

**THE CRIMINAL JUSTICE ACT, 1994 (AS AMENDED)**

**MONEY LAUNDERING**

**GUIDANCE NOTES FOR CREDIT INSTITUTIONS**

**Issued with the approval of:  
The Money Laundering  
Steering Committee**

*May 2003*

## **THE MONEY LAUNDERING STEERING COMMITTEE**

### **Committees**

### **Chaired by**

**Steering Committee**

**Department of Finance**

### **Sub-Committees :**

Credit Institutions Sub-Committee

Central Bank of Ireland

Financial Sector Sub-Committee

Central Bank of Ireland

Stockbrokers Sub-Committee

Irish Stock Exchange

Insurance Sub-Committee

Irish Insurance Federation

## **MEMBERSHIP OF THE STEERING COMMITTEE**

### **Representatives drawn from the following:**

Central Bank of Ireland

Department of Enterprise, Trade and Employment

Department of Finance

Department of Justice, Equality and Law Reform

Garda Síochána

The Revenue Commissioners

The Irish Bankers' Federation

Irish Mortgage And Savings Association

Irish Finance Houses Association

Irish Insurance Federation

An Post

Registrar of Friendly Societies

The Consultative Committee of Accountancy Bodies - Ireland

The Law Society

The Irish Stock Exchange

## **EXPLANATORY FOREWARD**

**The Criminal Justice Act, 1994, as amended (any reference herein to “the Act” includes a reference to the Act as amended)** provides inter alia for the offence in Irish law of money laundering and includes measures to counteract money laundering in line with:

- (i) **the EU Council Directive (91/308/EEC)** on prevention of the use of the financial system for the purpose of money laundering; and
- (ii) **the Forty Recommendations** of the **Financial Action Task Force (FATF)**, an OECD sponsored body, set up to counteract money laundering on a global basis.

The following provisions of the Act are relevant to credit institutions (banks and building societies) and their employees:

- (a) Section 31 provides for the new offence of money laundering which is broadly defined as the concealment, disguise, conversion, transfer or removal from the State of any property including money which is or represents the proceeds of drug trafficking or other criminal activity, for the purpose of avoiding prosecution or the making or enforcement of a confiscation order. In addition, it is also an offence to provide assistance to a person who is engaged in money laundering.
- (b) Section 32 imposes obligations on a wide range of persons and bodies providing financial services (designated bodies) to take certain measures (e.g. establishment of identity of customers and retention of documents and records of transactions) to prevent and assist in the detection of money laundering.
- (c) Section 57 imposes obligations on designated bodies and their employees to report to the Garda Síochána and the Revenue Commissioners suspicions that an offence under Section 31 (the offence of money laundering itself) or Section 32 (dealing with customer identification and record retention) has been, or is being committed. Any such report will not be treated as a breach of customer confidentiality as long as it is made in good faith.
- (d) Section 58 provides for various offences of prejudicing investigations under the Act including an offence of “tipping off” a customer about whom a report has been made.
- (e) The Act envisages that guidance on its application may be given by supervisory, regulatory or representative bodies and it is for this purpose that these Guidance Notes have been drawn up.

Section 57(6) of the Act provides that, in the event of a prosecution, in determining whether a designated body or a member of its staff has failed to make a report to the Gardaí and the Revenue Commissioners as required by the Act, a court may take account of such Guidance Notes.

## SCOPE

These Guidance Notes apply to credit institutions insofar as they provide, within the State, any of the services set out in Appendix D. For the purposes of these notes the following are credit institutions: Banks and Building Societies.

Although these Guidance Notes are designed specifically to cover the activities of credit institutions they may be applicable to other bodies undertaking any of the activities listed in the Annex to the Second Banking Co-ordination Directive (89/646/EEC) (see Appendix D) for example, Bureaux de Change, Credit Unions, An Post.

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. These Guidance Notes are recommendations as to good practice but do not constitute a legal interpretation of the Act.

The Steering Committee includes representatives from relevant Government Departments, the Revenue Commissioners, the Central Bank of Ireland, the Garda Síochána and the major representative bodies in the financial sector.

These Guidance Notes have been prepared by a sub-committee of the Steering Committee comprising representatives from:

- Central Bank of Ireland;
- The Irish Bankers' Federation

There are separate Guidance Notes for:

- Financial institutions (excluding credit institutions) supervised by the Central Bank of Ireland;
- Stockbrokers;
- Insurance and Retail Investment Products (for use by Life Assurance companies and intermediaries).

These Guidance Notes drew on similar notes prepared by the Joint Money Laundering Steering Group in the UK whose permission to do so is gratefully acknowledged.

**MONEY LAUNDERING**  
**GUIDANCE NOTES FOR CREDIT INSTITUTIONS**

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## **MONEY LAUNDERING: GUIDANCE NOTES FOR CREDIT INSTITUTIONS**

### **SECTION I - BACKGROUND**

1. The Act covers the laundering of the proceeds of drug trafficking and other criminal activity, and contains provisions necessary to implement the EU Money Laundering Directive\* and the Forty Recommendations to Combat Money Laundering of the Financial Action Task Force (FATF). It places certain obligations on credit and financial institutions with regard to establishment of identity of customers, retention of documents and records of transactions and the reporting of suspicious transactions.

#### **WHAT IS MONEY LAUNDERING?**

2. Money laundering as a concept may be described in simple terms as the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If undertaken successfully, money laundering enables criminals to legitimise "dirty" money by mingling it with "clean" money, ultimately providing a legitimate cover for the source of their income.

A more detailed definition of what constitutes the offence of money laundering in Irish law is set out in Appendix B to these Guidance Notes.

#### **The need to combat money laundering**

3. In recent years there has been a growing recognition that it is essential to the fight against crime that criminals be prevented, whenever possible, from legitimising the proceeds of their criminal activities by converting funds from "dirty" to "clean". No one knows exactly how much "dirty" money flows through the world's financial system every year, but the amounts involved are undoubtedly huge. It is estimated that about half of the laundered money arises from the illegal trade in drugs, the rest from other forms of organised crime and terrorism.
4. The ability to launder the proceeds of criminal activity through the financial system is vital to the success of criminal operations. Those involved need to exploit the facilities of the world's financial institutions if they are to benefit from the proceeds of their activities.

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\* Council Directive on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC)

The increased integration of the world's financial systems and the removal of barriers to the free movement of capital have enhanced the ease with which criminal money can be laundered and have complicated the tracing process. Individual credit institutions which become involved in a money laundering scandal will risk prosecution and the loss of their good market reputation.

5. It is generally recognised that effective efforts to combat money laundering cannot be carried out without the co-operation of credit institutions, their supervisory authorities and the law enforcement agencies. Accordingly, in order to address the concerns and obligations of these three parties, these Guidance Notes were drawn up in close collaboration with representatives of credit institutions and the Central Bank of Ireland and drew upon the experience and advice of the Gardaí Síochána where appropriate.

### **Stages of Money Laundering**

6. There is no one way of laundering money. Methods can range from the purchase and resale of high-value items (e.g. houses, cars or jewellery) to the passing of money through a complex international web of legitimate businesses and 'shell' companies. Initially, however, in the case of drug trafficking and some other serious crimes, such as robbery, the proceeds usually take the form of cash in relatively low denominations. This has a need to enter the financial system by some means so that it can be converted into a form which can be more easily transported, particularly out of the jurisdiction. The methods of achieving this are limited only by the ingenuity of the launderer and these methods have become increasingly sophisticated.
7. Despite the variety of methods employed, the laundering process is usually accomplished in three stages, each of which has its own characteristics and each of which may comprise numerous transactions by the launderers that could alert credit institutions to criminal activity:
  - a) Placement - the physical disposal of cash proceeds derived from illegal activity.
  - b) Layering - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.
  - c) Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy with the appearance of normal business funds.

8. The three basic steps may occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. The way in which these basic steps are used will depend on the available laundering mechanisms and the requirements of the criminal organisations. The table below provides some typical examples:-

<b>Placement stage</b>	<b>Layering stage</b>	<b>Integration stage</b>
Cash paid into bank (sometimes with staff complicity or mixed with proceeds of legitimate business).	Wire transfers abroad (often using shell companies or funds disguised as proceeds of legitimate business).	False loans repayments or forged invoices used as cover for laundered money.
Cash exported	Cash deposited in overseas banking system	Complex web of transfers (both domestic and international) makes tracing original source of funds virtually impossible.
Cash used to buy high value goods, property or business assets	Resale of goods/assets	Income from property or legitimate business assets appears "clean"

## **VULNERABILITY OF CREDIT INSTITUTIONS TO MONEY LAUNDERING**

9. There are a number of points in the laundering process at which credit institutions are particularly vulnerable to being used for money laundering. There are also points which the money launderer finds difficult to avoid and where his activities are therefore more susceptible to being recognised e.g.:

- entry of cash into the financial system;
- cross-border flows of cash; and
- transfers within and from the financial system.

10. Accordingly, efforts to combat money laundering focus largely on these points in the process, for example on the deposit-taking procedures of credit institutions i.e., the placement stage.

11. **One of** the most common forms of money laundering that credit institutions will encounter on a day to day basis in respect of their mainstream banking business takes the form of the accumulation of cash transactions which will be deposited in the banking system or exchanged for value items. Electronic funds transfer systems increase the vulnerability by enabling the cash deposits to be switched rapidly between accounts in different names and different jurisdictions.

12. It must, however, be emphasised that there are also many crimes (particularly the more sophisticated ones) which do not involve cash. Credit institutions, as providers of a wide range of services, are also vulnerable to being used in the layering and integration stages. Mortgage and other loan accounts may be used as part of this process to create complex layers of transactions. In such cases attempted money laundering will often feature one or more of the following : large deposit (i.e. relatively low loan-to-value), very short repayment programme with large repayments, regular large repayments and frequent house purchase property purchase/sale. Guidance on how to recognise and deal with such cases is set out in Section VI - Recognition and Reporting of Suspicious Transactions.
  
13. Appendix C to these Guidance Notes describes a number of money laundering schemes that have been uncovered where the use of bank accounts and other money transmission services was vital to the money launderers.

#### **HOW CREDIT INSTITUTIONS CAN COMBAT MONEY LAUNDERING**

14. In complying with the requirements of the Act and in following these Guidance Notes, credit institutions should at all times pay particular attention to the fundamental principle of good banking practice - '**know your customer**'. Having a sound knowledge of a customer's business and pattern of financial transactions and commitments is one of the best methods by which credit institutions and their staff will recognise attempts at money laundering. This aspect is referred to in Section VI of these Guidance Notes - Recognition and Reporting of Suspicious Transactions. It should also be dealt with in staff training programmes which are a fundamental part of the procedures designed to recognise and combat money laundering and which are referred to in Section VII - Education and Training.

## **SECTION II - WHAT THE LAW REQUIRES**

15. The law on money laundering is contained principally in the Criminal Justice Act, 1994 (as amended). Appendix A to these Guidance Notes contains a brief outline and summary of all of the provisions of the Act, including those relating to money laundering and identifies the amending legislation.

So far as credit institutions are concerned the Act:-

1. Defines the circumstances which constitute the offence of money laundering and provides penalties for the commission of the offence;
2. Requires credit institutions, when providing certain services, to establish the identity of their customers;
3. Requires credit institutions to retain copies of the materials used to identify their customers *and retain records of transactions*; and
4. Imposes an obligation on credit institutions and their employees to make a report to the Garda Síochána and the Revenue Commissioners where they suspect that a money laundering offence (Section 31) or an offence dealing with customer identification and record retention (Section 32) has been, or is being committed.

### **THE OFFENCE OF MONEY LAUNDERING**

16. A detailed definition of what constitutes the offence of money laundering in Irish law is set out in Appendix B to these Guidance Notes. Some of the circumstances which constitute the offence relate to a person doing things with property which is, or represents, his own proceeds of drug trafficking or other criminal activity. However, others relate to a person doing things with property which is, or represents, somebody else's criminal proceeds. The latter can be described as the provision of assistance to money launderers and could have a direct relevance for credit institutions and their employees.

The Criminal Justice Act, 1994 seeks to ensure that effective measures are taken to combat the laundering of the proceeds of criminal activity. The law covers laundering of proceeds of criminal activity whether this activity took place in Ireland or in another country or territory, provided that if it did not take place in Ireland, the activity corresponded to an offence both in Ireland and in such other country or territory, and whether or not it occurred before or after the law came into effect. Section 57(1) of the Criminal Justice Act, 1994 requires credit institutions to report to the Gardaí and the Revenue Commissioners where they suspect that an offence under Section 31 (Money Laundering offences) in relation to the business of the credit institution has been or is being committed. (There is also an obligation

to report suspicions of offences under Section 32 of the Act – this is dealt with in the paragraph below on the Obligation to Report Suspicions of Money Laundering).

In practical terms Section 57(1) requires that credit institutions should report to the Gardaí and the Revenue Commissioners where they suspect that an offence in relation to drug trafficking or other criminal activity has been or is being committed and that the services offered by the credit institution have been used to launder the proceeds of that offence. It is not necessary for a credit institution or its employees, in fulfilling their obligation to report a suspicious transaction, to determine the specific criminal offence underlying the suspicious transaction. However, criminal activities frequently associated with money laundering include drug trafficking, terrorist activity, thefts, fraud, robbery, forgery and counterfeiting, tax evasion, blackmail and extortion. (Examples of suspicious transactions are set out in Appendix F of these Guidance Notes).

Tax offences are not in a special category: the proceeds of a tax offence, like the proceeds of the other examples of criminal activity referred to above, may be the subject of money laundering offences under the Act. Consequently, where the suspicion is that a transaction or a series of transactions involves the proceeds of tax evasion, it should be reported. The nature of the transactions used to launder the proceeds of tax evasion are likely to be similar to, and in many instances identical to, those used to launder the proceeds of other criminal activity. Therefore, a claim by a customer that a particular transaction or series of transactions, which were regarded as suspicious, was/were being undertaken only for tax purposes, would not remove the reporting obligation. However, in fulfilling the reporting requirements a credit institution may, unless there are suspicious transactions indicating the contrary, reasonably assume that a customer has discharged his/her tax liabilities. There is no positive obligation on the credit institution to establish whether the customer has or has not done so.

#### **PROVISION OF ASSISTANCE TO MONEY LAUNDERERS**

17. It constitutes money laundering, and therefore an offence, for a person who, knowing or believing that any property is, or represents, another person's proceeds of drug trafficking or other criminal activity to handle, conceal, disguise, convert, transfer or remove from the State that property for the purpose of assisting a money launderer avoid the making or enforcement of a confiscation order.

It is sufficient if the property in question represents criminal proceeds either in whole or in part and whether directly or indirectly. Concealing or disguising the property includes concealing or disguising its nature, source, location, disposition, movement, ownership or any rights with respect to it.

Also, converting, transferring or removing any property includes the provision of any advice or assistance in relation to converting, transferring or removing the property.

A person "handles" the property if he dishonestly receives it or undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person or if he arranges to do any of these things.

Believing property to be, or represent, another person's criminal proceeds includes thinking that the property was probably, or probably represented, such proceeds.

The offence of money laundering is punishable by terms of imprisonment of up to fourteen years or a fine, or both.

## **IDENTIFICATION OF CUSTOMERS**

18. A credit institution is obliged by the Act (**Section 32(3)**) to take reasonable measures to establish the identity of any person for whom it proposes to provide any of the financial services set out in Appendix D to these Guidance Notes:-

- (a) on a continuing basis, or
- (b) in respect of individual transactions amounting to at least €13,000<sup>1</sup> or in respect of a series of apparently linked transactions which amount in the aggregate to at least €13,000 or
- (c) in any situation where it suspects that the service is connected with money laundering.

If, at the time of the transaction, the sum involved is not known, then the obligation to establish identity applies as soon as it becomes known that the sums involved amount to at least €13,000 (Section 32(4)).

Where the service is being provided by a credit institution for a person whom it knows, or has reason to believe, is acting for a third party, the credit institution must take reasonable measures to establish the identity of the third party (**Section 32(5)**).

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<sup>1</sup> €substitution amount, as specified in the Eurochangeover (Amounts) Act, 2001-Schedules 3 and 4 effective from 1 January 2002, for references to £10,000 in Section 32(b) of the Criminal Justice Act, 1994. £10,000 limit continues to apply until 31 December 2001.

A credit institution is not obliged to establish the identity of a person for whom it provides a service if that person is a "**designated body**" under the Act or if it is a body which corresponds to a designated body in a Member State of the European Union or in a state or country prescribed for the purpose by the Minister for Justice, Equality and Law Reform, **(Section 32(6))**.

The following are **designated bodies** under the Act **(Section 32(1))**.

- Banks and building societies;
- Money brokers;
- Life assurance companies;
- Providers of services in futures and options exchanges;
- An Post;
- Credit unions;
- Stockbrokers;
- Bureaux de change

The Minister for Justice, Equality and Law Reform may also prescribe other persons or bodies to be **designated bodies** if their business appears to the Minister to be liable to be used for the purpose of money laundering **(Section 32(1)(m))**.

The following have been so prescribed by the Minister under Section 32 (10)(a) Regulations, 1995:

- (1) Any person in the State who, as a principal activity, carries out one or more of the operations which are included in numbers 2 to 9 and numbers 11,12 and 14 of the List annexed to Council Directive 89/646/EEC *details of which are listed in Appendix D*;
- (2) An investment company authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I No 78 of 1989);
- (3) A management company of a unit trust scheme authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No 79 of 1989);
- (4) A management company of a unit trust scheme authorised under the Unit Trusts Act, 1990;

- (5) An investment company authorised under Part XIII of the Companies Act, 1990;
- (6) A general partner of an investment limited partnership authorised under the Investment Limited Partnership Act, 1994.
- (7) Any person who is an insurance broker or an insurance agent for the purpose of the Insurance Act, 1989.

It is an offence for a credit institution to fail to take reasonable measures to establish the identity of any person for whom it proposes to provide one of the services specified in Appendix D to these Guidance Notes or, of a third party where it knows, or has reason to believe that the person to whom it proposes to provide the service is acting for a third party. *It is also an offence for a person to provide false or misleading information when required to give evidence of identity, **or** when acting for a third party, or in relation to the sum involved in a transaction.*

Such offences *are* punishable by a term of imprisonment of up to five years or a fine, or both (**Section 32(12)**).

In addition to the financial services listed in Appendix D which are prescribed activities under the Criminal Justice Act 1994, the following activities, which relate mainly to new designated bodies listed above, have been prescribed under the Section 32(10)(b)(Prescribed Activities) Regulations, issued in 1995:

- (a) the purchase or sale of units or shares of collective investment schemes authorised under the European Communities (Undertaking for Collective Investment in Transferable Securities) Regulations, 1989(S.I. No.78 of 1989), the Unit Trusts Act, 1990, PART XII of the Companies Act, 1990 or the Investment Limited Partnerships Act, 1994.

## **KEEPING OF RECORDS/ADOPTION OF MONEY LAUNDERING PREVENTION PROCEDURES**

19. Credit institutions are required by the Act to retain copies of all materials used to identify a customer for a period of at least five years after the relationship with the customer has ended. (**Section 32(9)(a)**).

Additionally, in the case of transactions, credit institutions must retain the original documents, or copies admissible in legal proceedings, relating to the relevant transaction for a period of at least five years following the execution of the transaction (**Section 32(9)(b)**).

Designated bodies are required to have in place adequate arrangements and procedures to prevent and detect the commission of a money laundering offence, including the establishment of procedures to be followed by relevant staff in conducting the business of the designated body and the training of relevant staff in such procedures (Section 32(9 A & B)).

It is an offence for a credit institution to fail to maintain the records required by the Act or to fail to adopt measures to prevent and detect money laundering punishable by imprisonment for a term of up to five years or a fine, or both. (Section 32(12)).

### **OBLIGATION TO REPORT SUSPICIONS OF MONEY LAUNDERING**

20. The Act imposes an obligation on credit institutions and on their directors, employees and officers to report to the Garda Síochána and the Revenue Commissioners where they suspect that an offence of money laundering has been, or is being, committed in relation to their business. There is also an obligation to report where there is a suspicion that an offence in connection with customer identification and record retention has been or is being committed (**Section 57(1)**). The report may be made to the Gardaí and the Revenue Commissioners in accordance with an internal reporting procedure established by a credit institution for the purpose of facilitating compliance with the reporting obligation (Section 57(3)).

It is an offence for a credit institution, its directors, employees and officers to fail to make a report as required by the Act. Such an offence is punishable by imprisonment for a term of up to five years or a fine, or both (**Section 57(5)**).

In the case of an employee, it is a defence to a charge of failure to report that the employee made a report in accordance with an internal reporting procedure established by the employer (**Section 57(4)**). Further, in determining whether a person has complied with the obligation to report, a Court may take account of these Guidance Notes (**Section 57(6)**).

The Act provides that disclosure in good faith of information in the course of making a report to the Gardaí and the Revenue Commissioners of a suspicion of a money laundering offence is not to be treated as a breach of client confidentiality and is not to involve the person making the disclosure in liability of any kind (**Section 57(7)(a)**).

### **TIPPING OFF**

21. It is an offence where, in relation to an investigation into drug trafficking or into whether a person has benefited from an offence in respect of which a confiscation order might be

made, an order under Section 63 of the Act has been made, or has been applied for and has not been refused, or a warrant issued under Sections 55 or 64 of the Act has been issued, a person who, knowing or suspecting that such an investigation is taking place, makes any disclosure which is likely to prejudice the investigation (Section 58(1)). It is an offence, where a report of suspicion of the commission of a money laundering offence has been made, for a person who, knowing or suspecting that such a report has been made, makes any disclosure which is likely to prejudice any investigation arising from the report into whether the money laundering offence has been committed (Section 58(2)). Such an offence is punishable by a term of imprisonment of up to five years or a fine, or both (Section 58(4)).

### **RESPONSIBILITIES OF THE SUPERVISORY AUTHORITIES**

22. In recognition that credit institutions may be particularly vulnerable to be used by money launderers the Central Bank of Ireland, as part of its supervision of credit institutions, assesses the adequacy of and procedures adopted by credit institutions to counter money laundering and the degree of compliance with such procedures. The Central Bank uses these Guidance Notes as criteria against which it assesses the adequacy of a credit institution's internal controls, policies and procedures to counter money laundering. The Central Bank conducts inspections of credit institutions to assess their compliance with these Guidance Notes.
  
23. The Central Bank itself is obliged by the Act to report to the Garda Síochána and the Revenue Commissioners where it suspects that an offence under Section 31 or 32 of the Act has been, or is being, committed by an institution under its supervision (Section 57(2) of the Act).  
It is an offence punishable by imprisonment of up to five years or a fine, or both, for the failure of the Central Bank to comply with this requirement (Section 57(5)).

### **SECTION III - INTERNAL CONTROLS, POLICIES AND PROCEDURES**

24. Credit institutions are required by the Central Bank of Ireland to establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering. The Central Bank also requires credit institutions to take appropriate measures so that their employees are aware of the provisions of the Act and of the Central Bank's requirements in relation to money laundering. These measures are to include participation by relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as instructing them on how to proceed in such cases.

Where a credit institution has overseas branches, subsidiaries or representative offices it is recommended that a group policy be established to ensure that where possible such overseas operations comply, at a minimum, with the standards set out in these Guidance Notes.

25. Depending on the scale and nature of its operations, a credit institution may assign the responsibility for all of its obligations with regard to money laundering to one officer or, alternatively, it might decide to divide various responsibilities among a number of officers. It is important however that the responsibilities be clearly designated. It is also important that the responsibility for receiving, assessing and passing on to the Garda Síochána and the Revenue Commissioners of reports of suspicions of possible money laundering be assigned to one person (the Money Laundering Reporting Officer).

26. Credit Institutions should have in place adequate arrangements and procedures to:-

- (1) ensure the prompt reporting of suspicious transactions both internally and, as required by Section 57(1) of the Act, to the Garda Síochána and the Revenue Commissioners;
- (2) identify an officer (or officers if responsibilities are divided) at management level with responsibility for the institution's obligations in relation to money laundering and designate the responsibilities of the officer (or officers) (including the Money Laundering Reporting Officer);
- (3) provide the Money Laundering Reporting Officer with the necessary access to systems and records to fulfil the responsibility;
- (4) establish close co-operation and liaison with the Garda Síochána and the Revenue Commissioners;

(See Section VI of these Guidance Notes);

- (5) provide for screening of potential employees when recruiting;

- (6) provide continuing training programmes for employees; and
- (7) provide for the testing of the arrangements and procedures in place by way of audit.

27. The effect of Section 57, subsections (3) and (4), of the Act is that an employee need not report a suspected case of money laundering directly to the Garda Síochána and the Revenue Commissioners. Rather he/she may report in accordance with whatever internal reporting procedures are in place (i.e., report up the line) and in doing so will have a defence against any accusation of failure to report.

## **SECTION IV - IDENTIFICATION PROCEDURES**

### **IDENTITY PROCEDURES: GENERAL**

28. The Act states that a credit institution must take reasonable measures to establish identity of a person for whom it proposes to provide a service. The Act does not state what may or may not represent reasonable measures. This section of the Guidance Notes therefore sets out, as good industry practice, the measures to establish identity that might reasonably be expected of credit institutions. However, any measures adopted should not deny a person access to financial services solely on the grounds that they do not possess certain specified identification documentation. The requirements in paragraph 45 (iv) below are aimed at those persons who cannot reasonably be expected to produce certain forms of identification, such as a person who does not have a passport or driving licence and/or whose name and Irish address does not appear on a utility bill, electoral register or directory.

There are some exemptions from the requirement to establish identity and these are set out in paragraphs 36, 38, 39 and 42 (a).

29. The Act requires that copies of all materials used to establish identity must be retained for a period of at least five years after the account is closed or the business relationship ended. See Section V - Record Keeping, for guidance on this requirement. Once a person's identity has been satisfactorily established then, as long as records are maintained as required, no further evidence of identity is needed in respect of that person when transactions are subsequently undertaken by him/her.
30. Any subsequent changes to a customer's identification details (e.g. address change) that are brought to the attention of the credit institution should be recorded as part of the know your customer process. Generally, this would be undertaken as part of good business practice but it will also assist in money laundering prevention.
31. The verification procedures adopted to establish the identity of the person for whom it is proposed to provide a service should basically be the same whatever type of account or service is being provided. The best identification documents possible should be obtained

from the person i.e. those that have been issued by reputable sources and that are the most difficult to obtain illicitly. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity. Thus it is necessary that the current permanent address supplied by the person be separately verified.

32. Credit institutions will normally wish to undertake additional checks for credit and risk management purposes, but such procedures are outside the scope of these Guidance Notes.

### **WHEN MUST IDENTITY BE ESTABLISHED?**

33. A credit institution is required under Section 32(3) of the Act to take reasonable measures to establish the identity of any person (including corporate and unincorporated bodies) for whom it proposes to provide any of the services set out in Appendix D (and any other activity which might in future be prescribed by the Minister for Justice, Equality and Law Reform):
- (a) on a continuing basis (referred to subsequently in these Guidance Notes as, entering into a business relationship or opening an account), or
  - (b) in respect of individual transactions amounting to €13,000 or more or in respect of a series of transactions which are, or appear to be linked and which amount in aggregate to €13,000 or more (i.e. transactions of a one-off or occasional nature for persons who are not customers), or
  - (c) in any other case, irrespective of the amount, where it suspects that money laundering may be involved.

In addition, Section 32(5) of the Act requires a credit institution when dealing with a person whom it knows or has reason to believe to be acting for a third party, to establish the identity of that third party.

34. Where there is a requirement to establish the identity of a prospective customer, business should not proceed until satisfactory evidence of identity has been established. In exceptional cases, a credit institution may accept the application for account opening and a payment from the customer immediately subject to satisfactory establishment of identity as soon as is reasonably practicable. What constitutes an 'exceptional case' and 'reasonably practicable' must be determined by each credit institution at an appropriately senior level (e.g., branch manager) in the light of all the circumstances including what is known about the prospective customer, the nature of the business, the geographical location of the parties and whether it is practical to obtain the identification evidence before the account is opened.

In no circumstances should any further transactions be permitted on an account before the customer's identity has been established and this should be made clear to the customer.

In cases where adequate documents are not supplied and suspicion arises during the identification procedure which results in the credit institution refusing to do business with the customer, the matter should be reported to the Gardaí and the Revenue Commissioners.

35. The requirement to establish identity applies to all of the activities set out in Appendix D which includes deposit taking, mortgage and other lending based accounts and the issuing of credit and charge cards.
36. A credit institution is not expected to retrospectively establish the identity of persons who were already customers on the 2 May 1995. Credit institutions should, however, note that on the good practice principle of "know your customer" it is expected that they will be aware of who it is they are dealing with as customers.
37. A credit institution is required to establish the identity of an existing customer where there is a suspicion that the service being provided is connected with the commission of a money laundering offence. In such a situation, involving an existing customer, the credit institution should report the suspicion to the Gardaí and the Revenue Commissioners in accordance with Section 57 of the Act (see Section VI of these Guidance Notes). The Credit Institution should obtain the advice of the Garda Síochána before seeking to establish the customer's identity, particularly if this would involve an approach to the customer or an approach which would be likely to come to the attention of the customer.

## **IDENTITY PROCEDURES: EXEMPTIONS**

### **38. DESIGNATED BODIES**

Establishment of identity is not required for services provided between designated bodies as summarised in paragraph 18 of these Guidance Notes or between bodies corresponding to designated bodies in other EU Member States or other prescribed countries (see Appendix E which contains a list of member countries of the EU and other prescribed countries). The principles which should be applied in establishing whether a body in another EU Member State or prescribed country corresponds to a designated body are as follows:

- ?? Such bodies should be authorised and supervised by a regulatory body.
- ?? Such bodies should be covered by money laundering legislation which is at least equivalent to the standards required by the EU Money Laundering Directive and the FATF 40 Recommendations.

?? Such bodies should establish identity and retain records to a standard which is at least equivalent to the requirements set out in the Criminal Justice Act, 1994 and the relevant Guidance Notes.

39. **ONE-OFF TRANSACTIONS AND LINKED TRANSACTIONS (SECTION 32(3)(B))**

Establishment of identity is not normally needed in the case of one-off or occasional transactions when payment by, or to, the applicant is less than €13,000. Nor is it normally required in the case of a series of transactions that are or appear to be linked until the aggregate amount involved reaches €13,000. For the purpose of these Guidance Notes transactions that are separated by an interval of three months or more need not, in the absence of specific evidence to the contrary, be treated as linked. The need to aggregate linked transactions is designed to identify those who might structure their business to avoid the identification procedures and is not meant to cause inconvenience to genuine business transactions.

40. Irrespective of the amount involved, identity must be established in all cases where it is suspected that a service, which a credit institution proposes to provide for a person, is connected with money laundering and the details must be reported in line with the procedures set out in Section VI of these Guidance Notes.

41. Credit institutions are not required to establish additional computer and administrative systems specifically to identify and aggregate linked transactions. However, if a credit institution's existing systems recognise that two or more transactions have totalled more than €13,000 then this information must be acted upon.

42. **INTERGROUP CUSTOMER INTRODUCTIONS**

(a) Where an existing customer as at 2 May 1995, of a part of a bank or building society group, became a customer of another part of such group after 2 May 1995, then it is not necessary for such other part to establish identity.

(b) Where one part (i.e. a parent, subsidiary or sister company established in Ireland) of a bank or building society group, has established the identity of a customer in accordance with the relevant Guidance Notes and that customer subsequently becomes a customer of another part or parts of such group, then, provided the materials used to establish identity are freely available on request to such other part or parts of the group, it is not necessary to re-establish identity or for the materials to be duplicated. Such other part or parts of the group should retain, as materials used to establish identity, a record confirming that the identity has been established by another member of the group.

(c) Where one part (i.e. a parent, subsidiary or sister company established outside Ireland) of a bank or building society group, has established the identity of a customer in accordance with requirements which are equivalent to those set out in Irish legislation and guidance notes and such records of identity are freely available on request to the Irish bank/building society, it is not necessary to re-establish identity or for the materials to be duplicated. A record confirming that the identity has been established by another member of the group should be retained on the customer file.

## **INTRODUCTION OF INDIVIDUAL TRANSACTIONS BY OTHER DESIGNATED BODIES**

43. In the case of a single transaction (even where the amount involved is in excess of €13,000) to be effected by a credit institution for a person introduced to it by another designated body or a body corresponding to a designated body in a member state of the European Union or in any of the other countries set out in Appendix E, it is regarded as reasonable for the credit institution, in establishing identity, to rely on the written undertaking of the designated body or corresponding body that it has established the person's identity and holds evidence of the identity. The name and address of the customer must also be provided in writing by the introducing body. In such a case the written undertaking and the introduction constitutes material used to establish identity and must be retained in accordance with the procedures set out in Section V - Record Keeping.

What constitutes a "designated body" is set out in Section 32(1) of the Act. In summary it covers:-

- banks and building societies;
- money brokers;
- life assurance companies;
- providers of services in futures and options exchanges;
- An Post;
- credit unions;
- stockbrokers; and
- bureaux de change.

The Minister for Justice, Equality and Law Reform has power to add to this list and a number of other bodies have been prescribed under Section 32(10)(a) Regulations, 1995 (see paragraph 18 for details).

The procedure set-out above applies only to single transactions. If the person being introduced forms any continuing relationship with the credit institution, e.g. by opening an

account, then the credit institution concerned must itself obtain separate evidence of identity. However, due recognition may be given to the fact that the person introduced has already been identified in accordance with the provisions of these Guidance Notes, by the introducing designated body. In this regard, it will often be convenient to obtain copies of the evidence of identity held by the body which made the original introduction. The credit institution will not thereby be relieved of the need to independently verify the permanent address of the person being introduced.

#### 44. **ACQUISITION OF A DESIGNATED BODY BY A CREDIT INSTITUTION**

Where a credit institution acquires a designated body or the business of a designated body, provided that the underlying customer records are provided to the acquiring credit institution, it will not be necessary for the identity of the customers to be re-established. In these circumstances credit institutions may rely on the designated body's confirmation that it had complied with the local relevant legislation for the designated body. In cases where such confirmation or relevant underlying records cannot be obtained it will be necessary for the acquiring credit institution to establish customer identity in accordance with the relevant guidance notes.

### **HOW TO ESTABLISH IDENTITY**

#### **BUSINESS CONDUCTED FACE TO FACE (PARAGRAPHS 45 – 47)**

##### **RESIDENT PERSONAL CUSTOMERS**

#### 45. **Whenever possible, there should be face-to-face contact with the prospective customer.**

- (i) The following information should be obtained from prospective resident customers:
  - true name;
  - correct permanent Irish address, including postal code where applicable;

(In addition, date of birth should also normally be sought and recorded).

- (ii) The true name used should be verified by reference to a document obtained from a reputable source which bears a photograph and signature. Wherever possible a current valid full passport should be requested and *copied*. In circumstances where copying facilities are not available at the office of the credit institution, reference numbers and other relevant details should be recorded.

There are of course other documents that customers might produce as evidence of their identity (e.g. Drivers Licence with photograph, Age Card issued by the Garda

Community Relations Section). It is for each credit institution to decide the appropriateness of such documents in the light of other security procedures operated and other information available at account opening.

(iii) In addition to the name verification, it is important that the **current permanent address** should also be verified. Some of the best means of verifying address are:

- Checking the Electoral Register (local registers are held at Post Offices, Libraries and Garda Stations);
- Making a credit reference agency search;
- Checking a local telephone directory or available street directory;

Requesting sight of original copy of any of the following

- Current utility bill, bank, building society or financial institution statement.
- Notice of Determination for Tax Credit.
- Current Balancing Statement from Revenue Commissioners.
- Social Insurance documents.
- Current Household/Motor Insurance Documents.
- Revenue Commissioners C2 Tax Certificate.

(iv) Where a prospective customer does not possess evidence of identity and/or address verification as outlined in (ii) and (iii) above, the credit institution may adopt alternative identification procedures details of which are set out below.

In these cases the credit institution should require the prospective customer to complete and sign a form indicating the specific documentation that the customer does not hold (e.g. passport/driving licence, utility bill).

The credit institution may use either of the following methods, as an alternative to a passport/driving licence, to verify name:

?? Identification form with photograph signed by a member of the Gardaí (see Appendix I) or

?? Documentation/cards issued by a Government Department showing the name of the person and

Letter/statement from a person in a position of responsibility (e.g. a solicitor, accountant, doctor, minister of religion, teacher, social worker, community employment scheme supervisor) who is in a position to confirm the person's identity to the credit institution. In such instances the person providing the letter/statement must present themselves to the relevant credit institution providing proof of their own identity and verifying their status to the credit institution.

The credit institution may accept any one of the following, as an alternative to the items listed under 45(iii) above, to verify address:

- ?? Letter/statement from a licensed employment agency that the person has recently arrived in Ireland and is commencing employment or from an employer that the person has commenced employment and in each case stating that the person is not in a position to produce a utility bill or other document which shows an Irish address. In addition, in such cases the prospective customer should be required to submit follow-up documentation (e.g. utility bill) confirming Irish address in due course.
  - ?? Letter/statement from a person in a position of responsibility (e.g. a solicitor, accountant, doctor, minister of religion, teacher, social worker, community employment scheme supervisor) who is in a position to confirm the person's address to the credit institution. In such instances the person providing the letter/statement must present themselves to the relevant credit institution providing proof of their own identity and verifying their status to the credit institution.
  - ?? Documentation/cards issued by a Government Department showing the address of the person.
- (v) An introduction from a respected customer, personally known to a member of management in the branch or office in the credit institution concerned, may assist in the verification of the name and/or address of a person for whom a credit institution proposes to provide a service. In such a situation, details of the introduction should

be recorded on the customer file and signed by the member of management concerned.

- (vi) In respect of joint accounts, the name and address of all account holders, not just the first named, should be established and the address of each verified.

46. The standards in paragraph 45 are the recommended procedures which should apply in the vast majority of cases where it is necessary to establish the identity of a person for whom it is proposed to provide one of the services set out in Appendix D to these Guidance Notes. It may be reasonable to depart from these procedures in certain *exceptional* circumstances when Irish residents may not be able to provide appropriate documentary evidence of their identity, and where independent verification of their address is not possible. Clearly the monetary amount of an individual transaction will be a factor of significance for a credit institution in deciding whether it is reasonable, in a particular case, to depart from the recommended procedures.

In such cases a manager of the branch or office of the credit institution involved may authorise the opening of an account if satisfied with the circumstances and he should record these circumstances together with a signed statement that he is reasonably satisfied that identity has been established, and such record should be kept for the same period of time as other materials used to establish identity.

The level of such cases should be monitored by the credit institution to ensure that they are reasonable in the circumstances.

**In all cases** the onus is on the credit institution to establish that the circumstances warranted a departure from the recommended procedures and that the opinion it formed of a person's identity from the information it received was reasonable.

Under no circumstances should a credit institution depart from the recommended procedures where money laundering is suspected.

#### **NON-RESIDENT PERSONAL CUSTOMERS**

47. It is important that the identity of prospective customers, who are not normally resident in the State but who wish to open accounts here, is established using procedures which are, as far as possible, similar to those used to establish the identity of customers resident here. For those prospective non-resident customers where face-to-face contact is made it is recognised that address verification procedures may present difficulties. However passports, national identity cards or other documents containing a photograph and signature issued by a reliable source should be available and the relevant reference numbers should be recorded.

In addition, credit institutions may wish to obtain verification of the identity of the applicant from a reputable credit or financial institution in the applicant's country of residence.

#### **BUSINESS CONDUCTED BY POST, TELEPHONE OR ELECTRONICALLY (NON FACE TO FACE) PARAGRAPHS 48-53**

48. Any mechanism (e.g. post, telephone, or electronic) that avoids face to face contact between credit institutions and customers inevitably poses challenges for customer identification. Banking on the internet adds a new dimension to banking risks and opens up new mechanisms for fraud and money laundering. The identification measures adopted and the information received should achieve, as far as possible, the underlying objective, which is that the credit institution should take reasonable measures to establish and verify the identity and address of the person to whom it proposes to provide the service.

In such circumstances obtaining an original document which bears a photograph and a signature may be impracticable and accordingly the methods to establish identity must be adapted for such business. The specific methods used should compensate for the greater risk of money laundering which arises when a customer has not been physically present for identification purposes and should ensure that there is sufficient communication to confirm personal identity and address in accordance with the provisions set out in paragraph 49 to 53 below. Particular care should be taken, when dealing with applications for accounts providing cheque and money transmission facilities which are received by post or from coupon applications or electronically (e.g. via the internet).

As well as ensuring that the principles set out in paragraphs 49 to 53 below are adhered to, credit institutions engaged in the provision of banking services on a non face to face basis should ensure that the measures to prevent and detect money laundering (referred to in Section VII-Education and Training) take specific account of the inherent risks associated with the conduct of such business and in particular should establish procedures for monitoring and investigating activity on accounts opened on a non face to face basis. Unusual transactions should be investigated and reported if suspicious. Staff undertaking telephone contact should be provided with sufficient training to enable *them to identify* potentially suspicious responses to prevent inadvertent disclosure of confidential information.

49. There are a number of measures which, when undertaken together, will give credit institutions a reasonable degree of assurance as to the authenticity of the applicant where there is no face to face contact. The list of measures is not exhaustive and a credit institution may include other measures in its list of identification procedures provided that: (i) they fulfil

the same criteria i.e. they must provide an independent means of verification from a reputable source and (ii) the same principles are applied as set out below i.e. two types of personal identity should be obtained (one type in cases where a certified copy of passport/driving licence/other official document is obtained) and two types of address verification should be obtained.

Where initial checks fail to identify the prospective customer or give rise to suspicions that the information provided is false, additional verification measures should be undertaken and the details of the additional checks should be recorded. The provision of false information to a credit institution is an offence under Section 32(12) of the Act and should be reported to the Gardaí and the Revenue Commissioners in accordance with the credit institution's internal reporting procedures.

## **50. NON FACE TO FACE: RESIDENT PERSONAL CUSTOMERS**

### **Personal Identity**

The following are some of the methods which are considered reasonable measures to establish evidence of personal identity. In this regard there are two options and a credit institution may use either option:

#### Option One

- ?? A certified copy of a passport, drivers licence or identity form verified by Gardaí. Certification of passports/driving licences should be by a suitable person. Suitable persons include:
  - Gardaí Síochána/ Police Officers
  - Chartered & Certified Public Accountants
  - Notaries Public/Practising Solicitors
  - Embassy /Consular staff
  - Designated Bodies in Ireland or from a country listed in Appendix E.

#### Option Two

Two of the following items should be required.

- ?? An initial deposit cheque or other payment drawn on a personal account in the applicant's own name at another Irish bank or building society or from a bank from one of the countries listed at Appendix E.
- ?? Copy of passport, copy of driving licence or identity form issued by Gardaí. Copies of passport or driving licence should be reviewed by the credit institution to ensure that these are in date, that there is no apparent variation between the signature on the

copy and the signature obtained on any other document received from the customer (e.g. account opening form, agreement to terms of business etc.) and that the format of the copy document is consistent with the official format of that document for the country in question (e.g. layout, number format etc.).

- ?? Verification that the named applicant is registered as living at the home address provided (i.e. confirmed from the electoral register or from a credit reference agency).
- ?? Telephone contact with the applicant at an independently verified home or business telephone number (in order to make this telephone contact, the customers written consent may be required for loans and credit agreements which fall within Section 46 of the Consumer Credit Act, 1995).
- ?? The employer's personnel department confirms employment by verbal confirmation on a listed business telephone number (in order to make this contact, the customers written consent may be required for loans and credit agreements which fall under Section 46 of the Consumer Credit Act, 1995).

### **Address Verification**

In the case of address verification any two of the items on the list below should be obtained (originals of two different types of utility bills may be sought).

If a credit institution uses the electoral register or telephone contact as a means of personal identification it cannot use these same means to verify address.

- ?? Checking electoral register (local registers held at Post Offices, Libraries and Garda Stations).
- ?? Making a credit reference agency search.
- ?? Checking a local telephone directory or available street directory.
- ?? Requesting sight of current originals of any of the following:
  - Utility bill.
  - Bank, building society or financial institution statement.
  - Tax-free allowance certificate.
  - Balancing statement from Revenue Commissioners.
  - Revenue Commissioners C2 Tax Certificate.
  - Social Insurance Documents.

Household/motor insurance certificates.

Invoice from a mobile telephone company.

In addition to personal identity and address verification as outlined, in circumstances where a Personal Identification Number (PIN) is mailed to a customer there should be an internal control procedure to ensure that the address to which the PIN is mailed corresponds with other information received from the applicant regarding address (e.g. utility bills).

#### **NON FACE TO FACE: NON-RESIDENT PERSONAL CUSTOMERS**

51. For prospective non-resident customers who wish to open accounts without face-to-face contact it is important that, as far as possible, the verification procedures outlined for resident personal customers in paragraph 49 should be carried out, and the same information obtained in respect of personal identity and address verification. Particular care should be taken when relying on identification evidence provided by financial sector businesses from countries which have not been prescribed under Section 32(10)(d) of the Act (see Appendix E for list) or from non FATF countries to ensure that the customer's true identity and current permanent address can be confirmed. Copies of relevant documents should be sought and retained.
52. As well as the independent methods of personal and address verification outlined above under paragraphs 49-50, other methods which may be used to obtain evidence of identity in cases of non-resident customers (where appropriate the consent of the prospective customer should be obtained) include:
- ?? Use of branches, subsidiaries, head offices or correspondent institutions of the credit institution in the prospective customer's home country to confirm identity or as an agent to check personal identity and address verification.
  - ?? An account opening reference may be sought from a reputable credit or financial institution in the applicant's home country. Verification details should be requested covering true name, current permanent address, date of birth and verification of signature.
53. In certain very limited circumstances, which are outlined below, it is regarded as reasonable, in establishing identity, to rely upon a cheque or other payment providing the address of the person applying for the service is also verified in accordance with paragraph 50.

In such circumstances a record must be made of the person's account number and of the branch sorting code of the credit institution from which the payment originated and this record must be retained in line with the guidance given in Section V - Recording Keeping. Under no circumstances may the procedures provided for in this paragraph be used where there is any suspicion of money laundering.

The circumstances in which the procedures outlined above may be relied upon are where:-

- (i) the service to be provided is a fixed term, fixed amount deposit or investment related product which does not provide cheque or other money transmission facilities; **and**
- (ii) on the maturity of which the proceeds may be repaid only to the applicant or reinvested in a further similar deposit or fixed investment in the name of the applicant; **and**
- (iii) it is reasonable in all the circumstances for payment to be made by post or electronically or for the details of the payment to be given by telephone; **and**
- (iv) payment is to be made from an account held in the name of the person to whom the service is to be provided at another credit institution in a member state of the European Union or one of the other countries listed in Appendix E; **and**
- (v) there is no apparent variation between the name on the application form and the name of the drawer of the cheque or, in the case of payment other than by cheque, the name of the holder of the account from which the payment originated. Payments from joint accounts are considered acceptable for this purpose. Payments by bank or building society draft or from a general account are not considered acceptable for this purpose unless certified by the bank or building society concerned as coming from an account held with it in the name of the person to whom the service is to be provided.

## **STUDENTS AND YOUNG PEOPLE**

54. When opening accounts for students or other young people, the normal identification procedures set out in paragraph 45 should be followed save in exceptional circumstances. In situations where it is not possible to obtain verification of identity directly from the prospective customer it should be obtained from another source such as the home address of the parent(s) or by enquiries from the college or university.

55. Under normal circumstances, a minor would be introduced to the bank or building society by a family member or guardian who has an existing relationship with the credit institution concerned and such introduction may be relied upon as satisfactorily establishing identity.
56. For accounts opened through a school related scheme, the school should be asked to provide the date of birth and permanent address of the pupil.

#### **CONFIRMATION OF IDENTITY BY OTHER CREDIT INSTITUTIONS**

57. Where the applicant already has an established banking relationship with a credit institution and is now proposing to do business with another, mutually acceptable arrangements may be made between credit institutions whereby they agree to exchange confirmations that they have verified the identities of their respective customers and copies of materials used to establish identity. The confirmations and copies of materials should be retained in accordance with the provisions in these Guidance Notes.

#### **ISSUING OF CREDIT CARDS**

58. Where a credit card in respect of any credit card account is issued to any additional cardholder as well as to the principal cardholder then the credit institution issuing the additional credit card is not required to establish identity of such additional cardholder. In circumstances where two designated bodies have in place an arrangement whereby they act in conjunction with each other in relation to the issue of credit cards ('the scheme') and a credit card is to be issued under the scheme:

(a) to a person who was already a customer of either one of such designated bodies on 2 May 1995, then, in connection with the issue of credit cards under the scheme to such a person, neither of such designated bodies is expected to establish identity; or (b) to a person the identity of whom has been established in accordance with these Guidance Notes by one of such designated bodies then, in connection with the issue of credit cards under the scheme to such a person, the other designated body is not required to separately establish identity in cases where the materials used to establish identity are available on request to such other designated body.

#### **CLUBS AND SOCIETIES**

59. In the case of accounts to be opened for clubs and societies the identities of at least two elected officials and of two signatories on the account should be established in accordance with the guidelines set out in paragraph 45. When one of the two signatories changes a new signatory should replace the old signatory and the new signatory should be verified.

## **PARTNERSHIPS**

60. In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it should be obtained. In the case of partnerships, the identity of at least two partners and of two signatories authorised to operate the account should be established in accordance with paragraph 45. When one of the two signatories changes a new signatory should replace the old signatory and the new signatory should be verified.

## **CLIENT ACCOUNTS**

61. Where a credit institution proposes to provide one of the services set out in Appendix D for a person, whom the credit institution knows or who has reason to believe to be acting for a third party, the credit institution must take reasonable measures to establish the identity of the third party. Solicitors, Estate Agents, Accountants, Insurance Brokers, Stockbrokers, Fund Managers and other intermediaries frequently hold funds on behalf of their clients in “client accounts” opened with credit institutions. Such accounts may be general omnibus accounts holding the funds of many clients or they may be opened specifically for a single client, whose name may or may not form part of the designated name of the account or be otherwise disclosed to the credit institution. In these cases, while it is the intermediary who is the credit institution’s customer the effect of the Act is that the credit institution must also take reasonable measures to establish the identity of the third party (or client) on whose behalf the intermediary is acting. These cases should be distinguished from the case where an intermediary merely introduces a customer to the credit institution with the client becoming a direct customer of the credit institution (refer to paragraph 64).

The procedures to be applied for establishing identity where there is a client *account* depend on whether or not the intermediary itself is a designated body. The different scenarios are set out in paragraphs 62 to 63.

62. Where the intermediary is a designated body, or body corresponding to a designated body in a member state of the European Union or in one of the other countries listed in Appendix E there is no need to establish the identity of the designated body (see paragraph 38) nor to establish the identity of the third party.
63. Where the intermediary is from Ireland, or from a member state of the European Union or one of the other countries listed in Appendix E, but is not a designated body (or a corresponding body) then, not alone must the identity of the intermediary itself be established in accordance with the appropriate procedures in these Guidance Notes, but, additionally, reasonable measures must be taken to establish the identity of the party for whom the intermediary acts.

In these circumstances, and if the credit institution has no reason not to be satisfied with the bona fides of the intermediary, it is regarded as reasonable for a credit institution to establish identity by receiving the name of the third party from the intermediary. This may only be relied upon where the intermediary has supplied the credit institution with a written undertaking that, in respect of all third parties for whom the intermediary acts in obtaining from the credit institution any of the services set out in Appendix D, the intermediary will take reasonable measures to establish identity, will retain documentary evidence establishing such identity and will, forthwith upon request, furnish the credit institution with a copy of all such documents. This undertaking can be given separately by the intermediary for a particular customer or by way of a general undertaking.

Where the intermediary does not furnish a credit institution with such an undertaking, or where such an undertaking has previously been breached by an intermediary, the credit institution must itself establish the identity of the third party in accordance with the appropriate procedures in these Guidance Notes.

In the case of solicitors' general omnibus accounts, due to client confidentiality, it may not be possible for the solicitor to provide details of identification in respect of clients to the credit institution. In such cases, credit institutions will need to decide, based on their knowledge and experience with the intermediary, whether they are prepared to conduct business on this basis. Credit institutions should make reasonable enquiries about unusual transactions passing through client accounts and should report suspicious transactions to the Gardaí and the Revenue Commissioners.

Where the intermediary is from a country other than a member state of the European Union, or one of the other countries listed in Appendix E, then the credit institution must establish the identity of the intermediary and of the third party. In establishing the identity of the third party it is reasonable for the credit institution to have regard to the nature of the intermediary, the degree of confidence which the credit institution has in the intermediary, the geographical area in which the intermediary operates and the type of business being done. Depending on these factors it may be reasonable, in some cases, for a credit institution to rely upon a written undertaking from the intermediary as provided for in paragraph 63. Where, however, it appears that the intermediary is playing little or no role beyond providing a "front", such an undertaking will not be adequate and it will be necessary for the credit institution to establish the identity of the third party in accordance with the appropriate procedures in these Guidance Notes.

## **ACCOUNTS INTRODUCED BY INTERMEDIARIES**

64. Where an intermediary (whether the intermediary is or is not itself a designated body) introduces a customer to the credit institution with the customer becoming a direct customer of the credit institution, the obligation to take reasonable measures to establish identity of the client is on the credit institution. However, in circumstances where an intermediary is acting as a contractually appointed agent for the credit institution (e.g. a deposit agent) it is considered reasonable for the agent to establish identity on behalf of the credit institution, in accordance with the provisions set out in these Guidance Notes, provided that the evidence of identity obtained by the intermediary is available to the credit institution.

## **TRUST ACCOUNTS**

65. In the case of trust accounts (other than clubs and societies which are dealt with in paragraph 59) it is prudent for a credit institution to establish the identity, not only of the trustee, but also of the beneficiaries of the trust where ascertainable and obtain a copy of the trust deed.

## **CORPORATE CUSTOMERS**

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

## **IRISH INCORPORATED BODIES**

67. The following documents and information should be obtained to establish identity:
- (i) the original or certified copy or electronic copy issued by the Companies Registration Office of the Certificate of Incorporation or the Certificate to Trade;

- (ii) Memorandum and Articles of Association;
- (iii) a list of directors names, occupations, residential and business addresses and dates of birth;
- (iv) properly authorised mandate of the Directors to open an account and conferring authority on those who will operate it.

It may also be prudent to carry out:

A search of the file at the Companies Registration Office for the purposes of confirming that the correct date of incorporation of the company has been furnished under (i) above and that the directors on the file corresponds to the list of directors furnished as per (iii) above.

If there are discrepancies or inconsistencies between the information disclosed at subparagraph (i) and (iii) above and that which appears on the file in the Companies Registration Office an explanation should be sought from the Company and the explanations should be noted.

68. In the case of a company:
- quoted on a Stock Exchange in a country which is a member of the European Union or is one of the countries listed in Appendix E; or
  - known to be the subsidiary of such a company or
  - which is a private company or unquoted public company, the majority of whose directors are already known to the credit institution;

the procedures in paragraph 67 are usually sufficient.

69. In the case of a private company or unquoted public company the majority of whose directors are not known to the credit institution, the following additional procedures to those set out in paragraph 67 should be carried out:

(i) the identity of at least two directors and two people authorised to operate the account from time to time should be established in line with paragraphs 45 to 52. When one of the two signatories change, a new signatory should replace the old signatory and the new signatory should be verified.

(ii) a list of names and addresses of shareholders holding 10 per cent. or more of the issued share capital of the company should be obtained from the company and in the case of individual shareholders their occupations and dates of birth should also be obtained.

It may also be prudent to carry out a search of the company's file at the Companies Registration Office to establish if the list of shareholders given by the company corresponds with the shareholders listed on the Companies Office file. Credit institutions should seek and obtain satisfactory explanations of any discrepancies or inconsistencies between the shareholder information disclosed by the search in the Companies Registration Office and that supplied by the company and the explanations should be noted.

Where a significant shareholder (say 25 per cent) is a body corporate and particularly where it appears to be a nominee or "front" company it would be prudent to seek information from the company regarding the ultimate beneficial ownership of that particular shareholder. If adequate information is not forthcoming from the company, the credit institution should pay particular attention to business relations and transactions with that corporate customer.

### **NON-IRISH INCORPORATED BODIES**

70. In the case of companies which fall under one of the categories listed in paragraph 68, the procedures listed in paragraph 67 are usually sufficient.
71. In the case of all other companies, the procedures for establishing identity are the same as those contained in paragraphs 67 and 69 save that a reference should be obtained from either the individuals' banker or company's banker where either the relevant directors or authorised persons are non-resident.
72. It is recognised that company registration documents will differ from country to country and if memorandum and articles of association are not appropriate then the appropriate constitutive documentation should be obtained. It would normally be advisable to obtain appropriate legal opinions from lawyers practising in the relevant country as to the status and effect of the documents and in particular as to the fact of incorporation. Care should be taken to ensure that entities claiming to be subsidiaries or branches of quoted public companies are what they claim to be. Additional care will be required to be exercised by credit institutions in the case of bodies incorporated in countries which are neither member states of the European Union nor one of the other countries listed in Appendix E and particular attention given to the question of why the body concerned proposes to transact business with an Irish credit institution.

### **TAKING OF WHOLESALE EURO AND FOREIGN CURRENCY DEPOSITS**

73. Wholesale deposit business between designated bodies or their equivalent in EU or other prescribed countries have been covered in paragraph 38.

For wholesale deposits from other corporate bodies, the formal identification procedures as set out in paragraphs 67 to 72 may be substituted by establishing that the funds are received from a credit institution in Ireland or from within the EU or a prescribed country, on behalf of the client. This can only be relied upon where payback of funds is contracted to return to the same source for the same beneficiary account. Written confirmation of the deposit terms must be despatched immediately to depositors requesting them to formally acknowledge by return the terms of the deposit contract. If a variation of the contract terms is subsequently agreed such that the funds will not return to their source bank account, the formal identification procedures should be observed.

74. Where the funds are received by SWIFT, the ordering and beneficiary fields should be checked to ensure that they are complete and this should be noted on the filed message or otherwise recorded<sup>2</sup>. A SWIFT receipt message may only be relied upon where there is no apparent variation between the ordering and beneficiary fields. In the case of cheque receipts, the source of funds should be established in accordance with the guidance set out in paragraphs 48 to 53. Where the receipt of funds is in any other form e.g. bankers' drafts or cash, the identification procedures as set out in paragraphs 67 to 72 are applicable.

#### **PARTICIPATION IN SYNDICATED LOAN FACILITIES**

75. Credit institutions that participate in a syndicated loan facility may, for the purposes of accounts opened in respect of such a loan, rely on the identification procedures carried out by the paying agent or fiscal agent, provided that such agent is a designated body.

#### **PROVISION OF SAFE CUSTODY AND SAFETY DEPOSIT BOXES**

76. Particular precautions need to be taken in relation to requests to hold boxes, parcels and sealed envelopes in safe custody. Where such facilities are made available to non-account holders, the identification procedures set out in these Guidance Notes should be followed.

#### **PARTICIPATION IN SHARE ISSUES AND THE PROVISION OF SERVICES RELATED TO SUCH ISSUES**

##### **77. General**

This section deals with services provided by a credit institution which are of a kind referred to

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<sup>2</sup> In July 1992, SWIFT issued a broadcast requiring the sending institution to complete the ordering and beneficiary fields of customer payment instruction (MT100). In a letter sent to credit institutions in April 1993 the Central Bank of Ireland requested that the customer fields in electronic messages/payment instructions be completed as fully as possible.

at No. 8 of Appendix D hereto, that is “Participation in share issues and the provision of services related to such issues”.

Where a credit institution acts as registrar for a company, applications will be made to it for shares accompanied by payment, from either new or existing shareholders in that company. By and large, this situation arises in the case of a rights issue, an open offer, warrants and a public flotation.

In accordance with the Act, reasonable measures must be taken to establish the identity of any person for whom a credit institution proposes to provide a service of a kind listed in Appendix D hereto.

## 78. Exemptions

There is no obligation to establish the identity of a person where:

(i) that person is a “designated body” under the Act or if it is a body which corresponds to a “designated body” in a Member State of the European Union or in a State or country prescribed for the purpose by the Minister for Justice, Equality and Law Reform (see paragraph 18 of these Guidance Notes and Appendix E); or

(ii) the payment involved relates to one applicant only and totals less than €13,000 – this will also apply to joint applicants; or

(iii) a share application is received by post and payment is made by way of a cheque drawn on an Irish or EU credit institution (banks and building societies) and there is no apparent inconsistency between the name under which the application is made and the name on the cheque. Payments in joint account are acceptable for this purpose; or

(iv) a share application is received by post and payment is made by bank draft or building society cheque or from a general account where it is certified by the bank or building society concerned as coming from an account held with it in the name of the person making the application.

Where there are a series of transactions which are or appear to be linked and which amount in aggregate to €13,000 or more, reasonable measures must be taken to establish identity. Irrespective of the amount involved, identity must be established in all cases where it is suspected that the service which a credit institution proposes to provide for a person is connected with money laundering and the details must be reported in line with the procedures set out in Section VI of these Guidance Notes.

There is no requirement to establish computer and administrative systems specifically to identify and aggregate linked transactions. However, if it is recognised that two or more transactions have totalled €13,000 or more, then this information must be acted upon.

79. **Agent making third party applications**

Where an application is received from a person whom the credit institution knows or who has reason to believe to be acting for a third part(y/ies), then the credit institution must take reasonable measures to establish the identity of the third part(y/ies).

Where the intermediary is a designated body 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 E hereto, there is no need to establish the identity of the designated body or to establish the identity of third part(y/ies).

However, where the intermediary is from Ireland or from a Member State of the European Union or one of the countries listed in Appendix E and is not a designated body or a corresponding body, then the credit institution must establish the identity of the intermediary in accordance with the appropriate procedures in these Guidance Notes and, in addition, reasonable measures must be taken to establish the identity of the third part(y/ies) for whom the intermediary acts. In these circumstances, it is regarded as reasonable for the credit institution to establish identity by receiving the name of the third part(y/ies) from the intermediary. This may only be relied upon where the intermediary has supplied the credit institution or its agent for onward transmission with a written undertaking that in respect of all third parties for whom the intermediary acts, that the intermediary will take reasonable measures to establish identity, will retain documentary evidence establishing such identity and will forthwith upon request furnish the credit institution with a copy of all such documents. The undertaking can be given separately by the intermediary for a particular customer or by way of a general undertaking. Where the intermediary does not furnish a credit institution with such an undertaking or where such an undertaking has previously been breached by the intermediary, the credit institution must itself establish the identity of the third part(y/ies) in accordance with the appropriate procedures in these Guidance Notes.

Where the intermediary is from a country other than a Member State of the European Union or one of the other countries listed in Appendix E, then the credit institution must establish the identity of the intermediary and of the third part(y/ies). When establishing the identity of a third part(y/ies), it is reasonable for the credit institution to have regard to the nature of the intermediary, the degree of confidence which the credit institution has the intermediary, the geographical area in which the intermediary operates and the type of business being done. Depending on these factors, it may be reasonable in some cases for a credit institution to rely

on a written undertaking from the intermediary, as provided for in the immediately preceding paragraph. Otherwise, full verification procedures will be necessary in respect of the intermediary and the underlying third parties in accordance with the appropriate procedures in these Guidance Notes.

#### 80. **Timing of Verification Requirements**

Where there is a requirement to establish the identity of a person and certain verification procedures must be carried out, an acceptable time span must be determined in the light of all the facts, for example: geographical location and whether it is practical to obtain the evidence before commitments are entered into or money changes hands. While an application may be processed immediately, appropriate steps must be taken alongside the processing to verify the person's identity. Clearly, every effort should be made to complete the verification process before allocation takes place and in any event before the documents of title have been dispatched.

It is recommended that the prospectus and application form should clearly state that the establishment of identity is a requirement of the Criminal Justice Act, 1994 and that failure by the applicant to provide the necessary evidence of identity may result in delays in providing the entitlement documents or in returning the application moneys.

To avail of the non face to face identification procedures set out in paragraphs 48 to 53, it is recommended that applicants should be requested to post their applications through the normal postal service or in specially provided boxes available on the relevant premises of the credit institution.

#### 81. **HOW TO ESTABLISH IDENTITY**

##### **A Face to face Contact**

The procedures for establishing identity where there is face-to-face contact with a "Resident Personal Applicant", are the same as those set out at paragraphs 45 and 46 of these Guidance Notes.

In the case of a "Non-Resident Personal Applicant", paragraph 47 of these Guidance Notes sets out the appropriate procedures.

##### **B Applications Received by Post**

Resident Personal Application:

If the application does not fall under the exemptions outlined in paragraph 78 then reasonable measures should be taken to establish the identity of the person and at a minimum the procedures for verifying the address given (and verifying the name against that address) as set out in paragraph 45(iii) of these Guidance Notes should be followed.

#### Non-Resident Personal Customers

If the application does not fall under the exemptions outlined in paragraph 78 then verification of identity should be sought from a reputable credit or financial institution in the applicants county of residence. (For this the consent of the applicant should be obtained.) Verification details should be requested covering true name used, current permanent address and verification of signature.

## **82. IRISH-REGISTERED CORPORATE APPLICATIONS**

Where the exemptions contained in paragraph 78 do not apply, the credit institution will not be required to establish identity (unless money laundering is suspected) where the applicant is:

- a company quoted on a stock exchange in a country which is a member of the European Union or is one of the countries listed in Appendix E of these Guidance Notes: or
- known to be a subsidiary of such a company; or
- a private company or unquoted public company, the majority of whose directors are already known to the credit institution.

Where the applicant is a company which does not fall into any of the proceeding categories, verification should be carried out by way of a Companies Office search. When carrying out the Companies Office search, the credit institution should ascertain the correct date of incorporation of the company.

Where the applicant is an institutional investor, e.g. pension fund, local authority, unit trust or charity, reference may be made to appropriate agencies or directories to check identities.

Where an application is in the name of a pension fund of a company which falls into any of the categories referred to earlier in this paragraph or of a government agency or local authority, then no further steps to establish identity will normally be required.

## **OTHER**

- 83.** Where the applicant for business is a Central Bank or State-owned body or organisation of sovereigns (supranationals), from outside the EU and is not from a State or country prescribed by the Minister for Justice, Equality and Law Reform under Section 32(10)(d) of the Act, provided that such an applicant is not from a non co-operative country (NCCT) as prescribed by the FATF from time to time, a credit institution may refer to appropriate sources to check identity. Appropriate sources include industry directory, reference from a specialist consultant or a lawyer.

## **SECTION V - RECORD KEEPING**

### **STATUTORY REQUIREMENTS**

84. Section 32(9) of the Act requires credit institutions, where they have identified a person for the purposes of the Section, to retain, for use as evidence in any investigation into money laundering, a copy of all materials used to identify a person and the original documents or copies admissible in legal proceedings, relating to transactions. This is an essential constituent of the audit trail required in order to investigate money laundering *or any other offence*.

### **MATERIALS VERIFYING EVIDENCE OF IDENTITY**

85. Section 32(9)(a) states that a copy of all materials used to identify a customer or proposed customer must be maintained for a period of at least five years after the relationship with the customer has ended. It should be noted therefore that this obligation applies even if the person identified does not become a customer or the proposed transaction is not actually effected. The type of materials retained will vary according to the category of customer (refer to paragraphs 45 to 82 dealing with How to Establish Identity).
86. For practical purposes the date when the relationship with the customer has ended can be taken to be the date of:
- (i) the carrying out of an individual transaction or the last in the series of transactions;  
or
  - (ii) the closing of the last account held for that customer; or
  - (iii) the commencement of proceedings to recover debts payable on insolvency.

Where formalities to end a relationship have not been undertaken, but a period of five years has elapsed since the date when the last transaction was carried out, then the five year retention period commences on the date of the completion of the last transaction.

### **TRANSACTION RECORDS**

87. Section 32(9)(b) states that, in the case of transactions, the original documents, or copies admissible in legal proceedings, relating to the relevant transaction be maintained, for a period of at least five years following the execution of the transaction. In practice these will be records in support of entries in the accounts in whatever form they take e.g. credit/debit slips or cheques, bank waste sheets etc. Vouchers in respect of transactions undertaken with credit or debit cards need not be retained as part of the audit trail, as details of the

transactions and the method of payment will be recorded as part of the permanent ledger records and will appear on customers' statements.

## **SUSPICIOUS TRANSACTIONS**

88. The Garda Síochána and the Revenue Commissioners need to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish a financial profile of any suspect account. For example, the following information may be sought as part of an investigation into money laundering:

- (i) the identity of the beneficial owner of the account or of the person undertaking the transaction;
- (ii) the volume of funds flowing through the account; and
- (iii) for selected transactions:
  - the origin of the funds (if known)
  - the form in which the funds were offered or withdrawn  
i.e., cash, cheques etc.;
  - the destination of the funds;
  - the form of instruction and authority.

89. Where an investigation is commenced, the relevant records should be retained until the Garda Síochána and the Revenue Commissioners confirm that they may be disposed of.

## **FORMAT OF RECORDS**

90. In relation to transactions, the obligation under the Act is to retain the original documents or copies admissible in legal proceedings. It is recognised that credit institutions will usually have standard procedures which seek to reduce the volume and density of records that have to be stored while still complying with statutory requirements. Section 131 of the Central Bank Act, 1989 extended the definition of "Bankers' Books" in the Bankers' Books Evidence Act, 1879 to include any records in the ordinary business of a bank, kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a permanent legible form. Accordingly, records retained on microfiche or in computerised or electronic form are admissible as evidence provided they are capable of being reproduced in a permanent legible form.

91. When setting document retention policy, credit institutions must weigh the statutory requirements and the needs of the investigating authorities against normal commercial

considerations. However, when original vouchers are used for account entry, and are not returned to the customer or his agent, such original documents should be kept for at least one year to assist forensic analysis.

## **WIRE TRANSFER TRANSACTIONS**

92. Investigations of major money laundering cases over the last few years have shown that criminals make extensive use of electronic payment and message systems. The rapid movement of funds between accounts in different jurisdictions increases the complexity of investigations. In addition, investigations become even more difficult to pursue if the identity of the original ordering customer or the ultimate beneficiary is not clearly shown in an electronic payment message instruction.
  
93. In July 1992, at the request of the Financial Action Task Force, SWIFT (Society for Worldwide Interbank Financial Telecommunications), in an effort to ensure that its system was not used by criminals as a means to break the money laundering audit trail, asked all users of its system to ensure that, when sending SWIFT MT100 messages (customer transfers), the fields for both the ordering and the beneficiary customers be completed with the names and addresses of each.
  
94. Subject to any technical limitations, ordering customers should be encouraged to include this information for all credit transfers made by electronic means, both domestic and international, regardless of the payment or message system used. In cases where this information is not contained in the message, full records of the ordering customer and address should be retained by the originating credit institution. Funds transfers where both ordering and beneficiary customers are credit institutions are exempt from this requirement. The records of electronic payments and messages must be treated in the same way as any other records in support of entries in the account and kept for a minimum of five years.

## **SECTION VI - RECOGNITION AND REPORTING OF SUSPICIOUS TRANSACTIONS**

### **RECOGNITION OF SUSPICIOUS TRANSACTIONS**

#### **WHAT IS A SUSPICIOUS TRANSACTION?**

95. As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. Appendix F contains a list of examples of suspicious transactions. However, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. Therefore, the first key to recognition is knowing enough about the customer's business to recognise that a transaction, or series of transactions, is unusual.

#### **EXAMPLES OF SUSPICIOUS TRANSACTIONS**

96. Examples of possible suspicious transactions include:

##### ***DEPOSIT ACCOUNT TRANSACTIONS***

- unusually large cash deposits by an individual or company whose ostensible business would normally generate cheques or other instruments.
- large cash lodgements and/or withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.

##### ***MORTGAGE/ LOAN ACCOUNT TRANSACTIONS***

- customers who repay problem loans or clear mortgages unexpectedly.
- customers who have a large unexplained initial deposit resulting in a relatively low loan- to value ratio.
- customers who commit themselves to large monthly repayments on a short-term loan.
- customers who make large payments over and above the agreed monthly repayments.
- customers who purchase and sell property at a faster than normal rate.

In such cases the credit institution should ensure that it reconciles the customer's financial circumstances with the transactions on the account and where the credit institution is unable to

satisfy itself a suspicious transaction report should be submitted to the Gardaí and the Revenue Commissioners in accordance with section 57(1) of the Act.

97. Further examples of what might constitute suspicious transactions are given in Appendix F to these Guidance Notes. These are not intended to be exhaustive and only provide examples of ways by which money may be laundered. However, identification of any of the types of transactions listed in Appendix F should prompt further investigation and be a catalyst towards making at least initial enquiries about the source of funds.

## **REPORTING OF SUSPICIOUS TRANSACTIONS**

98. There is a statutory obligation on all staff to report suspicions of money laundering. Section 57(1) of the Act requires that directors, employees and officers shall report to the Garda Síochána and the Revenue Commissioners where they suspect that an offence under Section 31 (the offence of money laundering itself) or Section 32 (dealing with customer identification and record retention) of the Act has been or is being committed in relation to the business of the credit institution. Some credit institutions may choose to require that such unusual or suspicious transactions be drawn initially to the attention of supervisory management to ensure that there are no known facts that will negate the suspicion before further reporting to the Money Laundering Reporting Officer.
99. The Act provides that a report may be made to the Garda Síochána and the Revenue Commissioners under the Act in accordance with an internal reporting procedure to be established by a credit institution for the purpose of facilitating the operation of the reporting obligation.

Once an employee has reported his/her suspicion to another person in accordance with an established internal reporting procedure he or she has satisfied the statutory obligation (Sections 57(3) and 57(4)).

Thus all credit institutions have a clear obligation to ensure:

- that each relevant employee knows to whom that employee should report any suspicions; and
- that there is a clear reporting chain under which those suspicions will be passed without delay to the Money Laundering Reporting Officer.

## **THE ROLE OF THE MONEY LAUNDERING REPORTING OFFICER**

100. It is the Money Laundering Reporting Officer who will have the responsibility in credit institutions for communicating reports of suspicious transactions to the Garda Síochána and the Revenue Commissioners and who will provide the liaison between the credit institution and the Gardaí and the Revenue Commissioners.
101. The type of person appointed as Money Laundering Reporting Officer will vary according to the size of the credit institutions and the nature of its business, but he or she should be sufficiently senior to command the necessary authority. Each credit institution should prepare a detailed specification of the role and obligations of the Money Laundering Reporting Officer. Larger credit institutions may choose to appoint a senior member of their compliance, internal audit or fraud departments. In small organisations it may be appropriate to designate the Chief Executive. When several subsidiaries operate closely together within a group there is much to be said for designating a single Money Laundering Reporting Officer at group level.
102. The Money Laundering Reporting Officer has a significant degree of responsibility and should be familiar with all aspects of the legislation. It is the Money Laundering Reporting Officer who is responsible for deciding whether the information contained in transaction reports, received in accordance with the credit institution's internal reporting procedures, require to be communicated to the Garda Síochána and the Revenue Commissioners because they give rise to a knowledge or suspicion that a money laundering offence in relation to the business of the credit institution has been or is being committed.
103. In making this judgement, the Money Laundering Reporting Officer should consider all other relevant information available within the credit institution concerning the person or business to whom the initial report relates. This may include a review of other transaction patterns and volumes through the account or accounts in the same name, the length of the relationship, and referral to identification records held. If, after completing this review, he/she decides that the initial report gives rise to a knowledge or suspicion of money laundering, or an offence under Section 32 of the Act, then he/she must disclose this information to the Garda Síochána and the Revenue Commissioners.
104. In determining whether or not to report this implies a process with at least some formality attached to it. It does not necessarily imply that he/she must give reasons for negating, and therefore not reporting any particular matter, but it clearly would be prudent, for internal procedures to require that written reports are submitted to him/her and that he/she should

record his determination in writing. Clearly in the case where there is a doubt it would be prudent for the Money Laundering Reporting Officer to make a report to the Garda Síochána and the Revenue Commissioners.

## **REPORTING PROCEDURES**

105. The national reception points for reports from Money Laundering Reporting Officers of suspicions are:

*An Garda Síochána*

Garda Bureau of Fraud Investigation  
Money Laundering Investigation Unit  
Harcourt Square  
Dublin 2.

*Office of the Revenue Commissioners*

Money Laundering Unit  
5<sup>th</sup> Floor  
Hammam Buildings  
11-13 Upper O'Connell Street  
Dublin 1

106. The Garda Money Laundering Investigation Unit can be contacted during office hours at the following numbers:

Telephone: (01) 666 3714

Fax: (01) 475 4345

General correspondence (not STR's) can be sent to: [mliu@iol.ie](mailto:mliu@iol.ie)

The Revenue Commissioner's Money Laundering Unit can be contacted during office hours at the following numbers:

Phone: (01) 865 5164

Fax: (01) 865 5151

107. The use of a standard format in the making of reports is important and should be followed (see Appendix G). Reports can be forwarded by post or in urgent cases by facsimile message or telephone: telephone messages should be followed up by completion of the standard reporting form as soon as possible.

108. Where it is impossible in the circumstances to refrain from executing a suspicious transaction before reporting to the Gardaí and the Revenue Commissioners or where reporting it is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the credit institution concerned shall apprise the Gardaí and the Revenue Commissioners immediately afterwards. While it is impossible to spell out in advance how to deal with every possible contingency in most cases common sense will suggest what course of action is most appropriate. Where there is doubt it will be possible to seek the advice of the Money Laundering Reporting Officer.
109. Following receipt of a disclosure and initial research by the Garda Síochána Money Laundering Investigation Unit or the Revenue Commissioners Money Laundering Unit, if appropriate, the information disclosed is allocated for further investigation. This is likely to include seeking supplementary information from the credit institution making the disclosure, and from other sources. Discreet enquiries are then made to confirm the basis for suspicion.
110. Where information is disclosed in good faith in the course of making a report of a suspected offence under the Act or in good faith to a member of the Garda Síochána and the Revenue Commissioners investigating an offence, then the disclosure is not to be treated as a breach of any restriction upon the disclosure of information such as, for example, customer confidentiality.
111. The origins of financial disclosures are not revealed because of the need to protect the disclosing institution and to maintain confidence in the disclosure system. When a case is prepared for court, if a disclosure exists then it is classified as sensitive material.

#### **FEEDBACK FROM THE GARDA SÍOCHÁNA AND THE REVENUE COMMISSIONERS**

112. The provision of feedback by the Garda Síochána and the Revenue Commissioners to the credit institution by whom suspicions are reported is recognised as an important element of the system.
113. Feedback on 'paper' disclosures will be provided by the Garda Síochána on a six monthly basis or where there are developments to report.  
(See Appendix H for format of feedback report).

## SECTION VII – EDUCATION AND TRAINING

### INTRODUCTION

114. Credit institutions have responsibilities under the Act in relation to identification of customers, keeping of records and reporting of suspicions of money laundering. Additionally, there is a statutory obligation on all staff to report suspicions of money laundering.
115. The Act (as amended by Section 14 of the Criminal Justice (Miscellaneous Provisions) Act, 1997) requires credit institutions to adopt measures to prevent and detect money laundering. These measures include:
- (a) the establishment of procedures to be followed by employees in the conduct of the business,
  - (b) the giving of instructions to employees on the application of the EU Directive and
  - (c) the training of employees for the purpose of enabling them to identify transactions which may be related to money laundering and, the procedures to be followed in such cases.

These guidance notes, which are endorsed by the Central Bank of Ireland, set out the appropriate measures to be taken by credit institutions to fulfil the education and training requirements of the *Act*.

### THE NEED FOR STAFF AWARENESS

116. All existing staff and any new staff entering a credit institution from time to time must, by means of education and training programmes, be made aware of the responsibilities of a credit institution in relation to the identification of customers, keeping of records and the reporting of suspicions of money laundering. Additionally, all such staff should be made aware of their own statutory obligation to report suspicions of money laundering and that a failure to so report will render them liable to a fine or to imprisonment for a term not exceeding five years or to both.

The relevant Section of the Act (Section 57(1)) which deals with the reporting requirements includes the credit institution itself and its directors, employees and officers.

117. It is, therefore, important that credit institutions introduce comprehensive measures to ensure that staff and contractually appointed *agents* are fully aware of their responsibilities.

## **EDUCATION AND TRAINING PROGRAMMES**

118. Timing and content of training of all directors, officers and employees involved in the day-to-day business of activities identified in Section 32(2) of the Act will need to be adapted by individual credit institutions for their own needs.

The following is recommended:

- (a) Each credit institution should provide education and training programmes suitable for its own needs.
- (b) Both existing staff members and any new staff members entering the credit institution from time to time who deal directly with or are involved with administration of the following:
  - (i) the provision to new customers of any financial or banking service; or
  - (ii) the carrying out of any transactions for any other persons should be given appropriate training on the need to establish the identity of such new customers or such other persons. Such training should include account opening procedures and procedures for record keeping.
- (c) All relevant staff should be given training on how to identify factors which may give rise to suspicions of money laundering and on the internal procedures to be followed once they suspect that a money laundering offence in relation to the business of the credit institution has been or is being committed.
- (d) Any such training programmes should set out clearly that as well as the reporting requirements on the part of the credit institution in relation to suspicious transactions, each staff member has a personal responsibility to report.
- (e) In depth training concerning all aspects of the legislation and internal policies will be required for the Money Laundering Reporting Officer. In addition, the Money Laundering Reporting Officer will require extensive initial and on-going instruction on the reporting of suspicious transactions to the Gardaí and the Revenue Commissioners and on the feedback arrangements.

119. In addition to the above relatively standard requirements, training may have to be tailored to the needs of specialised areas of banking (e.g. treasury and corporate banking). It will also be necessary to keep the content of training programmes under review and to make arrangements for refresher training at regular intervals i.e. at least annually to ensure that staff do not forget their responsibilities.

#### **TRAINING PACKAGE FOR CREDIT INSTITUTIONS**

120. To assist credit institutions to fulfil their statutory education and training obligations, the Irish Bankers' Federation and Irish Mortgage and Savings Association, have produced a training package to supplement these Guidance Notes:-

## APPENDIX A

### OUTLINE AND SUMMARY OF THE PROVISIONS OF THE CRIMINAL JUSTICE ACT, 1994 AS AMENDED

#### **Background**

The purpose of the Act is to provide for:

- (i) the seizure and confiscation of the proceeds of drug trafficking and other serious offences;
- (ii) the creation of an offence of money laundering; and
- (iii) measures to give effect to a number of international instruments on drug trafficking, money laundering and mutual assistance in criminal matters.

It has been increasingly recognised that the traditional methods of dealing with criminal offences that generate substantial amounts of money, and drug trafficking in particular, are not sufficient in themselves and that what is required is a means of depriving persons who obtain large profits from crime, of those profits.

**Part II** of the Act extends the power of the courts in relation to seizure and confiscation of criminal proceeds to all cases where a person is convicted of an offence on indictment.

**Part III** deals with the enforcement of confiscation orders and other matters.

Both of these parts take account of recommendations made by the Law Reform Commission in its report 'The Confiscation of the Proceeds from Crime'.

**Part IV** of the Act provides for the new offence of money laundering and makes provision for anti-laundering measures in line with Council Directive 91/308/EEC on provision of the use of the financial system for the purpose of money laundering.

**Part V** of the Act is concerned with drug trafficking offences at sea and gives effect, in part to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) - the Vienna Convention.

**Part VI** of the Act deals with drug trafficking money imported or exported in cash.

**Part VII** of the Act makes provision for international co-operation in relation to criminal matters in accordance with the following international instruments:

- the Council of Europe Convention on Mutual Assistance in Criminal Matters (1959);
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990); and
- the 1988 Vienna Drugs Convention.

These conventions enable state parties to obtain a wide range of international assistance in respect of criminal prosecutions and investigations.

**Part VIII** provides for various miscellaneous matters including the duty to disclose information and the offence of prejudicing an investigation.

**Part IV** (Money Laundering) and **Part VIII** (supplementary) are relevant in the context of the Guidance Notes.

#### **Part IV**

**Section 31:** Money Laundering etc.

This Section provides for the offence of money laundering. Appendix B sets out in detail what constitutes the offence of money laundering. The activities covered are wide ranging and include those set out in the definition of 'laundering' in the EU Directive.

**Section 32:** Measures to be taken to prevent money laundering

This Section imposes obligations on banks and financial bodies to take certain measures (e.g. identification of customers, retention of records) to prevent and assist in the detection of money laundering.

**Part VIII:** Supplementary

**Section 57:** Disclosure of information

57(1) provides that persons or bodies to whom Section 31 applies shall report to the Garda Síochána and the Revenue Commissioners where they suspect that an offence under Section 31 and 32 has been or is being committed in relation to their business.

57(3) provides that a report may be made to the Garda Síochána and the Revenue Commissioners in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of Section 57.

57(9) relates to statutory or other duties restricting the disclosure of confidential or similar information. It provides that, where a person or body discloses any information in the course of making a report under subsection (1) or (2) of the section, or discloses to a member of the Garda Síochána and the Revenue Commissioners or other person concerned in the investigation or prosecution of a drug trafficking offence, or an offence in respect of which a confiscation order under Section 7 might be made, a suspicion that any property has been obtained as a result of or in connection with such an offence or derives from property so obtained, the disclosure will not be treated as a breach of the restriction.

**Section 58:** Offences of prejudicing investigation

58(1) provides that it shall be an offence for a person who knows or suspects that an order under Section 63 has been made or applied for, or a search warrant under Section 55 or 64 has been issued, in relation to an investigation into drug trafficking etc. to make any disclosure which is likely to prejudice the investigation.

58(2) makes similar provisions in relation to reports under Section 57. The offence will consist of making a disclosure likely to prejudice any investigation arising from the report into whether an offence has been committed under Section 31 or 32.

58(3) makes it a defence for the alleged offender to prove that he or she did not know or suspect that the disclosure was likely to prejudice the investigation or to prove that he or she had lawful authority for making the disclosure.

58(4) prescribes the penalties for offences under the Section.

The Criminal Justice Act, 1994, has been amended by the following legislation:

- ?? The Disclosure of Certain Information for Taxation and Other Purposes Act, 1996
- ?? The Criminal Justice (Miscellaneous Provisions) Act, 1997
- ?? The Criminal Justice (Theft and Fraud Offences) Act, 2001
- ?? The Central Bank and Financial Services Authority of Ireland Act, 2003

**APPENDIX B**  
**THE OFFENCE OF MONEY LAUNDERING**

**Section 31** of the Act sets out what constitutes the offence of money laundering.

Any of the following constitutes the offence of money laundering:-

1. Where a person conceals or disguises any property which is, or represents, his own proceeds of drug trafficking or other criminal activity, for the purpose of avoiding prosecution for an offence or for the purpose of avoiding the making or enforcement in his case of a confiscation order  
**(Section 31(1)(a)).**
2. Where a person converts or transfers property which is, or represents, his own proceeds of drug trafficking or other criminal activity, or removes it from the State for the purpose of avoiding prosecution for an offence or for the purpose of avoiding the making or enforcement in his case of a confiscation order (Section 31(1)(b)).
3. Where a person, knowing or believing that any property is, or represents, another person's proceeds of drug trafficking or other criminal activity, conceals or disguises that property for the purpose of assisting any person to avoid prosecution for an offence or for the purpose of assisting any person to avoid the making or enforcement of a confiscation order (Section 31(2)(a)).
4. Where a person, knowing or believing that any property is, or represents, another person's proceeds of drug trafficking or other criminal activity, converts or transfers that property, or removes it from the State, for the purpose of assisting any person to avoid the making or enforcement of a confiscation order (Section 31(2)(b)).
5. Where a person handles any property, knowing or believing that such property is, or represents, another person's proceeds of drug trafficking or other criminal activity (Section 31(3)).

In any of the above, it is sufficient if the property in question represents tainted proceeds either in whole or in part and whether directly or indirectly.

The references in 1 and 3 to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it **(Section 31(4)).**

Additionally, the references in 2 and 4 to converting, transferring or removing any property include the provision of any advice or assistance in relation to converting, transferring or removing such property

**(Section 31(5)).**

In relation to 5 (the handling offence), a person handles property if he dishonestly:-

- (a) receives it, or
- (b) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or
- (c) arranges to do any of the things specified in paragraph (a) or paragraph (b) above **(Section 31(6)(a)(b)(c)).**

Where a person does, in relation to tainted property, any of the acts specified in 3, 4 or 5 above, in such circumstances that it is reasonable to conclude that he knew or believed that the property was tainted, he is to be taken to have so known or believed 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 he so knew or believed **(Section 31(7)).**

**Sub section (8)** provides that believing property to be, or to represent, another person's proceeds of drug trafficking or other criminal activity includes "thinking that the property was probably, or probably represented, such proceeds".

**Sub section (11)** provides that the provisions of Section 31 are, insofar as they relate to the proceeds of drug trafficking or other criminal activity, to apply, whether the activity concerned took place in the State or elsewhere, and whether it occurred before or after the commencement of the Section. There is a proviso that, where the activity occurred outside the State, it corresponded to an offence under the law of the State and amounted to an offence under the law of the place in which it occurred.

## **APPENDIX C**

### **MONEY LAUNDERING SCHEMES UNCOVERED**

#### **ACCOUNT OPENING WITH DRAFTS**

1. An investigation into part of an international money laundering operation involving the UK revealed a method of laundering which involved the use of drafts from Mexican exchange bureaux. Cash generated from street sales of drugs in the USA was smuggled across the border into Mexico and placed into exchange bureaux (cambio houses). Drafts frequently referred to as cambio drafts or cambio cheques, were purchased in sums ranging from \$5,000-\$500,000, these were drawn on Mexican or American banks. The drafts were then used to open accounts in banks in the UK with funds later being transferred to other jurisdictions as desired.

#### **BANK DEPOSITS AND INTERNATIONAL TRANSFERS**

2. An investigation resulting from a disclosure identified an individual to be involved in the distribution of cocaine in the UK and money laundering on behalf of a drug trafficking syndicate in the United States of America. Money generated from the sales of the drug was deposited into a UK bank with large sums being later withdrawn in cash and transferred to the USA via a bureau de change. Funds were also transferred by banker's draft. The launderer later transferred smaller amounts to avoid triggering the monetary reporting limits in the US. Over an 18-month period a total of £2,000,000 was laundered and invested in property.
3. An individual involved in the trafficking of controlled drugs laundered the proceeds from the sales by depositing cash into numerous bank and building society accounts held in his own name. Additionally funds were deposited into accounts held by his wife. Funds were then transferred to Jamaica where the proceeds were used to purchase three properties amongst other assets.

#### **BOGUS PROPERTY COMPANY**

4. As a result of the arrest of a large number of persons in connection with the importation of Cannabis from West Africa a financial investigation revealed that part of the proceeds had been laundered through a bogus property company which had been set up by them in the UK. In order to facilitate the laundering process the traffickers employed a solicitor who set up a client account and deposited £500,000 received from them, later transferring the funds to his firm's bank account. Subsequently, acting on instructions, the solicitor withdrew the funds from the account and used them to purchase a number of properties on behalf of the defendants.

## **THEFT OF COMPANY FUNDS**

5. A fraud investigation into the collapse of a wholesale supply company revealed the director had stolen very substantial sums of company funds laundering the money by issuing company cheques to third parties which were deposited into their respective bank accounts both in the UK and with offshore banks. Cheques drawn on the third party accounts were handed back to the director made payable to him personally. These were paid into his personal bank account. False company invoices were raised purporting to show the supply of goods by the third parties to the company.

## **JERSEY DEPOSITS AND SHAM LOANS**

6. Cash collected in the US from street sales of drugs was smuggled across the border to Canada where some was taken to currency exchanges to increase the denomination of the notes and reduce the bulk. Couriers were organised to hand carry the cash by air to London where it was paid into a branch of a financial institution in Jersey.

Enquiries in London by HM Customs and Excise revealed that internal bank transfers had been made from the UK to Jersey where 14 accounts had been opened in company names using local nominee directors. The funds were repatriated to North America with the origin disguised, on occasions in the form of sham loans to property companies owned by the principals, either using the Jersey deposits as collateral or transferring it back to North America.

## **COCAINE LAB CASE**

7. A disclosure was made by a financial institution related to a suspicion which was based upon the fact that the client, as a non-account holder, had used the branch to remit cash to Peru, then having opened an account, had regularly deposited a few thousand pounds in cash. There was no explanation of the origin of the funds. Local research identified the customer as being previously suspected of local cocaine dealing.

Production orders were obtained and it was found that his business could not have generated the substantial wealth that the customer displayed; in addition his business account was being used to purchase chemicals known to be used in refining cocaine.

Further enquiries connected the man to storage premises which, when searched by police, were found to contain a cocaine refining laboratory, the first such discovery in Europe.

## **CURRENCY EXCHANGE**

8. Information was received from a financial institution about a non-account holder who had visited on several occasions exchanging cash for foreign currency. He was known to have an account at another branch nearby and his activity was neither explained nor consistent with his account at the other branch.

The subject of the disclosure was found to have previous convictions for drugs offences and an investigation ensued. The subject was arrested for importing cannabis and later convicted.

## **CASH DEPOSITS**

9. Information was submitted about a customer who held two accounts at branches of the same financial institution in the same area. Although he was unemployed it was noted that he had deposited £500-600 cash every other day.

It was established that he held a third account and had placed several thousand pounds on deposit in Jersey. As a result of these investigations, he was arrested and later convicted for offences related to the supply of drugs.

## **BANK COMPLICITY**

10. Enquiries by the Police resulted in the arrest of a man in possession of 6kgs of heroin. Further investigation established that an account held by the man had turned over £160,000 consolidated from deposits at other accounts held with the same financial institution. A pattern of transfers between these accounts, via the account holding branch, was also detected.

Information received led to a manager of the financial institution being suspected of being in complicity with the trafficker and his associates. He was arrested and later convicted of an offence of unlawful disclosure (tipping-off) and sentenced to 4 years imprisonment.

Further examples, can be found in the Annex to the FATF Reports on Money Laundering Typologies which can be accessed on the FATF website ([www.fatf-gafi.org](http://www.fatf-gafi.org)).

## APPENDIX D

### **Services of Credit Institutions within the Scope of the Act (These activities\* correspond to those listed in Council Directive 89/646/EEC - Second Banking Directive).**

1. Acceptance of deposits and other repayable funds from the public
2. Lending\*\*
3. Financial leasing
4. Money Transmission Services
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments
7. Trading for own account or for account of customers in:
  - a) money market instruments (cheques, bills, CDs, etc.);
  - b) foreign exchange;
  - c) financial futures and options;
  - d) exchange and interest rate instruments;
  - e) transferable securities;
8. Participation in share issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking
11. Portfolio management and advice\*\*\*
12. Safekeeping and administration of securities\*\*\*
14. Safe custody services.

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\* **Item 13 (credit reference agencies) of Directive 89/646/EEC is excluded from the scope of the Act.**

\*\* **Including inter alia: Consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting)**

\*\*\* **Refer also to Financial Institutions Guidance Notes**

## **APPENDIX E**

### **MEMBER STATES OF THE EUROPEAN UNION\***

Austria	Luxembourg
Belgium	Netherlands
Denmark	Portugal
Finland	Spain
France	Sweden
Germany	United Kingdom
Greece	
Ireland	
Italy	

### **STATES/COUNTRIES PRESCRIBED BY REGULATIONS UNDER SECTION 32(10)(d) OF THE CRIMINAL JUSTICE ACT, 1994**

Australia*	New Zealand*
Canada*	Norway*
The Channel Islands	Singapore*
Hong Kong*	Switzerland*
Iceland*	Turkey*
The Isle of Man	The United States of America*
Japan*	

\* These countries are also members of the FATF

*May 2003*

## APPENDIX F

### EXAMPLES OF SUSPICIOUS TRANSACTIONS

#### 1. Money Laundering Using Cash Transactions

- (a) Unusually large cash deposits made by an individual or company whose ostensible business activities would normally be generated by cheques and other instruments.
- (b) Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account/and/or to a destination not normally associated with the customer.
- (c) Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant.
- (d) Company accounts whose transactions, both deposits and withdrawals, are denominated by cash rather than the forms of debit and credit normally associated with commercial operations (e.g. Cheques, Letters of Credit, Bills of Exchange, etc.).
- (e) Customers who constantly pay-in or deposit cash to cover requests for bankers drafts, money transfers or other negotiable and readily marketable money instruments
- (f) Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.
- (g) Frequent exchange of cash into other currencies.
- (h) Branches that have a great deal more cash transactions than usual. (Head Office statistics detect aberrations in cash transactions).
- (i) Customers whose deposits contain counterfeit notes or forged instruments.
- (j) Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.
- (k) Large cash deposits using night safe facilities thereby avoiding direct contact with bank or building society staff.
- (l) Large cash withdrawals.
- (m) Business accounts for which credits and debits are nearly always cash lodgements and withdrawals.
- (n) Companies that do not appear to be carrying on any business activity whose accounts are used to receive and/or disburse large cash sums.

## **2. Money Laundering Using Bank or Building Society Accounts**

- (a) Customers who wish to maintain a number of trustee or clients' accounts which do not appear consistent with the type of business, including transactions which involve nominee names.
- (b) Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total credits would be a large amount.
- (c) Any individual or company whose account shows virtually no normal personal banking or business related activities, but is used to receive or disburse large sums which have no obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).
- (d) Reluctance to provide normal information when opening an account, providing minimal or fictitious information or, when applying to open an account, providing information that is difficult or expensive for the financial institution to verify.
- (e) Customers who appear to have accounts with several financial institutions within the same locality, especially when the bank or building society is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.
- (f) Matching of payments out with credits paid in by cash on the same or previous day.
- (g) Paying in large third party cheques endorsed in favour of the customer.
- (h) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.
- (i) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.
- (j) Greater use of safe deposit facilities. Increased activity by individuals. The use of sealed packets deposited and withdrawn.
- (k) Companies' representatives avoiding contact with the branch.
- (l) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client company and trust accounts.
- (m) Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other banking services that would be regarded as valuable.
- (n) Insufficient use of normal banking facilities e.g. avoidance of high interest rate facilities for large balances.

- (o) Large number of individuals making payments into the same account without an adequate explanation.
- (p) Business accounts which reflect few, if any, business transactions.

3. **Money Laundering Using Investment Related Transactions**

- (a) Purchasing of securities to be held by the financial institution in safe custody, where this does not appear appropriate given the customer's apparent standing.
- (b) Back to back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known drug trafficking areas.
- (c) Requests by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.
- (d) Larger or unusual settlements of securities in cash form.
- (e) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

4. **Money Laundering by Offshore International Activity**

- (a) Customer introduced by an overseas branch, affiliate or other bank based in countries where production of drugs or drug trafficking may be prevalent.
- (b) Use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business.
- (c) Customers who make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from, countries which are commonly associated with the production, processing or marketing of drugs; prescribed terrorist organisations; tax haven countries.
- (d) Building up of large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas.
- (e) Unexplained electronic fund transfers by customer on an in and out basis or without passing through an account.
- (f) Frequent requests for travellers cheques, foreign currency drafts or other negotiable instruments to be issued.
- (g) Frequent paying in of travellers cheques or foreign currency drafts particularly if originating from overseas.
- (h) Transfers to accounts in recognised tax havens.
- (i) Loans secured by a deposit or other financial asset located in a tax haven.

5. **Money Laundering Involving Financial Institution Employees and Agents**
- (a) Changes in employee characteristics, e.g. lavish life styles or avoiding taking holidays.
  - (b) Changes in employee or agent performance, e.g. the salesman selling products for cash has remarkable or unexpected increase in performance.
  - (c) Any dealing with an agent where the identity of the ultimate beneficiary or counterparty is undisclosed, contrary to normal procedure for the type of business concerned.
6. **Money Laundering by Secured and Unsecured Lending**
- (a) Customers who repay problem loans unexpectedly.
  - (b) Request to borrow against assets held by the financial institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing.
  - (c) Request by a customer for a financial institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

APPENDIX G  
STANDARD REPORTING FORMAT

**CRIMINAL JUSTICE ACT 1994**

GARDA REF NO: \_\_\_\_\_ SOURCE REF.No. \_\_\_\_\_ DATE \_\_\_\_\_

Disclosure By:	PHONE:
NAME OF INSTITUTION:	
NAME OF REPORTING OFFICER:	
BRANCH NAME:	SORT CODE:
BRANCH ADDRESS:	PHONE:
ACCOUNT NAME(S):	ACCOUNT NO's/DATE OF OPENING:
ADDRESS OF SUBJECT:	
DATE OF BIRTH:	
OCCUPATION:	EMPLOYER:
NATIONALITY:	PASSPORT NO:
IDENTIFICATION AND/OR REFERENCES	
DETAILS of sums arousing suspicion indicating origin form(cash/cheques etc). destination and instruction/authority	
Other RELEVANT INFORMATION including reason for suspicion aroused, associates, associated companies etc.	
(TO BE CONTINUED ON ADDITIONAL PAGES, (IF REQUIRED))	

APPENDIX H

FEEDBACK LETTER FROM GARDA UNIT and the Revenue

Commissioners

AN GARDA SÍOCHÁNA

OUR REF: \_\_\_\_\_

your address

YOUR REF: \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Money Laundering Reporting Officer  
(Name of Institution)

Dear Sir/Madam

I refer to your Report dated \_\_\_\_\_ concerning \_\_\_\_\_

and wish to inform you that the present position in the matter is as outlined  
hereunder:-

Suspected Money Laundering Offences disclosed

No offence disclosed

Report Under Investigation

Criminal proceedings commenced

No further action necessary

Comments

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yours faithfully

\_\_\_\_\_

**DETECTIVE SUPERINTENDENT**

**APPENDIX I**

ML 10

Criminal Justice Act, 1994 (as amended)

**RESIDENT PERSONAL CUSTOMERS: CERTIFICATION OF IDENTITY**

**SECTION 1 DECLARATION BY APPLICANT**

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please sign in a Garda Station in the presence of a Garda.**

I declare that I do not hold a current passport or driving licence.

Signature of applicant \_\_\_\_\_

If the applicant is unable to sign, a parent/guardian should sign here \_\_\_\_\_

**SECTION 2 CERTIFICATE OF IDENTITY**

**Please have this Section completed at a Garda Station by a member of An Garda Síochána.**

I certify that I have satisfied myself as to the identity of the applicant who has signed Section 1 above in my presence. I also certify that the photograph (on the back of which I have signed my name and affixed the Station Stamp) supplied with this application is a true likeness of the applicant.

Signature of the Garda _____	<b>Garda Station Stamp</b>
Name (in block letters) _____	
Rank _____	
Garda Number _____ Date _____	
Garda Station _____	

Telephone Number (including Area Code) \_\_\_\_\_

**Warning: A person who provides false or misleading information for the purposes of establishing identity under Section 32 of the Criminal Justice Act, 1994 shall be guilty of an offence.**

**APPENDIX J –**

**Powers that will be used by the Revenue Commissioners in conjunction with suspicious transaction reports**

The powers that will be used by Revenue Officers when conducting a review or investigation of a taxpayer as a consequence of a suspicious transaction report are as follows:

- ?? Section 906A Taxes Consolidation Act, 1997
- ?? Section 907 Taxes Consolidation Act 1997
- ?? Section 908 Taxes Consolidation Act 1997
- ?? Section 908A Taxes Consolidation Act 1997.

Normally a Revenue Officer will advise the Money Laundering Officer of a Credit Institution in advance when it is intended to use a power to obtain information from a Credit Institution in respect of a taxpayer who has been identified in a suspicious transaction report.