

THE CRIMINAL JUSTICE ACT 1994

MONEY LAUNDERING

GUIDANCE NOTES FOR ESTATE AGENTS AND AUCTIONEERS
IN RESPECT OF LAND AND/OR BUILDINGS AND HIGH VALUE GOODS

Approved by the Money Laundering Steering Committee

March 2005

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AND HIGH VALUE GOODS**

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1. INTRODUCTION

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities and includes acquiring, possessing or using the proceeds of criminal conduct. Criminal activity includes tax evasion.

Recent legislation has created criminal offences and has placed obligations on persons acting as estate agents, auctioneers or dealers in high value goods to identify clients (defined below), to maintain records in certain circumstances and to report suspicions of Money Laundering. The relevant legislation is the Criminal Justice Act 1994, as amended (the Act), Regulation 242 of 2003 and Regulation 3 of 2004.

These Guidance Notes have been issued with the approval of the Money Laundering Steering Committee, which was established under the aegis of the Department of Finance to oversee the issue of guidelines to facilitate the implementation of the Act, the EU Directive and the FATF Forty recommendations. The Steering Committee includes representatives of the Department of Justice, the Department of Finance, the Revenue Commissioners and An Garda Síochána as well as representatives of the designated bodies.

These Guidance Notes are recommendations as to good practice, but do not constitute a legal interpretation of the Act. The Act provides that a court, in determining whether an estate agent or auctioneer has complied with the Act, may have regard to compliance with these notes.

It is important that estate agents and auctioneers are familiar with these Guidance Notes and practitioners are recommended to consult their own legal advisers in relation to the interpretation of the Act and the Regulations as needed.

A person who conceals or disguises any property or converts or transfers it from the State and knows or believes or is reckless as to whether it represents the proceeds of criminal conduct, is guilty of the **offence of money laundering** under Section 31 of the Act. It is also an offence to provide any advice or assistance in relation to converting, transferring handling or removing property knowing or believing it to represent the proceeds (see Appendix 4) of criminal activity or being reckless as to whether it was or represented proceeds. Under Section 57 you must also **report suspicions** to the relevant Garda and Revenue units.

Estate agents, auctioneers and dealers in high value goods are now designated bodies. Section 32 obliges designated bodies to **secure and retain the identity of clients** for whom they are engaged to provide a service on a continuous basis or where a transaction, or linked transactions, amount to not less than €13,000 in respect of real property transactions, or in excess of €15,000 (in cash) in respect of high value goods changes hands. Even though these thresholds may not have been breached, if an estate agent or auctioneer suspects that money laundering is taking place, a duty arises to report such suspicions to the relevant authorities.

Section 58 creates the **offence of “tipping off”**, i.e. bringing to the notice of a third party the fact that a suspicion has been aroused, that an investigation is underway or that a report has been made either internally or to the relevant authorities. Should an estate agent or auctioneer continue to act for a party that refuses to provide evidence of identity, in circumstances where the legislation indicates that it must be provided, the estate agent or auctioneer may be guilty of a money laundering offence. The withdrawal of services is, of itself, unlikely to constitute a tipping off offence under the Act.

It is suggested that in the letter confirming Terms of Engagement the estate agent or auctioneer should state that it is essential to their Terms of Engagement that he/she can require proof of identity of the client at any time during the period of their engagement.

For those situations where the estate agent/auctioneer *is* regarded as providing a service to the purchaser a similar requirement be made of a purchaser in an auction by notices issued to all prospective bidders, and where the auction is of real estate this could be included in the brochure of the property.

The Act provides for penalties, including fines and/or imprisonment, in respect of non-compliance with the Act. The relevant sections of the Act and the Regulations are addressed later in these Guidance Notes and are also attached as appendices.

The term 'client' refers to the party with whom an estate agent or auctioneer contracts for the provision of services. In the vast majority of property transactions, the client will be the seller or landlord. For a buyer or tenant to be a client, he/she/it must retain the estate agent or auctioneer to act on his/her/its behalf.

In the sale of high value goods (e.g. fine art sold at auction) when a buyer's premium is charged, both the seller and the buyer are 'clients' for the purpose of the Act, even though no formal contractual relationship may come into existence between the auctioneer and the buyer. This is so even in cases where the seller is charged zero commission despite being the instructing client. Where it is necessary in such circumstances to secure and retain the identity of the client, proof of the identity of both seller and buyer should therefore be secured and retained.

Where the buyer solely engages the estate agent or auctioneer to act on his/her behalf, the buyer is the sole client and proof of only his/her identity need be secured and retained.

While Money Laundering legislation relates to the proceeds of all types of criminal conduct, auctioneers and estate agents should be aware that in many instances, crime is of a terrorist nature. Under both EU and domestic law, financing terrorism is an offence and practitioners should be cognisant that terrorist funding can comprise both large and small, regular, payments and are not confined to cash payments.

Designated bodies, including auctioneers and estate agents, are legally obliged to adopt measures to prevent and detect the commission of an offence of financing terrorism. In practical terms, for auctioneers and estate agents this will require ensuring that all those working in their practice know that money laundering is an offence likely to be carried out both by terrorists and by other criminals. Suspicions relating to the financing of terrorism should be handled in a similar manner to other suspicions of money laundering as set out in these Guidance Notes.

2. IDENTIFYING SUSPICIOUS TRANSACTIONS

The best protection against abuse by money laundering is for you to know who your clients are and the source of their funds. This is particularly important if you have not dealt with the client before. Arising from the Money-Laundering Regulations 2003 and 2004 you are obliged, where the financial thresholds are exceeded in individual or linked transactions or where you are providing a service on a continuous basis or otherwise where you suspect a service is connected with a money laundering offence, to take reasonable measures to identify your clients.

In addition, regardless of whether financial thresholds are exceeded or whether the suspicious activity is associated with your client or a third party, if you have suspicions you must report them.

Suspicion, by its nature, is personal and subjective. It falls short of proof based upon firm evidence. It has not been defined in Ireland, but the English courts which can be persuasive define it as being beyond mere speculation and based on some foundation such as:

- A degree of satisfaction, not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not and
- Although the creation of suspicion needs a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation

Suspicion does not require that you know the nature of the criminal offence or that particular funds were definitely those arising from the crime. The following indicators are among those that might then give rise to a suspicion that money laundering is taking place:

- A difficulty obtaining evidence of identity when requested
- A reluctance on the part of the client, or the buyer/tenant, to provide standard information
- A request that the transaction be effected in great haste
- A request that the transaction be effected regardless of price
- Lack of an apparent reason for using the services of an estate agent or auctioneer
- Use of intermediaries in a manner that helps protect the identity of those involved
- Funds coming from unusual or unverifiable sources
- Requesting a substantial cash payment be made, or accepted, when this is not part of the normal and legitimately explicable business pattern for the party or parties concerned
- A transaction that is otherwise outside the normal course of business for the party or parties concerned in terms of scale or pattern, including frequency.

Suspicion may relate to any individual or entity involved in the transaction and not just the client.

3. WHEN TO SECURE IDENTIFICATION

You must take reasonable measures to establish the identity of a client (as defined in the introduction to these Guidance Notes) where

1. Once-off or linked transactions amount to not less than p13,000 (land and/or buildings) or p15,000 cash (high value goods); **or**
2. You are engaged to provide a service on a **continuous basis**; **or**
3. You **suspect** that a service is connected with a money laundering offence.

Where an instructing party is acting on behalf of a third party, the estate agent or auctioneer should establish the identity of the third party (*see exceptions below*).

Estate agents and auctioneers are not required to retrospectively establish the identities of parties who were clients on or before 15th September 2003, the effective date for inclusion of estate agents and auctioneers in the legislation. Identification is not required in respect of transactions between two designated bodies.

Any evidence of identification obtained by you must be retained for use as evidence in any investigation into money laundering. Copies of all materials used to identify the person must be kept for at least five years after the business relationship with the client has ended. In the case of transactions, the original documents or copies admissible in legal proceedings relating to the relevant transaction must be kept for a period of at least five years following the transaction.

The maximum penalty under this section is an unlimited fine and/or a five-year prison term.

Identification must be secured and retained on file, for a period of not less than five years, in respect of any of the three situations above where your client is:-

- a) **A client seller or landlord**;
- b) **The purchaser**, in a proposed purchase of land and/or buildings, but only when an estate agent or auctioneer is retained by the purchaser to act on the purchaser's behalf;
- c) **The tenant**, when a letting is agreed, but only when you are retained to act on the tenant's behalf;
- d) **A real property owner**, where you are instructed to manage a property on behalf of that owner;
- e) **Both the vendor and the purchaser of high value goods** sold by you where a buyers premium is payable to you;
- f) **The buyer of high value goods** bought by you, where you are retained by the buyer but do not act for the seller.

Where there are joint clients, identification must be secured and retained for all of them.

It is important that both operational procedures and what constitutes suitable and adequate identification are consistent, so that criminals do not exploit weaknesses in the manner in which some estate agents and auctioneers seek identification.

The Act does not oblige you to share information gained with other designated bodies and you should treat all information obtained confidentially, furnishing such information when appropriate only to the relevant Garda and Revenue Units.

However, where an auctioneer or estate agent is an intermediary proposing to act for a client with another designated body he/she will give the other designated body a written assurance that he/she has all the relevant identification material concerning their client and will if requested furnish the designated body with a copy of all such documents.

4. HOW TO SECURE IDENTIFICATION

One of the circumstances giving rise to the need to secure identification of a client arises where the thresholds are being exceeded. In practice this will mean most transactions will give rise to the requirement to obtain identification. It is best to advise any new client at the outset that you are legally obliged to secure their identity, and request that they provide you with the relevant documentation. If you believe a transaction might breach the €13,000 threshold at a later stage you should inform them that you will need identification at a later stage if the threshold is breached. A client will not then be surprised at a later request for identification.

Estate agents and auctioneers, in sending new clients written confirmation of their terms of engagement in respect of real property transactions, should therefore advise their clients that: *“Under the Criminal Justice Act, 1994, estate agents and auctioneers are obliged to secure proof of identity and proof of address from the client, if not less than €13,000 will change hands in connection with the proposed transaction.”*

In respect of the sale of high value goods, a similar letter using the appropriate €15,000 cash threshold should issue to the client on taking instructions and wording to the same effect should be incorporated into Conditions of Sale used at plant & machinery, fine art and general chattel auctions, so that buyers, who would become clients for the purpose of the Act on paying a buyer's premium, are on prior notice of the requirement.

When identification is required, you must take all reasonable measures to secure the identity of the client concerned.

Wherever practicable, the estate agent or auctioneer should seek to ensure that he/she has face-to-face contact with clients. If verification of identity is required, the name and/or names should be obtained from clients and should be independently verified. Verification should ideally include a passport or driving licence.

The permanent address provided should be ideally verified by reference to a recent issue of one or more of the following, depending on the circumstances:

- a) Bank or Building Society statement
- b) Utility Bill
- c) Mortgage Statement
- d) Tax Notices from the Revenue Commissioners
- e) Social Welfare documents
- f) House/motor insurance certificates

If a client cannot provide any of the suggested methods of identification outlined above, you may adopt effective alternative identification procedures.

If neither a passport nor driving licence is available, it is reasonable to accept -

ML10 Form from the Garda Síochána;
National Immigration Card

Documentation issued by a Government Department showing the name of the person;

A letter/statement from a person in a position of responsibility (e.g. solicitor, accountant, doctor, minister of religion, teacher, social worker) who can confirm the client's identity - this person must accompany the client and produce evidence of his/her own identity.

Where none of the items suggested for verification of address can be provided, you should obtain:

- A letter or statement from a licensed employment agency or from an employer that the person has recently arrived in Ireland and is commencing employment and is not in a position to produce a utility bill. In addition, in such cases the prospective customer should be required to submit follow up documentation (e.g. utility bill) confirming address in due course.
- Documentation or card issued by a Government Department, showing the address of the person.
- A letter or statement from a person of responsibility (see above) confirming the person's address - this person must accompany the client and produce evidence of his/her own identity.

The originals should be seen in all instances. A copy of the document(s) relied upon must be taken and retained. Where this is not possible, the relevant details must be recorded and retained on file.

When face-to-face contact proves impossible, a certified copy of a passport or driver's licence is the best option. Certification may be by a solicitor, notary public, Garda Officer, Embassy/Consular staff or another designated body in Ireland.

For clients who are not resident in Ireland, it is recognised that address verification may be difficult. Evidence of address should however be provided, and can be so provided by:

- Obtaining certification from a solicitor, notary public, embassy/consular staff.
- Use of branches, subsidiaries, head offices, or correspondent agencies in the prospective client's country.

For partnerships/trusts it is recommended that a copy of the partnership agreement be obtained and that identification and verification of address be secured for not less than two of the partners/trustees.

For companies, a copy of the Articles and By-Laws should be secured.

Agents & Intermediaries

Where an agent or intermediary, through whom a client instructs you, is a designated body (solicitor, accountant, auctioneer, estate agent, financial or credit institution), or a body corresponding to a designated body in a member state of the European Union or in one of the other countries listed in Appendix 1, there is no need to establish the identity of the agent/intermediary. However, you should ensure that the designated body does actually exist and that it is regulated for money laundering purposes.

In this case, there is no need for you to secure the identity of the client, as it is the other designated body's responsibility to do so. The agent/intermediary should, however, provide you with a written assurance that it has all the relevant identification material concerning the client and will, if requested, furnish you with a copy of same. This assurance may be particular to a specific client or may be by way of a general assurance.

Unless the criteria set out in the immediately preceding two paragraphs are met, both the identity of the agent/intermediary and also the identity of the client must be sought. You are expected to adopt an approach that achieves the principal aims of the legislation.

Failure to Provide Identification

Failure to provide identification and/or proof of address may create a suspicion on the part of the estate agent or auctioneer and any such suspicion would give rise to an obligation to report the transaction to the authorities as suspicious. See relevant comments in Section 1.

5. RECORD KEEPING

The requirement contained in legislation to keep records of clients and transactions is an essential part of the audit trail that the legislation seeks to establish.

The obligation to keep records arises where there is an obligation to establish identity.

Where evidence of a person's identity is required, you must maintain on record a copy of the evidence. The most important single feature of the legislation in this area is that relevant records must be retained for at least five years from the date of completion of the business, or the termination of the business relationship (whichever is later).

Estate agents and auctioneers must ensure that they have procedures in place that will:

- (i) Show the method used to identify the individual/s concerned;
- (ii) Retain the copies of documents used to do so;
- (iii) Indicate the details of the transaction, including the parties thereto.

In relation to a long-term relationship, such as property management, records for the property owner must be established at the commencement of the business relationship and retained on file for at least five years after the termination of that relationship.

To satisfy the requirements of An Garda Síochána and the Revenue Commissioners, it is important that records are capable of retrieval without undue delay. It is not strictly necessary to retain documents in their original hard copy form, provided the firm has reliable procedures for holding records in microfiche or electronic form, as appropriate, and these records can be reproduced without undue delay. A hard copy format will probably prove the most suitable for most estate agents and auctioneers.

Where you have submitted a report of suspicious activity to An Garda Síochána and the Revenue Commissioners, or where it is known that a client, client or transaction is under investigation, relevant records must not be destroyed without the prior agreement of the authorities even though the five-year statutory time limit may have elapsed.

Confidentiality & 'Tipping Off'

For reasons of confidentiality, and to minimise the risk of 'tipping off' a suspect (an offence under Section 58 of the Act punishable by fines and/or imprisonment), it is best not to retain details of suspicions, or reports made to the authorities, on the actual property file.

However in a situation where the agent is contractually bound to complete a sale, and the circumstances are such that it is not practical to obtain identification before completion (e.g. after a property has been knocked down at an auction), the agent may complete the sale and then report non-compliance of identification

6. REPORTING SUSPICIONS OF MONEY LAUNDERING

Before any obligation to report a suspicious transaction arises there must be a **suspicion** that an offence of money laundering has been or is being committed.

The Act states that no person making a report in good faith will incur liability of any kind for making the report. Protection under the Act extends not just to individuals in practice as estate agents and auctioneers, but to all partners, directors, principals, officers and employees of partnerships or companies in practice.

Money Laundering Reporting Officer (MLRO)

Estate agents and auctioneers are recommended to appoint a Money Laundering Reporting Officer (MLRO), who should be a person sufficiently senior to command the necessary authority - ideally a principal. The MLRO should have responsibility to administer the practice's money laundering prevention system, to determine whether a client's identity needs to be secured and retained and to act as a central point of contact with An Garda Síochána and the Revenue Commissioners in reporting suspicions under the legislation.

A Deputy MLRO may be appointed to act when the RO is absent; within reason there must always be a MLRO available to staff.

There is a statutory obligation on all partners, directors, principals, officers or staff to report suspicions of money laundering, if they exist. Any party who reports the facts to a MLRO, under procedures adopted by the particular estate agency or auctioneering practice, fulfils this obligation.

Where a firm operates in several branches, it may opt for a MLRO in each office or else a central MLRO to act for the entire firm. In the latter event, a senior individual in each branch should have responsibility to report to the MLRO on behalf of the branch.

Franchisees are all separate trading entities and for them to share information on clients or clients with the franchiser's head office, for the purpose of money laundering prevention, may breach the Data Protection Act. Each franchisee must therefore have its own MLRO.

The MLRO must decide whether, in his/her opinion, there is a suspicion that any individual or entity engaged in a transaction (and not just the client) may be engaged in money laundering. This may require a review of other transactions involving the particular individual or entity, a consideration of the length of the business relationship, referral and identification records held and the manner in which the individual or entity has previously operated.

The MLRO must be afforded reasonable access to information that will enable him/her to undertake his/her responsibility.

It is important that the Money Laundering Reporting Officer should keep in a secure place a written record that a matter has been reported to him.

Firms with a regular flow of reports are strongly encouraged to develop their own contacts within the relevant authorities and periodically to seek advice in general terms as to the nature of transactions that should or should not be reported.

The relevant Units for reporting purposes are:

An Garda Siochána
Garda Bureau of Fraud Investigation
Money Laundering Investigation Unit
Harcourt Square
Harcourt Street
Dublin 2
Tel: 01 - 666 3712 Fax: 01 – 666 3711
Email: mliu@iol.ie

Office of the Revenue Commissioners
Suspicious of Money Laundering Reports Office
Block D
Ashtowngate
Navan Road
Dublin 15
Tel: 01 – 827 7636 Fax: 01 – 827 7484
Email doconn@revenue.ie

A **Sample Internal Reporting Form**, for use by staff and colleagues in reporting to the MLRO, is attached to these Guidance Notes at **Appendix 2**.

A **Sample External Reporting Form**, for use by the MLRO in respect of reports to the authorities, is attached to these Guidance Notes at **Appendix 3**.

7. AWARENESS

In order to ensure that statutory obligations are met employees of estate agents and auctioneers must be made aware of the practice's policies and procedures to prevent money laundering and for identification, record keeping and internal reporting.

The effectiveness of the procedures will depend on the extent to which Directors, Partners, Principals and all staff members appreciate the serious nature of money laundering. All must be made aware of their own personal legal obligations and of the penalties they could face personally should they not fulfil those obligations. They must also provide a prompt report of any suspicious transaction/s.

It is therefore important that estate agents and auctioneers introduce measures to ensure that everyone in their office is aware of their responsibilities.

All must be given a general appreciation of the background to money laundering. They must also be made aware of the legal requirement for the firm to report and for them to personally report suspicions to the RO. They must be made aware of the 'tipping off' offence.

The need for awareness extends to casual staff, including those who show property to the public at weekends and those who act as porters etc. at clearance auctions.

It is important to ensure that everyone, and not just those involved directly in transactions, are aware of the need to counter money laundering and of the responsibilities under the legislation to that end.

APPENDIX 1

Countries prescribed by the Minister for Justice and Equality and Law Reform as having similar money-laundering obligations:

All EU Member States

Argentina

Australia

Brazil

Canada

Channel Islands

Hong Kong

Iceland

Isle of Man

Japan

Mexico

New Zealand

Norway

Russia

Singapore

South Africa

Switzerland

Turkey

USA

APPENDIX 2

SAMPLE INTERNAL REPORTING FORM

To the Money laundering Reporting Officer of: í í í í í í í í í í í í í í í í í í .

From: Name: í í í í í í í í í í í í í í í í í í Extension: í í í í í í í í í í í í í í ...

Section/Branch: í í í í í í í í í í í í í í .. Position: í í í í í í í í í í í í í í ..

Client Name: í í í í í í í í í í í í í í í í í í

Address: í

Nationality (if known): í í í í í í í í File Reference Number: í í í í í í í í í

Property (if different to above): í

Date Business Relationship Commenced: í í í í í í

Purchaser/Tenant Name: í .

Address: í

REASON FOR SUSPICION:

í ..
í ..

Payments Received

- a) Amount: í í í í í í í í í í í í í í .
- b) Form (e.g. cash, draft, electronic transfer) : í í í í í í í í í í í í í í .
- c) Source: í .
- d) Reason for payment: í í í í í í í í í í í í í í .

Previous business involving the client or the purchaser/tenant (delete as appropriate):

í ..
í ..

The relevant file and documentation relating to the identity and/or address of client, if verified already, must accompany this report.

REPORTING OFFICER USE ONLY:

Date Received: í í í í í í .. Ref: í í í í í í í í í í .

Verification of Identity secured: Yes / No By: í í í í í í í Date: í í í í í í í í ..

Verification of Address secured: Yes / No By: í í í í í í í Date: í í í í í í í í

Where verification of identity or address does not accompany the internal report, it is the responsibility of the MLRO to secure same, if appropriate.

Garda/Revenue advised: Yes/No Date: í í í í í í . Ref: í í í í í í í í í í

Reason for Decision: í ..
í ..

APPENDIX 3

**SAMPLE EXTERNAL REPORTING FORM
Criminal Justice Act, 1994**

REF NO. _____ **SOURCE:** _____ **DATE:** _____

<p>NAME OF ESTATE AGENTs/ AUCTIONEERs FIRM: í</p> <p>NAME OF REPORTING OFFICER: í .</p> <p>FIRM ADDRESS: í</p> <p>PHONE: í í í í í . Ext: í í í PERSONAL E-MAIL: í í í í í í í í í í í í í í</p>
<p>Client of Firm: í í í í í í í í í í í í í í</p> <p>Address: í</p> <p>Date of Birth (if a person): í í í í í í í í í í í í í</p> <p>I.D. and/or References: í í í í í í í í í í í í í í í .</p> <p>Other Relevant Data, if any: í .. í</p> <p>Occupation: í í í í í í í í í í í í . Employer: í í í í í í í í í í í í .</p> <p>Nationality: í í í í í í í í í í í í í í . Passport Number (if known) í í í í í</p>
<p>Subject Property: .. í . í ..</p>
<p>Payments Received</p> <p>e) Amount: í í í í í í í í í í í í .</p> <p>f) Form (e.g. cash, draft, electronic transfer) : í í í í í í í í í í í í .</p> <p>g) Source: í í í í í í í í í í í í í í í í .</p> <p>h) Reason for payment: í í í í í í í í í í í í .</p>
<p>Buyer / Tenant: .. í . í ..</p> <p>Address if known: í .. í .</p> <p>Any other data known: í</p>
<p>Details giving rise to a suspicion that an offence under Section 31 or 32 of the Criminal Justice Act, 1994, has been or is being committed:</p>

APPENDIX 4

SECTIONS 31 & 32, CRIMINAL JUSTICE ACT, 1994 (Theft and Fraud Offences)

(Amendment of Section 31 of Criminal Justice Act, 1994.)

21.6 The Criminal Justice Act, 1994, is hereby amended by the substitution of the following section for section 31 (money laundering, etc.):

31.6 (1) A person is guilty of money laundering if, knowing or believing that property is or represents the proceeds of criminal conduct or being reckless as to whether it is or represents such proceeds, the person, without lawful authority or excuse (the proof of which shall lie on him or her)

(a) converts, transfers or handles the property, or removes it from the State, with the intention of

- (i) concealing or disguising its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or
- (ii) assisting another person to avoid prosecution for the criminal conduct concerned, or
- (iii) avoiding the making of a confiscation order or a confiscation co-operation order (within the meaning of section 46 of this Act) or frustrating its enforcement against that person or another person,

(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or

(c) acquires, possesses or uses the property.

(2) A person guilty of money laundering is liable

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 14 years or to both.

(3) Where a person

(a) converts, transfers, handles or removes from the State any property which is or represents the proceeds of criminal conduct,

(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or

(c) acquires, possesses or uses it, in such circumstances that it is reasonable to conclude that the person

(i) knew or believed that the property was or represented the proceeds of criminal conduct, or

(ii) was reckless as to whether it was or represented such proceeds, the person shall be taken to have so known or believed or to have been so reckless, unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless.

(4) Where a person first referred to in subsection (1) of this section does an act referred to in paragraph (a) of that subsection in such circumstances that it is reasonable to conclude that the act was done with an intention specified in that paragraph, the person shall be taken to have done the act with that intention unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person did it with that intention.

(5) This section does not apply to a person in respect of anything done by the person in connection with the enforcement of any law.

(6) This Part shall apply whether the criminal conduct in question occurred before or after the commencement of this section and whether it was or is attributable to the person first mentioned in subsection (1) or another.

(7)

(a) In this section

(i) criminal conduct means conduct which

(I) constitutes an indictable offence, or

(II) where the conduct occurs outside the State, would constitute such an offence if it occurred within the State and also constitutes an offence under the law of the country or territorial unit in which it occurs, and includes participation in such conduct;

(ii) reckless shall be construed in accordance with *section 16(2) of the Criminal Justice (Theft and Fraud Offences) Act, 2001*;

(iii) references to converting, transferring, handling or removing any property include references to the provision of any advice or assistance in relation to converting, transferring, handling or removing it;

(iv) references to believing that any property is or represents the proceeds of criminal conduct include references to thinking that the property was probably, or probably represented, such proceeds;

(v) references to any property representing the proceeds of criminal conduct include references to the property representing those proceeds in whole or in part directly or indirectly, and cognate references shall be construed accordingly.

(b) For the purposes of this section a person handles property if he or she, without a claim of right made in good faith

(i) receives it, or

(ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or

(iii) arranges to do any of the things specified in subparagraph(i) or (ii).

(c) For the purposes of paragraph (a)(i)(II)

(i) a document purporting to be signed by a lawyer practising in the state or territorial unit in which the criminal conduct concerned is alleged to have occurred and stating that such conduct is an offence under the law of that state or territorial unit, and

(ii) a document purporting to be a translation of a document mentioned in subparagraph (i) and to be certified as correct by a person appearing to be competent to so certify, shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents, unless the contrary is shown.

(8) Where

(a) a report is made by a person or body to the Garda Síochána under section 57 of this Act in relation to property referred to in this section, or

(b) a person or body (other than a person or body suspected of committing an offence under this section) is informed by the Garda Síochána that property in the possession of the person or body is property referred to in this section,

the person or body shall not commit an offence under this section or section 58 of this Act if and for as long as the person or body complies with the directions of the Garda Síochána in relation to the property.

32. (1) In this Part

“currency note” and “coin” mean, respectively, a currency note and coin lawfully issued or customarily used as money in the State or in any other state or a territorial unit within it and include a note denominated in euro and a coin denominated in euro or in cent and also any note or coin which has not been lawfully issued but which would, on being so issued, be a currency note or coin within the above meaning; and

“lawfully issued” means issued

- (a) by or under the authority of the European Central Bank,
- (b) by the Central Bank of Ireland or the Minister for Finance, or
- (c) by a body in a state (other than the State) or a territorial unit within it which is authorised under the law of that state or territorial unit to issue currency notes or coins.

(2) For the purposes of this Part, a thing is a counterfeit of a currency note or coin

- (a) if it is not a currency note or coin but resembles a currency note or coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or coin of that description, or
- (b) if it is a currency note or coin which has been so altered that it is reasonably capable of passing for a note or coin of some other description.

(3) For the purposes of this Part

- (a) a thing consisting of or containing a representation of one side only of a currency note, with or without the addition of other material, is capable of being a counterfeit of such a currency note, and
- (b) a thing consisting
 - (i) of parts of two or more currency notes, or
 - (ii) of parts of a currency note, or of parts of two or more currency notes, with the addition of other material,

is capable of being a counterfeit of a currency note.

APPENDIX 5

SECTIONS 57 & 58, CRIMINAL JUSTICE ACT, 1994 (Theft and Fraud Offences)

23.ô The Criminal Justice Act, 1994, is hereby amended by the insertion of the following section after section 57:

(=Designation of certain states or territorial units.ö)

57A.ô (1) The Minister may by order, after certain states or consultation with the Minister for Finance, designate any state, or territorial unit within a state, that in his or her opinion has not in place adequate procedures for the detection of money laundering.

(2) Any person or body to whom or which section 32 of this Act applies (including any director, employee or officer thereof) shall report to the Garda Síochána any transaction connected with a state or territorial unit that stands designated under subsection (1).

(3) A person charged by law with the supervision of a person or body to whom or which section 32 of this Act applies shall report to the Garda Síochána if the person suspects that a transaction referred to in subsection (2) has taken place and that that subsection has not been complied with by the person or body with whose supervision the first-mentioned person is so charged.

(4) A report may be made to the Garda Síochána under this section in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of this section.

(5) In the case of a person who was in employment at the relevant time, it shall be a defence to a charge of committing an offence under this section that the person charged made a report of the type referred to in subsection (2) or (3) of this section, as the case may be, to another person in accordance with an internal reporting procedure established for the purpose specified in subsection (4) of this section.

(6) A person who fails to comply with subsection (2) or (3) of this section is guilty of an offence and liableô

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

(7) In determining whether a person has complied with any of the requirements of this section, a court may take account of any relevant supervisory or regulatory guidance which applies to that person or any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(8) Where a person or body discloses in good faith information in the course of making a report under subsection (2) or (3) of this section, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by statute or otherwise or involve the person or body making the disclosure (or any director, employee or officer of the body) in liability of any kind.

(9) The Minister may by order, after consultation with the Minister for Finance, amend or revoke an order under this section, including an order under this subsection.ø

58.ô (1) Where ô

(a) an offence under this Act has been committed by a body corporate, and

(b) the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either

- (i) a director, manager, secretary or other officer of the body corporate, or
- (ii) a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.
- (3) The foregoing provisions shall apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

APPENDIX 6

REGULATION 242 OF 2003 (ADDITIONAL DESIGNATED BODIES)

STATUTORY INSTRUMENTS

S.I. No. 242 of 2003

CRIMINAL JUSTICE ACT 1994 (SECTION 32) REGULATIONS 2003

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S.I. NO. 242 OF 2003

CRIMINAL JUSTICE ACT 1994 (SECTION 32) REGULATIONS 2003

I, Michael McDowell, Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 32 (10)(a) and section 32(10A) (inserted by section 2 of the Disclosure of Certain Information for Taxation and Other Purposes Act 1996 (No. 25 of 1996)) of the Criminal Justice Act 1994 (No. 15 of 1994) (as adapted by the Justice (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 298 of 1997)), and for the purpose of giving effect to Article 2a and the second indent of Article 6(3) (inserted by Articles 2 and 5, respectively, of Directive No. 2001/97/EC of the European Parliament and of the Council of 4 December 2001¹¹) of Council Directive No. 91/308/EEC of 10 June 1991²², following consultation with the Minister for Finance, hereby make the following regulations:

1. (1) These Regulations may be cited as the Criminal Justice Act 1994 (Section 32) Regulations 2003.

(2) These Regulations come into operation on 15 September 2003.

2. (1) In these Regulations -

"auctioneer" has the meaning assigned to it by section 127 of the Finance Act 1995 (No. 8 of 1995);

"collective investment scheme" has the meaning assigned to it by section 206 (inserted by section 105 of the Finance Act 1994 (No. 13 of 1994)) of the Finance Act 1992 (No. 9 of 1992);

"Directive" means Council Directive No. 91/308/EEC of 10 June 1991, as amended by Directive No. 2001/97/EC of the European Parliament and of the Council of 4 December 2001;

"investment business firm" has the meaning assigned to it by section 2 of the Investment Intermediaries Act 1995 (No. 11 of 1995);

"practice", except in relation to an accountant, means the professional practice of a designated body;

"solicitor" has the meaning assigned to it by section 3 (inserted by section 3 of the Solicitors (Amendment) Act 1994 (No. 27 of 1994)) of the Solicitors Act 1954.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

3. The persons or bodies specified in the Schedule to these Regulations are prescribed as designated bodies for the purposes of section 32 of the Criminal Justice Act 1994 (No. 15 of 1994).

4. Section 57 of the Criminal Justice Act 1994 (No. 15 of 1994) does not apply to a person in the State who practises as an accountant on his or her own account, an auditor, a solicitor or tax advisor with regard to information he or she receives from or obtains in relation to a client in the course of ascertaining the legal position for that client, and

(a) when performing their task of defending or representing that client in or concerning judicial proceedings, or,

(b) when advising that client in relation to instituting or avoiding judicial proceedings,

whether such information is received or obtained before, during or after such proceedings.

¹ O.J. No. L. 344, 28.12.01, p. 76

² O.J. No. L. 166, 28.06.91, p. 77

Regulation 3

SCHEDULE

1. Any person in the State who practises as -
 - (a) an accountant on his or her own account,
 - (b) an auctioneer,
 - (c) an auditor,
 - (d) an estate agent,
 - (e) a tax advisor,
2. any person in the State who practises as a solicitor, when participating in any of the activities set out in Article 2a(5) of the Directive,
3. any person who provides money remittance services,
4. administration companies providing services to collective investment schemes,
5. an investment business firm,
6. a trustee or custodian of a collective investment scheme where it is regulated in the State,
7. a dealer in high-value goods, including precious stones, precious metals and works of art where payment is made in cash for a sum of p 15,000 or more,
8. casinos.

APPENDIX 7

REGULATION 3 OF 2004 (DESIGNATED ACTIVITIES)

STATUTORY INSTRUMENTS

S.I. No. 3 of 2004

CRIMINAL JUSTICE ACT 1994 (SECTION 32) (PRESCRIBED ACTIVITIES)

REGULATIONS 2004

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S.I. No. 3 of 2004

Criminal Justice Act 1994 (Section 32) (Prescribed Activities) Regulations 2004

I, Michael McDowell, Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 32(10)(b) of the Criminal Justice Act 1994 (No. 15 of 1994) (as adapted by the Justice (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 298 of 1997)), and for the purpose of giving further effect to Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001¹, and following consultation with the Minister for Finance, hereby make the following regulations:

1.(1) These Regulations may be cited as the Criminal Justice Act 1994 (Section 32) (Prescribed Activities) Regulations 2004.

(2) These Regulations shall come into operation on 1 February 2004.

2. In these Regulations -

“collective investment scheme” has the meaning assigned to it by section 206 (inserted by section 105 of the Finance Act 1994 (No. 13 of 1994)) of the Finance Act 1992 (No. 9 of 1992);

“investment advice” and “investment business services” have the meanings assigned to them by section 2 of the Investment Intermediaries Act, 1995 (No. 11 of 1995);

“land” includes land situated outside the State.

3. The activities specified in the Schedule are prescribed for the purposes of section 32(2) of the Criminal Justice Act 1994 (No. 15 of 1994).

¹ OJ No. L 344 of 28.12.2001, p.76

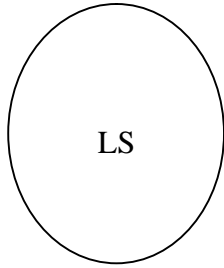
SCHEDULE

Prescribed Activities

1. Activities relating to the carrying on of the profession or trade of ó
 - (a) accountant (other than an accountant who provides a service in his or her capacity as an accountant to a person who employs him or her under a contract of service),
 - (b) auctioneer,
 - (c) auditor,
 - (d) estate agent,
 - (e) tax adviser.
2. Activities relating to the carrying on of the profession of solicitor consisting of -
 - (a) the provision of assistance in the planning or execution of transactions for clients concerning the ó
 - (i) buying or selling of land or business entities,
 - (ii) managing of client money, securities or other assets,
 - (iii) opening or management of bank, savings or securities accounts,
 - (iv) organisation of contributions necessary for the creation, operation or management of companies, or
 - (v) creation, operation or management of trusts, companies or similar structures, or
 - (b) the acting on behalf of and for a client in any financial transaction or transaction relating to land.
3. Activities consisting of -
 - (a) the provision of services to a person in connection with the purchase or sale of land where payment for the land concerned is in cash and is not less than p13,000,
 - (b) the provision of investment business services or investment advice,
 - (c) the carrying out of trustee or custodian duties for a collective investment scheme, or
 - (d) the provision of money remittance services.
4. Activities of administration companies consisting of the provision of services to collective investment schemes.
5. Activities of dealers in high value goods, including precious stones, precious metals and works of art where payment for the goods concerned is in cash and is not less than p15,000.
6. Activity of operating a casino.

GIVEN under my Official Seal,

This 7th day of January 2004.



MICHAEL MCDOWELL
Minister for Justice, Equality
and Law Reform.

EXPLANATORY NOTE

(This note is not a part of the Regulation and does not purport to be a legal interpretation)

These Regulations prescribe activities under Section 32 (10)(b) of the Criminal Justice Act 1994 which apply to the designated bodies referred to in the Criminal Justice Act 1994 (Section 32) Regulations 2003 (S.I. No. 242 of 2003)