ANTI-*MONEY LAUNDERING GUIDANCE* FOR MEMBERS OF THE BODIES AFFILIATED TO THE CONSULTATIVE COMMITTEE OF ACCOUNTANCY BODIES IN IRELAND (*CCAB-I*)

Guidance for those providing audit, accountancy, tax advisory, insolvency or related services in Ireland, on the prevention of money laundering and the countering of terrorist financing, issued by the Consultative Committee of Accountancy Bodies in Ireland.

This Anti-Money Laundering Guidance has been developed by a CCAB-I working party comprising staff and volunteer practitioners and has been approved for issue by The Institute of Certified Public Accountants in Ireland as Miscellaneous Technical Statement M42 (Revised) *Anti Money Laundering Guidance - Republic of Ireland,* to replace the Anti Money Laundering Guidance documents (Anti Money Laundering Guidance and Anti Money Laundering Procedures Guidance) which were issued in September 2005.

M42 (Revised) is effective as of 23rd September 2010. The Institute of Certified Public Accountants in Ireland would welcome comments from members on the Guidance up to Wednesday 15th December 2010 and such comments will be considered for inclusion in the Guidance.

Section 107 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides that the Minister for Justice and Law Reform, in consultation with the Minister for Finance, may approve guidelines and a court may have regard to such guidelines as approved in determining whether a defendant took all reasonable steps and exercised all due diligence to avoid committing an offence under the Act. Following the consultation period, The Institute of Certified Public Accountants in Ireland, in conjunction with the other CCAB-I bodies, will submit this Guidance for ministerial approval.

Disclaimer

This guidance has been prepared by the Consultative Committee of Accountancy Bodies - Ireland ("CCAB-I") to advise members of its constituent bodies on what measures need to be taken to comply with the Criminal Justice (Money Laundering and Terrorist Financing Act 2010 ("2010 Act").

This guidance supersedes ‑Anti-Money Laundering Guidance Republic of Ireland‖ issued by CCAB-I in September 2005 and the related "Anti-Money Laundering Procedures, Republic of Ireland", issued in March 2004 and updated in September 2005.

This guidance should be read in conjunction with, and not as a substitute for, the legislation. Members are advised that it may be appropriate, in considering the application of the provisions in particular circumstances, to seek legal advice.

No responsibility for loss occasioned to any person acting, or refraining from action, as a result of material in this publication can be accepted by the CCAB-I or CCAB-I constituent bodies.

Any issues arising out of the above will be governed by and construed in accordance with the laws of the Republic of Ireland and the courts o the Republic of Ireland shall have exclusive jurisdiction to deal with all such issues.

September 2010

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EXECUTIVE SUMMARY

INTRODUCTION

i The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (*2010 Act*) designates *external accountants*, auditors and *tax advisers*, amongst others (referred to collectively in the *2010 Act* as designated persons), for the purposes of the anti-*money laundering* and *terrorist financing* provisions of the *2010 Act*.

ii These provisions include requirements to establish certain procedures and impose reporting obligations on designated persons where knowledge, suspicion or reasonable grounds for that knowledge or suspicion exist that another person is engaged in *money laundering* or *terrorist financing*.

OBLIGATIONS ON „DESIGNATED PERSONS"

iii Having been designated since September 2003 for the purposes of the provisions of the previous anti-*money laundering* regime under the Criminal Justice Act 1994 and related Regulations, many of these obligations are familiar to *external accountants*, auditors and *tax advisers* and are already reflected within their operating procedures.

iv Under the *2010 Act*, they are required inter-alia:

- To apply the ***customer due diligence*** **provisions** of the *2010 Act*. Designated persons are required to take reasonable measures to identify and verify *clients* and measures –as reasonably warranted by the risk of *money laundering* or *terrorist financing*— to verify the identity of any **beneficial owner** connected with the *client* or the service provided. Certain categories of *client* may subject to ***simplified due diligence*** (Sections 33 through 39);
- To apply **appropriate *enhanced due diligence*** **measures** with regard to *clients* who do not present in person for verification of identity purposes and to *clients* who meet the definition of *politically exposed persons (PEPs)* under the *2010 Act* (Sections 33(4) and 37);
- To **obtain information** –reasonably warranted by the risk of *money laundering* or *terrorist financing*— on the purpose and intended nature of a *business relationship* with a *client*, **prior to establishing the relationship** (Section 35(1));
- To **monitor their dealings with *client***, including –to the extent reasonably warranted by the risk of *money laundering* or *terrorist financing*— scrutinising their *transactions* with the *client* to consider whether they are consistent with their knowledge of the *client"s* business and pattern of *transactions* (Section 35(3));
- To **report**, to the Garda Síochána and the Revenue Commissioners, knowledge, suspicion or reasonable grounds for that knowledge or suspicion, on the basis of information obtained in the course of carrying on business as a designated person, of *money laundering* or *terrorist financing* offences (Section 42);
- To **report,** to the Garda Síochána and the Revenue Commissioners, any service or *transaction* provided by the designated person in the course of business connected to a –designated place— under the *2010 Act* (Section 43);
- To **adopt policies and procedures**, in relation to their businesses, to prevent and detect the commission of *money laundering* and *terrorist financing* offences, including:
    - The assessment and management of risks of *money laundering* and *terrorist financing*;
    - Internal controls, including internal reporting procedures where established;
    - The monitoring and managing compliance with, and internal communication of, policies and procedures;

- The on-going training of principals, directors and staff in the law relating to *money laundering* and *terrorist financing*, in identifying services or other activities that may be related to *money laundering* or *terrorist financing* and in the policies and procedures established to deal with knowledge or suspicions of *money laundering* or *terrorist financing* activities (Section 54).

- To **keep records** evidencing the procedures applied and information obtained in applying the *customer due diligence* and monitoring requirements of the *2010 Act* with regard to *client* relationships and services provided, for a period of five years from:
  - in the case of *business relationships*, the date the relationship ceased; and
  - in the case of services provided, the date the service was completed (Section 55).

v The requirements of the *2010 Act* do not change the scope of work normally carried out on any assignment by an accountant, auditor or tax advisor. However, designated persons have to be able to demonstrate to their supervisory authorities that the have appropriate policies and procedures in place to meet their obligations under the *2010 Act*.

vi The *2010 Act* requires that *customer due diligence* measures are applied to all *clients*, not just those acquired after commencement of the *2010 Act* (15 July 2010). Section 33(d)(i) requires the measures to be applied to existing customers where an *accounting firm* has doubts about ‑the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer‖. There is no obligation to carry out an assessment of the adequacy of the documentation/information held by the *accounting firm* on the *client* immediately on commencement of the *2010 Act*. *CCAB-I* suggests that an appropriate time to carry out this assessment would be at the commencement of the next engagement with existing *clients*. Section 33(d)(ii) states that other documents or information which the *accounting firm* may have about the *client*, not necessarily originally gathered for the purposes of identifying the *client*, may be relied upon to confirm the identity of the customer.

OFFENCES OF *MONEY LAUNDERING* AND *TERRORIST FINANCING*

vii The *2010 Act* gives effect to the European Union (EU) Directive 2006/60/EC on the prevention of the use of the financial system for the purpose of *money laundering* and *terrorist financing* (‑*third money laundering directive*‖). The *third money laundering directive* defines *money laundering offences* as dealing with property ‗derived from criminal activity or from an act of participation in such activity'. ‗Criminal activity' in turn means the involvement in the commission of ‗serious crime', which is defined to include (at least) fraud, corruption and offences which are ‗punishable by deprivation of liberty or a detention order for a maximum of more than one year'. However, as discussed in the paragraphs below, the definition of *money laundering* in the *2010 Act* is much more wide ranging.

viii In Ireland, Section 7 of the *2010 Act* defines a *money laundering offence* in terms of ‗property that is the *proceeds of criminal conduct*'. *Money laundering offences* are committed where the person knows or believes (or is reckless in this regard) that the property represents the *proceeds of criminal conduct* and is involved in

- concealing or disguising the true nature, source, location, disposition or movement or ownership of such property;
- converting, transferring, handling, acquiring, possessing or using the property; or
- removing the property from, or bringing the property into, the State.

ix Section 6 of the *2010 Act* defines *criminal conduct* as ‗(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'. The Irish definition, therefore, goes further that the definition in the *third money laundering directive* as it encompasses

many indictable and non-indictable offences which are minor or technical in nature. Indeed, the *2010 Act* has widened the offence as compared to the previous legislation, which only defined *criminal conduct* in terms of an indictable offence. The effect of this broad definition is to establish a reporting obligation where any ‗proceeds' arise from committing an offence (whether involving a *client* or other third party). Such proceeds may include ‗saved costs' arising from illegal acts.

x The legislation contains no de minimis provisions, therefore all offences giving rise to proceeds, including those involving trivial amounts, fall to be reported.

xi The Criminal Justice (Terrorist Offences) Act 2005 (‗*2005 Act*') contains an offence of financing terrorism and obliges designated persons, including accountants, auditors and tax advisors, to adopt measures to prevent and detect the commission the offence of financing terrorism. In addition to the obligation to report knowledge or suspicions of *money laundering offences*, designated persons are also required by Section 42 of the *2010 Act* to report knowledge or suspicions of *terrorist financing* offences in the same manner.

SUPERVISORY AUTHORITIES

xii All designated persons under the *2010 Act* will be subject to supervision and monitoring by a ‗*competent authority*'. The *competent authority* for members of *CCAB-I* bodies, who are in business as *external accountants*, auditors and *tax advisers*, is the relevant *CCAB-I* body (Section 60).

xiii Designated persons may, however, be subject to more than one *competent authority* if they carry out other services (e.g. if they provide significant investment business advice, such that they are required to be registered with the Financial Regulator). Section 61 of the *2010 Act* provides for agreements between competent authorities, such that one *competent authority* could accept the sole responsibility for monitoring designated parties who are subject to monitoring by more than one *competent authority*. No such agreements are currently in place between *CCAB-I* bodies and other competent authorities.

xiv Section 63 of the *2010 Act* states that:

"[A] competent authority shall effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance…".

This active monitoring role did not exist in the legislation prior to the enactment of the *2010 Act*. The *CCAB-I* bodies'supervisory functions will meet their anti-*money laundering* supervision obligations under the *2010 Act* within their normal practice monitoring procedures and activities.

CHAPTER 1 – ABOUT THIS *GUIDANCE*

KEY POINTS

- The Irish anti-*money laundering* and *terrorist financing* regime requirements are set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the *2010 Act*) and the Criminal Justice (Terrorist Offences) Act 2005 (the *2005 Act*). The *2010 Act* implements Directive 2005/60/EC on the prevention of the use of the financial system for the purposes of *money laundering* and *terrorist financing* (the *third money laundering directive*) and repeals the anti-*money laundering* provisions in the Criminal Justice Act 1994 and related statutory instruments.

- The *2010 Act* provides that guidelines may be approved by the Minister for Justice and Law Reform and it is intended that this *Guidance* will be submitted for approval in due course. The Act further notes that the courts may have regard to guidance approved by the Minister in determining whether a defendant took all reasonable steps and exercised all due diligence to avoid committing an offence.

- The *2010 Act* refers to those persons subject to its provisions as designated persons'. Auditors, *external accountants* and *tax advisers* acting in the course of business carried on by the person in the State are designated persons. Members working in organisations outside the scope of the *2010 Act* are not subject to its requirements.

- *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

INTRODUCTION

1.1 Terms that appear in *italics* in this *Guidance* are explained in the Glossary.

1.2 This *Guidance* is consistent with the key principles and definitions of terms contained in the core guidance document issued for the financial services sector.

1.3 The *2010 Act* establishes the obligations of designated persons. Included in the definition of designated persons in Section 25 of the *2010 Act* are persons acting in the state in the course of business carried on by the person in the State, who or that is….an auditor, *external accountant* or *tax adviser*. Throughout this document, obligations on designated persons in the *2010 Act* (and the *2005 Act*, where applicable) are discussed by reference to *"accounting firms"*, which refers to accounting practices, whether structured as partnerships, sole practitioners or corporate practices and *"individuals"*, which are individual partners, directors, subcontractors, consultants and employees of such *accounting firms*.

1.4 This *Guidance* has been prepared to assist *accounting firms* and *individuals* in complying with their obligations, arising from Irish legislation, in relation to the prevention, recognition and reporting of *money laundering and terrorist financing*.

ACCOUNTING FIRMS* AND *INDIVIDUALS* WITHIN THE SCOPE OF THIS *GUIDANCE

1.5 The *Guidance* is addressed to those designated persons which are *accounting firms* and members of the *CCAB-I* bodies covered by Section 25[1] and *individuals*, who act in the course of a business carried on by them in Ireland as *an auditor*, *an external accountant*, an insolvency practitioner, *a tax adviser* or in the provision of investment advice under the Investment Business Regulations, and those who act in the course of business as trust or company service providers under Section 84. These services are referred to together for the purpose of this *Guidance* as the *defined services.*

1.6 Section 24 defines *external accountant* as **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** and *tax adviser* as **a person who by way of business provides advice about the tax affairs of other persons.** Section 25 separately identifies *auditors, external accountants* and *tax advisers* as designated persons' subject to the provisions of the *2010 Act.* The *2010 Act* does not define the term *accountancy services*. For the purpose of this *Guidance, accountancy services* includes, any service provided under a contract for services (i.e., not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information. Section 24 defines *designated accountancy body* as a prescribed accountancy body, within the meaning of the Companies (Auditing and Accounting) Act 2003 – the 2003 Act defines a prescribed accountancy body as (a) a recognised accountancy body or (b) any other body of accountants that is so prescribed. Currently, the prescribed accountancy bodies are:

- Association of Chartered Certified Accountants (ACCA);
- Association of International Accountants (AIA); Chartered
- Institute of Management Accountants (CIMA);
- Chartered Institute of Public Finance & Accountancy (CIPFA); Institute
- of Chartered Accountants in England & Wales (ICAEW); Institute of
- Chartered Accountants in Ireland (ICAI);
- Institute of Chartered Accountants of Scotland (ICAS); Institute of
- Certified Public Accountants in Ireland (ICPAI); and Institute of
- Incorporated Public Accountants (IIPA).

1.7 Employees of organisations which are not designated persons under the *2010 Act* are outside the scope of this *Guidance*. Those providing services privately on an unremunerated and voluntary basis are also outside the scope of this *Guidance*, since those services will not have been provided in the course of business carried on by the person in the State' (Section 25). Services provided in the course of employment or business in *defined services* will however be included, even if provided to the *client* on a pro-bono or unremunerated basis.

1.8 All *accounting firms* and *individuals* within the scope of this *Guidance* are advised to have regard to its content, in respect of all *defined services.* The *Guidance* is designed to assist *accounting firms* and *individuals* to meet their obligations under the anti-*money laundering* and *terrorist financing* legislation. Failure to meet those obligations could have serious legal, regulatory or professional disciplinary consequences. *Accounting firms or individuals* undertaking *defined services* who are supervised by another *competent authority*, such as the Financial Regulator or the Minister for Justice and Law Reform[2], should refer to the guidance issued by the Financial Services Sector**.**

1.9 It should also be noted that the way in which *accounting firms* and *individuals* apply the provisions of this *Guidance* will be likely to influence decisions by their professional bodies on whether they have complied with general ethical requirements, for example relating to integrity, the need to consider the public interest, or regulatory requirements.

[1] References throughout this *Guidance* to Section' are to the relevant provisions of the *2010 Act*, unless otherwise explicitly stated.

[2] The Department of Justice and Law Reform has established an anti-money laundering compliance unit to undertake the supervisory responsibilities of the Minister arising from the *2010 Act*.

1.10 *Accounting firms* may also need to have regard to guidance issued by other standard setters, professional bodies or trade associations where this relates to particular specialist services.

1.11 This *Guidance* does **not** deal with the specific requirements of the Financial Regulator. Accordingly, those providing financial services and regulated by the Financial Regulator should additionally refer to the Financial Regulator's requirements, which incorporate anti-*money laundering* guidance issued by the Financial Services Sector.

1.12 However, this *Guidance* **does** cover the requirements of *accounting firms* providing services under the relevant accountancy bodies' Investment Business Regulations or otherwise providing financial services under the oversight of their professional body. Such activities for the purpose of this *Guidance* are included within the scope of *defined services*.

1.13 As well as '*business relationship*', Section 33 refers to *transactions* involving payments to the *accounting firm* of over €15,000, either in a single *transaction* or in a series of linked *transactions*. This *Guidance* uses only '*business relationship*', a more natural term for accountancy and related services, throughout.

SUPERVISION BY *COMPETENT AUTHORITIES*

1.14 Section 60 requires all *accounting firms* to be supervised by an appropriate *competent authority*. For many *accounting firms* acting as *external accountants* and/or auditors, *tax advisers* or insolvency practitioners the *competent authority* will be the professional body to which they belong. Other competent authorities include:

- *Credit institutions* and *financial institutions* – Central Bank and Financial Services Authority of Ireland;
- Solicitors and barristers – Law Society of Ireland and the General Council of the Bar of Ireland respectively;
- Other designated persons not covered by the above – Minister for Justice and Law Reform[2].

1.15 Section 61 provides that where a *designated person,* such as an *accounting firm,* is subject to more than one *competent authority* the relevant *competent authorities* may agree that one shall act in respect of that *designated person,* but they are not obliged to do so. To date there are no such agreements in existence between *CCAB-I* bodies and other competent authorities. Accordingly some *accounting firms* and *individuals* may have to respond to more than one *competent authority*.

1.16 Under Section 63, a professional body which is a *component authority* is charged with effectively monitoring the *accounting firms* and *individuals* within its remit for compliance with their obligations under the *2010 Act* and to take measures reasonably warranted to secure such compliance. Such reasonable measures include reporting to the Garda Síochána and the Revenue Commissioners knowledge or suspicion that an *accounting firm* or *individual* is engaged in *money laundering* or *terrorist financing*.

LEGAL REQUIREMENTS AND STATUS OF THIS *GUIDANCE*

1.17 The anti-*money laundering* regime in Ireland is contained in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the *2010 Act*'). The *2010 Act* has repealed the provisions of the Criminal Justice Act 1994 and related regulations pertaining to *money laundering*. The Criminal Justice (Terrorist Offences) Act 2005 (the *2005 Act*') establishes the *terrorist offences*, including the offence of financing terrorism.

1.18 Approval of the Minister for Justice and Law Reform will be sought for this *Guidance*. Section 107(3) states that 'a court may have regard to any guidelines applying in relation to the [designated] person that has been approved by the Minister for Justice and Law Reform'.

1.19 Within this *Guidance*, the term ‗must' is used to indicate a legal or regulatory requirement and accordingly the use of this term indicates where following this *Guidance* is considered mandatory. *Accounting firms* may seek alternative interpretations of the Irish *anti-money laundering* regime if they wish but they are recommended to consider the impact of any advice they receive on their obligations and be able to justify why they have preferred to implement an alternative interpretation. However, there are many instances where law and regulation does not prescribe the required actions. In such instances the term ‗should' (and other terms suggesting possible ways in which *accounting firms* may approach matters subject to this *Guidance*) are used to indicate good practice methods that may be employed to meet statutory and regulatory requirements. *Accounting firms* need to consider the specific circumstances of their own situation in determining whether the suggested good practice methods are appropriate, or whether they consider alternative practices may be employed to achieve compliance with law and regulation. In all cases, *accounting firms* and *individuals* need to be prepared to be able to explain to their *competent authority* the rationale for their procedures and why they consider they are compliant with law and regulation.

1.20 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. Such sub-contractors are subject to the reporting requirements of the *2010 Act* by virtue of Section 41. (Please refer to paragraphs 2.21, 2.22 and
6.1 for further information regarding the reporting obligations of agents and other persons who have a ‗contract for services' with designated persons such as *accounting firms*.) 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.

1.21 Those involved in the provision of management consultancy services or interim management should be particularly alert to the possibility that they could be within the scope of the anti-money laundering regime to the extent they supply any of the *defined services* when acting under a contract for services in the course of business.

CHAPTER 2 – THE OFFENCES

KEY POINTS

- The *money laundering offences* are those contained in Sections 7 to 10 of Part 2 of the *2010 Act*. Section 13 of the *2005 Act* also creates similar offences relating to *terrorist financing*. In this *Guidance*, except where otherwise stated, the term ‗*money laundering*' will encompass *terrorist financing* activities.
- Detailed guidance as to the provisions of the *2005 Act* has not been provided as the requirements are very similar to those contained in the *2010 Act* which are described in detail. Reporting *of terrorist financing* suspicions is through the same channels *as money laundering* suspicions.
- The *money laundering offences* are framed very broadly and are designed to catch any activity in respect of *the proceeds of criminal conduct*, including possession of the proceeds of one's own *criminal conduct.*
- *Criminal conduct* is widely defined by Section 6 to be conduct that is an offence in Ireland as well as conduct occurring elsewhere that both (i) is an offence in the place where the conduct takes place and (ii) would have been an offence if it had taken place in Ireland.
- *Proceeds of criminal conduct* is defined in Section 6 as ―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 the legislation‖.
- *Property* is defined in Section 2 of the *2010 Act* as follows: ―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.‖
- There are no de minimis provisions relating to the *money laundering offences* under the *2010 Act* and the *terrorist financing* offences under *the 2005 Act.* They can be committed by any person, including *accounting firms* or those employed by *accounting firms*. Defences available to any person charged with such offences include reporting to the Garda Síochána and the Revenue Commissioners in advance of carrying out the *transaction* in question and not subsequently receiving an order to suspend the *transaction*.
- Other types of offences contained in the *2010 Act* to which *accounting firms* and *individuals* are exposed include the failure to apply adequate *customer due diligence* measures, the failure to disclose *money laundering* or *terrorist financing* offences and the failure to comply with the prohibition of disclosure contained in Section 49. These offences can be committed by *accounting firms*, any *individual* working in *accounting firms,* or by a *nominated officer, where such a role is established under the accounting firm's procedures*. For a full list of offences relevant to *accounting firms* and individuals, please refer to paragraph 2.37.
- It is a criminal offence for an *accounting firm* not to comply with the *2010 Act*. It is also an offence for any partner, director or officer of the *accounting firm,* to consent to or connive at the non-compliance or by neglect to cause non-compliance

WHAT IS *MONEY LAUNDERING* AND *TERRORIST FINANCING*?

2.1 The *2010 Act* defines *money laundering* very widely to include all forms of handling or possessing the proceeds, where the person knows or believes such proceeds is or represents the *proceeds of criminal conduct*, including possessing the proceeds of one's own crime, and facilitating any handling or possession of such proceeds. The *proceeds of criminal conduct* may take any form, including in money or money's worth, securities, tangible property and intangible property. The offence of *money laundering* also includes someone being reckless as to the criminal nature of the proceeds. *Money laundering* can be carried out in respect of the proceeds of conduct that is an offence in Ireland as well as conduct occurring elsewhere that (i) is an offence in the place where the conduct takes place and (ii) would have been an offence if it had taken place in Ireland.

2.2 *Terrorist financing*' means an offence under Section 13 of the Criminal Justice (Terrorist Offences) Act 2005. A person is guilty of an offence of financing terrorism if they, in or outside the State, directly or indirectly, unlawfully and wilfully, provide, collect or receive funds intending that they will be used or knowing that they will be used to carry out an act of terrorism. Terrorism is taken to be the use or threat of action designed to influence government, or to intimidate any section of the public, or to advance a political, religious or ideological cause where the action would involve violence, threats to health and safety, damage to property or disruption of electronic systems.

2.3 Materiality or de minimis exceptions do not exist in relation to either *money laundering* or *terrorist financing* offences.

2.4 For the purpose of this *Guidance*, except where otherwise stated, references to *money laundering* are also taken to encompass references to activities relating to *terrorist financing*, including handling or possessing funds to be used for terrorist purposes as well proceeds from terrorism. There can be considerable similarities between the movement of terrorist funds and the laundering of the *proceeds of criminal conduct*. However, two characteristics of *terrorist financing* need to be highlighted:

- *Terrorist financing* offences often involve small amounts which makes it more difficult to identify the terrorist property;
- *Terrorist financing* offences may involve the use of legitimate funds.

2.5 *Money laundering* activity may range from a single act, e.g. being in possession of the proceeds of one's own crime, to complex and sophisticated schemes involving multiple parties, and multiple methods of handling and transferring *the proceeds of criminal conduct* as well as concealing it and entering into arrangements to assist others to do so. *Accounting firms* and *individuals* need to be alert to the risks of *clients*, their counterparties and others laundering money in any of its possible forms. The *accounting firm* or its *client* does not have to be a party to *money laundering* for a reporting obligation to arise (see chapter 3). The definition of *money laundering* includes aiding, abetting, counselling or procuring an offence. In the case of *terrorist financing*, under Section 13(5) of the *2005 Act,* it is an offence to attempt to commit an offence, whether or not the funds are used in the commission of a terrorist offence. *Accounting firms* and *individuals* should be aware that all dealings with funds or property which are likely to be used for the purposes of terrorism would be considered as *terrorist financing offences*, even if the funds are "clean" in origin.

2.6 Sections 6 through 11 define the *money laundering offences*. **Anyone** can commit a *money laundering offence*. Conviction of any of these offences is punishable by up to 14 years imprisonment and/or an unlimited fine. A person commits a *money laundering offence* if he, knowing or believing that property is or ‗probably comprises' the *proceeds of criminal conduct* or being reckless as to whether the property is or ‗probably comprises' such proceeds, engages in any of the following acts in relation to the property:

- Concealing or disguising the true nature, source, location, disposition, movement or ownership or the property, or any rights relating to the property;
- Converting, transferring, handling, acquiring, possessing or using the property;
- Removing the property from, or bringing the property into, the State.

2.7 None of these offences are committed if:

- the persons involved did not know or suspect that they were dealing with the proceeds of *criminal conduct* and were not reckless as to whether or not the proceeds in question were the proceeds of *criminal conduct* ; or
- in advance of the possession or handling of the *proceeds of criminal conduct*, a report of the suspicious activity is made promptly either by an *individual* internally in accordance with the procedures established by the *accounting firm* (an *internal report)* or by an *individual* or an *accounting firm* direct to the Garda Síochána and the Revenue Commissioners before the act is committed. Section 42(7) of the *2010 Act* allows for such a report to be made immediately afterwards if it is not practicable to delay or stop the *transaction* or service from proceeding or the *accounting firm* is of the reasonable opinion that failure to proceed with the *transaction* or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or in the course of being conducted*; or*
- the act is committed by someone carrying out a law enforcement or judicial function; or
- the conduct giving rise to the *proceeds of criminal conduct* has taken place outside of Ireland, and the conduct was in fact lawful under the criminal law of the country/territory in which the act occurred*.*

2.8 *Criminal conduct* is defined under Section 6 in terms of the commission of ‗an offence'. This definition captures not only criminal offences, but all other offences which result in proceeds. As such, *criminal conduct* is defined very broadly. It goes beyond the common understanding of *money laundering*, being the conversion and concealment of funds derived from illegal activity, to incorporate the mere possession, acquisition or use of the illicit proceeds. Any offence, therefore, whether indictable or otherwise, which results in proceeds, represents a *money laundering offence* under Sections 6 and 7 and falls to be reported under the legislation.

2.9 In most cases of suspicion, the reporter will have in mind a particular type of underlying or predicate *criminal conduct*. However, on occasion a *transaction* or activity may so obviously lack any normal economic rationale or business purpose as to lead to a suspicion that it may be linked to *money laundering* in the absence of any other credible explanation. *Individuals* should not hesitate to exercise professional scepticism and judgement and should report such matters, if appropriate, externally or internally in accordance with an established procedure.

2.10 For a matter to be *money laundering* there must not only be *criminal conduct*, but also *proceeds of criminal conduct*. These terms are discussed in Chapter 6.

2.11 As noted in paragraph 2.2 above, Section 13 of the *2005 Act* establishes that a person is guilty of an offence of financing terrorism if they, in or outside the State, directly or indirectly, unlawfully and wilfully, provide, collect or receive funds intending that they be use or knowing that they will be used to carry out an act:

- That is an offence under Irish law;
- That is within the scope of and defined in any treaty listed in the annex to the Financing Terrorism Convention; or
- Any other act that is intended to cause death or serious bodily injury to a civilian or other person not taking part in an armed conflict, the purpose of which is to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act, of if they attempt to commit the offence.

It is also an offence if the person directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used for the benefit or purposes of a terrorist group.

2.12 Section 6 of the *2005 Act* defines *terrorist offences*, incorporating:

- terrorist activity (defined as the intention to (i) seriously intimidate a population; (ii) unduly compel a government or an international organisation to perform or abstain from performing an act; or (iii) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a state or an international organisation); and
- terrorist-linked activity (defined as an act which is committed with a view to engaging in a terrorist activity).

OFFENCE OF FAILING TO REPORT

The failure to disclose offence under Section 42

2.13 *Accounting firms and individuals* **"in the course of carrying on business of a designated person"** (including employees of an *accounting firm*) commit an offence if they fail to make a disclosure in cases where they have knowledge or suspicion, or reasonable grounds for suspicion that another person has been or is engaged in an offence of *money laundering*. Disclosure is made either internally in accordance with the procedures established by the *accounting firm* in accordance with Section 44(1) (which may involve reporting to a *nominated officer*), or direct to the Garda Síochána and the Revenue Commissioners. In this *Guidance*, internal disclosure in accordance with an accounting firm's procedures is referred to as an *internal report* and disclosure to the Garda Síochána and the Revenue Commissioners as an *external report*. Where the accounting firm's procedures provide for an *internal report* to be made, they also need to provide for an appropriate mechanism to ensure that an *external report* is made where there is knowledge, suspicion or reasonable grounds to suspect *money laundering* as a consequence of an *internal report*. Such procedures may involve the appointment of a *nominated officer* to consider and act, where appropriate, on *internal reports*. The offence of failing to make a disclosure is punishable by imprisonment of up to 5 years and/or an unlimited fine.

2.14 The failure to disclose offence is committed if an *individual* fails to make a report comprising the *required disclosure* as soon as is practicable either in the form of an *internal report* in accordance with his accounting firm's procedures, or in the form of a *external report* to the Garda Síochána and the Revenue Commissioners. The obligation to make the disclosure arises when:

- an *accounting firm* or an *individual* knows or suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* or *terrorist financing; and*
- the information or other matter on which the above is based came to him in the course of carrying on the business of the *accounting firm;* and
- the person has scrutinised the information in the course of reasonable business practice.

2.15 An *accounting firm* is obliged to make an *external report* if it is satisfied that the information received in *internal reports* meets the tests set out in paragraph 2.14. If the *accounting firm's* procedures provide for the appointment of a *nominated officer* for the purpose of considering and acting on (where necessary) *internal reports*, he or she may commit the failure to report offence if he/she fails to pass on reportable information in *internal reports*, as soon as is practicable, to the Garda Síochána and the Revenue Commissioners.

2.16 Section 42(4) establishes that an *accounting firm* or *individual* may have reasonable grounds to suspect that another person has been or is engaged in an offence of *money laundering* or *terrorist financing* if the *client* fails to provide the documentation or information required by the *accounting firm* in order to meet its *customer due diligence* obligations under the *2010 Act*. Under such circumstances, an obligation to report may also arise.

Required disclosure

2.17 *Accounting firms* should carefully consider the type of information to be included in their *external report*. They should ensure, in so far as possible, that their procedures for making an *internal report* provides all relevant information necessary to allow an assessment to be made as to whether an *external report* is required, and if so, to facilitate the making of the *external report*. Section 42(6) requires the following information to be provided*:*

- the information on which the *accounting firm's* knowledge, suspicion or reasonable grounds are based;
- the identity of the person suspected to have committed a *money laundering offence* (if known);
- the whereabouts of the laundered property, if known;
- any other relevant information.

2.18 Further *Guidance* on *external reports,* including the appropriate form and manner of reporting, is given in chapters 6 and 7 below.

Defences

2.19 There are defences to the offence of failing to report as follows:

- there is reasonable excuse for not making a report (note that there is no *money laundering* case law on this issue and it is anticipated that only relatively extreme circumstances, such as duress and threats to safety, might be accepted); or
- the *professional privilege reporting exemption* (see paragraphs 7.25 to 7.43 below) applies; or the
- *individual* does not actually know or suspect *money laundering* has occurred and has not been provided by his employer with the training required by the *2010 Act*.
  - If the employer has failed to provide the training, this is an offence on the part of the employer. In these circumstances, it may not be reasonable for employees to be held liable for failing to make a report; or
- it is known, or believed on reasonable grounds, that the *money laundering* is occurring outside Ireland, and is not unlawful under the criminal law of the country where it is occurring.

In determining whether a failure to disclose offence has been committed under Section 42(9), the Courts may have regard to the content of this *Guidance* when applied to an *individual,* delivering *defined services,* or to a *nominated officer*, where one is appointed under the *accounting firm's* procedures.

2.20 The general requirement under Section 42(7) is that an *accounting firm* must not proceed with a suspicious *transaction* or service connected with or subject of an *external report*, prior to the report being sent to the Garda Síochána and the Revenue Commissioners. There are two exceptions to this general rule, namely:

(a) where it is not practicable to delay or stop the *transaction* or service from proceeding, or
(b) the *accounting firm* is of the reasonable opinion that the failure to proceed with the *transaction* or service may lead to the other person suspecting that an *external report* has been or may be made or that an investigation has been or may be commenced.

Please refer to chapter 8 for more details.

***PREJUDICING AN INVESTIGATION* („*Tipping off*")**

2.21 Under Section 49 it is an offence for *accounting firms* or *individuals* to make any disclosure that is likely to prejudice an investigation, i.e.

- the fact that an *external report* has been, or is required to be, made; or
- that an investigation into allegations that a *money laundering* or *terrorist financing* offence has been committed is on-going or is being contemplated.

The penalty for this offence on summary conviction is a maximum of 12 months imprisonment, or a fine not exceeding €5,000, or both and on conviction on indictment to imprisonment for a term not exceeding five years, or a fine or both. There are a number of exceptions to this prohibition on revealing the existence of a report or an actual or contemplated investigation which are as follows:

- **Section 50 - Disclosure to customer in case of direction or order to suspect service or *transaction***: it is a defence for *accounting firms* to prove that the disclosure was to a customer/*client*, who was the subject of an order or direction given to the *accounting firm* not to carry out any specified service or *transaction* (by a member of the Garda Síochána of the rank of superintendent or above and/or on application by the Garda Síochána to the District Court), in accordance with Section 17, and the disclosure made was solely that the effect that the *accounting firm* had been so ordered/directed.

- **Section 51(1) - Disclosures within an undertaking:** it is a defence to prove that the disclosures in question were between agents, employees, partners, directors or other officers of the same undertaking.

- **Section 51(2) - Disclosures between *credit* or *financial institutions* belonging to the same group**: a person does not commit an offence where disclosure is made between two or more institutions, belonging to the same group, and the institution receiving the disclosure is from a Member State or from a country or territory specified by the Minister under Section 31 as imposing equivalent anti-*money laundering* requirements.

- **Section 51(3) - Disclosures between legal advisers or *relevant professional advisers* within different undertakings that share common ownership, management or control**: it is a defence for a legal adviser or a *relevant professional adviser* to prove that the disclosure was made to another legal adviser or a *relevant professional adviser* where both the person making the disclosure and the person to whom it was made are in either a Member State or from a country or territory specified by the Minister under Section 31 as imposing equivalent anti-*money laundering* requirements and both undertakings share common ownership, management or control.

- **Section 52 - Other permitted disclosures between institutions or professionals**: it a defence for a *credit institution*, a *financial institution*, a legal adviser or a *relevant professional adviser* to prove that the disclosure was:
    - to another institution of the same type (e.g. one *credit institution* to another) or professional of the same kind from a different undertaking but of the same professional standing (including being subject to equivalent duties of professional confidentiality and the protection of personal data within the meaning of the Data Protection Acts 1988 and 2003);
    - related to the same *client* or former *client* of both institutions or advisers or involves a *transaction* or provision of a service that involved them both;
    - was made only for the purpose of preventing a *money laundering* or *terrorist financing* offence; and
    - was made to a person in an EU Member State or a State imposing an equivalent *money laundering* requirements.

    This means that, for example, an accountant may only disclose to another accountant, and not to a lawyer or another kind of *relevant professional adviser*.

- **Section 53 - Other permitted disclosures (general)**: it is a defence to prove that a disclosure is made:
    - to a *competent authority* by virtue of the *2010 Act*, or
    - for the purpose of the detection, investigation or prosecution of a criminal offence in the Ireland or elsewhere, or
    - because the person did not know or suspect, at the time of the disclosure, that the disclosure was likely to prejudice an investigation into whether an offence of *money laundering* or *terrorist financing* had been committed, or
    - by an *accounting firm* (a *relevant professional adviser*' per the legislation) to its *client* solely to the effect that the *accounting firm* would no longer provide the particular service in question to the *client*, provided that the *accounting firm* ceased providing the service thereafter and made any *external report* required in accordance with the *2010 Act*.

2.22 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* with regard to 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*.

2.23 A prohibited disclosure under Section 49 of the *2010 Act* may be made in writing or verbally, and either directly or indirectly – including through inclusion of relevant information in published information. Considerable care is required in carrying out any communications with *clients* or third parties following a report. Before any disclosure is made relating to matters referred to in an *internal report* or *an external report*, it is important to consider carefully whether or not it is likely to constitute an offence of *prejudicing an investigation*. It is suggested that *accounting firms* keep records of these deliberations and the conclusions reached (paragraphs 7.12 to 7.14).

2.24 However, *individuals* and *accounting firms* will frequently need to continue to deliver their professional services and a way needs to be found to achieve this without falling foul of the offence of *prejudicing an investigation*. More guidance on acting for a *client* after a *money laundering* suspicion has been formed is given in chapter 9 of this document.

2.25 *Accounting firms* should ensure they have sufficient document retention policies in place (see paragraph 3.9) to meet their needs in this regard and in meeting their obligations under the *2010 Act*, as well as their legal and professional obligations more generally.

KNOWLEDGE AND SUSPICION

Is it knowledge or suspicion?

2.26 An offence is committed by an *accounting firm* or an *individual* if there is a failure to report where the *accounting firm* or *individual* has knowledge, suspicion or reasonable grounds for suspecting *money laundering* activity. There is no definition of knowledge or suspicion within the *2010 Act* and so interpretation of their meaning will rely on judgements in past legal cases, as well as this *Guidance* and on the ordinary meaning of the words.

2.27 Having knowledge means actually knowing that something is the case.

2.28 UK and international case law suggests that suspicion is a state of mind more definite than speculation, but falls short of knowledge based on evidence. It must be based on some evidence, even if that evidence is tentative – simple speculation that a *client* may be engaged in *money laundering* is not sufficient grounds to form a suspicion. Similarly, a general assumption that low levels of crime (e.g., not declaring all cash takings) are endemic in particular industry sectors does not amount to reasonable grounds for suspicion of particular *clients* operating in that sector.

2.29 A frequently used description is that ‗…A suspicion that something exists is more than a 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‘ (*Queensland Bacon PTY Ltd v Rees [1966] 115 CLR 266 at 303, per Kitto J*). In another more recent case, *Da Silva [2006] EWCA Crim 1654,* '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.'

2.30 *Money laundering* occurs only when criminal property has accrued to someone from a criminal act. In addition, it should be borne in mind that for property to be criminal property not only must it constitute a person‘s benefit from *criminal conduct*, but the alleged offender (i.e., the person alleged to be laundering criminal property) must know or believe (or be reckless as to whether or not) the property constitutes such a benefit. This means, for instance, that if someone has made an innocent error, even if such an error resulted in benefit and constituted a strict liability criminal offence, then the proceeds are not criminal property for the purposes of *2010 Act* and no *money laundering offence* has arisen until and unless the offender becomes aware of the error. *Accounting firms* need to consider carefully before reporting whether the information or other matter they intend to report meets these criteria. Examples of unlawful behaviour which may be observed, and may well result in advice to a *client* to correct an issue, but which are not reportable as *money laundering* are given below:

- offences where no proceeds or benefit results, such as the late filing of company accounts. However, *accounting firms and individuals* should be alert to the possibility that persistent failure to file accounts could represent part of a larger offence with proceeds, such as fraudulent trading or credit fraud involving the concealment of a poor financial position.
- misstatements in tax returns, for whatever cause, but which are corrected before the date when the tax becomes due.
- attempted frauds where the attempt has failed and so no benefit has accrued (although this may still be reportable under the Criminal Justice (Theft and Fraud Offences) Act 2001).

Where a *client* refuses to correct, or unreasonably delays in correcting, an innocent error that gave rise to proceeds and which was unlawful, *accounting firms* should consider what that indicates about the *client's* intent and whether the property has therefore now become *criminal property.*

Reasonable grounds for knowledge or suspicion

2.31 *Accounting firms* must make an *external report* if there are ‗reasonable grounds' for knowledge or suspicion, as well as actual knowledge or suspicion (*individuals* must make an *internal report* in such circumstances if that is in accordance with the internal reporting procedure established by the *accounting firm*). This 'reasonable grounds' test creates an objective test – *accounting firms* and their directors, partners, officers and employees 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. For example, a person might be considered to have reasonable grounds for knowledge of *money laundering* if he had actual knowledge of, or possessed information which would indicate to a reasonable person, that another person was committing or had committed a *money laundering offence*; or had deliberately ignored the obvious inference from information (ie,... wilfully shutting one's eyes) known to him that another person was committing or had committed a *money laundering offence*. Please note that the interpretation of ‗reasonable grounds' has not, as yet, been tested by the courts*.*

2.32 ‗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'.

2.33 Existence of higher than normal risk factors require increased attention to gathering and evaluation of ‗know your *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.

2.34 It is important that *individuals* 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 may be expected of a person of their standing. *Individuals* should exercise a healthy level of professional scepticism, and if unsure of the action that should be taken, consult with appropriate persons*,* if appropriate, in accordance with their *accounting firms'* procedures.

NON-COMPLIANCE WITH THE *2010 ACT*

2.35 It is a criminal offence for an *accounting firm* not to comply with the *2010 Act*. An offence may also be committed by any partner, director or officer of the *accounting firm,* who has consented to or connived at the non-compliance or where the non-compliance is attributable to his wilful neglect (Section 111).

2.36 The relevant offences are referred to below. *Accounting firms* should appreciate that there are a wide range of requirements in respect of which failure to comply could be considered to be a criminal offence.

2.37 The table overleaf sets out the offences which are relevant to the provision by *accounting firms* and *individuals* of *defined services*. Other offences included in the *2010 Act*, which can be committed by *credit* and *financial institutions*, by other designated persons subject to supervision by *State Competent Authorities,* or by holders of trust and company service provider authorisations from the anti-money laundering compliance unit of the Department of Justice and Law Reform, are not included in the table.

TABLE OF OFFENCES RELEVANT TO THE PROVISION OF *DEFINED SERVICES*	
OFFENCE	**PENALTY**
Sections 7-10 – *money laundering offences*.	Maximum jail sentence of 14 years and/or fine
Section 17(5) – failure to comply with direction of a member of the Garda Síochána or an order of a judge of the District Court to suspend a *transaction*.	Maximum jail sentence of 5 years and/or fine
Section 33(9) – • failure to apply *customer due diligence* measures; • failure to apply *enhanced due diligence* where required; • failure to comply with the requirements on timing of verification of identity of *clients* and any beneficial owner; • continuing with *transaction*/*business relationship* where unable to apply *customer due diligence* measures.	Maximum jail sentence of 5 years and/or fine
Section 35(4) – failure to apply special measures to *business relationships*.	Maximum jail sentence of 5 years and/or fine
Sections 37(9) – failure to apply *enhanced due diligence* to *politically exposed persons (PEPs)*.	Maximum jail sentence of 5 years and/or fine
Section 42(9) – failure to report suspicions of *money laundering* or *terrorist financing*.	Maximum jail sentence of 5 years and/or fine
Section 43(2) – failure to report *transactions* involving designated states.	Maximum jail sentence of 5 years and/or fine
Section 49(3) –making a disclosure which prejudices an investigation.	Maximum jail sentence of 5 years and/or fine
Section 54(8) – • failure to establish, maintain, monitor and manage the required policies and procedures; • failure to take appropriate measures to provide the required training.	Maximum jail sentence of 5 years and/or fine
Section 55(10) - failure to keep the required records.	Maximum jail sentence of 5 years and/or fine
Section 80 – obstructing, interfering or failing to comply with a request of an authorised officer of a state *competent authority*.	Maximum jail sentence of 1 year and/or fine
Section 13 of the *2005 Act* – financing terrorism	Maximum jail sentence of 20 years and/or fine

2.38 Further guidance on compliance with the *2010 Act* is given in chapters 3 to 9 below. When approval of the Minister for Justice and Law Reform has been obtained the Court may have regard to compliance with this *Guidance* in deciding whether a person ‑took all reasonable steps and exercised all due diligence to avoid committing an offence‖ (Section 107(3)).

CHAPTER 3 - ANTI *MONEY LAUNDERING* SYSTEMS AND CONTROLS

KEY POINTS

- Under the *2010 Act*, *accounting firms* are required to establish appropriate risk- sensitive policies and procedures in order to prevent and detect activities related to *money laundering* and *terrorist financing* including those policies and procedures which provide for:
  - identification and scrutiny of complex or unusually large *transactions*, unusual patterns of *transactions* with no apparent economic or lawful purpose and any other activities that the *accounting firm* has reasonable grounds to regard as particularly likely, by its nature, to be related to *money laundering* or *terrorist financing* (Chapters 6 and 7);
  - prevention of use of products favouring anonymity;
  - determination of whether a *client* is a *PEP* (Chapter 5);
  - *customer due diligence*, i.e. procedures designed to acquire knowledge about the firm's *clients* and prospective *clients* and to verify their identity as well as monitor *business relationships* and *transactions* (Chapter 5);
  - record keeping, including details of *customer due diligence* and supporting evidence for *business relationships*, which need to be kept for five years after the end of a relationship and records of *transactions*, which also need to be kept for five years;
  - internal control, risk assessment and management, compliance monitoring, management and communication; and
  - in addition, *accounting firms* are required to take measures to make relevant employees aware of the law relating to *money laundering* and *terrorist financing*, and to train those employees in how to recognise and deal with *transactions* which may be related to *money laundering* or *terrorist financing.*
- Section 44 of the *2010 Act* permits the establishment by *accounting firms* of an internal reporting procedure whereby knowledge, suspicions or reasonable grounds for suspicions of *money laundering* or *terrorist financing* offences are reported internally within the organisation by *individuals*., Such a report in accordance with the accounting firm's procedures, referred to as an *internal report* in this *Guidance*, is a defence for the *individual* concerned if charged with a failure to report (Chapter 7). The *accounting firm* has the responsibility, in accordance with its procedures, for assessing whether, as a result of the *internal report*, an *external report* must be made to the Garda Síochána and the Revenue Commissioners in accordance with Section 42.
- Best practice would be for *accounting firms* to consider the appropriate level of resource allocation necessary to support compliance. Issues that may need to be managed include the analysis and assessment of risks (both *client* and product/service risks), monitoring compliance with procedures and communication with *individuals* within the accounting firm.

INTRODUCTION

3.1 *Money laundering and terrorist financing* offences, contained in Sections 7 to 10 of the *2010 Act* and *terrorist offences* in Part 2 of the Criminal Justice (Terrorist Offences) Act 2005 (the *2005 Act*') may be committed not only by *accounting firms* but by any person. In contrast, the *2010 Act* imposes obligations on *accounting firms* under the legislation as to the systems and controls they need to have in place to meet the requirements of the *2010 Act*. Under the legislation, not only must each *accounting firm* put anti-*money laundering* systems and controls in place but it also has a duty to ensure that relevant staff are aware of these systems and are appropriately trained. *Accounting firms* are explicitly required to monitor and manage their compliance with, and internal communication of, their obligations under the *2010 Act,* specifically with regard to:

(a) the assessment and management of risks of *money laundering* or *terrorist financing*; and
(b) internal controls, including internal reporting procedures.

3.2 *Individuals* involved in the failure of *accounting firms* to meet their obligations under the *2010 Act* may be subject to criminal sanction, as may the *business* itself. Criminal sanctions for breach of the *2010 Act* only apply directly to the *individuals* working within an *accounting firm* when their neglect, connivance or consent has led to the failure to comply by the *accounting firm* (Section 111).

THE REQUIREMENTS

3.3 The *2010 Act's* requirements of *accounting firms* are contained in the following sections:

- *customer due diligence* (Sections 33 to 39); and
- record-keeping, procedures and training (Sections 54 and 55).

Systems

3.4 The *2010 Act* places requirements on *accounting firms* to have in place a wide range of systems in order to prevent and detect operations related to *money laundering* or *terrorist financing*. The nature and extent of such systems will depend on the size and complexity of the *accounting firm* in question. Where a separate chapter of this *Guidance* deals in detail with a particular matter, this is shown after the relevant heading below, whilst the other matters are dealt with in this chapter. The requirements cover the following issues:

- *customer due diligence* and ongoing monitoring (see chapter 5 of this *Guidance*);
- reporting procedures (see chapters 6 and 7 of this *Guidance*);
- record-keeping;
- internal control;
- risk assessment and management (see chapter 4 of this *Guidance*);
- compliance management;
- communication and training.

3.5 Whilst not required in the *2010 Act*, *accounting firms* may consider documenting their key policies and procedures with regard to anti-*money laundering*. Such a document may help to both disseminate the organisation's approach to their obligations to relevant staff members and to show to their *competent authority* how the organisation meets those obligations.

3.6 *Accounting firms* need to establish systems that create an internal environment or culture in which people are aware of their responsibilities under the Irish anti-*money laundering* regime and where they understand that they are expected to fulfil those responsibilities with appropriate diligence. In deciding what systems to install, an *accounting firm* will need to consider a range of matters including:

- the type, scale and complexity of its operations;

- the different business types it is involved in;
- the types of services it offers, and its *client* profiles; how
- it sells its services;
- the type of business *transactions* it becomes involved in or advises on; and
- the risks associated with each area of its operations in terms of the risks of the *accounting firm* or its services being used for *money laundering* or terrorist operations, or the risks of its *clients* and their counterparties being involved in such operations.

3.7 Depending on their size and the complexity of their operations, *accounting firms* may decide to allocate responsibility for internal controls and effective risk management to a member of senior management. *Accounting firms* may also establish a procedure whereby a *nominated officer* receives all reports of knowledge, suspicions or reasonable grounds for suspicion that *money laundering* or *terrorist financing* offences have been or are being committed, with that *nominated officer* being tasked with making any *external reports* deemed necessary under Section 42. If such a procedure is adopted, it would be advisable for the *accounting firm* to ensure that the appointed *nominated officer* has sufficient seniority and authority to carry out his task. The above two functions may or may not be held by the same person, depending on the procedures established. A*ccounting firms* may need systems and controls, appropriate to the size and nature of their *business*, sufficient to achieve the following:

- determination and recording of the firm's systems for anti-*money laundering* awareness, *client* acceptance, *customer due diligence* and on-going monitoring requirements (including whether a customer is a *"politically exposed person"* or *"PEP"*), consultation with and internal reporting to the *nominated officer* (where applicable) or other *individual(s)* within the organisation as appropriate, and dissemination of such policies and procedures to all relevant staff; development and documentation of the firm's risk assessment of its *business*;
- training of all relevant staff, including systems and controls to ensure training is taken/attended and understood;
- monitoring the compliance of the *business* with the policy and procedures including reporting to senior management on compliance and addressing any identified deficiencies.

3.8 In addition, *accounting firms* may consider maintaining the following additional systems, for effective internal control and risk management, appropriate to the size and complexity of their operations:

- documentation of policies and procedures in relation to matters not routinely a matter for *client* facing staff, such as *customer due diligence* for higher risk *clients*; information provision to senior management, training, awareness and compliance monitoring, and the role of the *nominated officer,* where one is appointed in accordance with the procedures established;
- provision in new product/service development processes for consideration of new services or business areas from an anti-*money laundering* perspective, and update of policy and procedure where appropriate;
- consideration at appropriate intervals of the *business* profile and whether the firm's risk assessment and/or policy and procedures require updating in response.

Appropriate systems might also include a policy of acceptance of new *clients* being reserved to partners or other senior personnel, who may wish to seek advice in accordance with established procedures, if it is proposed to accept *clients* from outside the usual and well understood *client* base of the firm.

Record-keeping

3.9 Records must be kept of *clients"* identity, the supporting evidence of verification of identity (in each case including the original and any updated records), the firm's *business relationships* with them (i.e. including any non-engagement related documents relating to the *client* relationship) and details of any occasional *transactions* and details of monitoring of the relationship. These records must be kept for five years after the end of the relevant *business relationships* or completion of the *transactions*. Care is needed to ensure appropriate retention of historic, as well as current, records. *Accounting firms* are also recommended to store securely information relating to both *internal reports* and *external reports* for at least the same period, i.e. at least five years after the report is made. Documentation of reports is dealt with in further detail in chapter 7 below. Shown below is a summary of record-keeping requirements specified in the *2010 Act* for *customer due diligence* and *business relationships*/occasional *transactions* and guidance in respect of retention of internal reporting procedures and training records for which there are no requirements in the *2010 Act*.

Record	Retention period	Comments
Specified in the 2010 Act		
i) *Client* identification, including evidence of identity	**5 years** from end of *business relationship.*[3]	Firms, depending on their needs, may consider a centralised repository of identification documents to be appropriate. Care should be taken to ensure that records are not destroyed by one department, while another is still within the five year retention period or has undertaken new business with the *client*. Where a *business* is engaged with several different activities with a *client*, it may decide to keep details of *customer due diligence* within each part of the firm so engaged, or to maintain central files, depending on its internal organisation. Evidence of *client* identity can be held in a variety of forms, e.g., in hard copy or in electronic form in accordance with the document retention policies employed within the *accounting firm*.
ii*) Business relationships*	**5 years** from the date when all activities in relation to the *business relationship* were completed - except in the case of particular *transactions* within that *business relationship* the retention period is 5 years from the date on which the *transaction* was completed	Records of *business relationships* and *transactions* involving payments to the *accounting firm* of over €15,000, either in a single *transaction* or in a series of linked *transactions* (i.e. *client* assignment working papers and related documents) also need to be maintained for five years from the end of the relationship or *transaction*. For particular *transactions* within a *business relationship*, the records for the particular *transaction* need only be retained for five years from the completion of that *transaction*. In the context of provision of *defined services* it would be reasonable to treat each engagement or assignment as a ‗particular *transaction*'. As *accounting firms* will need to maintain records for a wide range of purposes that comply with both legal and professional requirements for retention of documentation, it is not anticipated that any special system should be needed but that the general document retention systems employed within the *business*, provided they meet these standards, should be sufficient.

Record	Retention period	Comments
<u>Not required</u> in the 2010 Act – best practice recommendations		
iii) Suspicious activities	Not prescribed	Where applicable, records of *internal reports*, the *accounting firm's* consideration of same, any subsequent reporting decision and other issues such as the production of documents etc. are a vital record as they may form the basis of a defence to accusations of *money laundering* and related offences. For this reason, it is recommended that such records are retained for at least five years after being made. Records of *internal reports* are not considered to form part of *client* assignment working papers and so it is recommended that such records are kept, in a secure form, separately from the *accounting firms"* normal methods for retaining *client* work documents. This is to guard against inadvertent disclosure to any party who may have or seek access to the *client* working paper files where the existence or otherwise of an *internal report* or *external report is* not relevant to the purpose for which they are examining the files.
iv) Training	Not prescribed	We recommend that evidence of assessment of training needs and steps taken to meet such needs is retained. *Accounting firms* should determine a retention period in the light of their normal retention period for training and other internal records, but we recommend they be kept for at least five years in order to demonstrate a continuing compliance with the *2010 Act* and previously with the requirements of the Criminal Justice Act 1994.

3 As well ‗business relationship', the *2010 Act* refers to individual transactions or a series of linked transactions outside the *business relationship* valued at over €15,000. This *Guidance* uses only ‗*business relationship*", a more natural term for *accountancy and related services*, throughout.

3.10 *Accounting firms* should bear in mind their obligations under the Data Protection Legislation only to seek information that is needed for the declared purpose, not to retain personal information longer than is necessary, and to ensure that information that is held is kept up to date as necessary.

Reporting procedures

3.11 A*ccounting firms"* internal procedures should clearly set out what is expected of *individuals* who form suspicions or obtain knowledge of possible *money laundering* or *terrorist financing* offences. Where reports are to be provided internally in accordance with established procedures, the reports can take any form specified by the *accounting firm* in such procedures, e.g. phone calls, emails, in writing, supplemented by copies of third party documents and working papers but *accounting firms* should ensure that, whatever forms the reporting takes, relevant personnel are aware of the procedures to be used. Consideration should be given to how to minimise the number of copies of reporting information held within an *accounting firm*. *Accounting firms* may wish to consider whether it is advisable to specify telephone or face to face contact with the *nominated officer* or other *individual(s),* as appropriate, as the preferred initial reporting step, with the reporting records being created by the *nominated officer/other individual(s)*, supplemented as necessary with copy information from *client* files.

3.12 It is recommended that a procedure is put in place such that all details of *internal reports* are held other than in *client* files. The duty to report is a matter which does not fall within the delivery of professional services to *clients* and accordingly reporting details are not required to be placed on *client* files. Exclusion of information from *client* files assists in avoiding inadvertent or inappropriate disclosure of information and provides some protection against the threat of a disclosure *prejudicing an investigation*. *Client* files should retain only that information relevant to, and required for, the professional work being undertaken.

3.13 Further guidance is given in chapter 6 for *individuals* on forming suspicions and making *internal reports* and in chapter 7 for *accounting firms* in checking and validating *internal reports* and making *external reports* to *the Garda SÍochána and the Revenue Commissioners*.

Communication and Training

3.14 Section 54(6) provides that all persons involved in the conduct of the *accounting firm's* business are required to be instructed on the law relating to *money laundering* and *terrorist financing*, and regularly given training in how to recognise and deal with *transactions* which may be related to *money laundering* or *terrorist financing*. Though the *2010 Act* contains no express requirement, it is considered to be best practice for these provisions to be applied to all partners in *accounting firms* and to sole practitioners and to train all *client*-facing staff (see paragraph 3.15 below).

3.15 In considering a training plan, *accounting firms* need to keep in mind the objectives they are trying to achieve, which is to create an environment in relation to its business to prevent and detect the commission of *money laundering* and which thereby helps protect *individuals* and the *accounting firm*.

3.16 When identifying which staff may be considered relevant, *accounting firms* should consider not only those who have involvement in *client* work, but also, where appropriate, those who deal with the *accounting firm's* finances, and those who deal with procuring services on behalf of the *accounting firm* and who manage those services. Accordingly, it is likely that all *client*-facing staff will be considered relevant and at least the senior support staff. *Accounting firms* may decide to provide comprehensive training to all relevant staff members, or may chose to tailor its provision to match more closely the role of the employees concerned. In particular, *nominated officers,* where appointed, or other *individual(s)* given significant responsibilities in relation to compliance with the *accounting firm's* obligations under the *2010 Act* may require supplementary training, and members of senior management may also benefit from a customised approach or some supplementary training.

3.17 A training programme for relevant staff needs to contain content on the law and content which puts this into the context in which the *accounting firm* operates, to enable recognition of suspected *money laundering* and *terrorist financing* in that context, and which illustrates the ‗red flags' which staff should be aware of in conducting business. The core elements of law making up the anti- *money laundering* and anti-terrorism regime are set out in this *Guidance* (in particular in chapter 2). Whilst it is not necessary for relevant personnel to develop specialist knowledge of criminal law in general, they may reasonably be expected to apply the general legal and business knowledge which might normally be held by a person of their role and experience in determining whether to make a report (external or, if appropriate, internal).

3.18 Training also needs to cover how to deal with *transactions* which might be related to *money laundering* and *terrorist financing*. This would include training on the *accounting firms"* internal consultation and advisory systems (to assist *individuals* in assessing whether they have a valid suspicion), internal reporting systems and the *accounting firms"* expectations for confidentiality and the avoidance of a disclosure which would prejudice an investigation. Further guidance on recognising *money laundering* by those undertaking *defined services* is given in chapter 6.

3.19 As regards the frequency of training, this is a matter for each *accounting firm* to consider. It may be influenced by changes in law, regulation or professional guidance, by new case law or national/international findings, or by a change in the profile and perceived risks of the *business.* Each *accounting firm* should consider the frequency of its training, possibly on an annual basis, and document its assessment as to whether the current training and state of awareness of employees is sufficient, or whether a supplement is needed. It may not be necessary to repeat the whole of a training programme on a regular basis, but it may be possible to provide concise update material which accomplishes the dual role of refreshing or expanding knowledge and generally reminding staff of the importance of effective anti-*money laundering* work.

3.20 Training methods may be selected to suit the size, complexity and culture of the *business*, and may be delivered in a variety of ways including face to face, self-study, e-learning and video, or a combination of methods. *Accounting firms* should keep records of attendance at, or completion of, training.

3.21 *Accounting firms* need to make arrangements to ensure new members of staff or other *individuals* are trained as soon as possible after they join.

CHAPTER 4 – THE RISK BASED APPROACH

KEY POINTS

- The *2010 Act* allows for *accounting firms* to apply *customer due diligence* and on-going monitoring measures to the extent reasonably warranted by the risk of *money laundering* or *terrorist financing*.
- A risk based approach allows *accounting firms* to target resource and effort where the risk is greatest and, conversely, reduce requirements where the risk is low.
- *Accounting firms* must establish adequate and appropriate policies and procedures relating to risk assessment and management in order to prevent operations related to *money laundering* or *terrorist financing*.
- *Accounting firms* must—
  (a) determine the extent of *customer due diligence* measures (chapter 5) on a risk- sensitive basis depending on the type of *client*, *business relationship*, or services to be provided;
  (b) be able to demonstrate to their *competent authorities* that the extent of *customer due diligence* measures is appropriate in view of the risks of *money laundering* and *terrorist financing*.
- *Accounting firms* are required to take measures reasonably warranted by the risk of *money laundering* or *terrorist financing* to verify the identity of beneficial owners so that they are satisfied that they know who the beneficial owner is and what the control structure is in respect of a *client* who is other than a natural person (Section 33(2)).
- *Accounting firms* are required, to the extent reasonably warranted by the risk of *money laundering* or *terrorist financing*, to scrutinise *transactions* and other activities undertaken between the *accounting firm* and its *client* throughout the course of a *business relationship* to ensure consistency with *accounting firms'' and individuals''* knowledge of the *client*, his business and risk profile (Section 35(3)).
- *Accounting firms* should ensure that they keep up-to-date the information collected in applying *customer due diligence* measures.
- *Accounting firms* must apply *customer due diligence* measures at appropriate times to existing *clients* on a risk-sensitive basis, where there is reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained from such clients (see chapter 5).

RISK ASSESSMENT AND MANAGEMENT

Policies and procedures

4.1 All *accounting firms* must have appropriate policies and procedures for assessment and management of the risk of the *accounting firm* being used for *money laundering*, of failing to recognise it where it occurs and report it when required. A risk-based approach to anti-*money laundering* incurs cost which is proportionate to this risk, focusing effort where it is needed and has most impact.

4.2 *Accounting firms* are likely to already have in place policies and procedures to minimise professional, *client* and legal risk. Anti-*money laundering* procedures and policies may be integrated into existing risk management systems or be controlled separately. In either case, anti- *money laundering* policies and procedures should be valuable to *accounting firms*, in contributing to the control of risks to both *accounting firms* and *individuals* in this and other areas.

Risk profile

4.3 The development of a *money laundering* risk profile for the *accounting firm* enables a risk-based policy and approach to be developed, and thus to determine the most cost effective and proportionate way to manage and mitigate the *money laundering* and *terrorist financing* risks faced by the *accounting firm*. The risk profile of an *accounting firm* is determined by:

- identifying the *money laundering* and *terrorist financing* risks that are relevant to the accounting firm's business; and
- designing and implementing controls to manage and mitigate these risks, and record their operation.

Managing compliance

4.4 *Accounting firms* are required to monitor and manage their compliance with and internal communication of their policies and procedures and this includes their systems for risk assessment and management, as well as their other anti-*money laundering* policies and procedures (Section 54). It would be advisable for *accounting firms* to regularly assess the effectiveness of their systems and update their procedures as necessary. *Accounting firms* may come into contact with activity in the *client's* business which they perceive as likely, by its nature, to be related to *money laundering* or *terrorist financing* (in particular, complex or unusually large *transactions* and all unusual patterns of *transactions* which have no apparent economic or visible lawful purpose). In those circumstances, *accounting firms* have a duty to pay special attention to such an activity.

4.5 *Accounting firms* can decide for themselves how to carry out their risk assessment, which may be simple or sophisticated depending on the nature of their practice. Where the practice is simple, involving few service lines, with most *clients* falling into similar categories, a simple approach may be appropriate for most *clients*, with the focus being on those *clients* that fall outside the norm.

4.6 A risk-based approach can never, by its nature, be an error–free system. However, it ensures the most cost and operationally effective results by directing the attention of *accounting firms* to the risks relating to different *clients* and services, in order to determine what level of knowledge and verification is required when establishing a *business relationship* and in conducting that relationship.

THE RISK-BASED APPROACH

Risk assessment

4.7 Each *accounting firm* needs to make a reasoned decision as to how it intends to manage *money laundering* risk. A risk-based approach does, however, enable an *accounting firm* to target its effort on conducting *customer due diligence* more effectively with increased depth of work being conducted where the risks are perceived, on a rational basis, to be higher.

4.8 Senior management engagement and commitment is needed to produce and embed a successful risk-based approach, and it also needs effective communication to all staff members who need to use it.

4.9 *Accounting firms* may assess the *money laundering* risks of:

- different products and services,
- *client* types and sectors, and
- the jurisdictions of *client* origin, funding, investment and conduct of business.

and apply a simple risk categorisation of low/normal/high on the basis of these categories. Such an approach is valid, and should be capable of minimising complexity, but needs to retain an element of discretion and flexibility where risk ratings may be raised or lowered with appropriate management input in response to particular or exceptional circumstances.

4.10 *Accounting firms* may also wish to consider the different types of risk to which they are exposed. These risks may include

- being used in an active sense to launder money through the handling of cash or assets; becoming
- concerned in an arrangement which facilitates *money laundering*, through the provision of investment services or the provision of trust or company services;
- risks attaching to the *client* and/or those who trade with or otherwise interact with *clients* as regards their potential for involvement in *money laundering*.

4.11 A matrix prepared from a risk assessment of the above factors may provide the basis for the categorisation of *clients* and engagements into different risk groupings, to which appropriate levels of *customer due diligence* procedures are then assigned.

Developing and applying a risk based approach

4.12 In developing a risk-based approach, *accounting firms* need to ensure it is readily comprehensible and easy to use for all relevant staff. In cases of doubt or complexity, *accounting firms* may wish to consider putting in place procedures where queries may be referred to a senior and experienced person, e.g. where a *nominated officer* is appointed, he may be consulted in relation to a risk- based decision which may vary from standard procedures.

4.13 To develop the approach it is necessary to review the *accounting firm's* business and consider what *money laundering* risks might attach to each service type, *client* type etc. One way to consider this in relation to the *defined services* is outlined below, but there are other approaches that may be equally or more valid depending on the *accounting firm's* business.

4.14 *Accounting firms* should consider first the type of risk presented:

- is the risk that the *accounting firm* might be used to launder money or provide the means to launder money? Examples might include handling *client* money, implementing company and trust structures, handling insolvent estates where assets are tainted by crime etc.
- is the risk that the *client* or its counterparties might be involved in *money laundering*? Examples might include *clients* who are *PEPs* (see paragraphs 5.37 to 5.44), or who are high profile and attract controversy or adverse comment in the public domain, or who are involved in higher risk sectors and jurisdictions (*e.g.* those where corruption is known to be a higher risk), or who are known to be potentially involved in illegal activities, such as tax evaders seeking advice to resolve their affairs, and certain forensic work connected with fraud or other crime etc.

4.15 Consideration of these risk types should enable the *accounting firm* to draw up a profile of the *client* or service which are considered to present a higher than normal risk, and those which present a normal risk. Some may, by long acquaintance and detailed knowledge, or by their status (e.g. listed, regulated and government entities as defined for the purpose of *simplified due diligence* in accordance with Sections 34 and 36) be considered to present a lower than normal risk.

4.16 This matrix can then be incorporated into *client* acceptance procedures, and as step 1 of the *customer due diligence* process, allows a *money laundering* risk level to be assigned to ensure appropriate, but not excessive, *customer due diligence* work is carried out.

4.17 It is important for the approach adopted to incorporate a provision for raising the risk rating from low or normal to high if any information comes to light in conducting the *customer due diligence* that causes concern or suspicion.

4.18 In all cases, even where *clients* qualify for *simplified due diligence* exemptions under Sections 34 and 36, or where they are considered low risk for other reasons, to assist in effective ongoing monitoring *accounting firms* should gather knowledge about the *client* to allow an understanding of:

- who the *client* is;
- where required, who owns it (including ultimate beneficial owners – see paragraphs 5.6 through 5.12);
- who controls it;
- the purpose and intended nature of the *business relationship;*
- the nature of the *client;*
- the *client's* source of funds;
- the *client's* business and economic purpose.

4.19 The information specified in the bullet points above are referred to in the remainder of this *Guidance* as 'know your client' or 'KYC' information which is one step in the *customer due diligence* process. However, *accounting firms* may avail themselves of the opportunity to conduct verification of identity on a simplified basis both under Sections 34 and 36, where applicable, and otherwise where the accumulated knowledge of the *client* is considered sufficient to prove its identity on a risk-sensitive basis without collecting additional documents as might be required for a new *client* considered to present a normal risk (provided in both cases that any relevant requirements of the *2010 Act,* for example in relation to the identification of beneficial owners, are met).

4.20 *Accounting firms* need to set out clear requirements for collecting KYC information about the *client* and for conducting verification of identity, to a depth suitable to the assessment of risk. Set out in this *Guidance* are some high level guidelines as to how *accounting firms* might approach this.

CHAPTER 5 – *CUSTOMER DUE DILIGENCE*

KEY POINTS

- Effective "*customer due diligence*" measures are an essential part of any system designed to prevent *money laundering* and are a cornerstone requirement of the *2010 Act.*
- *Accounting firms* should take a **risk-based approach** to allow effort to be concentrated on higher risk areas (**also see chapter 4**). Risks must be assessed before the appropriate level of *customer due diligence* can be applied.
- *Customer due diligence* measures need (with limited exceptions) to be carried out prior to:
  - establishing a *business relationship;*
  - carrying out a *transaction* or series of linked *transaction* valued at in excess of €15,000;
  - carrying out a service where there is a real risk that the *client* is involved in, or the service is being sought for the purpose of, *money laundering* or *terrorist financing;*
  - carrying out a service where there are doubts concerning the veracity or adequacy of previous identification information.
- *Accounting firms* are required to ensure *customer due diligence* procedures are applied to all *clients*, both new and existing. *Customer due diligence* must be applied to existing *clients* (i.e. those existing prior to the commencement of the *2010 Act*) where there are doubts about the veracity or adequacy of previously obtained documents or information. *CCAB-I* recommends that *accounting firms* consider the adequacy of the information/documentation they hold on existing *clients* at the planning stage of the next engagement with such *clients.*
- **Before** entering a *business relationship*, *accounting firms* must:
  - identify and verify the *client's* identity using documents or information from reliable and independent sources;
  - identify the beneficial owner of the *client* (where there is one), including understanding the ownership and control structure of the *client* and take measures, reasonably warranted by the risk of *money laundering* or *terrorist financing*, to verify the identity of the beneficial owner(s);
  - obtain information, reasonably warranted by the risk of *money laundering* or *terrorist financing*, on the purpose and intended nature of the *business relationship.*
- Verification of identity may in certain circumstances be conducted during the establishment of a *business relationship* if this is necessary not to interrupt the normal course of business and there is little risk of *money laundering* or *terrorist financing* occurring, provided the verification is completed as soon as practicable after contact is first established.
- **During** a *business relationship*, *accounting firms* must monitor activity on an ongoing basis. This includes, to the extent reasonably warranted by the risk of *money laundering* or *terrorist financing*, the scrutiny of *transactions*, source of funds and other elements of knowledge collected in the *customer due diligence* process, to ensure the new information is consistent with other knowledge of the *client* and keeping the documentation concerning the *client* and the relationship updated.
- *Accounting firms* can use a variety of tools and methods to conduct *customer due diligence*; the onus is on them to satisfy themselves and to be able to demonstrate to their *competent authority* the appropriateness of their approach.

WHY IS THIS IMPORTANT?

5.1 *Customer due diligence* measures are a key part of the anti-*money laundering* requirements. They ensure that *accounting firms* know who their *clients* are, ensure that they do not accept *clients* unknowingly which are outside their normal risk tolerance, or whose business they will not understand with sufficient clarity to be able to form *money laundering* suspicions when appropriate. If an *accounting firm* does not understand its *client's* regular business pattern of activity it will be very difficult to identify any abnormal business patterns or activities. In addition, *accounting firms* must be in a position to supply the *client's* identity in the event that the *accounting firm* is required to submit an *external report* to the Garda Síochána and the Revenue Commissioners.

5.2 Many *accounting firms* will have other procedures for *client* acceptance, for example to ensure compliance with professional requirements for independence and to avoid conflicts of interest. The requirements of the *2010 Act* may either be integrated with those procedures or addressed separately. In either case, initial *customer due diligence* information not only assists in acceptance decisions, but also enables the *accounting firm* to form well-grounded expectations of the *client*'s behaviour which provides some assistance in detecting potentially suspicious behaviour during the *business relationship.*

5.3 The processes required for compliance with anti-*money laundering* initial *customer due diligence* requirements contribute vitally to the overall picture of potential *clients* and appropriate risk assessment of them. However, a lack of concern raised during *customer due diligence* does not automatically mean that the *client* and engagement will remain in their initial risk category. Continued alertness for changes in the nature or ownership of the *client*, its business model, or its susceptibility to *money laundering* – or actual evidence of the latter – must be maintained.

WHAT IS *CUSTOMER DUE DILIGENCE*?

5.4 Sections 33 through 39 provide an outline of the required components of *customer due diligence* which *accounting firms* need to ensure are integrated into *client* acceptance processes and the continuing conduct of the *business relationship.* The required components are:

- identifying the *client* (i.e. knowing who the *client* is) and verifying the identity of the *client* (i.e. confirming that identity is valid by obtaining documents or other information from sources which are independent and reliable);
- identifying the beneficial owner(s) (see paragraph 5.6 through 5.12) of a *client*, if there is one, so that the identity of the person(s) who ultimately own or control the *client* is known, the ownership and control structure is understood and also that their identities are verified, as required, on a risk-sensitive basis; and
- obtaining information, reasonably warranted by the risk of *money laundering* or *terrorist financing*, on the purpose and intended nature of the *business relationship*.

5.5 Whilst Sections 33 through 39 indicate some cases where either *simplified due diligence* may be employed or *enhanced due diligence* must be employed, they do not specify, comprehensively, how to apply a risk-based approach in conducting *customer due diligence*. Chapter 4 of this *Guidance* provides a high level outline of the key elements of a risk-based approach.

WHAT IS A BENEFICIAL OWNER?

5.6 Sections 26 through 30 set out in some detail the meaning of ‗beneficial owner' in terms of bodies corporate, partnerships, trusts, estates and other legal entities/arrangements not falling into the four categories listed above as well as a catch all provision that, where not otherwise specified, defines the beneficial owner as the person who ultimately owns or controls the *client* or on whose behalf a service or *transaction* is being conducted. The provisions regarding beneficial ownership are summarised below:

- **Bodies corporate** –beneficial owner means any person who, in respect of any body other than a company whose securities are listed on a *regulated market*, ultimately owns or controls, directly or indirectly including through bearer share holdings, more than 25% of the shares or voting rights in the body or who otherwise exercises control over the management of the body.

- **Partnerships** - beneficial owner means any person who ultimately is entitled to or controls (directly or indirectly) more than 25% of the capital or profits of the partnership or more than 25% of the voting rights in the partnership or who otherwise exercises control over the management of the partnership.

- **Trusts** - beneficial owner means any person who is entitled to a *vested interest in possession, remainder or reversion,* whether or not the interest is defeasible, in at least 25% of the capital of the trust property, or where a trust is not set up entirely for the benefit of persons with a *vested interest*, the class of persons in whose main interest the trust is set up or operates or any person who has control over the trust. Where a class of persons is identified, it is not a requirement for all members of that class to be separately identified.

- **Estates of deceased persons** – the beneficial owner, in relation to an estate of a deceased person in the course of administration, means the executor or administrator of the estate.

- **Other entities and arrangements** (meaning an entity or arrangement which administers and distributes funds) – where the persons who benefit from the entity or arrangement have been determined, beneficial owner means any person who benefits from at least 25% of the property of the entity or arrangements. Where those benefiting have yet to be determined, beneficial owner means the class of persons in whose main interest the entity or arrangement is set up or operates or a person who exercises control over at least 25% of the property of the entity or arrangement. Where a class of persons is the beneficial owner, it is not a requirement for all members of that class to be separately identified. Note that where a person is the beneficial owner of a body corporate which benefits from, or exercises control over, the property of an entity or arrangement, the person is to be regarded as having that benefit or control and so is classed as the beneficial owner.

5.7 The focus on identifying and, where appropriate, verifying the identity of beneficial owners is not only an important element of the required *customer due diligence* information, but is also an important factor in an effective risk-based approach to *client* acceptance. *Accounting firms* will need to be diligent in their enquiries in this field, taking into account that information may sometimes not be readily available from public record sources. This will necessitate a flexible approach to information gathering which will often involve direct enquiry of *clients* and their other advisers and professional service providers as well as undertaking public record searches in Ireland and overseas.

5.8 For incorporated entities (other than those for which *simplified due diligence* applies), *accounting firms* are required to identify any beneficial owner connected with the customer or service concerned, and -taking measures reasonably warranted by the risk of *money laundering* or *terrorist financing*, (i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is, and (ii) in the case of a legal entity or [other legal arrangement] to understand the ownership and control structure of the entity or arrangement concerned‖. It is a matter for an *accounting firm*

to identify the most appropriate method of verifying beneficial owners, taking account of the accounting firm's assessment of the *money laundering* risk presented by the customer.

5.9 Some possible options if verifying the identity of beneficial owners include:

- Requesting from the customer documentary evidence from an independent source detailing the beneficial owners;
- Searches of the relevant company registry;
- Electronic searches either direct or via a commercial agency for electronic agency for electronic verification.

5.10 *Simplified due diligence* (see paragraphs 5.28 to 5.32) applies for companies listed on a regulated market, such as the Main Securities Market of the Irish Stock Exchange (ISE) and the Main Market of the London Stock Exchange (LSE). The ISE's Enterprise Securities Market and the LSE's Alternative Investment Market are not regulated markets and, therefore, entities listed on these markets should be considered on a risk based approach.

5.11 In respect of private persons the customer is the beneficial owner, unless there are features of the *transaction*, or surrounding circumstances, that indicate otherwise. Therefore, there is no requirement on firms to make proactive searches for beneficial owners in such cases, but they should make appropriate enquiries where it appears that the customer is not acting on his/her own behalf. In such circumstances, the accounting firm should proceed as for a *client* who is a natural person.

5.12 In lower risk situations, therefore, it may be reasonable for the *accounting firm* to be satisfied as to the beneficial owner's identity based on information supplied by the customer. This could include information provided by the customer (including trustees or other representatives whose identities have been verified) as to their identity, and confirmation that they are known to the customer. While this may be provided orally or in writing, any information received orally should be recorded in written form by the *accounting firm*.

APPLICATION AND TIMING OF *CUSTOMER DUE DILIGENCE* MEASURES

Measures to be taken before entering a relationship / carrying out a service or *transaction*

5.13 Identification and verification of identity procedures (together termed as ‑ID proceduresǁ) should normally be completed **before** entering into a *business relationship*. This applies also to single *transactions* or a series of linked *transactions* valued at in excess of €15,000. ID procedures must be completed prior to carrying out any service for the *client* when there is a real risk that the customer is involved in, or the service sought by the *client* is for the purpose of, *money laundering* or *terrorist financing* or where there are doubts about the sufficiency of identification information already held. If it is concluded the information held is insufficient, the *accounting firm* should remedy this as soon as is practicable. Should a suspicion be developed about the *client*, *accounting firms* will need to consider whether they are satisfied that the information already held is sufficient and up to date or whether any additional or updated information is required in respect of the *client(s)* in question in order that the information required by Sections 33 through 39 (*customer due diligence*) is met. In particular, in any case where suspicion is developed, *simplified due diligence* may no be longer be appropriate. This means if *simplified due diligence* had been applied, additional information may need to be collected in accordance with *accounting firms"* risk- based procedures. *Accounting firms* must bear in mind in conducting this *customer due diligence* work the need to avoid disclosing that a *money laundering* report has been made, or that an investigation is underway, or may be commenced (see paragraphs 2.21 to 2.25 on *Prejudicing an Investigation*).

5.14 Section 33(5) allows for completion of identification and verification procedures 'during the establishment of a *business relationship*' rather than before if the measures are completed as

soon as practicable after the initial contact **but only** when such a process is necessary not to interrupt the normal conduct of business and there is -no real risk‖ of *money laundering* or *terrorist financing* occurring. Guidance on how this might reasonably be applied in the case of provision of the *defined services* is provided below, although this is not intended to be prescriptive, or exclusive. *Accounting firms* should not complete any assignment for a *client* (e.g. including transfer of *client* monies or delivery of work product) before *customer due diligence* has been carried out in full in accordance with the *accounting firms"* procedures.

5.15 If procedures are not completed before entering a *business relationship*, *accounting firms* and their *clients* may suffer considerable cost and inconvenience in having to terminate a relationship if ID procedures either cannot be completed, or where the results are unsatisfactory.

5.16 Section 35(1) requires *accounting firms* to obtain information on the purpose and intended nature of a *business relationship* prior to the establishment of such a relationship (as deemed necessary by the *accounting firm* on the basis of its risk assessment). If a *client* fails to provide an *accounting firm* with the required information, section 35(2) prohibits the *accounting firm* from providing the service until such time as the *client* provides the required information.

5.17 *Customer due diligence* should also be completed before undertaking individual *transactions* or a series of linked *transactions* valued at in excess of €15,000 for the *client* that do not form part of an ongoing *business relationship*. *Accounting firms* must understand why the *client* requires the service, the identities of other parties that might be involved, and any potential for *money laundering* or *terrorist financing* that may arise.

When delay may be acceptable

5.18 In forming new *business relationships*, there are some cases where delay **may** be acceptable, such as in urgent insolvency appointments, and urgent appointments that involve ascertaining the legal position of a *client* or defending the *client* in legal proceedings.

5.19 In such cases, *accounting firms* should still gather enough information to allow them to at least form a basic assessment of the identity of the *client* and *money laundering* risk and to complete other acceptance formalities such as considering the potential for conflicts of interest.

5.20 In other cases, where the majority of information required has been collected before entering a *business relationship*, short time extensions to complete collection of remaining information may be acceptable, provided this is caused only by administrative or logistical issues, and not by any reluctance of the *client* to provide the information and is necessary not to interrupt the normal course of business. Such extensions should be exceptional, rather than the norm. It is recommended that such extensions of time are considered and agreed by a member of senior management or the *nominated officer*, where appointed in accordance with the *accounting firm's* procedures, to ensure the reasons for the extension are valid and do not give rise to concern over the risk category of the *client* or the potential for *money laundering* suspicion.

5.21 If evidence is delayed (rather than refused), *accounting firms* should consider; the

- credibility of the *client's* explanation;
- the length of delay;
- whether the delay is in itself reasonable grounds for suspicion of *money laundering* requiring a report to the *Garda Síochána* and the *Revenue Commissioners* and/or a factor indicating against acceptance of the *client* and engagement; and
- documenting the reasons for delay and steps taken.

Non-compliance through *client* refusal

5.22 If a prospective *client* refuses to provide evidence of identity or other information properly requested as part of *customer due diligence*, the *business relationship* should be discontinued

and/or the *transaction*/series of linked *transactions* amounting to in excess of €15,000 sought by the *client* must not be provided, for so long as the failure continues (but see paragraphs 5.77 to 5.87 on insolvency cases). Consideration must be given as to whether a report needs to be made to the Garda Síochána and the Revenue Commissioners, in accordance with Section 42(4).

5.23 Where the appointment is of either a lawyer or *relevant professional advisor* in the course of ascertaining the legal position for the *client*, or performing the task of defending or representing the *client* in or concerning legal proceedings (including advice on instigating or avoiding proceedings) the requirement to cease acting and consider reporting to the Garda Síochána *and the Revenue Commissioners* does not apply although *customer due diligence* information will still need to be collected within the time constraints in Sections 33 and 35. *Accounting firms* are advised to consider the position very carefully before applying this exception to ensure that the type of work and their professional status fall within the definition of *relevant professional adviser* set out in Section 24.

Continuing *customer due diligence*

5.24 In addition to considerations before entering a *business relationship*, *customer due diligence* must be exercised on an ongoing basis during the relationship, as part of regular monitoring of *money laundering* risks or occasioned by the *client* undergoing significant changes. *Accounting firms* may wish to consider reviewing *customer due diligence* and other *client* information on a periodic basis, as well as in response to perceived risks.

5.25 Changes such as the appointment of new directors or shareholders and/ or controlling parties, changes in the *client's* strategy or changes of business profile may, depending on the circumstances, prompt *accounting firms* to re-apply *customer due diligence* procedures. These may differ from those adopted for a new *client*, and although there may be a change in focus the objective remains the same: to have a sound understanding of the *client's* identity and activities in order to assess risks of *money laundering* and to have accurate underlying records.

THE RISK BASED APPROACH TO *CUSTOMER DUE DILIGENCE*

5.26 Sections 33 and 35 require *customer due diligence* measures to be carried out on a risk-sensitive basis. This means that *accounting firms* need to consider how their risk assessment and management procedures (see chapter 3 above) flow through into their *client* acceptance and ID procedures, to give sufficient information and evidence, in the way most appropriate to the *business* concerned.

5.27 In addition, there are certain circumstances where Sections 33 through 39 lay down categories where *simplified due diligence* or *enhanced due diligence* is appropriate, according to national and international assessments of the risk of *money laundering*.

Simplified due diligence

5.28 "*Simplified due diligence*", whilst not being explicitly referred to as such in the *2010 Act*, is covered in Sections 34 and 36. It is a phrase which means that an *accounting firm* is not required to apply the *customer due diligence* measures laid out in Sections 33 (both in relation to a customer and to beneficial owners) and 35, where the *accounting firm* has reasonable grounds for believing that a *client* falls into the relevant categories.

5.29 *Accounting firms who* may be permitted to apply the *simplified due diligence* exemptions but who perceive other than a low risk of *money laundering* in a specific case, should consider applying their standard or *enhanced due diligence* processes. In any case, where a *client* or potential *client* has been subject to *simplified due diligence* and a suspicion or *money laundering* or *terrorist financing* arises in relation to that *client*, the *simplified due diligence* provisions may no longer be applicable and the *customer due diligence* requirements of Sections 33 and 35 may need to be

applied, subject to any issues regarding the potential to *prejudice an investigation* through a prohibited disclosure under Section 49.

5.30 Section 34(3) states that *simplified due diligence* may not be applied to *clients*:

(a) which come from a designated state under Section 32;

(b) where the *accounting firm* has reasonable grounds to believe that there is a real risk that the *client* is involved in, or the service sought is for the purposes or, *money laundering* or *terrorist financing*;

(c) where the *accounting firm* has reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained from the *client* for the purposes of verifying the *client's* identity;

(d) the *accounting firm* has to apply *enhanced due diligence* on the basis that the *client* has not presented to the *accounting firm* in person for verification or that the *client* is a *politically exposed person (PEP)* as defined in Section 37.

5.31 The main categories of relevance to those providing *defined services* are:

- *credit* or *financial institutions* subject to the provisions of the *third money laundering directive* or equivalent overseas requirements,
- listed companies whose securities are listed on a regulated *EEA* market or equivalent overseas market or prescribed regulated financial market,
- Irish public bodies and certain bodies accountable to an institution if the European Communities or to a public authority of a Member State (see Section 34(5)).

Simplified due diligence is also available for some categories of products and *transactions* which may be provided by *financial institutions*.

5.32 *Accounting firms* should set out clearly in their internal procedures what is considered to constitute reasonable grounds for a belief that a *client* can be made subject to *simplified due diligence*. Evidence should be obtained either as to the regulated status of the *credit* or *financial institution* (such as a print out from the regulator's official web-site or listing), or the listed status of the company (such as a print out from the exchange's official web-site or listing, or details of the listing obtained from a trusted, independent commercial provider of company information). With regard to public authorities, recourse to official government web-sites is recommended. In each case, where the body is not subject to Irish, EC or *EEA* law, justification will also need to be recorded as to how the provisions and other conditions regarding *specified disclosure obligations* in respect of listed companies, and the check and balance procedures and other conditions in respect of public authorities outside the Ireland, have been met. Where *simplified due diligence* applies, *accounting firms* are not required to apply standard *customer due diligence* measures. However, *accounting firms* must still carry out ongoing monitoring (see paragraph 5.66) and appropriate KYC information should therefore still be obtained (see paragraph 4.18).

Enhanced due diligence

5.33 A risk-based approach to *customer due diligence* will identify situations which by their nature can present a higher risk of *money laundering* or *terrorist financing*. Section 39 sets out a general provision that *enhanced due diligence* may be applied in such situations and means that the *accounting firm* would obtain additional *customer due diligence* information about the *client*.

5.34 Sections 33(4), 37 and 38 also specify that *enhanced due diligence* must be applied in a number of situations, of which two are relevant to providers of *defined services* and are outlined below:

- if a *client* has not been physically present for identification purposes, one or more additional measures must be taken to *enhance due diligence,* for example by, inter alia, either gathering additional documents, data or information, or taking additional steps to verify documents or obtain a confirmatory certificate from a *credit or financial institution* subject to the *third money laundering directive*; and

- if a *business relationship*, or *transaction*/series of linked *transactions* valued at in excess of €15,000, is to be undertaken with a *politically exposed person (PEP)* who is either a customer or a beneficial owner of a customer, the *accounting firm* must provide for senior management approval for the relationship to be established and must take adequate measures to establish the source of wealth and funds which are involved.

5.35 Sections 33(8) and 37(8) prohibit the *accounting firm* from providing the service sought by the *client* subject to the *enhanced due diligence* requirements of the *2010 Act*, where the *client* fails to provide the required information. The *accounting firm* must also not establish, or must discontinue, any *business relationship* until such time as the *client's* failure to provide information is rectified.

Non face to face introductions

5.36 Where the *client* has not been physically present for identification purposes, Section 33(4) of the *2010 Act* suggests the following as examples of how *enhanced customer due diligence* might be carried out:

- Ensuring that the *client's* identity is established by additional documents, data or information, e.g. verification of details supplied regarding home or business addresses, telephone numbers (electronically or otherwise) and communication with the *client* prior to commencing the *business relationship* through telephone contact, visits and/or mailing documentation;
- Supplementary measures to verify or certify the documents supplied, or seeking confirmatory certification from a *credit institution* or *financial institution* carrying on business in the State, or in another Member State or other designated state (designated by the Minister under Section 31) where the institution is supervised for compliance with AML obligations compliant with the *third money laundering directive*.

Politically exposed persons (PEPs)

5.37 Section 37 defines a *PEP* as a person "…who is or has, at any time in the preceding year been entrusted with a prominent public function', including either a 'specified official' or a member of the administrative, management or supervisory body of a state-owned enterprise, residing in a place outside Ireland or an immediate family member or known close associate of such a person. Specified official is defined as any of the following officials (including any such officials in an institution of the European Communities or an international body):

- a head of state, head of government, government minister or deputy or assistant government minister;
- a member of parliament;
- a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;
- a member of a court of auditors or of the board of a central bank;
- an ambassador, charge d'affairs or high ranking officer in the armed forces.

5.38 For risk management and reputational risk reasons, *accounting firms* may wish to treat as *PEPs* persons who held such positions more than a year ago.

5.39 "Immediate family member' of a *PEP* includes: parents, spouses and equivalent, children, spouses of children and equivalent, and any other family member of a class prescribed by the Minister (none at the time of publication).

5.40 "Close associate' includes any person who (i) has joint beneficial ownership of a legal entity or arrangement, or any other close business relations with a *PEP* or (ii) has sole beneficial ownership of a legal entity or arrangement set up for the actual benefit of a *PEP.*

5.41 An accounting firm is deemed to know or have reasonable grounds to know that a person is a *PEP*, an immediate family member of a *PEP* or a close associate of a *PEP* on the basis of

information in the possession of the *accounting firm* or in the public domain. Contravening the requirements to take steps to determine whether or not a customer or a beneficial owner is a *PEP* is not acceptable as a basis for claiming one did not know that a person was a *PEP* or an immediate family member or close associate of a *PEP* (Section 37(7)).

5.42 "International body" is not defined, and due consideration should be given to the type, reputation and constitution of the body before excluding it or its representatives from *enhanced due diligence*. However, bodies such as the United Nations, NATO and *FATF* may reasonably be included within the definition of an international body for this purpose.

5.43 Under Section 37, *clients* who are *PEPs* must always be subject to the *enhanced due diligence* measures referred to in paragraph 5.34 above.

5.44 *Accounting firms* are required to have risk sensitive measures in place to recognise *PEPs* (Sections 37(1) to 37(3)). This can be a simple check conducted by enquiring of the *client* and perhaps using an internet search engine. *Accounting firms* that are likely to regularly undertake services for *PEPs* may need to subscribe to a specialist database. To the extent possible, *accounting firms* should be aware of any news during a *business relationship* that could change a *client's* status to *PEP*.

Prohibited relationships

5.45 The *2010 Act* sets out circumstances which constitute prohibited relationships. In Section 59, correspondent banking relationships with *shell banks*, or a bank known to permit use of its accounts by a *shell bank* are prohibited. In addition, Section 58 prohibits the setting up of anonymous accounts, and *customer due diligence* must be applied to any existing accounts continuing in existence after commencement of the *2010 Act* before such an account is used.

5.46 In addition, *accounting firms* must comply with any prohibition issued by the Department of Finance in respect of any person, or State to which financial sanctions apply – see paragraph 5.64 below

Existing *clients*

5.47 Section 33(1)(d) requires *customer due diligence* measures to be carried out

"(i) prior to carrying out any service for the customer 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 customer, whether obtained under this section or section 32 of the Criminal Justice Act 1994 (the 1994 Act") prior to its repeal by this Act or under any administrative arrangements that the person may have applied before section 32 of the 1994 Act operated in relation to the person, and

(ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer."

5.48 The *2010 Act*, as well as the *third money laundering directive* which it transposes into Irish Law, is based on the concept of a risk-sensitive approach to identifying and verifying the identity of *clients*. The Minister for Justice and Law Reform and other members of the Government have confirmed this approach in various Dáil and Committee debates in the Houses of the Oireachtas during the progress of the Bill to transpose the *third money laundering directive*.

5.49 There is no requirement in the legislation for all existing *clients* to be subjected to *customer due diligence* procedures immediately on the coming into force of the *2010 Act* (15 July 2010). *CCAB- I* recommends that *accounting firms* keep their *clients'* identification and verification information up-to-date and suggests that an appropriate time to consider the need for additional information from the *client*, in order to ensure compliance with the requirements of *2010 Act*, would be at the commencement of the next engagement with existing *clients*.

5.50 *CCAB-I* recommends that *accounting firms* consider, at their next evaluation, whether the documentation and information they hold on the *client* is sufficient to meet their customer due diligence obligations under the *2010 Act*, based on their risk assessment. In this regard,

- past history of dealing with such existing *clients* can represent a rich source of verification of identity; and
- it may be easier to assess the potential risk that an existing *client* might be involved in *money laundering* or *terrorist financing* activities than the potential risk associated with a new *client* with whom they have had no previous experience.

5.51 Section 33(1)(d), as quoted above, states that designated persons, including *accounting firms*, may obtain relevant evidence of identity other than through the formal *customer due diligence* process. *Accounting firms* may decide, given the experience they have of dealing with a particular existing *client*, that the identification information they hold on the *client* is sufficient and that no further procedures are necessary, based on its assessment of the risks relating to that *client*. In such circumstances, it would be advisable for the *accounting firm* to document their consideration of that *client*.

Reliance on third parties

5.52 Section 40 provides that *accounting firms* may rely on certain third parties, referred to as ‗relevant third parties', to complete all or part of *customer due diligence,* subject to there being an arrangement between the *accounting firm* and the relevant third party. The *accounting firm* proposing to rely on a relevant third party must satisfy himself that, on the basis of the arrangement in place, the relevant third party will forward any documents or information relating to the *client* in question that has been obtained by the relevant third party in identifying that *client*, as soon as practicable after the *accounting firm* makes the request. *Accounting firms* should, however, be cautious in relying on third parties as they will remain liable for any failure to comply with *customer due diligence* measures notwithstanding their reliance on a third party (Section 40(5)). *Accounting firms* should consider requiring copies of relevant information and documentation from the third parties, in order that they may satisfy themselves the information is sufficient.

5.53 Relevant third parties on whom reliance may be placed are:

- *credit* or *financial institutions* (excluding undertakings solely providing foreign exchange or money services)
  - in Ireland; or
  - authorised to operate under the laws of another Member State or of a designated place (under Section 31);
- *external accountants, auditors, tax advisers* and *relevant independent legal professionals*
  - who are members of a *Designated Accountancy Body,* the Irish Taxation Institute or the Law Society of Ireland respectively; or
  - who are subject to mandatory professional registration or mandatory professional supervision under the laws of another Member State or in a designated place (under Section 31);
- trust and company service providers
  - who are members of a *Designated Accountancy Body*, of the Law Society of Ireland, or are authorised to carry on business by the Central Bank and Financial Services Authority of Ireland; or
  - who are subject to mandatory professional registration or mandatory professional supervision under the laws of another Member State or in a designated place (under Section 31);

The relevant third parties in the abovementioned ‗designated place' under Section 31 must be supervised or monitored in the place for compliance with requirements equivalent to those

specified in the *third money laundering directive*. *Accounting firms* may outsource their *customer due diligence* measures but remain liable for any failure in the *customer due diligence*.

5.54 At the end of this chapter (chapter 5C), a list is provided of the places designated by the Minister for Justice and Law Reform as having equivalent requirements to those laid down in the *third money laundering directive*.

5.55 Before placing reliance, an *accounting firm* seeking to rely on a relevant third party must take steps to ensure that the third party will provide the required information.

5.56 An *accounting firm is* not obliged to act as a relevant third party for another *designated person. Accounting firms* agreeing an arrangement to act as a relevant third party in relation to the *customer due diligence* obligations of another *designated person* should take great care to ensure they have adequate systems in place to keep proper records and to respond to any request for these.

5.57 Where an *accounting firm* agrees to be part of an arrangement whereby another *designated person* relies on him in meeting their obligations under the *2010 Act* with regard to *customer due diligence* must, if requested, make available to the person relying as soon as is reasonably practicable:

- any information obtained about the *client* (and any beneficial owner) when applying *customer due diligence* measures; and/or
- copies of any identification and verification data and other documents on the identity of the *client* (and any beneficial owner) obtained when applying *customer due diligence* measures.

Other designated persons who rely on an *accounting firm* to carry out *customer due diligence* measures, as part of an arrangement between both parties, remain ultimately responsible under the *2010 Act* for any failure to apply the measures.

5.58 A *designated person* may only rely on a relevant third party if the *designated person* is satisfied on the basis of the arrangement that the relevant third party will forward, as soon as practicable after a request, any documents or information relating to the customer that has been obtained by the relevant third party in applying the measure. Such arrangements may involve agreements over the retention of such records for specified periods after the date on which reliance commences. *Accounting firms* agreeing to act as a relevant third party for other *designated persons* should consider reflecting such agreements in their procedures.

5.59 The failure by *accounting firms* or other *designated persons*, who agree to act as a relevant third party, to provide the information referred to in paragraph 5.57 is not addressed in the *2010 Act*. However, *accounting firms* acting as relevant third parties should be aware that such failures could result in significant legal difficulties arising from claims of breach of contract.

5.60 Subject to paragraphs 5.52 to 5.55 above, reliance may be placed on a relevant third party in relation to the *customer due diligence* measures contained in Section 33 and in relation to the requirement to obtain information on the purpose and intended nature of a *business relationship*. However, *accounting firms* must still carry out ongoing monitoring in accordance with Section 35(3) (see paragraph 5.66) and the steps to determine whether the *client* is a *politically exposed person (PEP);* appropriate KYC information should therefore still be obtained (see paragraph 4.18). *Accounting firms* cannot rely on third parties in meeting their obligations with regard to on- going monitoring.

5.61 Whilst reliance may be a useful and efficient feature of a *customer due diligence* system between parties who are able to build a relationship of trust, it should not be entered into lightly. *Accounting firms* need to consider carefully whether they wish to be relied upon and, before agreeing to be part of a reliance arrangement, ensure:

- their *client* (and any other third party whose information would be disclosed) has no objection to their information being passed to the person seeking reliance; and
- that they have in place the necessary record-keeping systems.

CONDUCTING *CUSTOMER DUE DILIGENCE*

„Know your *client*" („KYC")

5.62 Section 33 does not limit the kinds of documents or information which an *accounting firm* may reasonably use to confirm the identity of a *client*. It refers to documents from a government source and ‑any prescribed class of documents, or any prescribed combination of classes of documents‖. The Minister for Justice and Law Reform can prescribe different classes of documents for different kinds of designated persons, customers, *transactions*, services or risks of *money laundering* or *terrorist financing*. To date, the Minister has not prescribed any classes of documents for any particular circumstances. *CCAB-I* understands that the Minister only intends to prescribe documents in situations where he deems the measures being applied are ineffective. Various sources may be used to enhance a *business"* knowledge of their *client*, including direct discussion with the *client*, information (*e.g.* websites, brochures, reports etc.) prepared by the *client* and review of public domain information.

5.63 *Accounting firms* need to consider whether there are any particular steps they wish to specify for use in higher risk cases to increase the depth of *customer due diligence*, such as seeking out wider information from internet and press searches concerning the *client*, its key counterparties, its sector and jurisdiction, or possibly using subscription databases which provide a quick way of accessing public domain information and in many cases provide links to persons or companies known to be associated with the *client* (see paragraphs 5.74 and 5.75 on electronic identification).

5.64 *Accounting firms* might, as appropriate to their risk assessment, wish to check the names of *clients* against lists of known terrorists and other financial restrictions information The Department of Finance website maintains a list of statutory instruments currently in force in respect of EU Regulations imposing financial sanctions – see: http://www.finance.gov.ie/viewdoc.asp?fn=/documents/FinancialSanctions2008/Finsanctionsindex 08.htm.

Some electronic resources also include an automated check against this information as part of the product.

Specific *customer due diligence* prompts

5.65 It may be helpful for a list of questions or prompts to be incorporated into *customer due diligence* procedures. Examples are given at the end of this chapter (chapter 5A) which should be amended to suit the particular *accounting firm's client* base and services.

Ongoing monitoring

5.66 Section 35(3) requires ongoing monitoring of the *business relationship*. This comprises scrutiny, to the extent reasonably warranted by the risk of *money laundering* or *terrorist financing*, of activity during the relationship, including enquiry into source of funds for *transactions* with the *client* if needed, to ensure all is consistent with expected behaviour based on accumulated *customer due diligence* information. In addition, the need to update *customer due diligence information* should be considered at appropriate times, following a risk based approach, according to the firm's knowledge of the *client* and changes in its circumstances or the nature of services provided by the firm. A firm also may wish to consider this need, on a more routine basis, as appropriate opportunities arise. Examples of such opportunities are:

- at the start of new engagements and when planning for recurring engagements;

- when a previously stalled engagement restarts;
- whenever there is a change of control and/or ownership of the client;
- when there is a material change in the level, type or conduct of business; and
- where any cause for concern, or suspicion, has arisen (in such cases, care must be taken to avoid making any disclosure which could prejudice an investigation).

Risk-based verification

5.67 Application of a risk-based approach is of considerable importance in verification, both to ensure a good depth of knowledge in higher risk cases, but also to avoid superfluous effort in lower or normal risk cases.

5.68 With the more frequently encountered *client* types, i.e. persons, private or public Irish companies, Irish partnerships, an Irish regulated designated person, or an Irish government body, outline guidance on a risk based approach to verification of identity is set out at the end of this chapter (chapter 5B).

Documentary evidence used in the verification of identity

5.69 The purpose of verification of identity is to confirm and prove the information collected in so far as it relates to the identity of the *client*. Recourse to documents from independent sources is important. The amount of reliance that can be placed upon, and thus the strength of, particular forms of evidence varies.

5.70 The following are illustrative of a different of strength of various forms of documentary evidence starting with the highest:

- documents issued by a government department or agency or a Court (including documents filed at the Companies Registration Office or overseas equivalent);
- documents issued by other public sector bodies or local authorities;
- documents issued by *designated persons* regulated by the Central Bank and Financial Services Authority of Ireland or overseas equivalent;
- documents issued by *relevant professional advisers* and *relevant independent legal professionals* regulated for anti-*money laundering* purposes by the Designated Accountancy Bodies or the Law Society of Ireland and overseas equivalents;
- documents issued by other bodies.

5.71 In the case of *clients* who are persons, documents from highly rated sources that contain photo identification as well as written details are a particularly strong source of verification of identity.

Certification and annotation

Certification

5.72 *Accounting firms* may wish to consider whether copies of original documents and copies of certified copies of original documents are to be certified as true copies to demonstrate their provenance. *Accounting firms* may wish to create standard stamps or labels to apply to documents, which can then simply be filled in with name, signature and date. *Accounting firms* are advised to have regard to the standing of the person certifying and may wish to consider specifying from whom certification may be accepted. For instance, *accounting firms* may decide to restrict acceptance to those documents certified by a person in the permitted categories for reliance (Section 40) which are broadly a *credit* or *financial institution* authorised by the Central Bank and Financial Services Authority of Ireland, a professionally qualified auditor, *external accountant,* insolvency practitioner or *tax adviser*, or *independent legal professional*, or their equivalent in other Member States or other designated places under Section 31, which have equivalent law and provided in all cases that the person is subject to supervision as to his compliance with those requirements.

Annotation

5.73 This should be used when the document is as good as an original but is not the original itself. This particularly applies to printouts from the Internet, such as downloads from the Companies Registration Office, regulator, stock exchange or government websites, or similar trustworthy business information sources. Each document so obtained should bear written evidence showing who printed it, when, from where and should be signed by the relevant person.

Electronic identification

5.74 There are now a number of subscription services that give access to databases of information on identity. Many of these services can be accessed on-line and are often used by *accounting firms to* replace or supplement paper verification checks. Subject to 5.66, this means *accounting firms* may use on-line verification as a substitute for paper verification checks for *clients* considered normal risk, supplemented by additional paper verification checks for higher risk *clients,* or vice versa.

5.75 Before using electronic databases, however, *accounting firms* should question whether the information supplied is sufficiently reliable, comprehensive and accurate. The following points should be considered before deciding to use an electronic source (either as part of a wider process or, where appropriate, on its own):

- **Does the system draw on multiple sources?** A single source, *e.g.* the Electoral Register, is usually not sufficient. A system which uses both negative and positive data sources is generally more robust than one that does not.[4]
- **Are the sources checked across a period of time?** Systems that do not regularly update their data are generally prone to more inaccuracies than those that do.
- **Are there control mechanisms to ensure the quality and reliability of data?** Systems should have built-in checks that ensure the integrity of data and should ideally be transparent enough to show the results of these checks and their bearing on the integrity of data.
- **Is the information accessible?** Systems need to allow an *accounting firm* either to download and store the results of searches in appropriate electronic form, or to print off a hardcopy record containing all necessary details as to name of provider, source, date etc.

Non typical documentation

5.76 Certain sectors of the population or persons may not be in a position to provide „designated persons" with the usual types of documentation necessary for them to fulfil their customer due diligence obligations set out in the *2010 Act* due to a range of circumstances. In cases where a *client* produces documentation that is not familiar to the *accounting firm* to meet the identification and verification requirements, the *accounting firm* may consider instituting enhanced monitoring arrangements over the *client's* activities in accordance with their risk assessment.

Insolvency cases

5.77 An insolvency practitioner should obtain verification of the identity of the person or entity over which he is appointed. Acceptable evidence of verification may include a court order, a court endorsed appointment, or an appointment made by a debenture holder or creditors meeting supported by a company search or similar. It is not always possible or necessary to obtain identification evidence direct from persons or individual shareholders or directors in an appointment in respect of a company as their co-operation may not be forthcoming.

5.78 It is important for an officeholder to be sure about the identity of the person or entity over which he is taking appointment given the urgency of the situation and the necessity not to delay when this might risk dissipation of assets and erosion of value. Initial contact with the company would include, for example accepting instructions from directors to take steps to place a company into liquidation or to accept appointment as independent reporting accountant under Section 3 of the Companies (Amendment) Act 1990. However, completion of other KYC elements of *customer due diligence* may not be possible prior to appointment and should be completed as soon as practicable after appointment (if possible, usually within 5 working days).

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4 'Positive' data are those that prove an individual exists, e.g. name, current address, date of birth etc, whereas „negative' data relate known incidents of fraud, including identity fraud, other known offences and registers of deceased persons.

5.79 Insolvency practitioners post appointment have a very different relationship with the insolvent *client* than that with a normal audit or advisory *client* and have access to a very wide range of information which alters the need for traditional pre-appointment KYC. However, particular focus is needed before, and immediately after, appointment on considering the way the business has been operated and assessing the risk of assets being tainted by crime. In such cases it may well be necessary, but not as a matter of routine in every case, to make an *external report* prior to performing the normal range of duties of collection, realisation and distribution of assets (see chapter 8).

5.80 Where the insolvency practitioner is appointed by Court order without any prior involvement with the insolvent company, reliance on the order of appointment or winding-up order is considered to be sufficient evidence of identity. This would apply in the following cases:

- Appointment as provisional liquidator by order of the Court;
- Appointment as liquidator in a winding up by the Court (including by order following an examination); or
- Appointment as examiner by order of the Court.

5.81 An insolvency practitioner appointed to a company which is itself a *designated person* under the *2010 Act*, and becoming responsible for the company's operation, will need to be satisfied that the company has appropriate procedures in place to ensure its compliance with the requirements of the *2010 Act* and that the procedures continue to function during the term of the his appointment.

Acting as receiver

5.82 Generally, the debenture under which the practitioner is appointed as receiver will refer to the receiver as agent of the company. Accordingly, prior to accepting that appointment, it would be appropriate for the practitioner to carry out the relevant identification procedures in respect of the directors of the company to which he/she is appointed.

5.83 Insolvency practitioners may be appointed as receiver by *financial institutions*, which are also designated persons under the *2010 Act* and are subject to the same requirements regarding *customer due diligence*, record-keeping, reporting and staff training. Where an insolvency practitioner is appointed receiver, whether over a specific property or all of the assets of the company, the appointment is by the *financial institution* and it is the *financial institution*, and not the company subject to the receivership, which is the *client*.

5.84 Where the holder of the debenture under which the receiver is appointed is a person or an entity which is not a *financial institution*, the practitioner should carry out the relevant *customer due diligence* procedures on their initial contact with the debenture holder.

Members' voluntary liquidation

5.85 In a members'voluntary liquidation, where the member is appointed by a resolution of the company in a general meeting, the relevant *customer due diligence* procedures would be applied to the company, taking into consideration the guidance on identifying and verifying corporate *clients* in this chapter.

Creditors‘ voluntary liquidation

5.86 In a creditors‘ voluntary liquidation where the practitioner nominated by the members of the company is appointed liquidator, the previous paragraph applies. Where the liquidator is appointed by decision of the meeting of creditors convened under Section 267 of the Companies Act, 1963, the insolvency practitioner is appointed to a company which has already been placed in liquidation by resolution of its members. Therefore, the insolvency practitioner applies its *customer due diligence* procedures to the company. It may be necessary to consider some of the members of the company if they are also creditors of the company according to the Statement of Affairs and it is probable that a distribution will be made to that category of unsecured creditors.

Other insolvency related services

5.87 Where insolvency practitioners are providing services outside of formal insolvency proceedings, they should apply their *customer due diligence* procedures to those parties with whom they have a contractual relationship. For example, where work is to be carried out for one party (e.g. a creditor or investor) in respect of a company, and both that party and the company sign the letter of instruction, the insolvency practitioner should apply his *customer due diligence* procedures to both parties to the agreement. Where instruction letters are received from a group of creditors or investors, it would normally be sufficient to apply the *customer due diligence* procedures to those parties who act on behalf of the group and enter into a contract with the practitioner (i.e. sign the letter of instruction), such as the agent or trustee.

CHAPTER 5 A – SPECIFIC PROMPTS FOR *CLIENTS*

These are suggested prompts only. In order to make the most use of these *accounting firms* should amend the text to suit their own *client* base and services offered.

A. For entities/businesses

1. What is its purpose in entering into any transaction forming the basis of the proposed engagement or its purpose in seeking services where not related to a specific transaction?
2. What are the entity's main trading and registered office addresses?
3. What are its business activities or purposes and sector?
4. Who controls and manages it (ie, has executive power over the entity – this may be directors, shadow directors or others depending on the circumstances)?
5. If the client is audited, were the accounts qualified and, if so, why?
6. Name and check that the person(s) purporting to represent the entity is/are who they say they are.
7. Who owns it - ultimate beneficial owner(s) and steps in between (at a minimum for companies provide details of any ultimate beneficial owners of more than 25% – for trusts, supply details of trustees and settlors and details of either beneficiaries with more than 25% interest, or the classes of beneficiary, and for collective investment funds or other similar arrangements provide details of the general partner and/or investment manager together with details of any person with more than 25% interest)?
8. What is its business model/intended business model (ie, the mechanism by which a business intends to generate revenue and profits and serve its customers – in terms of broad principles)?
9. What are the key sources of:
    - income (e.g., trading, investment etc); and
    - capital (e.g., public share offer, private investment etc)?
10. The history and current (also forecast if readily available) scale of the entity‘s:
    - earnings (e.g., turnover and profits/losses); and
    - net assets.
11. The entity‘s geographical connections, so that you are in a position to ask such questions as -Why is it getting so much money from that place?” and -Why is it sending assets to that place?”
12. Has the entity been subject to insolvency proceedings, or is it in course of being dissolved/struck-off, or has it been dissolved/struck-off?

B. For natural persons

- Home address and, if applicable/different, trading address.
- His or her purpose in entering into any transaction forming the basis of the engagement or purpose in seeking services where not related to a specific transaction.
- The scale and sources of the individual‘s capital (past and future). The
- scale and sources of the individual‘s income (past and future). The type
- and sector of the individual‘s business activities.
- The individual‘s geographical connections, so that you are in a position to ask such
- questions as –Why is he getting so much money from that place?” and –Why is she buying assets from that place?”

Has the individual been subject to bankruptcy proceedings?

- If after enquiry of the individual it is considered that the individual has been subject to bankruptcy proceedings, information can be obtained from a search of the bankruptcy register, which is maintained in the Office of the Examiner of the High Court (for further details, see the website of the Courts Services of Ireland / Office of the official Assignee in Bankruptcy: http://www.courts.ie/offices.nsf/WebCObyBusiness?Openview&l=en

Has the individual been disqualified as a director?

- Consult Companies Registration Office: http://www.cro.ie/search/disquale.asp

CHAPTER 5 B – EXAMPLES OF RISK-BASED VERIFICATION

Set out below are examples of risk-based verification for some of the more common *client* types.

A. Natural persons

Sources of evidence	
List 1: Evidence of identity Examples of photo identity • valid passport; or • valid photocard driving licence (full or provisional); or • national identity card; or Examples of non-photo evidence of identity: Documents issued by a government department, incorporating the person's name and residential address or their date of birth, *e.g.,* • a current full driver's licence, or • evidence of entitlement to a state or local authority funded benefit (including housing benefit and council tax benefit), tax credit, pension, educational or other grant; or • documents issued by the Revenue Commissioners, such as PAYE coding notices and statements of account (NB: employer issued documents such as P60s are not acceptable) • end of year tax deduction certificates.	*List 2: Evidence of address or date of birth* • instrument of a court appointment (such as a grant of probate, bankruptcy); or • current (within the last 3 months) bank statements, or credit/debit card statements issued by a regulated financial sector firm in Ireland, EU or designated place under Section 31 (but not those printed off the internet); or • a file note of a visit by a member of the firm to the address concerned (–home visit‖); or • an electoral register search showing residence in the current or most recent electoral year (can be done via http://www.checktheregister.ie/); or • a recent utility bill (gas, water, electricity, telephone); it must be a bill or statement of account (**not** correspondence); or • valid photocard driving licence (full or provisional); or • a current full driver's licence, or • evidence of entitlement to a state or local authority funded benefit (including housing benefit and council tax benefit), tax credit, pension, educational or other grant; or • documents issued by the Revenue Commissioners, such as PAYE coding notices and statements of account (NB: employer issued documents such as P60s are not acceptable); or • a firearms/shotgun certificate; or • a solicitor's letter confirming recent house purchase or land registry confirmation (you should also verify the previous address).

B. Entities

i. Non-listed bodies corporate

Company identification	**Examples of documentary evidence of company identification include:** Full company search from a national companies registry (or equivalent information obtained through a commercial provider of registry information) or Copies of taken from original documents evidencing details of • incorporation or registration, • registered office; and • list of directors and shareholders/members Identify shareholder/member in the entity holding more than 25% of the equity (rights to either income, capital or voting), or if there is no holding over 25%, where considered appropriate on a risk sensitive basis, the largest holding.
Beneficial owner(s)	**Suggested approach to considering beneficial owners:** Identify any person(s) and/or entities that is/are capable of exercising significant influence over this entity either as an appointed director, or as a shadow director or equivalent, according to whether a legal or natural person. Identify shareholder(s)/member(s) in the entity holding more than 25% of the equity (rights to income, capital or voting rights), or where no holding over 25%, according to whether a legal or natural person. Where there is no holding over 25%, consider whether there is a large shareholding which gives the shareholder the ability to control the entity. *Accounting firms* are aware that there may be a number of steps required to arrive at the identity of the ultimate beneficial ownership. *Accounting firms* verify the above as deemed appropriate/necessary on the basis of the accounting firm‘s risk assessment.

ii. Listed or regulated entities

Obtain either a printout from the relevant regulator‘s or exchange‘s web-site (and annotate), or obtain direct written confirmation from the regulator or exchange, confirming the regulated or listed status of the entity (ensure basic details of name, address, any membership or registration details, and any disciplinary details where applicable are provided).

Additional verification steps are not generally considered necessary in such cases as these entities qualify for application of *simplified due diligence*.

iii. Government or similar bodies

Obtain and annotate evidence to confirm the body‘s:

- main place of operation; and
- the government or supra-national agency controlling it (government and supra-national agency web-sites are a useful source of information).

Useful, trusted sites include:

- Irish government website
  www.gov.ie
- UK Government information portal
  http://www.direct.gov.uk/Homepage/fs/en
- EU official site http://www.europa.eu.int/
- USA government information portal
  http://www.firstgov.gov/Agencies/Federal/All_Agencies/index.shtml
- United Nations list of main bodies
  http://www.un.org/aboutun/mainbodies.htm

Additional verification steps are not generally considered necessary in such cases as these entities in Ireland qualify for application of *simplified due diligence*.

CHAPTER 5 C – THIRD COUNTRIES WHICH IMPOSE REQUIREMENTS EQUIVALENT TO THOSE LAID DOWN IN THE *THIRD MONEY LAUNDERING DIRECTIVE*

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Section 31) Order 2010 – SI No. 343 of 2010

The Minister for Justice and Law reform designated the following places, in accordance with Section 31(1) of the *2010 Act*, to be places which impose requirements equivalent to the *Third Money Laundering Directive*.

Argentina
Australia
Brazil Canada
Hong Kong
Iceland Japan
Liechtenstein
Mexico
New Zealand
Norway
The Russian Federation
Singapore
Switzerland
South Africa
United States of America
The Channel Islands and the Isle of Man
The Dutch overseas territories of Netherlands Antilles and Aruba
The French overseas territories of Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon and Wallis and Futuna

CHAPTER 6 – THE REPORTING OBLIGATION

KEY POINTS

- Reports of knowledge, suspicion or reasonable grounds for suspicion of *money laundering* or *terrorist financing offences* (referred to in this *Guidance* as *„external reports"*) submitted by *designated persons,* including *accounting firms,* are an important source of information used by the Garda Síochána and the Revenue Commissioners in the on-going effort to combat *money laundering* and *terrorist financing* offences.
- *Accounting firms* are required under the *2010 Act* to have procedures which provide for the reporting of knowledge, suspicion or reasonable grounds for knowledge or suspicion of *money laundering* or *terrorist financing.*
- The legislation does not alter the scope of the work normally carried out by an *accounting firm.*
- Failure to report in accordance with Section 42 where the relevant information or other matter has been obtained in the course of carrying on business as [*an accounting firm*]' is a criminal offence on the part of the *accounting firm.* Section 41 establishes that a reference to *designated persons,* including *accounting firms* in relation to reporting obligations includes a reference to any agent, director or other officer, employee or (in the case of a partnership) principal of the *accounting firm,* or any person engaged under a contract for services with the *accounting firm.*
- Section 43 also requires *accounting firms* to report services or *transactions* provided or carried out by the firm, in the course of its business, with places designated by the Minister for Justice and Law Reform under Section 31.
- Where an *accounting firm* has established a procedure whereby *internal reports* of knowledge, suspicion or reasonable grounds for knowledge or suspicion are made within the organisation, an *individual* fulfils his reporting obligations by making such an *internal report* in accordance with that procedure.
- The *accounting firm* is responsible for assessing *internal reports*, in accordance with the procedures established, making further inquiries if need be (either within the *accounting firm* or using public domain information), and, if appropriate, filing an *external report* to the Garda Síochána and the Revenue Commissioners. Such procedures may involve, for example, the appointment of a *nominated officer* with responsibility for the assessment of *internal reports* and the submission, where deemed necessary, of *external reports.*
- Where a *relevant professional advisor* receives information in 'privileged circumstances', leading him to know, suspect or have reasonable grounds to suspect that another person has been, or is, engaged in an offence of *money laundering* or *terrorist financing,* no report is required to be made to the Garda Síochána and the *Revenue Commissioners*. The *„professional privilege reporting exemption"* is overridden, however, where the information is received from or obtained in relation to a *client* with the intention of furthering a criminal purpose (see paragraphs 7.25 to 7.43).
- When reports are properly made they are not treated, for any purpose, as a breach of any restriction on the disclosure of information, however imposed.
- Where an *accounting firm* has to make an *external report*, it is prohibited from proceeding with any suspicious *transaction* or service until the report relating to that *transaction* or service has been submitted. There is an exemption from this prohibition where it is not practicable to delay or stop the *transaction* or service from proceeding or where the *accounting firm* is of the reasonable opinion that the failure to proceed may result in the other person suspecting that a report has been submitted or that an investigation may be commenced or in the course of being conducted.

WHAT MUST BE REPORTED AND WHEN?

External reports

6.1 In relation to the reporting obligations contained in the *2010 Act*, references to *accounting firms* are to be read as references to a director or other officer, employee or (in the case of a partnership) principal of the *accounting firm*. Section 41 also covers agents of the *accounting firm* or other persons ‗engaged under a contract for services' within the definition of designated persons for the purposes of the reporting obligation.

6.2 *Accounting firms* are required by Section 42(1) and (2) to submit an *external report* to the Garda Síochána and the Revenue Commissioners, where they have knowledge, suspicions or reasonable grounds to suspect that another person has been, or is, engaged in *money laundering* or *terrorist financing*. This report must be made as soon as is practicable after gaining the knowledge, forming the suspicion or acquiring the reasonable grounds for suspicion.

6.3 Such knowledge, suspicion or reasonable grounds for suspicion must arise ‗in the course of carrying on business as an *accounting firm*‖. Section 42(4) states that the inability to apply various CDD measures as a result of the failure on the part of the customer to provide document or information may represent such reasonable grounds for suspicion. In these circumstances, Section 33(8) also requires the *accounting firm* not to provide the service requested and to discontinue the *business relationship* until such time as the failure is rectified (see also paragraphs 5.22 and 5.23).

6.4 Knowledge, suspicions or reasonable grounds for suspicion are deemed only to arise where the *accounting firm* has scrutinised the information ‗in the course of reasonable business practice‖ (Section 42(3)). *CCAB-I* understands this provision to emphasise that the information must come to the *accounting firm* ‗in the course of carrying on business‖ of an *accounting firm* (Section 42(1)) and there is no obligation to complete an assessment of that information on a timescale which is different to that on which the *accounting firm* normally conducts its business. Care is advised in applying this provision, however, as information might come to an *accounting firm* in circumstances where normal business practice might be that such information would typically not be scrutinised until a later date, which might be some time after the information is received. As noted above, Section 42(2) requires a report ‗as soon as practicable after acquiring that knowledge or forming that suspicion‖. For example, audit conclusions are made at the end of the audit process and this may have an impact on the timing of the auditor's judgement that an issue is reportable under Section 42. In certain circumstances, an auditor may only be able to conclude at audit completion and sign off that he has reasonable grounds for suspecting that an offence resulting in proceeds has taken place. Also, information may be received during the course of an interim audit, which may take place some months before the planned audit completion and sign off, and such information might not normally be considered until a much later stage in the audit process. An *accounting firm* which does not deal with information for an extended period of time after receiving the information or forming the suspicion could expose itself to an accusation of a breach of Section 42(2) on timely reporting. Where doubt exists, it would be advisable to seek legal advice.

6.5 The following must be reported, as soon as practicable (Section 42(6)):

- the information or other matter on which the knowledge or suspicion of *money laundering* or *terrorist financing* (or reasonable grounds for such) is based;
- the identity of the suspect (if known);
- the whereabouts of the laundered property (if known);
- and any other relevant information.

Under Section 42(9), failing to report knowledge or suspicion, or reasonable grounds for such, of *money laundering* is a criminal offence (see chapter 2 of this *Guidance*, which outlines the offences and details of exemptions).

6.6 Care is needed to ensure that any information held concerning identity (such as date of birth, passport number, address, registration numbers for companies and so on) is included within reports as well as details of the laundered property and its whereabouts, where known, and reasons for knowledge or suspicion.

6.7 Even if the name of a suspect is not known, any information available which may assist in identifying the suspect or the whereabouts of any of the laundered property should be included in the report. For example, even if the *accounting firm* does not have the name of the suspect, if the *accounting firm* is aware the *client* holds the detail, the report should reflect this as information which may assist in identifying the suspect.

6.8 Section 42(6) requires that the *accounting firm* include "any relevant information" in the *external report*. This could, for example, include the names of victims or other persons associated with the activity. If such persons are not suspected by the *accounting firm* to be involved in the alleged *money laundering* of *terrorist financing* offence, the report should clearly state this.

6.9 The disclosure requirement relates to any information coming to an *accounting firm* in the course of carrying on business as an *accounting firm*, and not just information relating to *clients* and their affairs. This means that reports may be required on the basis of information not only about *clients*, but about potential *clients*, associates and counterparties of *clients*, acquisition targets and even employees of *accounting firms*.

6.10 As noted in paragraph 6.2, *external reports* must be made as soon as practicable. Section 42(7) requires an *accounting firm*, obliged to make an *external report,* to do so before proceeding with any suspicious *transaction* or service that is connected with, or the subject of, the report. There are two exceptions to this requirement, namely:

- where it is not practicable to delay or stop the *transaction* or service from proceeding; or
- where the *accounting firm* reasonably believes that a failure to proceed with the *transaction* would alert the other person to the possibility that a report may have been or will be made, or that an investigation is being contemplated or is on-going.

6.11 These exceptions do not apply to situations where the *accounting firm* has received a valid direction from the Garda Síochána or an order from a judge of the District Court not to proceed with the *transaction* or service (see Section 42(8)). For further discussion of these issues, please refer to chapter 8 of this *Guidance*.

Insolvency cases

6.12 Insolvency practitioners need to be aware that, in circumstances where they suspect the assets of a company to which they have been appointed may represent the *proceeds of criminal conduct*, selling those assets without having made the report required under Section 42 in advance, may constitute an offence under Section 42(9). A similar situation arises if an insolvency practitioner is suspicious that the funds offered to purchase a business or assets are of criminal origin.

6.13 The insolvency practitioner, having made a report under Section 42 in the above circumstances, may proceed with the proposed *transactions*, subject to a direction or order not to carry out the *transaction* having been issued by a member of An Garda Síochána not below the rank of superintendent (for a period of seven days) or by a judge of the District Court (for a period not exceeding 28 days) respectively under Section 17.

6.14 Insolvency practitioners may, in particular circumstances, wish to obtain legal advice and/or seek the directions of the Court.

6.15 An insolvency practitioner who is appointed to another *designated person* is obliged to make an *external report* under Section 42, where he has knowledge or suspicions that a *money laundering* or *terrorist financing* offence has been or is being committed, regardless of whether the *designated person* to which he has been appointed has, or is about to, make a report in relation to the same circumstances.

***Transactions* with designated states**

6.16 Section 43 also requires *accounting firms* to report to the Garda Síochána and the Revenue Commissioners any service or *transaction* that:

- the *accounting firm* provides or carries out in the course of carrying on business as an *accounting firm*; and
- is connected with a place designated by the Minister for Justice, Equality and Law Reform (under Section 32) as not having adequate procedures in place for the detection of *money laundering* or *terrorist financing* or is a place so designated by virtue of decisions adopted by the European Commission and in force under Articles 40(4) and 41(2) of the *third money laundering directive*. Places designated as such by the European Commission under the *third money laundering directive* are taken as designated under the *2010 Act*.

CCAB-I has received confirmation from the Departments of Justice and Law Reform and Finance that to date:

- no designation has been made to date by the Minister under Section 32; and
- no decisions have been made by the European Commission in respect of third countries having inadequate ML/TF procedures.

Accounting firms are advised to monitor any changes with regard to the issue of designated states. The CCAB-I bodies will update members on such changes using their respective websites and normal communications methods.

Confidentiality protections

6.17 Any report properly made under Sections 42 and 43 cannot be taken to breach any restriction on disclosure of information, however this is imposed. This means considerations of *client* or other duties of confidentiality must not impede reporting, unless the *professional privilege reporting exemption* applies (see chapter 7 below) where different considerations apply. Care needs to be taken by *accounting firms* in considering whether to make a report, however, as such protection may not exist for reports which are made founded only on speculation or made defensively, founded on generalities or ‚just in case'.

Other reporting obligations / *Prejudicing an investigation* („*tipping off*")

6.18 This *Guidance* deals only with obligations under the Irish anti-*money laundering* and *terrorist financing* regime – *accounting firms* should have regard to other obligations they may have, such as reporting responsibilities under companies legislation, the Company Law Enforcement Act 2001, the Criminal Justice (Theft and Fraud Offences) Act 2001 (e.g. the requirement on auditors to report to the Director of Corporate Enforcement where they have reasonable grounds to believe that a *client*, or an officer or agent of the company has committed an indictable offence under the Companies Acts), the Taxes Consolidation Act 1997, the applicable auditing standards, statutory regulatory returns, and reports of misconduct of fellow members of professional bodies, where applicable under the rules of professional conduct of such bodies. Care should be taken to avoid the offence of making a disclosure likely to prejudice an investigation when such additional reports have to be made.

6.19 Reports to professional bodies of misconduct by members of the same body and reports to regulators should be made with care, to minimise the danger of the regulator or professional body alerting the suspect, or otherwise treating the information inappropriately. It is recommended that *accounting firms* seek to identify a person within the organisation to whom they are reporting who has the requisite appreciation of the *anti-money laundering* legislation and appropriate seniority, thus mitigating the risk of making a disclosure likely to prejudice an investigation. This should also apply to situations where *accounting firms* need to alert their insurers to possible claims, for example under professional indemnity policies.

6.20 Insolvency practitioners are subject to various statutory obligations. For example, Section 56 of the Company Law Enforcement Act, 2001 requires the liquidator of an insolvent company to report on the conduct of the company's directors.

6.21 When making such reports, *accounting firms* and insolvency practitioners need to be aware of the dangers of „*prejudicing an investigation*".

6.22 Guidance in relation to avoiding the risk of *prejudicing an investigation* is set out in paragraphs 2.21 to 2.25. Guidance on continuing to act for *clients* who are the subject of *an external report* is given in chapter 9.

RECOGNISING *MONEY LAUNDERING*

The key elements

6.23 *Money laundering* is defined in Section 7 of the *2010 Act* to include various acts of handling and transacting in the *proceeds of criminal conduct*. *Criminal conduct* is defined under Section 6 in terms of the commission of „an offence". This definition captures not only criminal offences, but all other offences which result in proceeds. As such, *criminal conduct* is defined very broadly.

6.24 In most cases of suspicion, the reporter will have in mind a particular type of underlying or predicate *criminal conduct*. However, on occasion a *transaction* or activity may so obviously lack any normal economic rationale or business purpose as to lead to a suspicion that it may be linked to *money laundering* in the absence of any other credible explanation. *Individuals* should not hesitate to exercise professional scepticism and judgement and should report such matters if appropriate, externally or internally in accordance with an established procedure.

6.25 For a matter to be *money laundering*, there must not only be *criminal conduct*, but also *proceeds of criminal conduct*. These terms are described below.

Criminal conduct

6.26 *Criminal conduct* is that which constitutes an offence in Ireland or would do if it was committed in Ireland and is an offence in the place where the conduct occurs.

6.27 Since Irish law defines *money laundering* so widely, any *criminal conduct* which has resulted in any form of *proceeds of criminal conduct* will also constitute *money laundering*. It is not expected that *individuals* will become expert in the very wide range of underlying or predicate criminal offences which lead to *money laundering* but they will be expected to recognise those that fall within the professional competence of their role and should use professional scepticism, judgement and independence as appropriate to identify offences.

6.28 As noted above, the reporting obligations arise where offences are committed which give rise to proceeds. These *predicate offences* may be under any legislation. *Accounting firms* are most likely to encounter possible offences under the Companies Acts, the Criminal Justice (Theft and Fraud Offences) Act 2001 and tax legislation. However, they should be aware that if they receive information during the normal course of their work which gives rise to knowledge, suspicion or reasonable grounds for suspicion that an offence has been, or is being, committed under other legislation, they have a reporting obligation in such circumstances (except where the *professional privilege reporting exemption* applies – see paragraphs 7.25 to 7.43). *CCAB-I* / professional guidance is available on indictable offences under the Companies Acts which are reportable to the Office of the Director of Corporate Enforcement and on the 2001 Act as follows:

- APB Bulletin 2007/02: *The duty of auditors in the Republic of Ireland to report to the director of corporate enforcement;*
- Information Sheet: *Reporting Company Law Offences : Information for Auditors; CCAB-I*
- memo: *Section 59 Criminal Justice (Theft and Fraud Offences) Act 2001.*

6.29 If a person knowingly engages in criminal activity but does not successfully benefit from it, that person may have committed some other offence (often fraud) but not *money laundering*. If an activity does not result in *proceeds of criminal conduct* it cannot constitute a *money laundering offence*. Consequently, there is no obligation to file a *money laundering* report. However, *accounting firms* may have a reporting obligation arising from other legislation (e.g. to the Garda Síochána under Section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001), or may have other reporting duties (such as those referred to in paragraph 6.18 above).

Proceeds of criminal conduct

6.30 *„Proceeds of criminal conduct"* is the benefit derived from a person's criminal activity. Note that the proceeds can take any form. For example, cost savings from ignoring mandatory health and safety regulations, savings as a result of tax evasion, and other less obvious financial benefits can also constitute *„proceeds of criminal conduct"*. Benefits obtained through bribery or corruption[5], including benefits (such as profit or cash flow) from contracts obtained by such means, would also constitute *proceeds of criminal conduct*. Where such proceeds are used to acquire further assets, these further assets themselves become *„proceeds of criminal conduct"*. It is important to note that there is no de minimis level and thus *„proceeds of criminal conduct"* is not identified by its value.

Section 6 defines *„proceeds of criminal conduct"* as:

"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 commencement of this Part"

The offences of *money laundering* and *terrorist financing* are predicated on the alleged offender knowing or believing that the property is the *proceeds of criminal conduct* (or being reckless in this regard).

Intent

6.31 The definition of *money laundering offences* in Section 7 requires that an offender must know or suspect, *or be reckless as to whether or not,* that property is the *proceeds of criminal conduct*. Conduct which is an innocent error or mistake may be criminal where it constitutes a strict liability offence but will not also be *money laundering*.

6.32 If an *accounting firm* or *individual* knows or believes that a *client* is acting in error, the *individual* may approach the *client* and explain the situation and legal risks to him. However, once the criminality of the conduct is explained to the *client*, he must bring his conduct (including past conduct) promptly within the law to avoid a *money laundering offence* being committed. Where there is uncertainty about the legal issues, outside the competence of the *accounting firm, clients* should be referred to an appropriate specialist or professional legal adviser.

6.33 „Suspicion" and „reasonable grounds for suspicion" are dealt with in paragraphs 2.26 to 2.34. In considering whether there are reasonable grounds to suspect that an offence exists, practitioners should be aware of the following:

- whilst „suspicion" is by its nature subjective, the term „reasonable grounds to suspect" indicates an objective test, likely to be met if particular facts and circumstances would lead a reasonable person of similar training and position to infer knowledge or suspicion of an offence;
- section 11 of the Act includes provision that in determining whether a *money laundering offence* exists, a person is presumed by the court to have known (or been reckless) as to whether property was the *proceeds of criminal conduct*, unless evidence provides reasonable doubt that such was the case.

Determining whether and when to report

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5 Ireland ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in September 2003. The main body of law on corruption is contained in the Prevention of Corruption Acts 1889 to 2010. The core offences of active (proffering bribes) and passive (receiving bribes) corruption are set out in the Prevention of Corruption (Amendment) Act 2001, as amended by the Prevention of Corruption Amendment) Act 2010, which establishes the offences of active and passive corruption with regard to both domestic and foreign agents , including public officials. The Prevention of Corruption (Amendment) Act 2010 extended the categories of persons subject to extra-territorial jurisdiction for the offence of corruption to include: Irish citizens, Irish Residents, Irish registered companies, other corporate bodies established under the laws of Ireland, and other relevant agents.

6.34 There can be no hard and fast rules on how to recognise *money laundering and terrorist financing*. It is important for all *accounting firms and individuals* to be alert to this issue and to apply their professional judgement and experience.

6.35 *Individuals* need to consider whether activity or conduct observed in the course of business has the characteristics of *money laundering* and, therefore, warrants a report. Most *accounting firms* will include in their standard anti-*money laundering* systems and procedures arrangements to allow *individuals* to discuss whether the information they hold amounts to a reportable knowledge or suspicion, and *individuals* should take advantage of these arrangements where necessary.

6.36 Where *accounting firms* have established a procedure for internal reporting (e.g. to a *nominated officer)*, *individuals* must report promptly in accordance with those procedures once the requisite knowledge or suspicion has been formed, or reasonable grounds for such have come into existence. There are no legal or other external requirements for the format of an *internal report* and *accounting firms* may design their systems for internal reporting as they wish. *Internal reports* may be made orally or in writing, and may refer to *client* files or contain all the requisite information in a standard form, provided that all the information as required by Section 42(6) – see paragraph
6.5 above – and other information which the *accounting firm* requires under its procedures for the reporting of *money laundering* are reliably provided and recorded.

6.37 To decide whether or not a matter is suspicious *individuals* may need to make further enquiries (within the normal scope of the assignment or *business relationship*) of the *client* or their records. The anti-*money laundering* legislation does not prevent normal commercial enquiries being made to fulfil duties to *clients*, and such enquiries may also assist in understanding a matter to determine whether or not it is suspicious. However, investigations into suspected *money laundering* should not be conducted unless this is within the scope of the engagement, and information is limited to that to which the *individual* would normally be entitled in the course of business. Normal business activities should be maintained and such information or other matter which flows from this will form the proper basis of *internal reports,* where appropriate, and *external reports*. To carry out additional investigations is unnecessary and could risk alerting a money launderer and result in accusations of the offence of *prejudicing an investigation* under Section 49.

6.38 In deciding whether a report (internal or external) is necessary, *individuals* should be cautious and may wish to consider the following questions to assist their decision:

- Am I suspicious, or do I know, that activity I have seen constitutes *criminal conduct* and has caused someone to benefit from it in some way?
- Am I suspicious of an activity which, whilst I can't identify a specific *predicate offence*, is so unusual or lacking in normal commercial rationale that it causes suspicion that money is being laundered?
- If so, do I suspect a particular person or persons of having been involved in *criminal conduct* (or do I know who undertook *criminal conduct*), or does another person that I can name have details of this person(s) or information that might assist in identifying this person(s)?
- Do I know who might have received, or still be holding, the *proceeds of criminal conduct* or where the proceeds, in whatever form, might be located or have I got any information which might allow the proceeds to be located?
- Do I think that the person(s) involved in the activity knew or suspected that the activity was *criminal conduct* or do I think the activity arose from innocent error?
- Can I explain coherently what and who I am suspicious of, and why, either in terms of knowledge or suspicion that a *predicate offence* has been committed, or in terms of abnormal activities which may constitute *money laundering*?

6.39 Where an *accounting firm* deems a report to be necessary, that report is usually required to be submitted prior to proceeding with the *transaction* or service about which the report is to be made - see paragraphs 6.10 to 6.14 above.

HOW TO REPORT

Internal reporting procedures

6.40 Guidance on internal reporting procedures is provided in chapter 7.

6.41 *Accounting firms* that are sole practitioners, or *individuals* in *accounting firms* which have not established an internal reporting procedure for knowledge or suspicions of *money laundering* and *terrorist financing*, make an *external report* directly to the Garda Síochána and the Revenue Commissioners, where such a report is deemed necessary in accordance with Sections 42 and 43.

6.42 Section 44 allows for *accounting firms* to establish internal reporting procedures that allow any *individual* in the *accounting firm* to submit an *internal report*, in accordance with such procedures, of knowledge or suspicion or reasonable grounds for such, of *money laundering*. In doing so, the *individual* has a defence against accusations of failing to report under Sections 42 and 43.

6.43 Where an *accounting firm* has established procedures for the internal reporting of knowledge or suspicions of *money laundering* or *terrorist financing*, the *internal report* must be made promptly in accordance with such procedures. The procedures may include provisions such that *individuals* may discuss the knowledge or suspicions and the reasonableness of their conclusions with other colleagues or more senior members of staff (for example line managers, or a *nominated officer*, where one is appointed) and may also specify who should formally submit the *internal report* in accordance with the procedures.

6.44 Similarly, the internal procedures of an *accounting firm* may address the situation where a group (more than one *individual*) arrives at knowledge or reasonable suspicion together by consolidating their thoughts. The procedures may, for example, permit or require a single *internal report* to be submitted.

Reports to the Garda Síochána *and the Revenue Commissioners*

6.45 Guidance on making *external reports* is provided in chapter 7.

6.46 Once an *internal report* has been made in accordance with established procedures, the *accounting firm* is responsible for making decisions on whether the information contained in an *internal report* needs to be relayed to the Garda Síochána and the Revenue Commissioners in the form of an *external report*, and compiling and despatching the *external report* (chapter 7).

6.47 The *accounting firm's* procedures should also address the process for considering whether or not to proceed with a *transaction* or service in circumstances where a report is deemed necessary but has not yet been submitted – see paragraphs 6.10 to 6.14 above.

6.48 The disclosure of information in accordance with the requirements of the *2010 Act* shall not be treated, for any purpose, as a breach of any other enactment or rule of law e.g. Data Protection Legislation (Section 47).

CHAPTER 7 – INTERNAL REPORTING PROCEDURES AND REPORTING TO THE GARDA SÍOCHÁNA AND THE REVENUE COMMISSIONERS

KEY POINTS

- Section 44(1) of the *2010 Act* allows for an *accounting firm* to establish procedures for internal reporting for the purpose of managing the accounting firm's reporting obligations. Such internal reporting procedures may involve the appointment of a person, throughout this document referred to as a *„nominated officer"*, to receive *internal reports* from *individuals* within the *accounting firm* and to decide on the need for an *external report* based on the information and documentation provided.
- There is no legal obligation on *accounting firms* to establish such procedures and *accounting firms* may decide that it is more efficient, based on their own circumstances, for *individuals* within their organisation to report directly to the Garda Síochána and the Revenue Commissioners. Sole practitioners, who do not have any staff, would simply submit any necessary reports directly to the Garda Síochána and the Revenue Commissioners.
- Where *accounting firms* establish such internal reporting procedures, *individuals* within the *accounting firm* fulfil their reporting obligations under the *2010 Act* by making an *internal report* in accordance with the procedures established.
- Any discussion in this chapter of the role and functions of a *nominated officer* is based on the assumption that an *accounting firm* has decided to appoint someone to that role as part of their internal reporting procedures; bearing in mind that there is no legal obligation on *accounting firms* to establish such internal procedures which include the role of a *nominated officer.*
- The role of the *nominated officer*, where established, carries significant responsibility. Where an *accounting firm* decides to appoint a *nominated officer* in accordance with its procedures, the role should be undertaken by a senior person within the *accounting firm* who has sufficient authority to take independent decisions, and who is properly equipped with sufficient knowledge, and resources, to undertake the role.
- The key role is that of receiving *internal reports*, and making *external reports,* where deemed necessary, to the Garda Síochána and the Revenue Commissioners, but *nominated officers* may undertake also other functions relating to the *accounting firm's* systems and controls in relation to its anti-*money laundering* activities, as deemed necessary by the *accounting firm* and established in its procedures.
- *It would be advisable for accounting firms,* which decide to appoint a *nominated officer*, to make provision for delegates or deputies to cover any absence of the *nominated officer* and to ensure all relevant employees are aware of the reporting channels laid down by the *accounting firm* in its procedures.
- It is for *accounting firms* to determine the format of *internal reports.* There is also no prescribed format in the *2010 Act* for *external reports*, though Section 42(6) sets out the *required disclosures*.
- A *relevant professional adviser* who knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* or *terrorist financing* is exempted from making a report where his knowledge or suspicion comes to him in privileged circumstances (the *professional privilege reporting exemption*). This is, however, subject to the ‑criminal purpose exception‖, i.e. where the information is provided to the *relevant professional adviser* with the intention of furthering a criminal purpose.

INTERNAL REPORTING PROCEDURES

7.1 An *accounting firm* is obliged to make a report to the Garda Síochána and the Revenue Commissioners where it has knowledge, suspicion or reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* or *terrorist financing.* The *2010 Act* does not mandate any internal reporting procedures but Section 44(1) allows for *accounting firms* to establish such procedures for the purposes of managing their reporting obligations under the *2010 Act*. It is vital that all principals and staff of an *accounting firm* clearly understand the communication lines for reporting suspicions of *money laundering* with the *accounting firm's* procedures, and the importance of complying with those procedures in meeting the obligations both of *individuals* and of the *accounting firm* under the legislation.

7.2 Such internal reporting procedures may include the appointment of a *nominated officer* to manage the internal and external reporting process. Where *accounting firms* decide to appoint a *nominated officer* as part of their internal reporting procedures, the role, which carries significant responsibility, should be undertaken by an appropriately experienced *individual*. One of the principals of an accounting firm, or similar in other *accounting firms*, is likely to be suitable, or another senior and skilled person with sufficient authority to enable decisions to be taken independently. The role of *nominated officer* would typically involve:

- considering *internal reports* of *money laundering*;
- deciding if there are sufficient grounds for suspicion to pass those reports on to the Garda Síochána and the Revenue Commissioners in the form of an *external report*, and, if so, to make that report; and
- act as the key liaison point with the Garda Síochána and the Revenue Commissioners.

7.3 Depending on the procedures established by the *accounting firm, nominated officers,* where appointed*,* may also take responsibility for:

- training within the *accounting firm*;
- advising on how to proceed with work once an *internal report* and/or *external report* has been made in order to guard against risks of *prejudicing an investigation*; and
- the design and implementation of internal anti-*money laundering* systems and procedures.

7.4 If these responsibilities are not undertaken by the *nominated officer* (where appointed), they should be taken on by another sufficiently senior and skilled person within the *accounting firm.* This person should work closely with the *nominated officer*, where appointed.

7.5 Depending on the size and complexity of an *accounting firm*, it may establish procedures such that the functions of a *nominated officer* can be delegated, although it would be advisable that the *nominated officer* maintain close supervision of such delegated functions. It would also be advisable for *accounting firms* to have contingency arrangements for discharging the duties of a *nominated officer*, where appointed, during periods of absence or unavailability. *Accounting firms* may consider appointing an alternate or deputy *nominated officer* for these situations and ensure that the reporting channels are well known to all relevant employees.

7.6 Like all *individuals*, *nominated officers*, where appointed, can commit the *money laundering* and *terrorist financing offences* as well as the related offences of *failure to disclose* and *prejudicing an investigation*.

Assessment of *internal reports*

7.7 When an *internal report* is submitted, there are two matters which need to be dealt with immediately. Rapid consideration of the *internal report* is needed as Section 42(7) requires, with only limited exceptions, that where a report is deemed necessary, it must be submitted before an *accounting firm* proceeds with the *transaction* or service in question (see paragraphs 6.10 to 6.14 and chapter 8). In addition, the *accounting firm* should first establish by discussion and review whether or not the *professional privilege reporting exemption* may apply, as this exemption significantly affects not only whether an *external report* must be made under the legislation, but also whether it may be made. The *professional privilege reporting exemption* is limited to *relevant professional advisers*, defined in Section 24 as:

-An accountant, auditor or *tax adviser* who is a member of a designated accountancy body or of the Irish Taxation Institute‖.

Further guidance on the *professional privilege reporting exemption* is given in paragraphs 7.25 to 7.43 below.

7.8 Once an *internal report* is received in accordance with the established internal procedures, it must be assessed to determine whether it constitutes knowledge, suspicion or reasonable grounds for suspicion that a *money laundering* or *terrorist financing* offence has been or is being committed. The factors to be considered, in deciding whether an *external report* should be made, would be the same as those discussed in paragraph 6.38 in relation to an *individual*, namely:

- Am I suspicious, or do I know, that activity I have seen constitutes *criminal conduct* and has caused someone to benefit from it in some way?
- Am I suspicious of an activity which, whilst I can't identify a specific *predicate offence*, is so unusual or lacking in normal commercial rationale that it causes suspicion that money is being laundered?
- If so, do I suspect a particular person or persons of having been involved in *criminal conduct* (or do I know who undertook *criminal conduct*), or does another person that I can name have details of this person(s) or information that might assist in identifying this person(s)?
- Do I know who might have received, or still be holding, the *proceeds of criminal conduct* or where the proceeds, in whatever form, might be located or have I got any information which might allow the proceeds to be located?
- Do I think that the person(s) involved in the activity knew or suspected that the activity was *criminal conduct* or do I think the activity arose from innocent error?
- Can I explain coherently what and who I am suspicious of, and why, either in terms of knowledge or suspicion that a *predicate offence* has been committed, or in terms of abnormal activities which may constitute *money laundering*?

7.9 In each case the *accounting firm* should ensure the *internal report* contains all the relevant information known to the *individual(s)* making the report and records all necessary aspects such as:

- who is making the report;
- the date of the report;
- who is suspected or information that may assist in ascertaining the identity of the suspect (which may simply be details of the victim and the fact that the victim knows the identity but this is not information to which the *accounting firm* is privy in the ordinary course of its work);
- who is otherwise involved in or associated with the matter and in what way;
- what the facts are;
- what is suspected and why;
- information regarding the whereabouts of any *proceeds of criminal conduct* or information that may assist in ascertaining it (which may simply be the details of the victim who has further information but this is not information to which the *accounting firm* is privy in the ordinary course of its work);
- what involvement does the *accounting firm* have with the issue in order that the following may be considered:
  - the risk of making a disclosure which could prejudice an investigation;
  - the basis of continuance of work; and
  - any other necessary guidance for engagement staff.

7.10 Reasonable enquiries may be made of other *individuals* and systems within the *accounting firm.* Such enquiries may either have the effect of confirming the knowledge or suspicion, or reasonable grounds for such, or may provide additional material which enables the cause of suspicion to be eliminated at which point the matter may be closed without an *external report* being issued.

7.11 If the *accounting firm's* assessment of the information or other matter received in an *internal report* is that it constitutes knowledge, suspicion or reasonable grounds for suspicion that a *money laundering* or *terrorist financing* offence has been, or is being, committed, then an *external report* to the Garda Síochána and the Revenue Commissioners will be required unless the *professional privilege reporting exemption* applies.

The reporting record

7.12 It is vital for the control of legal risk that adequate records of *internal reports* are maintained, in accordance with the procedures established by the *accounting firm*. These would normally be details of all *internal reports* made including:

- details of the *accounting firm's* handling of the matter;
- requests for further information and assessments of the information received;
- decisions as to whether to conclude immediately or to wait for further developments or
- information;
- decisions as to whether to make an *external report* or not and on what grounds;
  any advice given to engagement teams as regards continuation of work.

7.13 Details of *internal reports* submitted as *external reports* should also be retained. For efficiency, and ease of reference, it is recommended that some form of index of reports is kept and internal reference numbers given. The records may be simple, or sophisticated, depending on the size of the *accounting firm* and the volume of reporting, but all need to contain broadly the same information and be supported by appropriate working papers. These records are important as they may subsequently be required to justify and defend the actions of the *accounting firm*, an *individual* or a *nominated officer,* where appointed in accordance with the *accounting firm's* procedures.

7.14 There is no prescribed format specified in the *2010 Act* or elsewhere for *internal reports* to be made in accordance with an accounting firm's established procedures. As discussed in paragraphs 3.11 and 3.12, an *internal report* can take the form of a face to face meeting between the *individual* making the *internal report* and the *nominated officer* (where one is appointed) or other *individual(s)* in accordance with established procedures, phone-calls, emails, etc. It is very important, however, that where *accounting firms* establish internal reporting procedures, that they are also clear about the required format where *individuals* make such *internal reports*.

EXTERNAL REPORTS

Reporting to the Garda Síochána and the Revenue Commissioners

7.15 Depending on the procedures established by an *accounting firm*, *external reports* will be made either by *individuals* or *nominated officers*, where appointed, within the *accounting firm*.

7.16 Once an *individual* or a *nominated officer* has concluded a report is required, it should be prepared and submitted promptly to the Garda Síochána and the Revenue Commissioners.

7.17 Section 42(2) requires that a report be made 'as soon as is practicable' after the information required is received. As discussed in paragraph 6.4, *accounting firms* should be cautious in applying the provision of Section 42(3) requiring that the information giving rise to knowledge or suspicion which would give rise to a reporting obligation by scrutinised 'in the course of reasonable business practice', as to do so might involve the information not being considered for an extended period of time, which might expose the *accounting firm* to the risk of being prosecuted for not reporting in a timely manner. In practical terms, the interval between receiving an *internal report* in accordance with the accounting firms' procedures and making *an external report* will vary quite widely. Some matters may be disposed of very rapidly where all the information required to make an *external report* is received with the first contact, and where this occurs a quick turnaround should be achieved. It is particularly important to work rapidly in matters where a *transaction* or the provision of a service is on-going and a decision about how to proceed is required, or where '*money laundering in* action' is suspected, i.e. another is engaged in current *criminal conduct* which may provide law enforcement with opportunities to intervene. In other cases, where not all the required information is immediately to hand, or where there is material uncertainty as to whether the matter is reportable or not, a decision may be reasonably made to await further expected developments, and/or seek further information before making a reporting decision.

7.18 The information which is to be provided in an *external report* is prescribed in Section 42(6), namely:

- information or other matter on which the knowledge or suspicion of *money laundering* or *terrorist financing* (or reasonable grounds for such) is based
- the identity of the suspect (if known);
- the whereabouts of the laundered property (if known); and
- any other relevant information.

There is, however, no prescribed format for the *external report* itself.

7.19 *External reports* should be prepared so as to present information in a way that is clear and succinct. Section 42(6) requires the provision of ‑any other relevant information‖ in the *external report*. Considerations in preparing an *external report* may include:

- providing the full name of the reporting *accounting firm*;
- providing the information held by the *accounting firm* (name, address, date of birth, registration numbers etc) identifying the subject of the report;
- where it assists in explaining the matter being reported, it may be appropriate to include a number of subjects/persons in the report, providing such identification information as is known in the manner above for each of them;
- clarifying the role of each subject/person, as far as it is known, in the matter and clearly identifying whether or not each subject/person is suspected of being involved in the commission of the alleged *money laundering* or *terrorist financing* offence;
- providing information regarding bank account/*transaction* details where available and relevant; explaining clearly the activity observed giving rise to the suspicion without using jargon or terms which might not be readily understood by non-accountants and, as far as known, giving details of when events occurred;
- highlighting the features of the activity which are unusual or are considered to denote either a *predicate offence* to *money laundering*, or *money laundering* or *terrorist financing offences*;
- providing such information held as to the whereabouts of any laundered property;
- keeping the information given in the report as succinct as possible; and
- ensuring that the report adequately explains the circumstances giving rise to the accounting firm‘s knowledge or suspicions that a *money laundering* or *terrorist financing offence* has been or is being committed, given that the report is submitted without any supporting documents.

7.20 An *accounting firm's* procedures should include the manner in which advice is to be provided, on receipt of an *internal report* and on making an *external report,* to engagement teams on how to continue their work and interact with the *client* to balance professional responsibilities, risk to the *accounting firm* and responsibilities under *the 2010 Act*. This area of work is examined in chapter 9.

7.21 Reports in relation to *money laundering* / *terrorist financing* suspicions are to be made to both the Garda Síochána and the Revenue Commissioners at:

Garda Síochána
Detective Superintendent
Financial Intelligence Unit (FIU)
Garda Bureau of Fraud Investigation
Harcourt Square
Dublin 2
Phone: 01-6663714
Fax: 01-6663711

Revenue Commissioners
Suspicious Transactions Reports Office
Block D
Ashtowngate
Navan Road
Dublin 15
Phone: 01-8277542
Fax: 01-8277484

Guarding confidentiality

7.22 Whilst it is reasonable for the *accounting firms* to expect the Garda Síochána and the Revenue Commissioners to make strenuous efforts to protect the confidentiality of those who make *external reports,* reporters should also take such steps as are available to them to protect the confidentiality of *accounting firms* and the information reported.

7.23 *External reports* should disclose information relevant to the suspicion or knowledge of *money laundering* and information necessary to allow the reader to gain a proper understanding of the matters reported. It is recommended that reporters:

- refrain from including other confidential information where this is not required for compliance with obligations under *the 2010 Act;*
- show the name of the *accounting firm* and the *individual*, or the *nominated officer,* where applicable, only once in the report;
- do not include names of personnel who made *internal reports*;
- only include parties as subjects where this information is necessary for an understanding of the report, or to meet the standards of the disclosures required by Section 42(6); and
- highlight clearly any particular concern the reporter has about safety (in physical, reputational or other terms).

7.24 Whilst it is reasonable for an *individual* or a *nominated officer*, where appointed, to answer questions from an appropriate member of the Garda Síochána /Revenue Commissioners aimed simply at clarifying the content of an *external report*, any further disclosure to the Garda Síochána /Revenue Commissioners or prosecuting agencies should normally only be undertaken in response to the exercise of a power to obtain information contained in relevant legislation, or in compliance with professional guidance on the balance of confidentiality and making disclosures in the public interest. This provides protection for the *individual* or *nominated officer* and the *accounting firm* against any allegation of breach of confidentiality.

THE *PROFESSIONAL PRIVILEGE REPORTING EXEMPTION*

Application of the exemption

7.25 Section 46(1) states that disclosure of information which is subject to legal privilege is not required. *Accounting firms* and *individuals* may, in the course of their work, receive information documentation subject to legal privilege, for example when engaged by a legal professional to carry out work on behalf of a *client*.

7.26 Apart from legal privilege, Section 46(2), as quoted below, also establishes that *relevant professional advisers* are not required to submit an *external report* in certain circumstances.

> -Nothing in this Chapter requires a *relevant professional adviser* to disclose information that he or she has received from or obtained in relation to a *client* in the course of ascertaining the legal position of the *client*.ll

7.27 A *relevant professional adviser* who knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in *money laundering* or *terrorist financing* is exempted from making an *external* report where his knowledge or suspicion comes to him in privileged circumstances (the *professional privilege reporting exemption*). In such circumstances, provided that the information is not given to him with the intention (by his *client* or another person) of furthering a criminal purpose (the criminal purpose exception' – see paragraphs 7.39 to 7.43 below), Section 46(2) affords the adviser a complete defence against a charge of failure to disclose (i.e., to make an *external report*). The *professional privilege reporting exemption* also means that in these circumstances an *accounting firm* should not make an *external report*, as they are expected to be bound by the same standards of behaviour as is the case for legal professional advisers subject to legal privilege.

7.28 A similar provision to Section 46(2) was contained in the Criminal Justice Act 1994 and related regulations, which are superseded for AML purposes by the *2010 Act*. The wording of Section 46(2) is different to the previous regime in that it no longer makes reference to 'performing the task of defending or representing the *client* in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings'. However, in a speech by the Minister for Justice, Equality and Law Reform to the Seanad on 2nd March 2010, he confirmed that the wording of Section 46(2) does not alter the application of this exemption in practice:

'This provision is similar to the position which already exists in regard to privileged information contained in our existing legislation. The present draft of the Bill does not alter the situation with regard to such privilege in any way. The situation which currently applies under the existing anti- *money laundering* legislation will continue to do so.'

Thus, the activities that are associated with 'ascertaining the legal position of the *client*' are taken to encompass the involvement of the *relevant professional adviser* in the provision of advice on, defending or representing the *client*, in relation to judicial proceedings.

7.29 Discussions within the *accounting firm* in accordance with its procedures, to seek advice about making a report under Section 42, shall not be taken to be an *internal report* when it was not intended as such, e.g. if the person initiating the discussion believes the matter falls within the *professional privilege reporting exemption* and contacts the appropriate *individual(s*) in accordance with the *accounting firm's* procedures, to confirm this. Whether or not the *accounting firm's* procedures provide for a *nominated officer* to make an *external report*, it is recommended that the information which would otherwise be required by Section 42(6) is collected by either the *nominated officer* or other *individual(s)*, as applicable, to enable careful consideration with the reporter of whether or not the matter falls within the *professional privilege reporting exemption* and, if it does, whether this is overridden by the criminal purpose exception. It is recommended that the decision reached in this regard and the reasons for reaching that decision are documented.

7.30 A *relevant professional adviser* is defined in Section 24 as ‗an accountant, auditor or *tax adviser* who is a member of a *designated accountancy body* or of the Irish Taxation Institute'. A *designated accountancy body* is defined as 'a prescribed accountancy body within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003 – currently:

- Association of Chartered Certified Accountants (ACCA);
- Association of International Accountants (AIA);
- Chartered Institute of Management Accountants (CIMA);
- Chartered Institute of Public Finance & Accountancy (CIPFA);
- Institute of Chartered Accountants in England & Wales (ICAEW);
- Institute of Chartered Accountants in Ireland (ICAI);
- Institute of Chartered Accountants of Scotland (ICAS);
- Institute of Certified Public Accountants in Ireland (ICPAI); and
- Institute of Incorporated Public Accountants (IIPA).

The *professional privilege reporting exemption* also extends to persons in partnership with (or equivalent), or employed by, the *relevant professional adviser* to provide them with assistance or support. The information must come to these partners or employees in connection with this assistance or support and to the *relevant professional adviser* in privileged circumstances.

7.31 I*ndividuals* who are members of a *CCAB-I* member body, those in partnership with such *individuals* in *accounting firms* regulated by the *CCAB-I* member bodies and the employees of such *accounting firms* are within the scope of the exemptions. If *accounting firms* or *individuals* are in any doubt as to whether these provisions apply to them, it is recommended that they seek legal advice.

7.32 If a *relevant 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 *professional privilege reporting exemption* in Section 46(2) (unless the criminal purpose exception applies) and so has no discretion to make a *money laundering* or *terrorist financing* report. This means that the *relevant professional adviser* could find himself in a situation where he might wish to make a report but is prevented from doing so. In such circumstances, he should consider whether he may continue to act, but in carrying out his decision will need to bear in mind Sections 48 through 53 relating to *prejudicing an investigation* (see paragraphs 2.21 to 2.25).

7.33 Whether or not the *professional privilege reporting exemption* applies needs to be considered carefully, including a consideration as to whether the *relevant professional adviser* was working in privileged circumstances when the particular information or other matter came to him. This is an important consideration, as a *relevant professional adviser* may be providing a variety of services to a *client*, not all of which may create privileged circumstances for this purpose. Accordingly, it is strongly recommended that a careful record is maintained of the provenance of information considered when a decision is made on the applicability or otherwise of the *professional privilege reporting exemption*.

Examples of privileged circumstances

7.34 Examples where *relevant professional advisers* might frequently fall within privileged circumstances include:

- advice on taxation matters, where the *tax adviser* is giving advice on the interpretation or application of any element of tax law and in the process is assisting a *client* to understand his tax position;
- advice on the legal aspects of a take-over bid, for example on points under the Companies Act legislation;
- advice on duties of directors under the Companies Act;
- advice to directors on legal issues relating to insolvency cases *e.g.* on the legal aspects of reckless trading;
- advice on employment law;
- assisting a *client* by taking witness statements from him or from third parties in respect of litigation;
- representing a *client*, as permitted, at a tax tribunal; and
- when instructed as an expert witness by a solicitor on behalf of a *client* in respect of litigation.

7.35 It should be noted that conducting audit work does not of itself give rise to privileged circumstances for this purpose, as the *relevant professional adviser* is neither providing legal advice, nor is he instructed in respect of litigation. Nor do routine book-keeping, accounts preparation or tax compliance assignments, though privileged circumstances may arise if the *client* requests or the adviser gives, legal advice on an informal basis, during the course of such an assignment.

Discussion and recording of *professional privilege reporting exemption*

7.36 It is recommended that the reasons for the conclusion reached as to whether the *professional privilege reporting exemption* applies are carefully documented. If the *relevant professional adviser* decides it does apply, he must act in accordance with the *professional privilege reporting exemption* unless the criminal purpose exception applies. If in doubt, it is recommended that *accounting firms* and *individuals* seek professional or legal advice.

7.37 An *accounting firm's* procedures should address the process by which consideration is given, in deciding whether to make an *external report*, to whether or not the information giving rise to the knowledge, suspicion or reasonable grounds for suspicion that a *money laundering* or *terrorist financing* offence may have been, or is being committed, has been received in privileged circumstances under Section 46(2). Even where the *client* service team believe that the *professional privilege reporting exemption* applies, *accounting firms* should consider whether their procedures should require that all matters involving knowledge or suspicion of *money laundering* are dealt with in a standardised manner. This might involve referral of the matter to a *nominated officer*, where appointed, or other *individual(s)* within the *accounting firm*, as appropriate, or to another appropriate person (see paragraph 7.36). Internal discussion of a matter in accordance with the *accounting firm's* procedures, where the purpose of the discussion is the obtaining of advice about making a disclosure under Section 42, does not alter the applicability of the *professional privilege reporting exemption*. Given the complexity of these matters, and the need for considered and consistent treatment with adequate documentation of decisions made, a referral to and discussion with the *nominated officer*, where one is appointed, or other *individual(s)* in accordance with the procedures, is likely to be beneficial and is recommended. A decision may be made to seek further appropriate advice.

7.38 Likewise reporters within an *accounting firm* are entitled to seek advice from an appropriate specialist (either a person within the *accounting firm* or an external adviser who himself is able to apply the *professional privilege reporting exemption*) without altering the applicability of the *professional privilege reporting exemption*.

Criminal purpose exception

7.39 Before determining whether the *professional privilege reporting exemption* must be applied, consideration needs to be given to whether the exemption is lost through application of the criminal purpose exception. This exception, as set out in Section 46(3), overrides the *professional privilege reporting exemption* which:

> ‗does not apply to information received from or obtained in relation to a *client* with the intention of furthering a criminal purpose'.
>
> This means that communications that would otherwise qualify under the *professional privilege reporting exemption* are not covered by the exemption where the communication was intended to facilitate or to guide someone (usually the *client* but possibly a third party) in the commission, or furtherance, of any crime or fraud. An example of this might be where tax advice was sought ostensibly to enable the affairs of a tax evader to be regularised but in reality was sought to aid continued evasion by improving the evader's understanding of the relevant issues.

7.40 The criminal purpose exception also applies where communication takes place between a *client* and his adviser in circumstances where the *client* is the innocent tool of a third party's criminal or fraudulent purpose. An example of this might be where a money launderer gives money to a family member, who is unaware of the source of that money, to purchase a property, for which purpose he communicates with his adviser.

7.41 The criminal purpose exception does not apply where the adviser is approached to advise on the consequences of a crime or fraud or similar conduct that has already taken place and where the *client* has no intention, in seeking advice, to further that crime or fraud. This means that a person who is concerned that he may be guilty of tax evasion can approach a *tax adviser* for legal advice in this regard without fear of the exception being invoked. This remains the case even if the potential *client* declines a *client* relationship having received the advice, and the adviser does not know whether the person will proceed to rectify his affairs. However, if the person behaves in a way that makes the adviser suspicious that he intends to use the advice to further his evasion, then an *external report* could be required.

7.42 The criminal purpose exception is a difficult area and Irish and international courts will not usually allow the exception to be invoked unless there is reasonably compelling circumstantial evidence available that demonstrates that the communications have in some way been intended to further the criminal purpose. A mere speculation may not be sufficient as a basis to invoke it. It is strongly recommended that professional or legal advice is sought in all cases of doubt.

7.43 In summary, the following issues need to be considered before deciding whether to apply the *professional privilege reporting exemption*:

(a) Are those who received the information or other matter which gave rise to knowledge or suspicion of *relevant professional advisers* (Section 24)?
(b) Was the information or other matter which gave rise to knowledge or suspicion of *money laundering* received by the *relevant professional adviser* in privileged circumstances (Section 46(2)) and not in some other communication or situation?
(c) Was the information or other matter received or communicated with the intention of furthering a criminal purpose (ie, does the criminal purpose exception apply (Section 46(3))?

If the answers to (a) and (b) are yes, and the answer to (c) is no, the *professional privilege reporting exemption* must be applied. If the answer to (a) and (b) are yes and the answer to (c) is yes, the criminal purpose exception applies and an *external report* must be made. Further advice should be sought from the relevant professional body or a lawyer in cases of doubt. This issue may be vital in balancing legal and professional requirements for confidentiality and for serving the public interest and the interests of *clients*. If doubts cannot be resolved through internal discussion, through access to normal sources of professional advice, *accounting firms* are strongly recommended to seek advice from a professional legal adviser with experience of these matters.

CHAPTER 8 – DIRECTIONS, ORDERS AND AUTHORISATIONS RELATING TO INVESTIGATIONS

KEY POINTS

- An *accounting firm* required to make an *external report* is generally prohibited from proceeding with any suspicious *transaction* or service connected with the report, or with a *transaction* or service the subject of the report, until the report is sent to the Garda Síochána and the Revenue Commissioners (Section 42(7)).
- There are two exceptions to this prohibition, namely:
  - If it is not practicable to delay or stop the *transaction* or service from proceeding; or
  - It is reasonable to believe that failure to proceed with the service or *transaction* may result in the other person suspecting that a report has been, or may be, made or that an investigation has been, or may be, commenced (Section 42(7)).
- In any case, an *accounting firm* may not proceed with any *transaction* or service if the *accounting firm* has been directed or ordered not to proceed by the Garda Síochána or the District Court (Section 42(8)).
- A member of the Garda Síochána, with a rank of superintendant or above, may direct (in writing) a person not to carry out any specified service or *transaction*, for a period not exceeding seven days, whether or not a report has been received from an *accounting firm* (Section 17(1)).
- A judge of the District Court may order a person not to carry out a specified service or *transaction* for a period of up to 28 days, though further orders may be made in relation to the same service or *transactions* (Section 17(2)).

DIRECTION OR ORDER NOT TO CARRY OUT SERVICE OR *TRANSACTION*

Proceeding with a *transaction* or service

8.1 As referred to in chapter 6, Section 42(7) prohibits an *accounting firm*, which is required to make an *external report*, from proceeding with any suspicious *transaction* or service connected with the report, or with a *transaction* or service with the subject of the report, until the report is sent to the Garda Síochána and the Revenue Commissioners. There are two exceptions to this general prohibition, such that an *accounting firm* may proceed if:

- It is not practicable to delay or stop the *transaction* or service from proceeding; or
- The *accounting firm* is of the reasonable opinion that failure to proceed with the *transaction* or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or in the course of being conducted.‘

8.2 Examples of scenarios which may constitute a -*transaction* or service connected with, or the subject of, the report‖, requiring the *external report* to be made prior to proceeding might include:

- acting as an insolvency officeholder where there is knowledge or suspicion either that the assets may in whole or in part represent the proceeds of criminal conduct, or where the insolvent entity may enter into or become concerned in an arrangement which facilitates the -converting, transferring, handing, acquiring possessing or using‖ the proceeds of criminal conduct (under Section 7);
- designing and implementing trust and company structures for *clients*, including acting as trustees or company officers, where there is knowledge or suspicion that these structures are being, or may be about to be, used to launder money or finance terrorism;
- acting as an agent in the negotiation and implementation of *transactions* where these involve an element of criminal property being either bought or sold by a *client*, for example corporate acquisitions;
- handling money in *client* accounts which is suspected to be of criminal origin; and
- providing outsourced business processing for *clients* where money is suspected to be of criminal origin.‖

8.3 Typically, the issuing of an opinion on whether a set of financial statements give a true and fair view of the performance and financial position of the reporting entity is unlikely to be relevant to, or connected with, an *external report* to the Garda Síochána and the Revenue Commissioners regarding knowledge or suspicions of the commission of a *money laundering* or *terrorist financing offence*. However, if the auditor suspects that the audit report is necessary in order for financial statements to be issued in connection with a *transaction* involving the proceeds of crime, or if the auditor is due to sign off an auditor's report on financial statements for a company that he suspects to be a front for illegal activity, the auditor might be involved in an arrangement which facilitates the -converting, transferring, handing, acquiring possessing or using‖ the *proceeds of criminal conduct*.

8.4 Where an *accounting firm* has received a direction from a member of the Garda Síochána, with a rank of superintendent or above, or an order from a judge of the District Court (both in accordance with section 17), not to proceed with the service or *transaction*, then the exceptions above do not apply (Section 42(8)).

Direction by the Garda Síochána not to proceed

8.5 Under Section 17(1), a member of the Garda Síochána, who has a rank -not below the rank of superintendent‖, may direct a person, in writing, not to proceed with a particular service or *transaction* for the period specified in the written notice, not to exceed seven days. The direction:

- may, but is not required to be, issued on foot of a report made by an *accounting firm* under Section 42;
- is made on the basis that the member of the Garda Síochána is satisfied that the direction is reasonably necessary to allow preliminary investigations to be carried out to establish whether or not there are reasonable grounds to suspect that the service or *transaction* would comprise or assist in *money laundering* or *terrorist financing*.

Order from a judge of the District Court not to proceed

8.6 Section 17(2) also provides for an order from a District Court Judge not to proceed with a specified service or *transaction* for the period specified in the order, not to exceed 28 days. However, such orders may be made on more than one occasion, in accordance with Section 17(3).

8.7 In making such an order, the District Court Judge is satisfied by information provided on oath by a member of the Garda Síochána that:

- There are reasonable grounds to suspect that the service or *transaction* would comprise or assist *money laundering* or *terrorist financing*, and
- An investigation of a person for that *money laundering* or *terrorist financing* is taking place.

8.8 Applications for an order by a District Court Judge are made to a judge of the District Court in the district where the order is to be served (Section 17(4)).

Directions and orders - compliance; notice

8.9 Failure to comply with a direction of the Garda Síochána or an order from a judge of the District Court is an offence. Any person acting in compliance with a direction or order will not be treated as having breached any requirement or restriction imposed by any other enactment or rule of law.

8.10 Section 18(1) obliges the member of the Garda Síochána, who issues the direction or applies to the District Court for the order, to give notice in writing to any person, whom he knows to be affected by the direction or order, as soon as practicable after the direction is given or order is made, unless:

- It is not reasonably practicable to ascertain the whereabouts of the person; or
- There are reasonable grounds for believing that disclosure would prejudice the investigation.

8.11 If the member of the Garda Síochána becomes aware that a person who is affected by the direction or order is aware of the direction or order, then the member of the Garda Síochána is obliged to inform him in writing as soon as practicable thereafter of the direction or order, notwithstanding the above provision about prejudicing the investigation (Section 18(2)).

8.12 The notice in writing shall include the reasons for the direction or order and advise the person of their rights to apply to the District Court:

- (under Section 19) for a revocation of the direction or order; or
- (under Section 20) for an order to in relation to any of the property concerned (a) to discharge reasonable living expenses and other necessary expenses of the person and/or the person‘s dependents or (b) to carry on a business, trade, profession or other occupation to which any of the property relates.

8.13 Under Section 19, a judge of the District Court may revoke a direction or order on application by a person affected by the direction/order, if satisfied that the grounds for the direction/order do not, or no longer, apply.

8.14 The direction or order ceases to have effect on the cessation of the investigation. As soon as practicable thereafter, a member of Garda Síochána is obliged to inform, in writing, both the person who received the direction or order and any other person whom the member is aware is affected by the direction or order.

Authorisation from the Garda Síochána to proceed

8.15 A member of the Garda Síochána, not below rank of superintendent, may authorise, in writing, a person to proceed with a service or *transaction*, which would otherwise comprise or assist *money laundering*, if the member is satisfied that to do so is necessary for the purposes of the investigation (Section 23).

SUSPENSION OF ACTIVITY

8.16 Once a direction or order has been received, the process must be adhered to and the activity that would otherwise be a *money laundering* or *terrorist financing* offence refrained from until the notice period has expired or notice in writing has been received that the direction or order has ceased to have effect. Failure to do so risks prosecution either for a *money laundering* or *terrorist financing* offence, which is punishable by imprisonment and/or a fine.

8.17 Section 50 provides a defence against the offence of making a disclosure which prejudices an investigation where disclosure is made to a *client* that the defendant (the *accounting firm*) was directed by the Garda Síochána or ordered by a judge of the District Court not to carry out any specified service or *transaction* in respect of the *client*. Disclosure must be made only to the *client* and must be solely to the effect that the *accounting firm* has been so directed / ordered.

CHAPTER 9 – ACTIONS POST SUBMISSION OF AN *EXTERNAL REPORT*

KEY POINTS

- Once an *external report* has been submitted, the *accounting firm* needs to consider whether or not the content of the *external report* requires any change to, or even cessation in, any related *client* relationship.
- In addition, careful consideration needs to be given to reconciling the need to fulfil professional duties, whilst avoiding the risks of *prejudicing an investigation*. Particular car should be taken where the engagement involves third party reporting.
- An *external report* may be followed by requests for further information from the Garda Síochána /Revenue Commissioners or prosecuting agencies, both informal and by means of relevant orders. *Accounting firms* need to have in place procedures for checking the validity of requests and for ensuring a proper response is made.
- *Accounting firms* may wish to consider a standard wording, in responses to professional enquiries on a change of professional appointment, to the effect that the legislation precludes the firm from responding to any queries pertaining to *external reports*, contemplated or submitted.

CONTINUING WORK IN CONNECTION WITH A REPORTED MATTER

***Client* relationships**

9.1 *Accounting firms* do not have to stop working after submission of an *external report* unless a direction of an appropriate member of the Garda Síochána (rank of superintendent or above) or an order from a judge of the District Court is received, in which case all or part of *client* work may well need to be suspended until the relevant period of the direction/order lapses or notice is received in writing that the direction/order ceases to have effect (see chapter 8).

9.2 Where an *external report* involves a *client* as a suspect, *accounting firms* may wish to consider whether the behaviour observed is such that for professional reasons the *accounting firm* no longer wishes to act.

9.3 Generally, if following a report of suspicion, an *accounting firm* wishes for its own commercial or ethical reasons to exit a relationship, there is nothing to prevent this provided the way the exit is communicated does not constitute an offence of *prejudicing an investigation* under Section 49.

9.4 If a decision is made to terminate a *client* relationship, an *accounting firm* should follow its normal procedures in this regard, whilst always bearing in mind the need to avoid *prejudicing an investigation*. Section 53(2) provides a defence for a legal adviser or *relevant professional adviser* (see Section 24 and paragraph 7.30 above) in exiting a *client* relationship, as long as:

- the disclosure was solely to the effect that the legal adviser or *relevant professional adviser* would no longer provide the particular service concerned to the *client*; the
- service duly ceases once the *client* has been informed; and
- the legal adviser or *relevant professional adviser* made any report required in accordance with *the 2010 Act.*

Balancing professional work and the requirements of the *2010 Act*

9.5 Normal commercial enquiries to understand a *transaction* carried out in the course of an engagement will not generally lead to *prejudicing an investigation*, although care should be exercised to avoid either making a disclosure prohibited under Section 49 (see paragraph 2.21) or making accusations or suggesting that any person is guilty of an offence. It is important to confine enquiries to those required in the ordinary course of business and not attempt to investigate a matter unless that is within the scope of the professional work commissioned.

9.6 Continuation of work may require discussion with *client* senior management of matters relating to suspicions formed. This may be of particular importance in audit relationships. Care must be taken to select appropriate, and non-complicit, members of senior management for such discussion whilst always bearing in mind the need to avoid *prejudicing an investigation*.

9.7 In more complex circumstances, consultation with the Garda Síochána may be necessary before enquiries are continued, but in most cases a common sense approach will resolve the issue.

9.8 *Accounting firms* may wish to consult the *nominated officer*, where appointed, or other *individual(s)* in accordance with the *accounting firm's* procedures, or other suitable specialist (for example a solicitor) regularly if there are concerns with regard to *prejudicing an investigation*, and, in particular, it is important that before any document referring to the subject matter of a report is released to a third party the *nominated officer,* if appointed, is consulted and, in extreme cases, the Garda Síochána. Some typical examples of documents released to third parties are shown below as an aide memoire:

- public audit or other attest reports;
- public record reports to regulators;
- confidential reports to regulators (e.g. to the Financial Regulator under relevant auditing standards);
- provision of information to sponsors or other statements in connection with the Irish Stock Exchange Listing Rules;
- reports by a liquidator to the Director of Corporate Enforcement on the conduct of directors under Section 56 of the Company Law Enforcement Act 2001;
- statements on resignation as auditors in accordance with Section 185 of the Companies Act 1990;
- professional clearance/etiquette letters;
- communications to *clients* of intention to resign.

9.9 In particular, Section 185 of the Companies Act 1990 (‗1990 Act') requires notice of auditor resignations to be filed at Companies Registration Office and such notice to include statements of any circumstances ―connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of the members or creditors of the company‖. Furthermore, Section 161A of the Companies Act 1963 (‗1963 Act') requires notification to the Irish Auditing and Accounting Supervisory Authority (‗IAASA') where an auditor resigns in accordance with Section 185 of the 1990 Act, or is removed in accordance with Section 160(5) of the 1963 Act, during the period between the conclusion of the last annual general meeting and the conclusion of the next annual general meeting. Notice of resignation to IAASA is to be accompanied by the resignation notice served under Section 185(1) of the 1990 Act (or, in the case of removal, by a copy of the any representations made by the auditor to the company in accordance with Section 161(3) of the 1963 Act – except where they were not sent out to the members in accordance with Section 161(4)). The contents of such statements require careful consideration to ensure that statutory and professional duties are met, without including such information as may constitute an offence of *prejudicing an investigation*. There are no provisions in the *2010 Act* in this regard. However, *accounting firms* may well wish, in cases of complexity, to discuss the matter with the Garda Síochána or the Revenue Commissioners in order to understand their perspective and document such discussion.

9.10 Such a discussion with the Garda Síochána or the Revenue Commissioners may well be valuable, but *accounting firms* and *individuals* should bear in mind these authorities are not able to advise, and nor are they entitled to dictate how professional relationships should be conducted. It may be possible to arrive at an agreed wording, such that the *accounting firm's* obligations are adequately addressed whilst the relevant law enforcement agency is satisfied that the wording would not *prejudice an investigation*. In such circumstances, it is unlikely that the *accounting firm* will know or suspect that the report will *prejudice an investigation*. If the wording cannot be agreed, the *accounting firm* or *individual* should seek legal advice and potentially the directions of the Court to protect itself.

9.11 *Accounting firms* may on occasion need advice to assist them in considering such reporting issues. Legal advice may be sought from a suitably skilled and knowledgeable professional legal adviser, and recourse may also be had to helplines and support services provided by professional bodies.

REQUESTS FOR FURTHER INFORMATION

Requests from the Garda Síochána and /or the Revenue Commissioners

9.12 The Garda Síochána or the Revenue Commissioners may contact an *accounting firm* (usually the *nominated officer*, where one is appointed) or an *individual* to ask for further information about an *external report* submitted by the *accounting firm*. Before responding, it is recommended that a verification process is undertaken to ensure the person making contact is a bona fide member of the Garda Síochána / the Revenue Commissioners. This may be most simply achieved by taking a caller's name and organisation details, and then calling the main switchboard of the organisation to be put through to the person.

9.13 To the extent that the request is simply aimed at clarifying the content of an *external report*, *accounting firms/individuals* may respond without the need for any further process.

9.14 However, if the request is for production of documents or provision of information additional to the *external report*, it is recommended that *accounting firms/individuals* require the relevant agency to use its powers of compulsion before they respond. This is not intended to be non co-operative, and indeed *accounting firms/individuals* are recommended to engage in constructive dialogue with the Garda Síochána / Revenue Commissioners, including as to the content and drafting of the request, but is intended to protect *accounting firms/individuals* from allegations that they breached confidentiality. *Client* or other third party consent is not required in cases of compulsion, and nor should it be sought due to the risk of *prejudicing an investigation.*

9.15 Before responding to requests for further information, *accounting firms/individuals* should ensure they understand:

- the authority under which the request is made; the
- extent of the information requested;
- the required timing and manner of the production of information; and what
- information should be excluded *eg,* that subject to legal privilege,

If in any doubt, *accounting firms/individuals* should seek legal advice. *Accounting firms* should document their consideration of the issues.

9.16 Information or documentation that is subject to legal privilege or legal professional privilege should not be provided. If *individuals* or *accounting firms* are unsure as to whether certain documents fall within the privileged category or not, they should not include these documents in response to enquiries and seek legal advice.

9.17 Before providing information to a member of the Garda Síochána or the Revenue Commissioners, *accounting firms* should require evidence of the person's identity, for example, by showing official identification and a copy of the relevant order, or *accounting firms* may attend the premises of the relevant agency to hand over the information.

Requests arising from a change of professional appointment (professional enquiries)

Requests regarding identification information

9.18 In such a case the disclosure request may be made under the provisions of Section 40, reliance, or the new adviser may simply want copies of identification evidence, in order to assist it in satisfying its own identification procedures. *Accounting firms* should not release confidential information without the *client's* consent. If reliance is being placed on the *accounting firm*, it should follow the guidance in paragraphs 5.56 to 5.59 above in relation to record keeping for this purpose.

Requests for information regarding suspicious activity

9.19 In general, it is recommended that such requests are declined as the offence of *prejudicing an investigation* greatly restricts the ability to make such disclosures. It is recommended that *accounting firms* do not respond to questions in professional enquiry letters concerning either their satisfaction as to the identity of an entity or natural person or as to whether any *external report* has been made or contemplated. *Accounting firms* may wish to consider a standard wording in such responses to the effect that the legislation precludes them from responding to such queries.

Data Protection Acts 1988 to 2003 - Access to personal data

9.20 Section 4 of the Data Protection Acts 1988 to 2003 requires data controllers, such as *accounting firms*, to supply subjects, e.g. *clients*, with details of the personal data held by that data controller. Section 5(1)(a) of the same Acts, however, states that the access requirements do not apply to personal data:

> -kept for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or pay-able to the State, a local authority or a health board, in any case in which the application of that section to the data would be likely to prejudice any of the matters aforesaid.ll

9.21 Thus, *accounting firms* would not be required to disclose to a *client* information / personal data to held relating to knowledge or suspicion of a *money laundering* or terrorist financing offences, including *internal or external reports* arising from such knowledge or suspicion.

9.22 It is recommended that *accounting firms* document any considerations surrounding the decision to grant or refuse access to information requested in such circumstances.

GLOSSARY

2005 Act	Criminal Justice (Terrorist Offences) Act 2005
2010 Act	Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
Accountancy Services	*Accountancy services* includes for the purpose of this *Guidance* any service provided under a contract for services (i.e., not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information.
Competent Authority	Bodies identified by Section 60 of the *2010 Act* as being empowered to supervise the compliance of *individuals* and *accounting firms* with the *2010 Act.*
Accounting firms	A sole practitioner, company, partnership or other organisation undertaking defined services. This includes accountancy practices, whether structured as partnerships, sole practitioners or corporate practices.
Business relationship	A business, professional or commercial relationship between an *accounting firm* and a *client*, which is expected by the accounting firm, at the time when the contact is established, to have an element of duration.
CCAB-I	Consultative Committee of Accountancy Bodies in Ireland - the committee represents the Institute of Chartered Accountants in Ireland; the Association of Chartered Certified Accountants; the Chartered Institute of Management Accountants; and the Institute of Certified Public Accountants in Ireland.
Client	A person in a *business relationship*, or carrying out an occasional *transaction*, with an *accounting firm*.
Credit institution	Has the meaning given by Section 24 of the *2010 Act.*
Criminal Conduct	Conduct that constitutes an offence in Ireland as well as conduct occurring elsewhere that constitutes an offence under the law of that place and would have been an offence if it had taken place in the Ireland (Section 6).
Customer due diligence	The process by which KYC information is gathered, and the identity of a *client* is established and verified, for both new and existing *clients*.
Defined services	Activities carried on, in the course of business carried on by *accounting firms* or *individuals* as an auditor, *external accountant*, *i*nsolvency practitioner or *tax adviser* or as trust and company service providers. It also includes persons providing financial services under the Investment Business Regulations under the oversight of their professional body.
EEA	European Economic Area countries, which are the European Union member states plus EFTA (European Free Trade Association) member states.
Enhanced due diligence	Additional due diligence steps that must be applied in situations where there is a higher risk of *money laundering* or *terrorist financing* and in a number of specific situations (Sections 33(4), 37 and 39 of the *2010 Act*), of which two are relevant to providers of *defined services;(i) where* the *client* has not been physically present for identification purposes, and (ii) if a *business relationship* or occasional *transaction* is to be undertaken with a *politically exposed person (PEP).*

External accountant	Means a person (an *accounting firm* or sole practitioner) 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 (Section 24).
External report	Report made under Section 42 or 43 of the *2010 Act* to the Garda Síochána and the Revenue Commissioners.
FATF	Financial Action Task Force, created by G7 nations to fight *money laundering*.
Financial institution	Has the meaning given by Section 24 of the *2010 Act.*
Guidance	*Guidance* which is (a) issued by a *CCAB-I* body which is a *competent authority* under the *2010 Act*; and (b) approved by the Minister for Justice and Law Reform. In this *Guidance,* the term has been used for *Guidance* for which ministerial approval has been applied, and is expected to be obtained. Any use of the term ‗guidance‖ outside this definition, has not been italicised in this *Guidance.*
Individuals	Includes the partners, directors, subcontractors, consultants and employees of *accounting firms*.
Internal Report	A report made internally by an *individual* in accordance with procedures established by the *accounting firm.*
Money laundering offences	As defined in Section 7 of the *2010 Act,* a person commits a *money laundering offence* by: • concealing or disguising the true nature, source, location, disposition, movement or ownership of criminal property, or any rights relating to the property; • converting, transferring, handling, acquiring, possessing or using the criminal property; or • removing the criminal property from, or bringing the property into, the State. Other offences involve *money laundering* outside the State in certain circumstances (Section 8), attempts outside the State to commit offences in the State (Section 9) and aiding, abetting, counselling or procuring outside the State commission of offence in the State (section 10
Nominated Officer	This term is used to describe an *individual* who may be appointed by an *accounting firm,* in accordance with an internal reporting procedure under Section 44(1) of the *2010 Act* to manage the accounting firm‘s *money laundering* and *terrorist financing* reporting process. There is no legal obligation on *accounting firms* to establish such an internal reporting procedure or to appoint a *nominated officer*.
Politically exposed persons (PEPs)	*Politically exposed persons*, as defined in Section 37 of the *2010 Act*. See also paragraphs 5.37 to 5.44 above.
Prejudicing an	A ‗related‘ *money laundering offence*, defined under Section 49 of the *2010 Act.* It involves the making of any disclosure that is likely to prejudice an

investigation	investigation.
Predicate offence	Means the underlying offence or any offence as a result of which *criminal property* has been generated.
Proceeds of criminal conduct	Any property that is derived from or obtained through *criminal conduct*, whether directly or indirectly, or in whole or in part (Section 6).
Professional privilege reporting exemption	An exemption from reporting suspicions formed on the basis of information received in privileged circumstances (see paragraphs 7.25 to 7.43 of this *Guidance*).
Relevant independent legal professional	Barrister, solicitor or notary who carries out various services as set out in Section 24 of the *2010 Act*.
Relevant professional adviser	Defined in Section 24 of the *2010 Act* as an accountant, auditor or *tax adviser* who is a member of a designated accountancy body or of the Irish Taxation Institute.
Required disclosure	The requirement under Section 42(6) of the *2010 Act* to disclose (a) information on which the knowledge, suspicion or reasonable grounds are based; (b) the identity, if known, of the person known or suspected to be or have been engaged in an offence of *money laundering* or *terrorist financing*; (c) the whereabouts, if known, of the criminal property; and (d) any other relevant information.
Shell bank	means a *credit institution*, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is unaffiliated with a regulated financial group
Simplified due diligence	The phrase used to refer to the exemptions from *customer due diligence* provided in sections 34 and 36(1) for certain categories of *client*.
Vested interest	A 'vested interest' is an interest which to which an entitlement already exists (whether immediately - 'in possession'; or in the future, following the ending of another interest - 'in remainder' or 'in reversion'). It is in contrast to an interest which is merely 'contingent'; a contingent interest is an interest which will only arise on the happening of a particular event, such as surviving to a particular date or surviving a particular person. Determining whether an interest is vested or contingent requires careful analysis. For example, if a trust provides that A has a life interest, and that B has an interest which takes effect on A's death, both A and B will have vested interests and, if B does not survive A, B's interest will devolve as part of B's estate; however, if B's interest is expressed to take effect on A's death only if he (B) is then living, B's interest (which will fail if he predeceases A) is merely contingent. A defeasible interest is one which may be defeated, generally by the exercise of a power under the trust deed; an indefeasible interest is one which cannot be defeated. In the examples given above, A and B both have indefeasible interests. It is important that a defeasible vested interest is not mistaken for a contingent interest. A defeasible vested interest will take effect unless and until it is defeated; a contingent interest on the other hand will not take effect unless and until the event on which it is contingent arises.
Tax adviser	Means a person who by way of business provides advice about the tax affairs

of other persons (Section 24).

Terrorist financing

Means an offence under Section 13 of the *2005 Act*, which states:

> -…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.

The offence also encompasses providing, collecting or receiving funds whilst knowing or intending that they will be used for the benefit or purposes of a terrorist group or to carry out other *terrorist offences* under Section 6 of the *2005 Act*. Attempting to commit the above offences is also an offence.

Terrorist offences

Section 6 of the *2005 Act* defines *terrorist offences*, incorporating:

- terrorist activity (defined as the intention to (i) seriously intimidate a population; (ii) unduly compel a government or an international organisation to perform or abstain from performing an act; or (iii) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a state or an international organisation); and
- terrorist-linked activity (defined as an act which is committed with a view to engaging in a terrorist activity)

Tipping off

See „*prejudicing an investigation*".

Third money laundering directive

References in this *Guidance* to the „*Third Money Laundering Directive*" are to DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of *money laundering* and *terrorist financing*. It is available from: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf

Transaction The provision of any advice by an *accounting firm* or *individual* to a *client* by way of business, or the handling of the *client's* finances by way of business. Section 24 of the *2010 Act* defines transactions in the context of different *designated persons*', including:

(a) in relation to a professional service provider, any transaction that is carried out in connection with a customer of the provider and that is:

(i) in the case of a provider acting as auditor, the subject of an audit carried out by the provider in respect of the accounts of the customer,

(ii) in the case of a provider acting as an external accountant or tax adviser, or as a trust and company service provider, the subject of the service carried out by the provider for the customer,

(iii) …".