

MONEY LAUNDERING – THE NEW REPORTING REGIME

18th September, 2003

Irish Institute of Taxation

Eoin Cunneen, Solicitor, L.K. Shields, Solicitors

INTRODUCTION

The scope of this talk primarily sets out the main provisions of the Criminal Justice Act, 1994 (as amended) together with the relevant new 2003 regulations very recently introduced. It would not be possible in the timeframe allowed for today's seminar to conduct a very detailed forensic examination of the extensive statute law which relates to the Criminal Justice Act and how that might apply to the new regulations.

Furthermore, given that these regulations have been in existence for a matter of days, it is difficult to predict how the letter of the law might be applied, in particular, where there is a crossover between tax / company law legislation and the new regulatory requirements. Professional advice should always be sought (where appropriate).

“Money Laundering”, by definition, is the process by which the identity of what might be regarded as “dirty money”, representing the proceeds of criminal conduct is altered or “washed” through apparently legitimate transactions so that the money loses its original identity and appears to originate from a legitimate source.

The Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, recently commented that *“In the area of financial investigation, the measures directed at the offence of money laundering and the related compliance obligations including the mandatory reporting of suspicious financial transactions have been significant. A major feature of the fact that, since the beginning, the offence of money laundering extended to the proceeds of both drug trafficking and other criminal activity”*.

During the course of this talk I will discuss the fact that the new requirements imposed by the Second EU Directive on Money-Laundering of 2001 and the Criminal Justice Act (Section 32) Regulations, 2003 (which brought this Directive into Irish Law), which now subject Solicitors, Accountants, Auditors and Tax Consultants (“Practitioners”) and other parties to the Criminal Justice Act of 1994

(the originating Irish legislation dealing with money laundering offences) and obligations that are now imposes such providers to identify customers / clients, to maintain records and to report suspicious transactions. The relevant Sections of the Criminal Justice Act, 1994 (as amended), for the purpose of this talk are:

- Section 31: The offence of money laundering;
- Section 32: The obligation on the relevant designated body to identify clients and maintain records;
- Section 57: The obligation to report "suspicious transactions";
- Section 58: The offence of "tipping off".

It is of the utmost importance that Accountants, Auditors and Tax Consultants familiarise themselves thoroughly with the content of each of these Sections in detail and, if necessary, they should seek legal or other professional advice upon their position or that of their client.

Since enactment of the Criminal Justice Act, 1994, Banks and Financial Institutions have been bound as "designated persons" to, inter alia, report suspicious transactions and to operate "know your

client” procedures. The Second EU money laundering Directive¹ (which was passed after the events of September 11th in 2001) extended the scope of the application of the originating 1991 Money Laundering Directive to certain designated bodies.

An important date to note is that these regulations and requirements have had immediate effect since **Monday, 15th September, 2003.**

A. WHAT IS A MONEY LAUNDERING OFFENCE?

Section 31 of the 1994 Act (was amended by Section 21 of the Criminal Justice (Theft and Fraud Offences) Act, 2001) provides, inter alia, that

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

¹ Directive 2001/97/EC which amended Council Directive 91/308/EC which related to the prevention of the use of the financial system for the purpose of money laundering.

- (a) converts, transfers or handles the property or removes it from the State, with the intention of –
 - (i) concealing or disguising its true nature, source, location, disposition, movement of ownership or any rights with respect to it, or
 - (ii) assisting another person to avoid prosecution for the criminal conduct concerned, or
 - (iii) avoiding the making of a confiscation order or a confiscation cooperation order (within the meaning of Section 46 of this Act) or frustrating its enforcement against that person or another person,

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

- (c) acquires, possesses or uses the property."

What “**criminal conduct**” entails is obviously of the utmost importance to determine. Section 31(7) of the Criminal Justice Act, 1994 (as amended) provides that “criminal conduct” means conduct which:-

- (i) Constitutes an **indictable offence**, or
- (ii) Where the conduct occurs outside of the State, would constitute such an offence if it occurred within the State and also constitutes an offence under the law of the country or territorial unit in which it occurs, and includes participation in such conduct.

By way of explanation, an indictable offence is an offence which may be tried before a Judge and Jury either in the Circuit Court or Central Criminal Court. While an indictable offence can, at the option of the prosecution, be tried summarily (i.e. without a Jury), an indictable offence would still remain to be an indictable offence, notwithstanding the summary nature of the prosecution.

An obvious important question for Accountants, Auditors and Tax Consultants is whether the possible existence of alleged outstanding taxation liabilities would constitute **“criminal conduct”**?

For one thing, the offence of “knowingly and willfully committing a false return” as set out in Section 1078 of the Taxes Consolidation Act, 1997 (as amended) can be tried on indictment. It is noteworthy that the UK equivalent legislation (the Proceeds of Crime Act, 2002) specifies *“For the avoidance of doubt, the proceeds of tax evasion are to be included in money laundering reports”*. A guidance note from the Law Society of Ireland to its Solicitors has stated that the term “criminal conduct” would include “drug trafficking offences, organised crime, theft and fraud, forgery, blackmail, extortion and tax evasion”.

While it is no doubt the case that members of the institute would not engage in money laundering, the above references to converting, transferring, handling or removing to include references to **“the provision of any advice or assistance in relation to converting, transferring, handling or removing it”**. As Section 31(7)(iv) of the Criminal Justice Act, 1994 (as amended) of the Criminal

Justice Act, 1994, (as amended) states that “references to believing that any such property is or represents the proceeds of criminal conduct includes references to the property representing those proceeds in the whole or in part directly or indirectly, and cognate references shall be construed accordingly”.

The Draft Guidelines which have been issued by the Irish Institute of Taxation state that “It is not required that a Tax Advisor identify any specific criminal offence in reporting a suspicious transaction. What is required is that, where a Tax Advisor suspects that his or her services are being availed of in concealing or disguising proceeds of a criminal offence, a report is to be made”.²

It is worthwhile to examine the key elements of this offence and what these phrases mean as follows:-

“Converting” – means that the proceeds of criminal conduct, including the transferring or handling of the property or removal from the State with the intention of disguising or concealing its nature, or assisting another party to avoid

² Draft Guidelines issued by the Irish Taxation Institute (September, 2003). These Guidelines are pending approval by the Money Laundering Steering Committee.

prosecution for the criminal conduct concerned, or avoiding the making of a confiscation order (within the meaning of Section 46 of the Criminal Justice Act, 1994 (as amended)).

“Concealing” – means the disguising of the true nature, source, location, disposition, movement or ownership of any rights in respect with.

“Possessing” – this means the acquiring, possession or use of the proceeds of such criminal conduct.

Section 31(3) of the Criminal Justice Act, 1994 (as amended) states that

“Where a person, inter alia, converts, conceals, acquires, possesses or uses it.....it is reasonable to conclude that the person

- (i) knew or believed that the property or represented the proceeds of criminal conduct, or
- (ii) was reckless as to whether it was or represented such proceeds,

the person shall be taken to have so known or believed or to have been so reckless, unless the Court or Jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless".

Section 31(2) of the Criminal Justice Act, 1994 (as amended) provides that a person found guilty of money laundering is liable:-

- (a) on summary conviction, to a fine not exceeding IR£1,500 (€1,905) or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to Imprisonment for a term not exceeding 14 years or to both.

Having regard to the possibility of a custodial sentence being levied, the seriousness at which the problem of money laundering is being taken at European and National level is abundantly clear.

Property is also defined as including "money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property". While there is no definition of what "proceeds" means the originating legislation in 1994 stated at Section 5(1)(a) that *"Any payments or other awards received by a person (whether before or after the commencement of Section 4 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking"*.

It is also noteworthy that the Consultative Committee of Accountancy Bodies in Ireland have stated that (having taken legal advice), the "proceeds of criminal conduct" would also include:-

"Benefits (in the form of saved costs) arising from a failure to comply with the regulatory or legal requirement where that failure is an indictable offence (for example, breaches of health and safety requirements of competition law)", and

“Benefits obtained through bribery or corruption, including benefits (such as profit or cash flow) from contract obtained by these means”.³

As there are literally thousands of indictable offences on the statute books that, if committed, are likely to result in that person benefiting from the costs of not complying with statutory requirements and obligations, such persons might be deemed to be “acquiring property” representing the proceeds of criminal conduct. It is also noteworthy that the requirement to report such offences need to be made regardless of the amount of benefit derived from such action or, for that matter, the seriousness or otherwise of the offence. The requirement to report is, therefore, absolute in nature. I will deal with the obligation to report in greater detail below.

The fact that advisors may have to make a report to the Gardai and the Revenue Commissioners requires serious consideration. As the requirement to report (where appropriate) has only existed since this week, practitioners are, I suspect, unaware practically as to how

³ The Consultative Committee of Accountancy Bodies – Ireland (Briefing Paper), August, 2003

the new regulations might interact with other legislation, including data protection legislation and, for example, how any necessary reporting of possible tax evasion might sit with, for example, the Codes of Practice dealing with voluntary disclosures.

Section 32(12) of the Criminal Justice Act provides that the failure to establish the identity of clients or to retain records for the requisite period of time or to establish procedures and provide training for employees to enable them to identify suspicious transactions constitute offences under this Section. I will deal with the procedures required to establish the identity of clients and the retention of records in greater detail below.

B. WHAT ACTIVITIES ARE COVERED BY THE NEW REGULATIONS?

It is important to consider the various activities that are covered by the money laundering legislation as not all transactions or activities give rise to a potential requirement to report on money laundering. Section 32(2) of the 1994 Act, (as amended) indicates that the various requirements apply in respect of specific operations engaged in, or

services provided by the reporting body. Such services are to include:-

- (i) Certain items in the list annexed to Council Directive 89/646/EEC;
- (ii) Activities to which Council Directive 79/267/EEC (as amended) apply;
- (iii) Any other activity which may be prescribed in regulations under Section 32(10) of the Criminal Justice Act, 1994 (as amended).

(i) Council Directive 89/646/EEC (the Second Banking Co-ordination Directive). The various operations which require reporting include the following:-

- Lending;
- Financial leasing;
- Money transmission services;
- Issuing and administering means of payments (e.g. credit cards, travelers cheques and Bankers drafts);

- Guarantees and commitments;
- Trading for own account or for account of customers in:-
 - (a) Money market instruments (e.g. cheques, bills of exchange, certificates of deposit etc.);
 - (b) Foreign exchange;
 - (c) Financial futures and options;
 - (d) Exchange and interest rate instruments;
 - (e) Transferable securities.
- Participation and securities issues and the provision of services relating to such issues;
- Money brokering;
- Safe keeping and administration of securities;
- Safe custody services;
- Portfolio management and advice;
- Advice given to undertakings on capital structure, industrial strategy and related questions and advice as well as any services relating to mergers and the purchase of undertakings.

(ii) Council Directive 79/267/EEC (as amended)

This Directive primarily deals with the supervision of credit institutions, insurance undertakings and investment firms.

(iii) Any other activity which may be prescribed under Section 32(20) of the Criminal Justice Act, 1994 (as amended).

The regulations which relate to this section deal primarily with the acceptance of deposits and repayable funds from the public, and the purchase or sale of units in certain collective investment schemes. The Draft Irish Institute of Taxation Guidelines have stated that particular care "should be taken in cases where a Tax Advisor is directly involved in the project management of tax based schemes, for example, the administration of a BES Scheme".⁴

It may be the case that some Practitioners would not provide many of the services outlined above, however, it is certainly likely that the requirements would extend to:-

- (i) Portfolio management and advice;

⁴ Draft Irish Taxation Institute Guidelines, September 2003

- (ii) Participation and securities issues and the provision of services relating to such issues;
- (iii) Advices in relation to undertakings and capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchases of such undertakings.

Practitioners should carefully and thoroughly review all relevant legislation where they have a doubt that the service being provided by them may or may not come within the list of specified activities.

C. PERMITTED EXEMPTIONS FROM REPORTING

Statutory Instrument No. 242 of 2003 (paragraph 4) provides that the reporting requirements to the Revenue and Gardai as set out in Section 57 do not apply to a person in the State (which would include Tax Advisors, Accountants and Solicitors) to information he or she receives from, or obtained in relation to a client

- (a) in the course of ascertaining the legal position of that client, and

- (b) when performing their task of defending or representing that client in or concerning **judicial proceedings** (whether such information is received), or
- (c) when advising that client in relation to instituting or avoiding judicial proceedings,

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

Obviously the notion of what “**judicial proceedings**” is of particular importance. For example, if a tax payer receives a notice of an audit, it is possible that as a result of any investigation by Revenue, criminal proceedings could ensue. Certain commentators have stated that any matter which is likely to give rise to contentious Court proceedings, for example, an Appeal Commissioners hearing would be covered by the aforesaid exemption, however, this is yet to be clarified.

It will be no doubt necessary for the Institute and other appropriate professional bodies to discuss the above and other matters in detail with the Revenue Commissioners and the Garda Síochána to discuss

the practical implications of the new regulations and certainly clarification will be required of what “*advice*” entails and the scope of such a definition.

Section 31 (8) of the Criminal Justice Act, 1994 (as amended) provides that where a report is made by a person to the Gardai Síochána in relation to property referred to in Section 31 or where that person or body (other than the person or body suspected of committing an offence under the Section) is informed by the Gardai that property in the possession of the person is property referred to in this Section, that person or body shall not commit an offence under this Section or Section 58 of this Act if and as for as long as the person or body complies with the directions of the Gardai Síochána in relation to the property”.

I will deal with the consequences of failing to report a suspicious transaction and the “tipping off” later in this talk.

D. REPORTING REQUIREMENTS

Section 57 of the 1994 Act requires that the designated bodies report suspicions that an offence under Section 31 or Section 32 has

been committed. Accordingly therefore, all suspicions that indictable offences may have been committed where proceeds are involved are reportable.

Section 57 (1) states:

“any person to whom or which Section 32 of this Act applies (including their directors, employees and officers) shall report to the Gardai Siochana and to the Revenue Commissioners where they suspect that an offence under Section 31 or 32 of this Act in relation to the business of that person or body has been or is being committed”.

Obviously the notion of what a **suspicion** entails is subjective in nature and is probably likely to be objective interpretation falling short of proof based on firm facts. *“Suspicion”* has been defined by the English courts as being beyond mere speculation and based on some foundation. *(Obviously, a Practitioner’s “suspicion” does not amount to proof and any charge that any alleged offence had been committed would still need to be proved to the relevant standard of proof by the relevant prosecuting authority.)* The Law Society of

Ireland has produced a non exhaustive list of common indicators of potentially suspicious transactions such as, *inter alia*::

- Client does not want correspondence sent to home address.
- Client appears to have dealings with several solicitors in one area, for no apparent reason.
- Client repeatedly uses an address but frequently changes the names involved.
- Client shows curiosity about internal systems, controls and policies.
- Client attempts to develop a close rapport with staff.
- Client appears to have recently established a series of new relationships with different financial entities.⁵

The Draft Guidelines prepared by the Irish Taxation Institute state, *inter alia*, that a suspicion would be formed if

- (i) by reference to the Tax Advisor's training and experience, information or explanations provided by the client are not credible, or

⁵ Law Society guidance notes for solicitors on anti-money laundering legislation (appendix 1)

- (ii) it appears that important and material information provided by the client is false, forged or incapable of verification, or information is provided which is inconsistent with the Tax Advisor's knowledge of the business activity / sector and the amounts of money involved are material either in absolute terms or in the context of the client's turnover or general financial affairs.⁶

It is without doubt that Practitioners will have to give careful thought as to whether the circumstances of a particular file give rise to a situation where an offence under Section 31 or 32 has been, or is being, committed. In doing so, Practitioners will have to determine whether they are **participating** in the act of assisting the client in relation to the transaction or that they are **acting on behalf** of a client in relation to a **transaction** which comes within the categories of specified activities, in relation to which that Practitioner has a **suspicion** an offence of money laundering has been or is being committed. As aforesaid, the information leading

⁶ Draft Guidelines issued by the Irish Taxation Institute, September 2003.

to that suspicion must arise in circumstances other than the specified exempted areas.

The Practitioner must also determine whether there is property that is or is likely to represent the proceeds of an indictable offence and, secondly, he/she must suspect that the property has been converted, transferred, handled or disguised in such a way as to disguise the original nature of the property.

I have attached to the end of this talk a helpful chart prepared by the Institute's Director of Education, Mr. Brian Keegan, which is a useful reference point for Practitioners to help them to determine whether a reporting requirement applies.

E. HOW A REPORT IS MADE ?

Reports must be made to the Gardai Siochana and the Revenue Commissioners. Correspondence to the Gardai is to be directed to the following: The Superintendent, Garda Bureau of Fraud Investigation, Harcourt Square, Harcourt Street, Dublin 2.

Correspondence to the Revenue is to be sent to the underlying Tax Projects Office, 5th Floor, Hamman Buildings, 11-13 Upper O'Connell Street, Dublin 1.

It is also worth noting that if a Practitioner fails to make a report of the suspicion of money laundering that this will constitute an offence.

The legislation does not set out in particular time period from the forming of the suspicion to the actual issuance of the Report, I would suspect that this must be done as soon as it is reasonably practicable. I understand that as of August 2003 the Consultative Committee of Accountancy Bodies in Ireland was still in the process of seeking to agree the form of a report that is to be used for practitioners making reports.

It is likely that given the wide definition of money laundering that other reporting obligations that already exist might overlap with the other reporting requirements to bodies. Certain Practitioners have become accustomed to making reports to the Director of Corporate Enforcement pursuant to the Company Law Enforcement Act, 2001.

The new reporting requirement will add to further costs. It will also be interesting to see how the reporting requirements and standards of proof required in terms of the necessity to make a report will be determined. Obviously different standards of proof are required for different indictable offences. For example, the threshold of proof required for an accountant to form a suspicion that books and records may not have been properly kept may in fact be a different standard of proof to the standard inherent in Section 57. It is conceivable in certain situations that if proper books and accounts have not been kept that this could have led to an under declaration of revenue which of itself might be an indictable offence and may be reportable. Depending on the circumstances, it may be prudent for the Practitioner to take independent legal or other professional advice on his/her position. Obviously it also stands to reason that a practitioner and his/her client could not be advised by the same legal adviser.

It is also note-worthy that Section 57 (7) provides that where a report is made under Section 57 (1) and (2) and such a disclosure is made in good faith, this will not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise

and shall not involve that person or body making the disclosure in any liability of any kind. While this provision is no doubt of comfort to practitioners, they should however, be careful to only report what they are legally required to report as otherwise they could conceivably leave themselves open to an action for breach of confidence from their client if information which was not relevant to the suspicion was reported or if they reported an unjustified suspicion. Having regard to the fact that Practitioners have to report to different bodies, in different situations (which could overlap, in whole or in part), Practitioners will need to focus squarely on each relevant report that needs to be made, in isolation, to avoid confusion arising.

D. Offence of “Tipping Off”

Section 58 (1) provides that “Where person who

- (a) “knowing or suspecting that an investigation is taking place 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 1994 Act has been made or applied for

and not been refused, or a warrant under Section 55 or Section 64 of the 1994 Act has been issued, makes any disclosure likely to prejudice the investigation arising from that report; and

- (b) a person knowing that a report has been made under sub-sections 1 and 2 of Section 57 makes a disclosure likely to prejudice any investigation arising from the Report into whether an offence has been committed under Section 31 or 32 of the 1994 Act".

shall be guilty of an offence.

Two stated defences exist that an individual can rely upon is charged with such an offence namely that:

- That individual did not know or suspect that the disclosure to which the proceedings relate and was likely to prejudice any such investigation;
- That individual had lawful authority or reasonable excuse to not make the disclosure.

It is accordingly important that Practitioners should take the utmost care not to fall foul of this particular section to “tip off” any client who could conceivably fall foul of the money laundering regulations. It also follows that any necessary reportage of suspicions relating to money laundering must be carefully, impersonally and consistently made within an organisation. The Consultative Committee of Accountancy Bodies in Ireland have stated that auditors, in particular, “may be faced with particular difficulties when, for example, complying with statutory duties to report to regulators; issuing qualifying audit opinions; not issuing audit opinions at all; or issuing notices of resignation under Section 185 of the Companies Act, 1990.

F. WHAT WILL THE NEW REGULATIONS ENTAIL IN TERMS OF GENERAL, PROCEDURAL AND REGULATORY REQUIREMENTS FOR PRACTITIONERS?

Since **15th September 2003**, practitioners will be required to:

- (i) Take measures to identify new clients and maintain records in respect of their identity for **five years**;

- (ii) Keep records of all relevant transactions (both by new and existing clients) and keep copies of such documents for at least **five years** following the transaction;
- (iii) Put in place **internal procedures for staff** training and awareness;
- (iv) Introduce **internal reporting procedures**;
- (v) Finally, they must **report all suspicious transactions** to the Gardai and the Revenue.

Failing to adhere to requirements of Section 32(9) in relation to the maintenance of records and the establishment of procedures could, if prosecuted, lead to a sentence of up to five years, or a fine, or both.

As set out above, the reporting obligations established by Section 32 are in respect of carrying out one or more of the activities specified at Section 32 (2). However, given the day-to-day practice of a Practitioner, it is likely that the range of activities referred to in that Section are likely to relate to all such firms, to varying degrees.

The various professional bodies have suggested that reports should be made in accordance with an internal reporting procedure. In this regard it is generally suggested that firms would nominate a senior member in the firm with responsibility for receiving such reports that are made internally and deciding upon whether for a transmission of such reports is necessary in the circumstances having referred to the legislation. In banks and other financial institutions, such institutions have in place a **“Money Laundering Reporting Officer”**. The Law Society of Ireland have recommended to solicitors that firms would establish such an officer to take charge of the firm’s reporting requirement (where necessary).

In terms of identification of clients, the provision is not to apply retrospectively. As and from 15th September, 2003 a practitioner should be aware of the identity of all the parties to whom it is rendering services in order to comply with their money laundering requirements. If, however, practitioners have a existing client on or before the relevant date and they form a suspicion that the service that is being provided by them is in connection with the commission of money laundering offence than they must make a report.

Under Section 32 (3) a practitioner must take **“reasonable measures”** to identify all new clients for whom such practitioner wishes to provide services either on a continuing basis or in respect of a transaction or a series of transaction which amount to at least €13,000 (which is not an annual exemption). It is also noteworthy that if a practitioner is providing services in respect of joint clients that he/she must seek identification evidence from all such parties.

There is an exemption on the regulations if the client is an existing client of the firm or where the client is a designated body under the Act or thirdly where the transaction is a one-off transaction or a series of linked transactions, the aggregate amount of which is less than €13,000. In terms of identification requirements, I would suspect that practitioners will need to establish satisfactorily that they are dealing with a real person or organisation and should obtain sufficient, reliable original documentation vouching the client's identity.

In terms of the procedures to be deployed when identifying new clients, naturally there are a wide variety of different types of clients which will, no doubt, affect how a Practitioner would satisfy himself

/ herself that they have complied with the relevant identification procedure requirements. I have set out below a non exhaustive list of the different type of clients.

- Resident private individuals (which are met face-to-face);
- Non-resident private individuals (that are met face-to-face);
- Resident private individuals (where there is no face-to-face interaction);
- Non-resident private individuals (where there is no face-to-face interaction);
- Compliance clients;
- Referrals from another professional firm;
- Multi national companies / individuals that are temporarily resident in the jurisdiction;
- Companies / incorporated bodies;
- Non-Irish incorporated bodies;
- Trusts;
- Nominee companies.

As the nature of each particular Practitioner's business (be he / she an Accountant, Auditor or Tax Consultant) differ greatly, I do not

propose to comment in detail upon the level of vouching documentation that should be required by the Practitioner in seeking to comply with the legislation. Instead, I would refer you to the very useful Draft Guidelines prepared by the Irish Taxation Institute, the briefing paper prepared by the Consultative Committee of Accountancy Bodies – Ireland and the Guidance Notes for Solicitors on Money Laundering Legislation (September 2003).

The general principle to bear in mind is that a practitioner should satisfy himself/herself satisfactory as to the identity of that person and evidence of their address. A current valid passport or driving license should be requested. The current permanent address given should be verified by means of a utility bill or official notice. Obviously it will be more difficult to establish the identity of non-resident individuals that are not met face-to-face and a practitioner should seek to verify insofar as it is possible the information obtained in respect of personal identity and address verification.

CONCLUSION

It is abundantly clear that Practitioners will have to give very careful consideration to the terms of the money laundering regulations and

the guidance notes prepared by their professional body or institute to ensure that they do not fall foul of these regulations. While the letter of the law is, by and large, quite clear, the interaction from a practical perspective between the regulations and the action that will / may be taken by the Revenue / Gardai on foot of reports made and the interaction between the Revenue / Gardai and other State bodies remains to be seen. It is without question, however, that the professional organisations will need to consult with Revenue / the Gardai with a view to addressing genuine questions which are likely to arise from Practitioners who are obviously keen to comply with the regulations (where appropriate) and, at the same time, not reporting transactions which do not require to be reported.

© **Eoin Cunneen**
L. K. Shields, Solicitors
September 2003. All Rights Reserved

Note: This paper is intended to give general guidance and should not be relied upon as legal advice. Specific legal advice should be taken on each particular factual situation.

4 Decision Tree: Reporting on Money Laundering

