



Number 6 of 2010

**CRIMINAL JUSTICE (MONEY LAUNDERING AND
TERRORIST FINANCING) ACT 2010**

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**CRIMINAL JUSTICE (MONEY LAUNDERING AND
TERRORIST FINANCING) ACT 2010**

AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING; TO PROVIDE FOR THE REGISTRATION OF PERSONS DIRECTING PRIVATE MEMBERS' CLUBS; TO PROVIDE FOR THE AMENDMENT OF THE CENTRAL BANK ACT 1942 AND THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961; TO PROVIDE FOR THE CONSEQUENTIAL REPEAL OF CERTAIN PROVISIONS OF THE CRIMINAL JUSTICE ACT 1994; THE CONSEQUENTIAL AMENDMENT OF CERTAIN ENACTMENTS AND THE REVOCATION OF CERTAIN STATUTORY INSTRUMENTS; AND TO PROVIDE FOR RELATED MATTERS.

[5th May, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Short title and commencement.

(2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

(3) An order under *subsection (2)* may, in respect of the repeal of the provisions of the Criminal Justice Act 1994 specified in *section 4*, and the revocation of the statutory instruments specified in *Schedule 1* effected by *section 4(2)*, appoint different days for the repeal of different provisions of the Criminal Justice Act 1994 and the revocation of different statutory instruments or different provisions of them.

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Interpretation. 2.—(1) In this Act—

“Implementing Directive” means Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed person” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis¹;

“Minister” means the Minister for Justice, Equality and Law Reform;

“money laundering” means an offence under *Part 2*;

“prescribed” means prescribed by the Minister by regulations made under this Act;

“property” means all real or personal property, whether or not heritable or moveable, and includes money and choses in action and any other intangible or incorporeal property;

“terrorist financing” means an offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005;

“Third Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing², as amended by the following:

(a) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC³;

(b) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC⁴.

(2) A word or expression used in this Act and also in the Third Money Laundering Directive or the Implementing Directive has, unless the contrary intention appears, the same meaning in this Act as in that Directive.

Regulations. 3.—(1) The Minister may, after consulting with the Minister for Finance, by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

¹OJ L 214, 4.8.2006, p. 29

²OJ L 309, 25.11.2005, p.15

³OJ L 319, 5.12.2007, p.1

⁴OJ L 267, 10.10.2009, p.7

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

4.—(1) Sections 31, 32, 32A, 57(1) to (6) and (7)(a), 57A and 58(2) of the Criminal Justice Act 1994 are repealed. Repeals and revocations.

(2) The statutory instruments specified in *column (1)* of *Schedule I* are revoked to the extent specified in *column (3)* of that Schedule.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas and the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas. Expenses.

PART 2

MONEY LAUNDERING OFFENCES

6.—In this Part— Interpretation (*Part 2*).
“criminal conduct” means—

- (a) conduct that constitutes an offence, or
- (b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State;

“proceeds of criminal conduct” means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of this Part.

7.—(1) A person commits an offence if— Money laundering occurring in State.
(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

- (i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;
- (ii) converting, transferring, handling, acquiring, possessing or using the property;

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(iii) removing the property from, or bringing the property into, the State,

and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

(2) A person who attempts to commit an offence under *subsection (1)* commits an offence.

(3) A person who commits an offence under this section is liable—

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

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

(4) A reference in this section to knowing or believing that property is the proceeds of criminal conduct includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct.

(5) For the purposes of *subsections (1) and (2)*, a person is reckless as to whether or not property is the proceeds of criminal conduct if the person disregards, in relation to property, a risk of such a nature and degree that, considering the circumstances in which the person carries out any act referred to in *subsection (1) or (2)*, the disregard of that risk involves culpability of a high degree.

(6) For the purposes of *subsections (1) and (2)*, a person handles property if the person—

(a) receives, or arranges to receive, the property, or

(b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person.

(7) A person does not commit an offence under this section in relation to the doing of any thing in relation to property that is the proceeds of criminal conduct so long as—

(a) the person does the thing in accordance with a direction, order or authorisation given under *Part 3*, or

(b) without prejudice to the generality of *paragraph (a)*, the person is a designated person, within the meaning of *Part 4*, who makes a report in relation to the property, and does the thing, in accordance with *section 42*.

Money laundering outside State in certain circumstances.

8.—(1) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *section 7* commits an offence if any of the following circumstances apply:

(a) the conduct takes place on board an Irish ship, within the meaning of *section 9* of the Mercantile Marine Act 1955,

- (b) the conduct takes place on an aircraft registered in the State,
 - (c) the conduct constitutes an offence under the law of that place and the person is—
 - (i) an individual who is a citizen of Ireland or ordinarily resident in the State, or
 - (ii) a body corporate established under the law of the State or a company registered under the Companies Acts,
 - (d) a request for the person's surrender, for the purpose of trying him or her for an offence in respect of the conduct, has been made under Part II of the Extradition Act 1965 by any country and the request has been finally refused (whether or not as a result of a decision of a court), or
 - (e) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct, and a final determination has been made that—
 - (i) the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003, or
 - (ii) the person should not be surrendered to the issuing state.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under this section is, in a case where *subsection (1)(c)* applies, taken to be ordinarily resident in the State on the date of the commission of the offence.

(4) In this section, “European arrest warrant” and “issuing state” have the same meanings as they have in the European Arrest Warrant Act 2003.

9.—(1) A person who attempts, in a place outside the State, to commit an offence under *section 7(1)* is guilty of an offence.

Attempts, outside State, to commit offence in State.

(2) A person who commits an offence under this section is liable—

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

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

Aiding, abetting, counselling or procuring outside State commission of offence in State.

10.—(1) A person who, in a place outside the State, aids, abets, counsels or procures the commission of an offence under *section 7* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

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

(3) This section is without prejudice to section 7(1) of the Criminal Law Act 1997.

Presumptions and other matters.

11.—(1) In this section “specified conduct” means any of the following acts referred to in *section 7(1)* (including *section 7(1)* as applied by *section 8* or *9*):

- (a) concealing or disguising the true nature, source, location, disposition, movement or ownership of property, or any rights relating to property;
- (b) converting, transferring, handling, acquiring, possessing or using property;
- (c) removing property from, or bringing property into, the State or a place outside the State.

(2) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged, or attempted to engage, in specified conduct in relation to property that is the proceeds of criminal conduct, in circumstances in which it is reasonable to conclude that the accused—

- (a) knew or believed the property was the proceeds of criminal conduct, or
- (b) was reckless as to whether or not the property was the proceeds of criminal conduct,

the accused is presumed to have so known or believed, or been so reckless, unless the court or jury, as the case may be, is satisfied, having regard to the whole of the evidence, that there is a reasonable doubt that the accused so knew or believed or was so reckless.

(3) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances are evidence that the property is the proceeds of criminal conduct.

(4) For the purposes of *subsection (3)*, circumstances in which it is reasonable to conclude that property is the proceeds of criminal conduct include any of the following:

- (a) the value of the property concerned is, it is reasonable to conclude, out of proportion to the income and expenditure of the accused or another person in a case where the accused engaged in the specified conduct concerned on behalf of, or at the request of, the other person;
- (b) the specified conduct concerned involves the actual or purported purchase or sale of goods or services for an amount that is, it is reasonable to conclude, out of proportion to the market value of the goods or services (whether the amount represents an overvaluation or an undervaluation);
- (c) the specified conduct concerned involves one or more transactions using false names;
- (d) the accused has stated that he or she engaged in the specified conduct concerned on behalf of, or at the request of, another person and has not provided information to the Garda Síochána enabling the other person to be identified and located;
- (e) where an accused has concealed or disguised the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property, the accused has no reasonable explanation for that concealment or disguise.

(5) Nothing in *subsection (4)* limits the circumstances in which it is reasonable to conclude, for the purposes of *subsection (3)*, that property is the proceeds of criminal conduct.

(6) Nothing in this section prevents *subsections (2) and (3)* being applied in the same proceedings.

(7) *Subsections (2) to (6)* extend to proceedings for an offence under—

- (a) *section 10*, or
- (b) section 7(1) of the Criminal Law Act 1997 of aiding, abetting, counselling or procuring the commission of an offence under *section 7, 8 or 9*,

and for that purpose any reference to an accused in *subsections (2) to (6)* is to be construed as a reference to a person who committed, or is alleged to have committed, the offence concerned.

(8) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not necessary, in order to prove that property is the proceeds of criminal conduct, to establish that—

- (a) a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property, or

(b) a particular person committed an offence comprising criminal conduct in relation to the property.

(9) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not a defence for the accused to show that the accused believed the property concerned to be the proceeds of a particular offence comprising criminal conduct when in fact the property was the proceeds of another offence.

Location of proceedings relating to offences committed outside State.

12.—Proceedings for an offence under *section 8, 9 or 10* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Consent of DPP required for proceedings for offences committed outside State.

13.—If a person is charged with an offence under *section 8, 9 or 10*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

Certificate may be evidence in proceedings under this Part.

14.—(1) In any proceedings for an offence under this Part in which it is alleged that property the subject of the offence is the proceeds of criminal conduct occurring in a place outside the State, a certificate—

(a) purporting to be signed by a lawyer practising in the place, and

(b) stating that such conduct is an offence in that place,

is evidence of the matters referred to in that certificate, unless the contrary is shown.

(2) A certificate referred to in *subsection (1)* is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(3) In a case where a certificate referred to in *subsection (1)* is written in a language other than the Irish language or the English language, unless the contrary is shown—

(a) a document purporting to be a translation of that certificate into the Irish language or the English language, as the case may be, and that is certified as correct by a person appearing to be competent to so certify, is taken—

(i) to be a correct translation of the certificate, and

(ii) to have been certified by the person purporting to have certified it,

and

(b) the person is taken to be competent to so certify.

(4) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(c)*, a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

- (a) a passport was issued by that Department to a person on a specified date, and
- (b) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(5) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(d)* or *(e)*, a certificate purporting to be signed by the Minister and stating any of the matters referred to in that paragraph is evidence of those matters, and is taken to have been signed by the Minister, unless the contrary is shown.

15.—A person who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under *section 8, 9 or 10* consisting of the conduct, or substantially the same conduct, that constituted the offence of which the person has been acquitted or convicted.

Double jeopardy.

16.—For the avoidance of doubt, a reference in this Part to an offence under the law of a place outside the State includes a reference to an offence in connection with taxes, duties, customs or exchange regulation.

Revenue offence committed outside State.

PART 3

DIRECTIONS, ORDERS AND AUTHORISATIONS RELATING TO INVESTIGATIONS

17.—(1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, direct a person not to carry out any specified service or transaction during the period specified in the direction, not exceeding 7 days, if the member is satisfied that, on the basis of information that the Garda Síochána has obtained or received (whether or not in a report made under *Chapter 4 of Part 4*), such a direction is reasonably necessary to enable the Garda Síochána to carry out preliminary investigations into whether or not there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

Direction or order not to carry out service or transaction.

(2) A judge of the District Court may order a person not to carry out any specified service or transaction during the period specified in the order, not exceeding 28 days, if satisfied by information on oath of a member of the Garda Síochána, that—

- (a) there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing, and
- (b) an investigation of a person for that money laundering or terrorist financing is taking place.

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(3) An order may be made, under *subsection (2)*, in relation to a particular service or transaction, on more than one occasion.

(4) An application for an order under *subsection (2)* shall be made to a judge of the District Court assigned to the district in which the order is proposed to be served.

(5) A person who fails to comply with a direction or order under this section commits an offence and is liable—

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

(6) Any act or omission by a person in compliance with a direction or order under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

Notice of direction or order.

18.—(1) As soon as practicable after a direction is given or order is made under *section 17*, the member of the Garda Síochána who gave the direction or applied for the order shall ensure that any person who the member is aware is affected by the direction or order is given notice, in writing, of the direction or order unless—

- (a) it is not reasonably practicable to ascertain the whereabouts of the person, or
- (b) there are reasonable grounds for believing that disclosure to the person would prejudice the investigation in respect of which the direction or order is given.

(2) Notwithstanding *subsection (1)(b)*, a member of the Garda Síochána shall give notice, in writing, of a direction or order under this section to any person who is, or appears to be, affected by it as soon as practicable after the Garda Síochána becomes aware that the person is aware that the direction has been given or order has been made.

(3) Nothing in *subsection (1)* or (2) requires notice to be given to a person to whom a direction is given or order is addressed under this section.

(4) A notice given under this section shall include the reasons for the direction or order concerned and advise the person to whom the notice is given of the person's right to make an application under *section 19* or *20*.

(5) The reasons given in the notice need not include details the disclosure of which there are reasonable grounds for believing would prejudice the investigation in respect of which the direction is given or order is made.

Revocation of direction or order on application.

19.—(1) At any time while a direction or order is in force under *section 17*, a judge of the District Court may revoke the direction or order if the judge is satisfied, on the application of a person affected

by the direction or order, as the case may be, that the matters referred to in *section 17(1)* or *(2)* do not, or no longer, apply.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

20.—(1) At any time while a direction or order is in force under *section 17*, in relation to property, a judge of the District Court may, on application by any person affected by the direction or order concerned, as the case may be, make any order that the judge considers appropriate in relation to any of the property concerned if satisfied that it is necessary to do so for the purpose of enabling the person—

Order in relation to property subject of direction or order.

- (a) to discharge the reasonable living and other necessary expenses, including legal expenses in or in relation to legal proceedings, incurred or to be incurred in respect of the person or the person's dependants, or
- (b) to carry on a business, trade, profession or other occupation to which any of the property relates.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

21.—(1) A direction or order under *section 17* ceases to have effect on the cessation of an investigation into whether the service or transaction the subject of the direction or order would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

Cessation of direction or order on cessation of investigation.

(2) As soon as practicable after a direction or order under *section 17* ceases, as a result of *subsection (1)*, to have effect, a member of the Garda Síochána shall give notice in writing of the fact that the direction or order has ceased to have effect to—

- (a) the person to whom the direction or order has been given, and
- (b) any other person who the member is aware is affected by the direction or order.

22.—A report made under *Chapter 4 of Part 4* shall not be disclosed, in the course of proceedings under *section 17* or *19*, to any person other than the judge of the District Court concerned.

Suspicious transaction report not to be disclosed.

23.—(1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, authorise a person to do a thing referred to in *section 7(1)* if the member is satisfied that the thing is necessary for the purposes of an investigation into an offence.

Authorisation to proceed with act that would otherwise comprise money laundering.

(2) The doing of any thing in accordance with an authorisation under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

(3) *Subsection (2)* is without prejudice to *section 7(7)*.

PART 4

PROVISIONS RELATING TO FINANCE SERVICES INDUSTRY, PROFESSIONAL SERVICE PROVIDERS AND OTHERS

CHAPTER 1

Interpretation (Part 4)

Definitions.

24.—(1) In this Part—

“barrister” means a practising barrister;

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

“business relationship”, in relation to a designated person and a customer of the person, means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing;

“competent authority” has the meaning assigned to it by *sections 60 and 61*;

“credit institution” means—

- (a) a credit institution within the meaning of Article 4(1) of the Recast Banking Consolidation Directive, or
- (b) An Post in respect of any activity that it carries out, whether as principal or agent, that would render it, or a principal for whom it is an agent, a credit institution as a result of the application of *paragraph (a)*;

“customer”—

- (a) in relation to an auditor, means—
 - (i) a body corporate to which the auditor has been appointed as an auditor, or
 - (ii) in the case of an auditor appointed to audit the accounts of an unincorporated body of persons or of an individual, the unincorporated body or the individual,
- (b) in relation to a relevant independent legal professional, includes, in the case of the provision of services by a barrister, a person who is a client of a solicitor seeking advice from the barrister for or on behalf of the client and does not, in that case, include the solicitor, or
- (c) in relation to a trust or company service provider, means a person with whom the trust or company service provider has an arrangement to provide services as such a service provider;

“Department” means the Department of Justice, Equality and Law Reform;

“designated accountancy body” means a prescribed accountancy body, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003;

“designated person” has the meaning assigned to it by *section 25*;

“EEA State” means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC⁵;

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

“financial institution” means—

- (a) an undertaking that carries out one or more of the activities listed in points 2 to 12, 14 and 15 of Annex I to the Recast Banking Consolidation Directive (the text of which is set out for convenience of reference in *Schedule 2*) or foreign exchange services, but does not include an undertaking—
 - (i) that does not carry out any of the activities listed in those points other than one or more of the activities listed in point 7, and
 - (ii) whose only customers (if any) are members of the same group as the undertaking,
- (b) an insurance company that carries out the activities covered by the Life Assurance Consolidation Directive and is authorised in accordance with that Directive,
- (c) a person, other than a person falling within Article 2 of the Markets in Financial Instruments Directive, whose regular occupation or business is—
 - (i) the provision to other persons of an investment service, within the meaning of that Directive, or
 - (ii) the performance of an investment activity within the meaning of that Directive,
- (d) an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act),

⁵OJ L 267, 10.10.2009, p.7

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- (e) a collective investment undertaking that markets or otherwise offers its units or shares,
- (f) an insurance intermediary within the meaning of the Insurance Mediation Directive (other than a tied insurance intermediary within the meaning of that Directive) that provides life assurance or other investment related services, or
- (g) An Post, in respect of any activity it carries out, whether as principal or agent—
 - (i) that would render it, or a principal for whom it is an agent, a financial institution as a result of the application of any of the foregoing paragraphs,
 - (ii) that is listed in point 1 of Annex I to the Recast Banking Consolidation Directive, or
 - (iii) that would render it, or a principal for whom it is an agent, an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act) if section 2(6) of that Act did not apply;

“group”, other than in the definition in this subsection of “public body”, has the same meaning as in Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council⁶;

“Insurance Mediation Directive” means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation⁷;

“Life Assurance Consolidation Directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance⁸;

“Markets in Financial Instruments Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC⁹;

“member”, in relation to a designated accountancy body, means a member, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003, of a designated accountancy body;

“member”, in relation to the Irish Taxation Institute, means a person who is subject to the professional and ethical standards of the Institute, including its investigation and disciplinary procedures, but

⁶OJ L 35, 11.2.2003, p. 1

⁷OJ L 9, 15.1.2003, p. 3

⁸OJ L 345, 19.12.2002, p. 1

⁹OJ L 145, 30.4.2004, p. 1

does not include a person who is admitted to its membership as a student;

“occasional transaction”, in relation to a customer of a designated person, means a single transaction, or a series of transactions that are or appear to be linked to each other, where—

- (a) the designated person does not have a business relationship with the customer, and
- (b) the total amount of money paid by the customer in the single transaction or series is greater than €15,000;

“payment service” has the same meaning as in the Payment Services Directive;

“Payment Services Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC¹⁰;

“professional service provider” means an auditor, external accountant, tax adviser, relevant independent legal professional or trust or company service provider;

“property service provider” means a person who by way of business carries out any of the following services in respect of property located in or outside the State:

- (a) the auction of property other than land;
- (b) the purchase or sale, by whatever means, of land;

but does not include a service provided by a local authority in the course of the performance of its statutory functions under any statutory provision;

“public body” means a body, organisation or group—

- (a) specified in paragraph 1(1) to (4) of the First Schedule to the Freedom of Information Act 1997 (including as construed by paragraph 4 of that Schedule), or
- (b) established by or under an enactment and prescribed by regulations for the purposes of paragraph 1(5) of the First Schedule to that Act;

“Recast Banking Consolidation Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)¹¹, as amended by the following:

- (a) the Payment Services Directive;
- (b) the Electronic Money Directive;

“regulated market” means—

¹⁰OJ L 319, 5.12.2007, p.1

¹¹OJ L 177, 30.6.2006, p.1

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- (a) a regulated financial market that is in an EEA State and is included in any list published by the European Commission (including any list on the Commission’s website), and in force, under Article 47 of the Markets in Financial Instruments Directive,
- (b) a regulated financial market in a place other than an EEA State, being a place that imposes, on companies whose securities are admitted to trading on the market, disclosure requirements consistent with legislation of the European Communities, or
- (c) a prescribed regulated financial market;

“relevant independent legal professional” means a barrister, solicitor or notary who carries out any of the following services:

- (a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:
 - (i) buying or selling land or business entities;
 - (ii) managing the money, securities or other assets of clients;
 - (iii) opening or managing bank, savings or securities accounts;
 - (iv) organising contributions necessary for the creation, operation or management of companies;
 - (v) creating, operating or managing trusts, companies or similar structures or arrangements;
- (b) acting for or on behalf of clients in financial transactions or transactions relating to land;

“relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Taxation Institute;

“solicitor” means a practising solicitor;

“State competent authority” has the meaning assigned to it by section 62;

“tax adviser” means a person who by way of business provides advice about the tax affairs of other persons;

“transaction” means—

- (a) in relation to a professional service provider, any transaction that is carried out in connection with a customer of the provider and that is—
 - (i) in the case of a provider acting as an auditor, the subject of an audit carried out by the provider in respect of the accounts of the customer,
 - (ii) in the case of a provider acting as an external accountant or tax adviser, or as a trust or company service

provider, the subject of a service carried out by the provider for the customer, or

- (iii) in the case of a provider acting as a relevant independent legal professional, the subject of a service carried out by the professional for the customer of a kind referred to in *paragraph (a) or (b)* of the definition of “relevant independent legal professional” in this subsection;

and

- (b) in relation to a casino or private members’ club, a transaction, such as the purchase or exchange of tokens or chips, or the placing of a bet, carried out in connection with gambling activities carried out on the premises of the casino or club by a customer of the casino or club;

“trust or company service provider” means any person whose business it is to provide any of the following services:

- (a) forming companies or other bodies corporate;
- (b) acting as a director or secretary of a company under an arrangement with a person other than the company;
- (c) arranging for another person to act as a director or secretary of a company;
- (d) acting, or arranging for a person to act, as a partner of a partnership;
- (e) providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership;
- (f) acting, or arranging for another person to act, as a trustee of a trust;
- (g) acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

(2) The Minister may prescribe a regulated financial market for the purposes of the definition of “regulated market” in *subsection (1)* only if the Minister is satisfied that the market is in a place other than an EEA State that imposes, on companies whose securities are admitted to trading on the market, disclosure requirements consistent with legislation of the European Communities.

25.—(1) In this Part, “designated person” means any person, acting in the State in the course of business carried on by the person in the State, who or that is—

Meaning of “designated person”.

- (a) a credit institution, except as provided by *subsection (4)*,
- (b) a financial institution, except as provided by *subsection (4)*,
- (c) an auditor, external accountant or tax adviser,
- (d) a relevant independent legal professional,

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- (e) a trust or company service provider,
- (f) a property service provider,
- (g) a casino,
- (h) a person who effectively directs a private members' club at which gambling activities are carried on, but only in respect of those gambling activities,
- (i) any person trading in goods, but only in respect of transactions involving payments, to the person in cash, of a total of at least €15,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other), or
- (j) any other person of a prescribed class.

(2) For the purposes of this Part, a person is to be treated as a designated person only in respect of those activities or services that render the person a designated person.

(3) A reference in this Part to a designated person does not include a reference to any of the following:

- (a) the Minister for Finance;
- (b) the Central Bank and Financial Services Authority of Ireland;
- (c) the National Treasury Management Agency.

(4) A person is not to be treated as a designated person for the purposes of this Part solely as a result of operating as a credit institution or financial institution, in the course of business, if—

- (a) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution is €70,000 (or such other amount as may be prescribed) or less,
- (b) the total of any single transaction, or a series of transactions that are or appear to be linked to each other, in respect of which the person operates as a credit institution or financial institution does not exceed €1,000 (or such other lesser amount as may be prescribed),
- (c) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution does not exceed 5 per cent of the business's total annual turnover,
- (d) the person's operation as a credit institution or financial institution is directly related and ancillary to the person's main business activity, and
- (e) the person provides services when operating as a credit institution or financial institution only to persons who are customers in respect of the person's main business activity, rather than to members of the public in general.

(5) *Subsection (4)* does not apply in relation to any prescribed class of person.

(6) For the avoidance of doubt and without prejudice to the generality of *subsection (1)(a)* or *(b)*, a credit or financial institution that acts in the State in the course of business carried on by the institution in the State, by means of a branch situated in the State, is a designated person whether or not the institution is incorporated, or the head office of the institution is situated, in a place other than in the State.

(7) The Minister may prescribe a class of persons for the purposes of *subsection (1)(j)* only if the Minister is satisfied that any of the business activities engaged in by the class—

(a) may be used for the purposes of—

- (i) money laundering,
- (ii) terrorist financing, or
- (iii) an offence that corresponds or is similar to money laundering or terrorist financing under the law of a place outside the State,

or

(b) are of a kind likely to result in members of the class obtaining information on the basis of which they may become aware of, or suspect, the involvement of customers or others in money laundering or terrorist financing.

(8) The Minister may, in any regulations made under *subsection (7)* prescribing a class of persons, apply to the class such exemptions from, or modifications to, provisions of this Act as the Minister considers appropriate, having regard to any risk that the business activities engaged in by the class may be used for a purpose referred to in *paragraph (a)* of that subsection.

(9) The Minister may prescribe an amount for the purposes of *paragraph (a)* or *(b)* of *subsection (4)*, in relation to a person's business activities as a credit institution or financial institution, only if the Minister is satisfied that, in prescribing the amount, the purposes of that subsection will likely be fulfilled, including that—

- (a) those activities are carried out by the person on a limited basis, and
- (b) there is little risk that those activities may be used for a purpose referred to in *subsection (7)(a)*.

(10) The Minister may prescribe a class of persons for the purpose of *subsection (5)* only if the Minister is satisfied that the application of *subsection (4)* to the class involves an unacceptable risk that the business activities engaged in by the class may be used for a purpose referred to in *subsection (7)(a)*.

Beneficial owner in relation to bodies corporate.

26.—In this Part, “beneficial owner”, in relation to a body corporate, means any individual who—

- (a) in the case of a body corporate other than a company having securities listed on a regulated market, ultimately owns or controls, whether through direct or indirect ownership or control (including through bearer shareholdings), more than 25 per cent of the shares or voting rights in the body, or
- (b) otherwise exercises control over the management of the body.

Beneficial owner in relation to partnerships.

27.—In this Part, “beneficial owner”, in relation to a partnership, means any individual who—

- (a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership, or
- (b) otherwise exercises control over the management of the partnership.

Beneficial owner in relation to trusts.

28.—(1) In this section, “trust” means a trust that administers and distributes funds.

(2) In this Part, “beneficial owner”, in relation to a trust, means any of the following:

- (a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in at least 25 per cent of the capital of the trust property;
- (b) in the case of a trust other than one that is set up or operates entirely for the benefit of individuals referred to in *paragraph (a)*, the class of individuals in whose main interest the trust is set up or operates;
- (c) any individual who has control over the trust.

(3) For the purposes of and without prejudice to the generality of *subsection (2)*, an individual who is the beneficial owner of a body corporate that—

- (a) is entitled to a vested interest of the kind referred to in *subsection (2)(a)*, or
- (b) has control over the trust,

is taken to be entitled to the vested interest or to have control over the trust (as the case may be).

(4) Except as provided by *subsection (5)*, in this section “control”, in relation to a trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary the trust;
- (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
- (d) appoint or remove trustees;
- (e) direct, withhold consent to or veto the exercise of any power referred to in *paragraphs (a) to (d)*.

(5) For the purposes of the definition of “control” in *subsection (4)*, an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

29.—In this Part, “beneficial owner”, in relation to an estate of a deceased person in the course of administration, means the executor or administrator of the estate concerned. Beneficial owner in relation to estates of deceased persons.

30.—(1) In this Part, “beneficial owner”, in relation to a legal entity or legal arrangement, other than where *section 26, 27 or 28*, applies, means— Other persons who are beneficial owners.

- (a) if the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25 per cent of the property of the entity or arrangement,
- (b) if the individuals who benefit from the entity or arrangement have yet to be determined, the class of such individuals in whose main interest the entity or arrangement is set up or operates, and
- (c) any individual who exercises control over at least 25 per cent of the property of the entity or arrangement.

(2) For the purposes of and without prejudice to the generality of *subsection (1)*, any individual who is the beneficial owner of a body corporate that benefits from or exercises control over the property of the entity or arrangement is taken to benefit from or exercise control over the property of the entity or arrangement.

(3) In this Part, “beneficial owner”, in relation to a case other than a case to which *section 26, 27, 28 or 29*, or *subsection (1)* of this section, applies, means any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.

(4) In this section, “arrangement” or “entity” means an arrangement or entity that administers and distributes funds.

CHAPTER 2

Designation of places other than Member States — procedures for detecting money laundering or terrorist financing

Designation of places imposing requirements equivalent to Third Money Laundering Directive.

31.—(1) For the purposes of the definition of “acceptable institution” in *section 33* and its application in that section, the definition of “specified customers” in *section 34* and its application in that section and *section 36*, the definition of “relevant third party” in *section 40* and its application in that section, and for the purposes of *sections 34(2)(b)(ii), 51(2) and (3) and 52(2)*, the Minister may, after consultation with the Minister for Finance, by order designate a place other than a Member State if the Minister is satisfied that the place imposes requirements equivalent to those specified in the Third Money Laundering Directive.

(2) The designation of a place other than a Member State under this section does not apply so long as the place is the subject of a decision adopted by the European Commission and in force, under Articles 40(4) and 41(2) of the Third Money Laundering Directive.

Designation of places having inadequate procedures for detection of money laundering or terrorist financing.

32.—(1) The Minister may, after consultation with the Minister for Finance, by order designate a place that is not a Member State, for the purposes of *sections 34(3), 36(2) and 43*, if the Minister is satisfied that the place does not have adequate procedures in place for the detection of money laundering or terrorist financing.

(2) A place that is the subject of a decision adopted by the European Commission and in force, under Articles 40(4) and 41(2) of the Third Money Laundering Directive is taken to have been designated under this section.

CHAPTER 3

Customer Due Diligence

Identification and verification of customers and beneficial owners.

33.—(1) A designated person shall apply the measures specified in *subsections (2) and, where applicable, (4)*, in relation to a customer of the designated person—

- (a) prior to establishing a business relationship with the customer,
- (b) prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,
- (c) prior to carrying out any service for the customer, if the person has reasonable grounds to believe that there is a real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing, based on any of the following, or other, circumstances:
 - (i) the customer, or the type of customer, concerned;
 - (ii) if the person has a business relationship with the customer, the type of business relationship concerned;

- (iii) the type of service or of any transaction or product in respect of which the service is sought;
- (iv) the purpose (or the customer's explanation of the purpose) of the service or of any transaction or product in respect of which the service is sought;
- (v) the value of any transaction or product in respect of which the service is sought;
- (vi) the source (or the customer's explanation of the source) of funds for any such transaction or product,

or

(d) prior to carrying out any service for the customer if—

- (i) the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer, whether obtained under this section or section 32 of the Criminal Justice Act 1994 ("the 1994 Act") prior to its repeal by this Act or under any administrative arrangements that the person may have applied before section 32 of the 1994 Act operated in relation to the person, and
- (ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer.

(2) The measures that shall be applied by a designated person under *subsection (1)* are as follows:

- (a) identifying the customer, and verifying the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including—
 - (i) documents from a government source (whether or not a State government source), or
 - (ii) any prescribed class of documents, or any prescribed combination of classes of documents;
- (b) identifying any beneficial owner connected with the customer or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—
 - (i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is, and
 - (ii) in the case of a legal entity or legal arrangement of a kind referred to in *section 26, 27, 28 or 30*, to understand the ownership and control structure of the entity or arrangement concerned.

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(3) Nothing in *subsection (2)(a)(i)* or *(ii)* limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

(4) Without prejudice to the generality of *subsection (2)(a)*, one or more of the following measures shall be applied by a designated person under *subsection (1)*, where a customer who is an individual does not present to the designated person for verification in person of the customer's identity:

- (a) verification of the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe are reliable as confirmation of the identity of the customer in addition to any documents or information that would ordinarily have been used to verify the customer's identity if the customer had presented to the designated person for verification in person of the customer's identity;
- (b) verification of documents supplied, for the purposes of verifying the identity of the customer under this section, to the designated person by the customer;
- (c) verification of the customer's identity on the basis of confirmation received from an acceptable institution that the customer is, or has been, a customer of that institution;
- (d) ensuring that one or more of the following transactions is carried out through an account in the customer's name with an acceptable institution that is a credit institution:
 - (i) the first payment made by the customer to the designated person for the provision of a service;
 - (ii) in the case of a designated person acting for or on behalf of the customer in respect of a financial transaction or a transaction relating to land, the first payment made by the customer in respect of the transaction;
 - (iii) in the case of a designated person that is another credit institution or is a financial institution, the first payment made by the customer to the designated person for the provision of a product;
 - (iv) in the case of a designated person that is another credit institution, the first occasion on which credit is received by the customer from the designated person or on which money is deposited with the designated person by the customer;
 - (v) in the case of a designated person trading in goods in respect of transactions involving payments as referred to in *section 25(1)(i)*, the first such payment made by the customer to the designated person.

(5) Notwithstanding *subsection (1)(a)*, a designated person may verify the identity of a customer or beneficial owner, in accordance

with *subsections (2) and, where applicable, (4), during the establishment of a business relationship with the customer if the designated person has reasonable grounds to believe that—*

- (a) verifying the identity of the customer or beneficial owner (as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business, and
- (b) there is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing,

but the designated person shall take reasonable steps to verify the identity of the customer or beneficial owner, in accordance with *subsections (2) and, where applicable, (4), as soon as practicable.*

(6) Notwithstanding *subsection (1)(a)*, a credit institution may allow a bank account to be opened with it by a customer before verifying the identity of the customer or a beneficial owner, in accordance with *subsections (2) and, where applicable, (4)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before carrying out that verification.

(7) Notwithstanding *subsection (1)(a)*, a designated person may verify the identity of a beneficiary under a life assurance policy, in accordance with *subsections (2) and, where applicable, (4)*, after the business relationship concerned has been established, but the designated person shall carry out that verification before—

- (a) the policy is paid out, or
- (b) the beneficiary exercises any other right vested under the policy.

(8) A designated person who is unable to apply the measures specified in *subsection (2) or (4)* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information required under this section—

- (a) shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified, and
- (b) shall discontinue the business relationship (if any) with the customer.

(9) Except as provided by *section 34*, a designated person who fails to comply with this section commits an offence and is liable—

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

(10) In this section, “acceptable institution” means a credit institution or financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) that—

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- (a) carries on business in the State as a designated person,
- (b) is situated in another Member State and supervised or monitored for compliance with requirements specified in the Third Money Laundering Directive, in accordance with Section 2 of Chapter V of that Directive, or
- (c) is situated in a place designated under *section 31* and supervised or monitored in the place for compliance with requirements equivalent to those specified in the Third Money Laundering Directive.

(11) The Minister may prescribe a class of documents, or a combination of classes of documents, for the purposes of *subsection (2)(a)(ii)*, only if the Minister is satisfied that the class or combination of documents would be adequate to verify the identity of customers of designated persons.

(12) For the purposes of *subsection (2)(a)(ii)*, the Minister may prescribe different classes of documents, or combinations of classes of documents, for different kinds of designated persons, customers, transactions, services or risks of money laundering or terrorist financing.

Exemptions from *section 33*.

34.—(1) A designated person is not required to apply the measures specified in *section 33(2)* if the customer or product concerned is a specified customer or specified product, as the case may be.

(2) A credit institution is not required to apply the measures specified in *section 33(2)(b)* in respect of the beneficial ownership of money held, or proposed to be held, in trust—

- (a) in a client account, within the meaning of the Solicitors (Amendment) Act 1994, or
- (b) in an account for clients of a person who by way of business, provides legal or notarial services to those clients—
 - (i) in a Member State and who is supervised or monitored for compliance with requirements specified in the Third Money Laundering Directive, in accordance with Section 2 of Chapter V of that Directive, or
 - (ii) in a place that is designated under *section 31* and who is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Third Money Laundering Directive.

(3) A designated person shall not apply the exemptions provided for in *subsections (1)* and *(2)* in any of the following circumstances:

- (a) the customer concerned is from a place that is designated under *section 32*;
- (b) *section 33(1)(c)* or *(d)* or *(4)* applies;
- (c) the designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned, under *section 37*.

(4) A credit institution may apply the exemption provided for in *subsection (2)* in relation to the beneficial ownership of money held in trust in a credit institution only if the credit institution is satisfied that information on the identity of the beneficial owners of the money held in the account is available, on request, to the credit institution.

(5) For the purposes of this section, a specified customer is—

(a) a credit institution or financial institution that—

- (i) carries on business in the State as a designated person,
- (ii) is situated in another Member State and supervised or monitored for compliance with requirements laid down in the Third Money Laundering Directive, in accordance with Section 2 of Chapter V of that Directive, or
- (iii) is situated in a place designated under *section 31* and supervised or monitored in the place for compliance with requirements equivalent to those laid down in the Third Money Laundering Directive,

(b) a listed company whose securities are admitted to trading on a regulated market,

(c) a public body, or

(d) a body (whether incorporated or unincorporated) that—

- (i) has been entrusted with public functions under a provision of the treaties of the European Communities or under an Act adopted by an institution of the European Communities,
- (ii) in the reasonable opinion of the designated person concerned, the identity of the body is publicly available, transparent and certain,
- (iii) in the reasonable opinion of the designated person concerned, the activities of the body and its accounting practices are transparent, and
- (iv) the body is either accountable to an institution of the European Communities or to a public authority of a Member State.

(6) A reference in *subsection (5)* to a financial institution does not include a reference to an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both.

(7) For the purposes of this section, a specified product is—

(a) a life assurance policy having an annual premium of no more than €1,000 or a single premium of no more than €2,500,

(b) an insurance policy in respect of a pension scheme, being a policy that does not have a surrender clause and may not be used as collateral,

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- (c) a pension, superannuation or similar scheme that provides for retirement benefits to employees and where contributions to the scheme are made by deductions from wages and the rules of the scheme do not permit a member's interest under the scheme to be assigned, or
- (d) electronic money, within the meaning of the Electronic Money Directive, where—
 - (i) in a case where the electronic device concerned cannot be recharged, the monetary value that may be stored electronically on the device does not exceed €250 or, if the device cannot be used outside of the State, €500, or
 - (ii) in a case where the electronic device concerned can be recharged—
 - (I) the total monetary value of all amounts by which the device may be charged or recharged (or both), in any calendar year, including any initial stored value of the device on purchase if the device is purchased during the year, does not exceed €2,500, and
 - (II) none, or less than €1,000, of the electronic money may be redeemed by the issuer (as referred to in Article 11 of that Directive) in that year.

Special measures applying to business relationships.

35.—(1) A designated person shall obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of a business relationship with a customer prior to the establishment of the relationship.

(2) A designated person who is unable to obtain such information, as a result of any failure on the part of the customer, shall not provide the service sought by the customer for so long as the failure continues.

(3) A designated person shall monitor dealings with a customer with whom the person has a business relationship, including (to the extent reasonably warranted by the risk of money laundering or terrorist financing) by scrutinising transactions and the source of wealth or of funds for those transactions, to determine whether or not the transactions are consistent with—

- (a) the person's knowledge of the customer and the customer's business and pattern of transactions, and
- (b) any knowledge that the person may have that the customer may be involved in money laundering or terrorist financing.

(4) Except as provided by *section 36*, a designated person who fails to comply with this section commits an offence and is liable—

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

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

36.—(1) A designated person is not required to comply with *section 35(1)* if the designated person has reasonable grounds for believing that the customer or product concerned is a specified customer or specified product, as the case may be. Exemption from *section 35(1)*.

(2) The exemption provided for in *subsection (1)* does not apply to a designated person in any of the following circumstances:

- (a) the customer concerned is from a place that is designated under *section 32*;
- (b) *section 33(1)(c)* or *(d)* or *(4)* applies;
- (c) a designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned, under *section 37*.

(3) For the purposes of this section, “specified customer” and “specified product” have the same meanings as they have in *section 34*.

37.—(1) A designated person shall take steps to determine whether or not a customer, or a beneficial owner connected with the customer or service concerned, being a customer or beneficial owner residing in a place outside the State, is a politically exposed person or an immediate family member, or a close associate of, a politically exposed person. Enhanced customer due diligence — politically exposed persons.

(2) The designated person shall take the steps prior to—

- (a) establishing a business relationship with the customer, or
- (b) carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction.

(3) The steps to be taken are such steps as are reasonably warranted by the risk that the customer or beneficial owner (as the case may be) is involved in money laundering or terrorist financing.

(4) If a designated person knows or has reasonable grounds to believe that a customer residing in a place outside the State is a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall—

- (a) ensure that approval is obtained from any senior management of the designated person before a business relationship is established with the customer, and
- (b) determine the source of wealth and of funds for the following transactions—
 - (i) transactions the subject of any business relationship with the customer that are carried out with the customer or in respect of which a service is sought, or

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- (ii) any occasional transaction that the designated person carries out with, for or on behalf of the customer or that the designated person assists the customer to carry out.

(5) Notwithstanding *subsections (2)(a) and (4)(a)*, a credit institution may allow a bank account to be opened with it by a customer before taking the steps referred to in *subsection (1)* or seeking the approval referred to in *subsection (4)(a)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or any beneficial owner concerned before taking the steps or seeking the approval, as the case may be.

(6) If a designated person knows or has reasonable grounds to believe that a beneficial owner residing in a place outside the State, and connected with a customer or with a service sought by a customer, is a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall apply the measures specified in *subsection (4)(a) and (b)* in relation to the customer concerned.

(7) For the purposes of *subsections (4) and (6)*, a designated person is deemed to know that another person is a politically exposed person or an immediate family member or close associate of a politically exposed person if, on the basis of—

- (a) information in the possession of the designated person (whether obtained under *subsections (1) to (3)* or otherwise),
- (b) in a case where the designated person has contravened *subsection (1) or (2)*, information that would have been in the possession of the person if the person had complied with that provision, or
- (c) public knowledge,

there are reasonable grounds for concluding that the designated person so knows.

(8) A designated person who is unable to apply the measures specified in *subsection (1), (3), (4) or (6)* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information—

- (a) shall discontinue the business relationship (if any) with the customer for so long as the failure continues, and
- (b) shall not provide the service or carry out the transaction sought by the customer for so long as the failure continues.

(9) A person who fails to comply with this section commits an offence and is liable—

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

(10) In this section—

“close associate” of a politically exposed person includes any of the following persons:

- (a) any individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the politically exposed person;
- (b) any individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the politically exposed person;

“immediate family member” of a politically exposed person includes any of the following persons:

- (a) any spouse of the politically exposed person;
- (b) any person who is considered to be equivalent to a spouse of the politically exposed person under the national or other law of the place where the person or politically exposed person resides;
- (c) any child of the politically exposed person;
- (d) any spouse of a child of the politically exposed person;
- (e) any person considered to be equivalent to a spouse of a child of the politically exposed person under the national or other law of the place where the person or child resides;
- (f) any parent of the politically exposed person;
- (g) any other family member of the politically exposed person who is of a prescribed class;

“politically exposed person” means an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including either of the following individuals (but not including any middle ranking or more junior official):

- (a) a specified official;
- (b) a member of the administrative, management or supervisory body of a state-owned enterprise;

“specified official” means any of the following officials (including any such officials in an institution of the European Communities or an international body):

- (a) a head of state, head of government, government minister or deputy or assistant government minister;
- (b) a member of a parliament;
- (c) a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;

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- (d) a member of a court of auditors or of the board of a central bank;
- (e) an ambassador, chargé d'affaires or high-ranking officer in the armed forces.

(11) The Minister may prescribe a class of family member of a politically exposed person, for the purposes of *paragraph (g)* of the definition of “immediate family member” of a politically exposed person in *subsection (10)*, only if the Minister is satisfied that it would be appropriate for the provisions of this section to be applied in relation to members of the class, having regard to any heightened risk, arising from their close family relationship with the politically exposed person, that such members may be involved in money laundering or terrorist financing.

Enhanced customer due diligence — correspondent banking relationships.

38.—(1) A credit institution shall not enter into a correspondent banking relationship with another credit institution (“the respondent institution”) situated in a place other than a Member State unless, prior to commencing the relationship, the credit institution—

- (a) has gathered sufficient information about the respondent institution to understand fully the nature of the business of that institution,
 - (b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the respondent institution, and the quality of supervision or monitoring of the operation of that institution in the place, are sound,
 - (c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the respondent institution, that those controls are sound,
 - (d) has ensured that approval is obtained from the senior management of the credit institution,
 - (e) has documented the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent banking relationship and, in particular—
 - (i) the responsibilities of the credit institution arising under this Part, and
 - (ii) any responsibilities of the respondent institution arising under requirements equivalent to those specified in the Third Money Laundering Directive,
- and
- (f) in the case of a proposal that customers of the respondent institution have direct access to a payable-through account held with the credit institution in the name of the respondent institution, is satisfied on reasonable grounds that the respondent institution—
 - (i) has identified and verified the identity of those customers, and is able to provide to the credit institution, upon request, the documents (whether or not

in electronic form) or information used by the credit institution to identify and verify the identity, of those customers,

- (ii) has applied measures equivalent to the measure referred to in *section 35(1)* in relation to those customers, and
- (iii) is applying measures equivalent to the measure referred to in *section 35(3)* in relation to those customers.

(2) A credit institution that fails to comply with this section commits an offence and is liable—

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

39.—(1) Nothing in this Chapter prevents a designated person from applying measures in relation to a customer or beneficial owner that are additional to those specified in this Chapter, for the purposes of preventing or detecting money laundering or terrorist financing.

Designated person's discretion to apply additional enhanced customer due diligence measures.

(2) Without prejudice to the circumstances in which a designated person may apply such additional measures, the designated person may do so when the designated person considers that there is a heightened risk of money laundering or terrorist financing.

40.—(1) In this section, “relevant third party” means—

Reliance on other persons to carry out customer due diligence.

- (a) a person, carrying on business as a designated person in the State—
 - (i) that is a credit institution,
 - (ii) that is a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both),
 - (iii) who is an external accountant or auditor and who is also a member of a designated accountancy body,
 - (iv) who is a tax adviser, and who is also a solicitor or a member of a designated accountancy body or of the Irish Taxation Institute,
 - (v) who is a relevant independent legal professional, or
 - (vi) who is a trust or company service provider, and who is also a member of a designated accountancy body, a solicitor or authorised to carry on business by the Central Bank and Financial Services Authority of Ireland,

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- (b) a person carrying on business in another Member State who is supervised or monitored for compliance with the requirements specified in the Third Money Laundering Directive, in accordance with Section 2 of Chapter V of that Directive, and is—
- (i) a credit institution authorised to operate as a credit institution under the laws of the Member State,
 - (ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) and authorised to operate as a financial institution under the laws of the Member State, or
 - (iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the other Member State,

or

- (c) a person who carries on business in a place designated under *section 31*, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Third Money Laundering Directive, and is—
- (i) a credit institution authorised to operate as a credit institution under the laws of the place,
 - (ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or
 - (iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

(2) A reference in *subsection (1)(b)(iii)* and *(c)(iii)* to a legal professional is a reference to a person who, by way of business, provides legal or notarial services.

(3) Subject to *subsections (4)* and *(5)*, a designated person may rely on a relevant third party to apply, in relation to a customer of the designated person, any of the measures that the designated person is required to apply, in relation to the customer, under *section 33* or *35(1)*.

(4) A designated person may rely on a relevant third party to apply a measure under *section 33* or *35(1)* only if—

- (a) there is an arrangement between the designated person (or, in the case of a designated person who is an employee, the designated person's employer) and the relevant third party under which it has been agreed that the

designated person may rely on the relevant third party to apply any such measure, and

- (b) the designated person is satisfied, on the basis of the arrangement, that the relevant third party will forward to the designated person, as soon as practicable after a request from the designated person, any documents (whether or not in electronic form) or information relating to the customer that has been obtained by the relevant third party in applying the measure.

(5) A designated person who relies on a relevant third party to apply a measure under *section 33* or *35(1)* remains liable, under *section 33* or *35(1)*, for any failure to apply the measure.

(6) A reference in this section to a relevant third party on whom a designated person may rely to apply a measure under *section 33* or *35(1)* does not include a reference to a person who applies the measure as an outsourcing service provider or an agent of the designated person.

(7) Nothing in this section prevents a designated person applying a measure under *section 33* or *35(1)* by means of an outsourcing service provider or agent provided that the designated person remains liable for any failure to apply the measure.

CHAPTER 4

Reporting of suspicious transactions and of transactions involving certain places

41.—In this Chapter, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person. Interpretation (Chapter 4).

42.—(1) A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds. Requirement for designated persons and related persons to report suspicious transactions.

(2) The designated person shall make the report as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.

(3) For the purposes of *subsections (1) and (2)*, a designated person is taken not to have reasonable grounds to know or suspect that another person commits an offence on the basis of having received information until the person has scrutinised the information in the course of reasonable business practice (including automated banking transactions).

(4) For the purposes of *subsections (1) and (2)*, a designated person may have reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist

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financing if the designated person is unable to apply any measures specified in *section 33(2) or (4), 35(1) or 37(1), (3), (4) or (6)*, in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information.

(5) Nothing in *subsection (4)* limits the circumstances in which a designated person may have reasonable grounds, on the basis of information obtained in the course of carrying out business as a designated person, to suspect that another person has committed an offence of money laundering or terrorist financing.

(6) A designated person who is required to report under this section shall disclose the following information in the report:

- (a) the information on which the designated person's knowledge, suspicion or reasonable grounds are based;
- (b) the identity, if the designated person knows it, of the person who the designated person knows, suspects or has reasonable grounds to suspect has been or is engaged in an offence of money laundering or terrorist financing;
- (c) the whereabouts, if the designated person knows them, of the property the subject of the money laundering, or the funds the subject of the terrorist financing, as the case may be;
- (d) any other relevant information.

(7) A designated person who is required to make a report under this section shall not proceed with any suspicious transaction or service connected with the report, or with a transaction or service the subject of the report, prior to the sending of the report to the Garda Síochána and the Revenue Commissioners unless—

- (a) it is not practicable to delay or stop the transaction or service from proceeding, or
- (b) the designated person is of the reasonable opinion that failure to proceed with the transaction or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or in the course of being conducted.

(8) Nothing in *subsection (7)* authorises a designated person to proceed with a service or transaction if the person has been directed or ordered not to proceed with the service or transaction under *section 17* and the direction or order is in force.

(9) Except as provided by *section 46*, a person who fails to comply with this section commits an offence and is liable—

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

(10) A reference in *subsection (7)* to a suspicious transaction or service is a reference to a transaction or service that there are reasonable grounds for suspecting would, if it were to proceed—

- (a) comprise money laundering or terrorist financing, or
- (b) assist in money laundering or terrorist financing.

43.—(1) A designated person shall report to the Garda Síochána and Revenue Commissioners any service or transaction, that—

Requirement for designated persons to report transactions connected with places designated under *section 32*.

- (a) the designated person provides or carries out in the course of carrying on business as a designated person, and
- (b) is connected with a place that is designated under *section 32*.

(2) A person who fails to comply with this section commits an offence and is liable—

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

44.—(1) Without prejudice to the way in which a report may be made under *section 42* or *43*, such a report may be made in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of the section concerned.

Defence — internal reporting procedures.

(2) It is a defence for a person charged with an offence under *section 42* or *43* to prove that the person was, at the time of the purported offence, an employee who made a report under that section, in accordance with such an internal reporting procedure, to another person.

45.—(1) Information included in a report under this Chapter may be used in an investigation into money laundering or terrorist financing or any other offence.

Use of reported and other information in investigations.

(2) Nothing in this section limits the information that may be used in an investigation into any offence.

46.—(1) Nothing in this Chapter requires the disclosure of information that is subject to legal privilege.

Disclosure not required in certain circumstances.

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

(3) *Subsection (2)* does not apply to information received from or obtained in relation to a client with the intention of furthering a criminal purpose.

Disclosure not to be treated as breach.

47.—The disclosure of information by a person in accordance with this Chapter shall not be treated, for any purpose, as a breach of any restriction imposed by any other enactment or rule of law on disclosure by the person or any other person on whose behalf the disclosure is made.

CHAPTER 5

Tipping off by designated persons

Interpretation
(Chapter 5).

48.—In this Chapter, “legal adviser” means a barrister or solicitor.

Tipping off.

49.—(1) A designated person who knows or suspects, on the basis of information obtained in the course of carrying on business as a designated person, that a report has been, or is required to be, made under *Chapter 4* shall not make any disclosure that is likely to prejudice an investigation that may be conducted following the making of the report under that Chapter.

(2) A designated person who knows or suspects, on the basis of information obtained by the person in the course of carrying on business as a designated person, that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed, shall not make any disclosure that is likely to prejudice the investigation.

(3) A person who fails to comply with this section commits an offence and is liable—

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

(4) In this section, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.

Defence — disclosure to customer in case of direction or order to suspend service or transaction.

50.—It is a defence in any proceedings against a person (“the defendant”) for an offence under *section 49*, in relation to a disclosure, for the defendant to prove that—

- (a) the disclosure was to a person who, at the time of the disclosure, was a customer of the defendant or of a designated person on whose behalf the defendant made the disclosure,
- (b) the defendant, or the designated person on whose behalf the defendant made the disclosure, was directed or ordered under *section 17* not to carry out any specified service or transaction in respect of the customer, and
- (c) the disclosure was solely to the effect that the defendant, or a designated person on whose behalf the defendant made the disclosure, had been directed by a member of

the Garda Síochána, or ordered by a judge of the District Court, under *section 17* not to carry out the service or transaction for the period specified in the direction or order.

51.—(1) It is a defence in any proceedings against an individual for an offence under *section 49*, in relation to a disclosure, for the individual to prove that, at the time of the disclosure—

Defences — disclosures within undertaking or group.

- (a) he or she was an agent, employee, partner, director or other officer of, or was engaged under a contract for services by, an undertaking, and
- (b) he or she made the disclosure to an agent, employee, partner, director or other officer of, or a person engaged under a contract for services by, the same undertaking.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

- (a) the person was a credit institution or financial institution, or made the disclosure on behalf of a credit institution or financial institution,
- (b) the disclosure was to a credit institution or a financial institution,
- (c) the institution to which the disclosure was made was situated in a Member State or a place designated under *section 31*, and
- (d) both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group.

(3) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

- (a) the person was a legal adviser or relevant professional adviser,
- (b) both the person making the disclosure and the person to whom it was made carried on business in a Member State or in a place designated under *section 31*, and
- (c) those persons performed their professional activities within different undertakings that shared common ownership, management or control.

52.—(1) This section applies to a disclosure—

Defences — other disclosures between institutions or professionals.

- (a) by or on behalf of a credit institution to another credit institution,
- (b) by or on behalf of a financial institution to another financial institution,

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- (c) by or on behalf of a legal adviser to another legal adviser, or
- (d) by or on behalf of a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure to which this section applies, for the person to prove that, at the time of the disclosure—

- (a) the disclosure related to—
 - (i) a customer or former customer of the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made, or
 - (ii) a transaction, or the provision of a service, involving both the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made,
- (b) the disclosure was only for the purpose of preventing money laundering or terrorist financing,
- (c) the institution or adviser to which or whom the disclosure was made was situated in a Member State or in a place designated under *section 31*, and
- (d) the institution or adviser making the disclosure, or on whose behalf the disclosure was made, and the institution or adviser to which or whom it was made were subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of the Data Protection Acts 1988 and 2003).

(3) A reference in this section to a customer of an adviser includes, in the case of an adviser who is a barrister, a reference to a person who is a client of a solicitor who has sought advice from the barrister for or on behalf of the client.

Defences — other disclosures.

53.—(1) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

- (a) the disclosure was to the authority that, at the time of the disclosure, was the competent authority responsible for monitoring that person, or for monitoring the person on whose behalf the disclosure was made, under this Part,
- (b) the disclosure was for the purpose of the detection, investigation or prosecution of an offence (whether or not in the State), or
- (c) the person did not know or suspect, at the time of the disclosure, that the disclosure was likely to have the effect of prejudicing an investigation into whether an offence of

money laundering or terrorist financing had been committed.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

- (a) at the time of the disclosure, the person was a legal adviser or relevant professional adviser,
- (b) the disclosure was to the person's client and solely to the effect that the person would no longer provide the particular service concerned to the client,
- (c) the person no longer provided the particular service after so informing the client, and
- (d) the person made any report required in relation to the client in accordance with *Chapter 4*.

CHAPTER 6

Internal policies and procedures, training and record keeping

54.—(1) A designated person shall adopt policies and procedures, in relation to the designated person's business, to prevent and detect the commission of money laundering and terrorist financing.

Internal policies and procedures and training.

(2) In particular, a designated person shall adopt policies and procedures to be followed by persons involved in the conduct of the designated person's business, that specify the designated person's obligations under this Part, including—

- (a) the assessment and management of risks of money laundering or terrorist financing, and
- (b) internal controls, including internal reporting procedures for the purposes of *Chapter 4*.

(3) The policies and procedures referred to in *subsection (2)* include policies and procedures dealing with—

- (a) the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing, and
- (b) measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity.

(4) The designated person shall also adopt policies and procedures in relation to the monitoring and management of compliance with, and the internal communication of, the policies and procedures referred to in *subsection (2)*.

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(5) In preparing policies and procedures under this section, the designated person shall have regard to any relevant guidelines applying in relation to the designated person that have been approved under *section 107*.

(6) A designated person shall ensure that persons involved in the conduct of the designated person's business are—

- (a) instructed on the law relating to money laundering and terrorist financing, and
- (b) provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.

(7) A reference in this section to persons involved in the conduct of a designated person's business includes a reference to directors and other officers, and employees, of the designated person.

(8) A designated person who fails to comply with this section commits an offence and is liable—

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

(9) The obligations imposed on a designated person under this section do not apply to a designated person who is an employee of another designated person.

(10) *Subsection (6)* does not apply to a designated person who is an individual and carries on business alone as a designated person.

Keeping of records
by designated
persons.

55.—(1) A designated person shall keep records evidencing the procedures applied, and information obtained, by the designated person under *Chapter 3* in relation to—

- (a) each customer, and
- (b) in the case of a designated person to whom *section 38* applies, each correspondent banking relationship.

(2) Without prejudice to the generality of *subsection (1)*, a designated person shall take the original or a copy of all documents used by the designated person for the purposes of *Chapter 3*, including all documents used to verify the identity of customers or beneficial owners in accordance with *section 33*.

(3) A designated person shall keep records evidencing the history of services and transactions carried out in relation to each customer of the designated person.

(4) The documents and other records referred to in *subsections (1) to (3)* shall be retained by the designated person, at an office or other premises in the State, for a period of not less than 5 years after—

- (a) in the case of a record referred to in *subsection (1)(a)*, the date on which the designated person ceases to provide any service to the customer concerned or the date of the last transaction (if any) with the customer, whichever is the later,
- (b) in the case of a record referred to in *subsection (1)(b)*, the date on which the correspondent banking relationship concerned ends,
- (c) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular transaction by the designated person with, for or on behalf of the customer (other than a record to which *paragraph (d)* applies), the date on which the particular transaction is completed or discontinued,
- (d) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular occasional transaction comprised of a series of transactions, with, for or on behalf of a customer, the date on which the series of transactions is completed or discontinued, or
- (e) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular service for or on behalf of the customer (other than a record to which *paragraph (c)* or *(d)* applies), the date on which the particular service is completed or discontinued.

(5) *Subsection (4)(a)* extends to any record that was required to be retained under section 32(9)(a) of the Act of 1994 immediately before the repeal of that provision by this Act.

(6) *Subsection (4)(c) to (e)* extends to any record that was required to be retained under section 32(9)(b) of the Criminal Justice Act 1994 immediately before the repeal of that provision by this Act and for that purpose—

- (a) a reference in *subsection (4)(c) to (e)* to a record referred to in *subsection (3)* includes a reference to such a record, and
- (b) a reference in *subsection (4)(d)* to an occasional transaction comprised of a series of transactions includes a reference to a series of transactions referred to in section 32(3)(b) of the Criminal Justice Act 1994.

(7) A designated person may keep the records referred to in *subsections (1) to (6)* wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(8) The requirements imposed by this section are in addition to, and not in substitution for, any other requirements imposed by any other enactment or rule of law with respect to the keeping and retention of records by a designated person.

(9) The obligations that are imposed on a designated person under this section continue to apply to a person who has been a designated person, but has ceased to carry on business as a designated person.

(10) A requirement for a designated person that is a body corporate to retain any record under this section extends to any body corporate that is a successor to, or a continuation of, the body corporate.

(11) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(12) A designated person who fails to comply with this section commits an offence and is liable—

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

CHAPTER 7

Special provisions applying to credit and financial institutions

Measures for retrieval of information relating to business relationships.

56.—(1) A credit institution or financial institution that is a designated person shall have systems in place to enable it to respond fully and promptly to enquiries from the Garda Síochána—

- (a) as to whether or not it has, or has had, a business relationship, within the previous 6 years, with a person specified by the Garda Síochána, and
- (b) the nature of any such relationship with that person.

(2) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

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

Application of certain requirements to branches and subsidiaries in non-Member States.

57.—(1) A credit institution or financial institution that is a designated person and incorporated in the State shall ensure that any branch of the institution, or any subsidiary of the institution that is also a credit institution or financial institution, in a place other than a Member State, applies requirements equivalent to those specified in Chapters II and IV of the Third Money Laundering Directive.

(2) If the place concerned does not permit the application of requirements equivalent to those specified in Chapters II and IV of the Third Money Laundering Directive, the designated person shall—

- (a) inform the competent authority for the designated person, and

- (b) apply measures, determined in consultation with the competent authority, to deal with the risk of money laundering or terrorist financing arising from the absence of those requirements.

(3) A credit institution or financial institution that is a designated person and incorporated in the State shall communicate any policies and procedures that it has adopted under *section 54* to any branch or subsidiary referred to in *subsection (1)* that is in a place other than a Member State.

(4) A designated person that fails to comply with this section commits an offence and is liable—

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

58.—(1) A credit institution or financial institution shall not set up an anonymous account for, or provide an anonymous passbook to, any customer. Anonymous accounts.

(2) A credit institution or financial institution shall not keep any anonymous account, or anonymous passbook, that was in existence immediately before the commencement of this section for any customer.

(3) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

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

59.—(1) A credit institution shall not enter into a correspondent banking relationship with a shell bank. Relationships between credit institutions and shell banks.

(2) A credit institution that has entered into a correspondent banking relationship with a shell bank before the commencement of this section shall not continue that relationship.

(3) A credit institution shall not engage in or continue a correspondent banking relationship with a bank that the institution knows permits its accounts to be used by a shell bank.

(4) A credit institution shall apply appropriate measures to ensure that it does not enter into or continue a correspondent banking relationship that permits its accounts to be used by a shell bank.

(5) A credit institution that fails to comply with this section commits an offence and is liable—

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- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).
- (6) In this section, “shell bank” means a credit institution (or a body corporate that is engaged in activities equivalent to a credit institution) that—
- (a) does not have a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated,
 - (b) is not authorised to operate, and is not subject to supervision, as a credit institution (or equivalent) in the jurisdiction in which it is incorporated, and
 - (c) is not affiliated with another body corporate that—
 - (i) has a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated, and
 - (ii) is authorised to operate, and is subject to supervision, as a credit institution or an insurance undertaking, in the jurisdiction in which it is incorporated.

CHAPTER 8

Monitoring of designated persons

Meaning of “competent authority”.

60.—(1) Subject to *section 61*, a reference in this Part to the competent authority for a designated person is a reference to the competent authority prescribed for the class of designated persons to which the designated person belongs.

(2) If no such competent authority is prescribed, a reference in this Part to the competent authority is a reference to the following:

- (a) in the case of a designated person that is a credit institution or a financial institution, the Central Bank and Financial Services Authority of Ireland;
- (b) in the case of a designated person who is an auditor, external accountant, tax adviser or trust or company service provider—
 - (i) if the person is a member of a designated accountancy body, the designated accountancy body, or
 - (ii) if the person is not a member of a designated accountancy body and is a body corporate, or a body of unincorporated persons, carrying out its functions under this Part through officers, members or employees of it who are members of a designated accountancy body, the designated accountancy body;
- (c) in the case of a designated person who is a solicitor, the Law Society of Ireland;

- (d) in the case of a designated person who is a barrister, the General Council of the Bar of Ireland;
- (e) in the case of any designated person other than a designated person referred to in *paragraph (a), (b), (c) or (d)*, the Minister.

(3) The Minister may prescribe a competent authority for a class of designated persons, for the purpose of *subsection (1)*, only if the Minister is satisfied that the competent authority is more appropriate than the competent authority specified in *subsection (2)* for the class of designated persons, having regard to the nature of the business activities engaged in by that class.

61.—(1) Where there is more than one competent authority for a designated person under *section 60*, those competent authorities may agree that one of them will act as the competent authority for that person, and references in this Part to a competent authority are to be construed accordingly.

Agreements between competent authorities where more than one applicable.

(2) An agreement under this section, in relation to a designated person, takes effect when the competent authority who has agreed to act as the competent authority for the designated person gives notice, in writing, to that person.

(3) An agreement under this section, in relation to a designated person, ceases to have effect when—

- (a) any of the parties to the agreement gives notice, in writing, to the other parties of the termination of the agreement,
- (b) the agreement expires, or
- (c) as a result of the operation of *section 60(1)*, the competent authority who has agreed to act as the competent authority is no longer a competent authority of the person under *section 60*,

whichever is the earliest.

62.—(1) In this Part, a reference to a State competent authority is a reference to one of the following competent authorities:

Meaning of “State competent authority”.

- (a) the Central Bank and Financial Services Authority of Ireland;
- (b) the Minister;
- (c) such other competent authority as is prescribed.

(2) The Minister may prescribe a competent authority as a State competent authority for the purposes of *subsection (1)(c)* only if—

- (a) the Minister is satisfied that the competent authority is appropriate, having regard to the functions of State competent authorities under this Part, and
- (b) the competent authority is a Minister of the Government or an officer of a particular class or description of a

Department of State or is a body (not being a company) by or under an enactment.

General functions of competent authorities.

63.—(1) A competent authority shall effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements specified in this Part.

(2) The measures that are reasonably necessary include reporting to the Garda Síochána and Revenue Commissioners any knowledge or suspicion that the competent authority has that a designated person has been or is engaged in money laundering or terrorist financing.

(3) In determining, in any particular case, whether a designated person has complied with any of the requirements specified in this Part, a competent authority shall consider whether the person is able to demonstrate to the competent authority that the requirements have been met.

(4) A competent authority that, in the course of monitoring a designated person under this section, acquires any knowledge or forms any suspicion that another person has been or is engaged in money laundering or terrorist financing shall report that knowledge or suspicion to the Garda Síochána and Revenue Commissioners.

Application of other enactments.

64.—Nothing in this Part limits any functions that a competent authority (including a State competent authority) has under any other enactment or rule of law.

Annual reporting.

65.—A competent authority shall include, in each annual report published by the authority, an account of the activities that it has carried out in performing its functions under this Act during the year to which the annual report relates.

Request to bodies to provide names, addresses and other information relating to designated persons.

66.—(1) In this section, a reference to relevant information, in relation to a person, that is held by a body is a reference to any of the following information that is held by the body:

- (a) the name, address or other contact details of the person;
- (b) any other prescribed information relating to the person.

(2) A State competent authority may, by notice in writing, request any public body, or any body that represents, regulates or licenses, registers or otherwise authorises persons carrying on any trade, profession, business or employment, to provide the authority with any relevant information, in relation to—

- (a) any designated persons for whom the authority is a competent authority, or
- (b) any persons whom the body reasonably considers may be such designated persons.

(3) A State competent authority may make a request under this section only in relation to information that is reasonably required by

the authority to assist the authority in carrying out its functions under this Part.

(4) Notwithstanding any other enactment or rule of law, a body that receives a request under this section shall disclose the relevant information concerned.

(5) The Minister may prescribe information, for the purposes of *subsection (1)(b)*, that a State competent authority may request under this section only if the Minister is satisfied that the information is appropriate, having regard to the functions of the State competent authority under this Part.

67.—(1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to provide such information or documents (or both) relating to the designated person specified in the notice.

Direction to furnish information or documents.

(2) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) In giving a direction under this section, a State competent authority shall specify the manner in which any document or information is required to be furnished and a reasonable time by which the document or information is required to be furnished.

(4) A person is required to furnish documents in accordance with this section only if the documents are in the person's possession or within the person's power to obtain lawfully.

(5) If a person knows the whereabouts of documents to which the direction applies, the person shall furnish to the State competent authority who gave the direction a statement, verified by a statutory declaration, identifying the whereabouts of the documents. The person shall furnish the statement no later than the time by which the direction specifies that the documents are required to be furnished.

(6) A person who, without reasonable excuse, fails to comply with *subsection (5)* commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(7) If any document required to be furnished under this section is in electronic, mechanical or other form, the document shall be furnished in written form, unless the direction specifies otherwise.

(8) A State competent authority may take copies of, or extracts from, any document furnished to the authority under this section.

68.—(1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to furnish to the authority an explanation of any documents relating to the designated person that—

Direction to provide explanation of documents.

(a) the person has furnished to the authority in complying with a direction under *section 67*, or

(b) an authorised officer has lawfully removed from premises under *section 77* (including as applied by *section 78*).

(2) In giving a direction under this section, a State competent authority shall specify the manner in which any explanation of a document is required to be furnished and a reasonable time by which the explanation is required to be furnished.

(3) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

Purpose of direction under *section 67* or *68*.

69.—A State competent authority may give a direction under *section 67* or *68* only in relation to information or documents reasonably required by the authority to assist the authority to perform its functions under this Part.

Self-incrimination (*sections 67* and *68*).

70.—Nothing in *section 67* or *68* requires a person to comply with a direction under the section concerned to furnish any information if to do so might tend to incriminate the person.

Direction to designated person to comply with obligations under this Part.

71.—(1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to discontinue, or refrain from engaging in, specified conduct that in the opinion of the authority constitutes, or, if engaged in, would constitute, a breach of any specified provision of this Part.

(2) The State competent authority shall specify in the direction a reasonable time by which the direction is to be complied with.

(3) If the designated person fails to comply with the direction and is subsequently found guilty of an offence consisting of the conduct specified in the direction, the court shall take the failure to comply with the direction into account as an aggravating factor in determining any sentence to be imposed on the person for the offence.

Appointment of authorised officers.

72.—(1) A State competent authority may appoint employees of the authority or other persons who, in the opinion of the authority, are suitably qualified or experienced, to be authorised officers for the purpose of this Chapter.

(2) A State competent authority may revoke any appointment made by the authority under *subsection (1)*.

(3) An appointment or revocation under this section shall be in writing.

(4) A person's appointment by a State competent authority as an authorised officer ceases—

(a) on the revocation by the authority of the appointment,

(b) in a case where the appointment is for a specified period, on the expiration of the period,

(c) on the person's resignation from the appointment, or

- (d) in a case where the person is an employee of the authority—
 - (i) on the resignation of the person as an employee of the authority, or
 - (ii) on the termination of the person’s employment with the authority for any other reason.

73.—(1) Every authorised officer appointed by a State competent authority shall be furnished with a warrant of appointment as an authorised officer by the State competent authority.

Warrant of appointment.

(2) In the course of performing the functions of an authorised officer under this Chapter, the officer shall, if requested to do so by any person affected, produce the officer’s warrant of appointment for inspection.

74.—An authorised officer may exercise powers as an authorised officer under this Chapter only for the purpose of assisting the State competent authority that appointed the authorised officer in the performance of the authority’s functions under this Part.

Powers may only be exercised for assisting State competent authority.

75.—(1) An authorised officer may enter any premises at which the authorised officer reasonably believes that the business of a designated person has been or is carried on.

General power of authorised officers to enter premises.

(2) An authorised officer may enter any premises at which the authorised officer reasonably believes records or other documents relating to the business of a designated person are located.

(3) An authorised officer may enter premises under *subsection (1)* or *(2)*—

- (a) in a case where the authorised officer reasonably believes that the business of a designated person is carried on at the premises (as referred to in *subsection (1)*), at any time during which the authorised officer reasonably believes that the business is being carried on there, or
- (b) in any other case, at any reasonable time.

76.—Nothing in this Chapter shall be construed as empowering an authorised officer to enter any dwelling without the permission of the occupier or the authority of a warrant under *section 78*.

Entry into residential premises only with permission or warrant.

77.—(1) An authorised officer may, at any premises lawfully entered by the officer, do any of the following:

Power of authorised officers to do things at premises.

- (a) inspect the premises;
- (b) request any person on the premises who apparently has control of, or access to, records or other documents that relate to the business of a designated person (being a designated person whose competent authority is the State competent authority who appointed the authorised officer)—

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- (i) to produce the documents for inspection, and
 - (ii) if any of those documents are in an electronic, mechanical or other form, to reproduce the document in a written form;
 - (c) inspect documents produced or reproduced in accordance with such a request or found in the course of inspecting the premises;
 - (d) take copies of those documents or of any part of them (including, in the case of a document in an electronic, mechanical or other form, a copy of the document in a written form);
 - (e) request any person at the premises who appears to the authorised person to have information relating to the documents, or to the business of the designated person, to answer questions with respect to the documents or that business;
 - (f) remove and retain the documents (including in the case of a document in an electronic, mechanical or other form, a copy of the information in a written form) for the period reasonably required for further examination;
 - (g) request a person who has charge of, operates or is concerned in the operation of data equipment, including any person who has operated that equipment, to give the officer all reasonable assistance in relation to the operation of the equipment or access to the data stored within it;
 - (h) secure, for later inspection, the premises or part of the premises at which the authorised officer reasonably believes records or other documents relating to the business of the designated person are located.
- (2) A person to whom a request is made in accordance with *subsection (1)* shall—
- (a) comply with the request so far as it is possible to do so, and
 - (b) give such other assistance and information to the authorised officer with respect to the business of the designated person concerned as is reasonable in the circumstances.
- (3) A reference in this section to data equipment includes a reference to any associated apparatus.
- (4) A reference in this section to a person who operates or has operated data equipment includes a reference to a person on whose behalf data equipment is operated or has been operated.

Entry to premises and doing of things under warrant.

78.—(1) A judge of the District Court may issue a warrant under this section if satisfied, by information on oath of an authorised officer, that there are reasonable grounds for believing that—

- (a) documents relating to the business of a designated person that are required for the purpose of assisting the State competent authority that appointed the authorised

officer under this Chapter in the performance of the authority's functions under this Part are contained on premises, and

- (b) the premises comprise a dwelling or an authorised officer has been obstructed or otherwise prevented from entering the premises under *section 75*.

(2) A warrant under this section authorises an authorised officer, at any time or times within one month of the issue of the warrant—

- (a) to enter the premises specified in the warrant, and
- (b) to exercise the powers conferred on authorised officers by this Chapter or any of those powers that are specified in the warrant.

(3) Entry to premises the subject of a warrant may be effected with the use of reasonable force.

79.—An authorised officer may be accompanied, and assisted in the exercise of the officer's powers (including under a warrant issued under *section 78*), by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

Authorised officer may be accompanied by others.

80.—(1) A person commits an offence if the person, without reasonable excuse—

Offence to obstruct, interfere or fail to comply with request.

- (a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under this Chapter, or
- (b) fails to comply with a requirement, or request made by an authorised officer, under *section 77* (including as applied by *section 78*).

(2) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) A reference in this section to an authorised officer includes a member of the Garda Síochána or other person who is accompanying and assisting the officer in accordance with *section 79*.

81.—Nothing in this Chapter requires a person to answer questions if to do so might tend to incriminate the person.

Self-incrimination — questions of authorised officers.

82.—Nothing in this Chapter requires the production of any document or information subject to legal privilege.

Production of documents or information not required in certain circumstances.

83.—(1) The disclosure or production of any information or document by a person in accordance with this Chapter shall not be treated as a breach of any restriction under any enactment or rule of law on disclosure or production by the person or any other person on whose behalf the information or document is disclosed or produced.

Disclosure or production not to be treated as breach or to affect lien.

(2) The production referred to in *subsection (1)* of any item forming part of the documents relating to the business of a designated person shall not prejudice any lien that the designated person or any other person claims over that item.

CHAPTER 9

Authorisation of Trust or Company Service Providers

Interpretation
(Chapter 9).

84.—In this Chapter—

“Appeal Tribunal” means an Appeal Tribunal established under *section 101*;

“authorisation” means an authorisation to carry on business as a trust or company service provider granted under this Chapter and, if such an authorisation is renewed or amended under this Chapter, means, unless the context otherwise requires, the authorisation as renewed or amended (as the case may be);

“principal officer” means—

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

“trust or company service provider” does not include any of the following:

- (a) a member of a designated accountancy body;
- (b) a barrister or solicitor;
- (c) a credit institution or financial institution.

Meaning of “fit and proper person”.

85.—For the purposes of this Chapter, a person is not a fit and proper person if any of the following apply:

- (a) the person has been convicted of any of the following offences:
 - (i) money laundering;
 - (ii) terrorist financing;
 - (iii) an offence involving fraud, dishonesty or breach of trust;

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

86.—(1) A reference in a relevant document to the holder or proposed holder of an authorisation includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified. Authorisations held by partnerships.

(2) A reference in *subsection (1)* to a relevant document is a reference to any of the following:

- (a) this Chapter;
- (b) a regulation made for the purposes of this Chapter;
- (c) an authorisation or condition of an authorisation;
- (d) any notice or direction given under this Chapter;
- (e) any determination under this Chapter.

(3) Without prejudice to the generality of *subsection (1)* or *section III*, where any requirement is imposed by or under this Chapter on the holder of an authorisation and failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of an authorisation) who contravenes the requirement is liable for the offence.

87.—(1) A person commits an offence if the person carries on business as a trust or company service provider without being the holder of an authorisation issued by the Minister under this Chapter. Prohibition on carrying on business of trust or company service provider without authorisation.

(2) A person who commits an offence under *subsection (1)* is liable—

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

Application for authorisation.

88.—(1) An individual, body corporate or partnership may apply to the Minister for an authorisation to carry on business as a trust or company service provider.

(2) The application shall—

(a) be in a form provided or specified by the Minister,

(b) specify the name of—

(i) the proposed holder of the authorisation,

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

(iii) any person who is, or is proposed to be, a beneficial owner of the business,

(c) be accompanied by any consent, in the form provided or specified by the Minister, that is required to enable access to personal data (within the meaning of the Data Protection Acts 1988 and 2003) held by other persons or bodies and that is required to assist the Minister in determining, for the purposes of *section 89* (including as applied by *section 92*) whether or not the proposed holder and other persons referred to in *paragraph (b)* are fit and proper persons,

(d) contain such other information, and be accompanied by such documents, as the Minister requests,

(e) be accompanied by the prescribed fee (if any).

(3) The Minister may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Minister to determine the application.

(4) As soon as practicable after an applicant becomes aware that any information or document provided to the Minister under this section contains a material inaccuracy or has changed in any material particular, including information or a document provided in relation to an application that has been granted, but not including information or a document provided in relation to an application that has been refused, the applicant shall give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(5) For the purposes of *subsection (2)(e)* (including as applied by *section 92*), the Minister may prescribe different fees, to accompany applications for authorisations under this Chapter, for different classes of proposed holders of those authorisations and in prescribing such fees may differentiate between the fee to accompany such an application for an authorisation (not being an application for the renewal of such an authorisation) and the fee to accompany an application for the renewal of such an authorisation.

89.—(1) The Minister may refuse an application under *section 88* only if— Grant and refusal of applications for authorisation.

- (a) the application does not comply with the requirements of *section 88*,
- (b) the applicant does not provide any additional documents or information in accordance with a notice given under *section 88(3)*,
- (c) the Minister has reasonable grounds to be satisfied that information given to the Minister by the applicant in connection with the application is false or misleading in any material particular,
- (d) the Minister has reasonable grounds to be satisfied that any of the following persons is not a fit and proper person:
 - (i) the proposed holder of the authorisation;
 - (ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carry on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);
 - (iii) any person who is, or is proposed to be, a beneficial owner of the business concerned,
- (e) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with the obligations imposed on trust or company service providers, as designated persons, under this Part,
- (f) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with each of the following:
 - (i) any conditions that the Minister would have imposed on the authorisation concerned if the Minister had granted the application;
 - (ii) any prescribed requirements referred to in *section 94*;
 - (iii) *section 95*;
 - (iv) *section 98*;
 - (v) *section 106*,
- (g) the proposed holder of the authorisation is so structured, or the business of the proposed holder is so organised, that the proposed holder is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Minister,
- (h) in a case where the proposed holder of the authorisation is a body corporate, the body corporate is being wound up,

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- (i) in a case where the proposed holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,
 - (j) in a case where any person referred to in *paragraph (d)* has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State, or
 - (k) in a case where the proposed holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.
- (2) If the Minister proposes to refuse an application, the Minister shall serve on the applicant a notice in writing—
- (a) specifying the grounds on which the Minister proposes to refuse the application, and
 - (b) informing the applicant that the applicant may, within 21 days after the serving of the notice, make written representations to the Minister showing why the Minister should grant the application.
- (3) Not later than 21 days after a notice is served on an applicant under *subsection (2)*, the applicant may make written representations to the Minister showing why the Minister should grant the application.
- (4) The Minister may refuse an application only after having considered any representations made by the applicant in accordance with *subsection (3)*.
- (5) As soon as practicable after refusing an application, the Minister shall serve a written notice of the refusal on the applicant. The notice shall include a statement—
- (a) setting out the grounds on which the Minister has refused the application, and
 - (b) informing the applicant that—
 - (i) the applicant may appeal to an Appeal Tribunal against the refusal, and
 - (ii) if the applicant proposes to appeal to an Appeal Tribunal against the refusal, the applicant may, within one month after being served with the notice of refusal, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(6) If the Minister does not refuse the application, he or she shall grant it and, on granting the application, the Minister shall—

- (a) record the appropriate particulars of the holder of the authorisation in the register of persons authorised to carry on business as a trust or company service provider, and
- (b) issue the applicant with an authorisation that authorises the holder of the authorisation to carry on business as a trust or company service provider.

90.—(1) In granting an application for an authorisation under this Chapter, the Minister may impose on the holder of the authorisation any conditions that the Minister considers necessary for the proper and orderly regulation of the holder's business as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

Minister may impose conditions when granting an application for an authorisation.

(2) The Minister shall specify any such conditions in the authorisation granted to the holder or in one or more documents annexed to that authorisation.

(3) If, under this section, the Minister imposes any conditions on an authorisation, the Minister shall serve on the holder of the authorisation, together with the authorisation, a written notice of the imposition of the conditions that includes a statement—

- (a) setting out the grounds on which the Minister has imposed the conditions, and
- (b) informing the holder that—
 - (i) the holder may appeal to an Appeal Tribunal against the imposition of any of the conditions, and
 - (ii) if the holder proposes to appeal to an Appeal Tribunal against the imposition of any of the conditions, the holder may, within one month after being served with the notice of the imposition of conditions, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

91.—(1) An authorisation comes into force on the day on which the authorisation is granted, or, if a later date is specified in the authorisation, on that later date, whether or not an appeal against any conditions of the authorisation is made under *section 100*.

Terms of authorisation.

(2) An authorisation remains in force, unless sooner revoked under this Chapter, for a period of 3 years from the date on which it comes into force.

(3) A reference in this section to an authorisation does not include a reference to an authorisation that is renewed under *section 92*.

92.—(1) The Minister may renew an authorisation on the application of the holder of the authorisation unless the authorisation has been revoked under this Chapter.

Renewal of authorisation.

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(2) *Sections 88 to 90* apply, with any necessary modifications, in relation to an application for the renewal of an authorisation.

(3) An application for the renewal of an authorisation shall be made not less than 10 weeks before the end of the period for which it was granted.

(4) In addition to the grounds specified in *section 89* (as applied by *subsection (2)*), the Minister may refuse to grant a renewed authorisation on the grounds that the application for renewal has been made less than 10 weeks before the end of the period for which the authorisation was granted.

(5) If an application for the renewal of an authorisation is made within the time provided for in *subsection (3)* and is not determined by the Minister before the end of the period for which the authorisation was granted, the authorisation remains in force until the date on which the application is determined.

(6) A renewed authorisation comes into force on—

(a) in a case where *subsection (5)* applies, the date on which the application is determined, or

(b) in any other case, the day immediately following the end of the period for which the authorisation that it renews was granted or last renewed, as the case may be.

(7) A renewed authorisation, unless sooner revoked under this Chapter, remains in force for a period of 3 years from the date on which it comes into force under *subsection (6)*.

(8) *Subsections (6) and (7)* have effect whether or not an appeal against any conditions of the authorisation is made under *section 100*.

Minister may
amend
authorisation.

93.—(1) The Minister may amend an authorisation granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Minister considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the authorisation as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If the Minister proposes to amend an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to amend the authorisation.

(3) The notice shall—

(a) specify the proposed amendment, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not make that amendment.

(4) Not later than 21 days after a notice is served under *subsection (2)* on the holder of an authorisation, the holder may make written

representations to the Minister showing why the Minister should not amend the authorisation.

(5) The Minister may amend an authorisation only after having considered any representations to the Minister made in accordance with *subsection (4)* showing why the Minister should not amend the authorisation.

(6) The Minister shall serve written notice of any amendment of an authorisation on the holder of the authorisation. The notice shall include a statement—

- (a) setting out the grounds on which the Minister has amended the authorisation, and
- (b) informing the holder that—
 - (i) the holder may appeal to an Appeal Tribunal against the amendment, and
 - (ii) if the holder proposes to appeal to an Appeal Tribunal against the amendment, the holder may, within one month after being served with the notice of amendment, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(7) The amendment of an authorisation under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under *section 100*.

94.—(1) The holder of an authorisation commits an offence if the holder fails to comply with—

- (a) any condition of the authorisation, or
- (b) any prescribed requirements.

Offence to fail to comply with conditions or prescribed requirements.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding €2,000, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Minister may prescribe requirements for the purposes of *subsection (1)(b)* only if the Minister is satisfied that it is necessary to do so for the proper and orderly regulation of the business of trust or company service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing.

95.—(1) The holder of an authorisation shall take reasonable steps to ensure that the following persons are fit and proper persons:

- (a) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

Holder of authorisation to ensure that principal officers and beneficial owners are fit and proper persons.

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(b) any person who is a beneficial owner of the business concerned.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €2,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of authorisation by Minister on application of holder.

96.—The Minister shall revoke an authorisation on the application of the holder of the authorisation, but only if satisfied that the holder of the authorisation has fully complied with each of the following:

(a) any conditions of the authorisation;

(b) any prescribed requirements referred to in *section 94*;

(c) *section 95*;

(d) *section 98*;

(e) *section 106*.

Revocation of authorisation other than on application of holder.

97.—(1) The Minister may revoke an authorisation only if the Minister has reasonable grounds to be satisfied of any of the following:

(a) the holder of the authorisation has not commenced to carry on business as a trust or company service provider within 12 months after the date on which the authorisation was granted;

(b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months;

(c) the authorisation was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the holder of the authorisation;

(ii) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the business concerned;

(e) the holder of the authorisation has contravened or is contravening the obligations imposed on trust or company service providers, as designated persons, under this Part;

(f) the holder of the authorisation has contravened or is contravening any of the following:

- (i) a condition of the authorisation;
- (ii) a prescribed requirement referred to in *section 94*;
- (iii) *section 95*;
- (iv) *section 98*;
- (v) *section 106*;
- (g) the holder of the authorisation is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part;
- (h) in a case where the holder of the authorisation is a body corporate, the body corporate is being wound up;
- (i) in a case where the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;
- (j) in a case where any person referred to in *paragraph (d)* has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State;
- (k) in a case where the holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.

(2) If the Minister proposes to revoke an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to revoke the authorisation.

(3) The notice shall—

- (a) specify the grounds on which the Minister proposes to revoke the authorisation, and
- (b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not revoke the authorisation.

(4) Not later than 21 days after a notice is served under *subsection (2)* on the holder of an authorisation, the holder may make written representations to the Minister showing why the Minister should not revoke the authorisation.

(5) The Minister may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with *subsection (4)*.

(6) As soon as practicable after revoking an authorisation under this section, the Minister shall serve written notice of the revocation on the person who was the holder of the authorisation. The notice shall include a statement—

- (a) setting out the reasons for revoking the authorisation, and
- (b) informing the holder that—
 - (i) the holder may appeal to an Appeal Tribunal against the revocation, and
 - (ii) if the holder proposes to appeal to an Appeal Tribunal against the revocation, the holder may, within one month after being served with the notice of revocation, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister.

(7) The revocation of an authorisation under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under *section 100*.

Direction not to carry out business other than as directed.

98.—(1) If the Minister reasonably believes that there may be grounds for revoking an authorisation under *section 97*, the Minister may serve on the holder of the authorisation a direction in writing prohibiting the holder from carrying on business as a trust or company service provider other than in accordance with conditions specified by the Minister.

(2) The Minister shall include in a direction under this section a statement—

- (a) setting out the Minister's reasons for giving the direction,
- (b) informing the holder of the authorisation concerned that—
 - (i) the holder may appeal to an Appeal Tribunal against the direction, and
 - (ii) if the holder proposes to appeal to an Appeal Tribunal against the direction, the holder may, within one month after being served with the direction, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister,

and

- (c) specifying the conditions with which the holder of the authorisation is required to comply.

(3) The Minister may, by notice in writing served on the holder of the authorisation concerned, amend or revoke a direction given under this section.

(4) Without prejudice to the generality of *subsection (3)*, the Minister may, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(5) A direction under this section takes effect from the date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under *section 100*.

(6) A direction under this section ceases to have effect—

- (a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or
- (b) on the revocation of the holder's authorisation under this Chapter,

whichever occurs first.

(7) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.

(8) A person who commits an offence under this section is liable—

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

99.—As soon as practicable after revoking an authorisation under *section 96* or *97*, or giving a direction under *section 98*, the Minister shall publish in *Iris Oifigiúil* a notice giving particulars of the revocation or direction.

Minister to publish notice of revocation or direction.

100.—(1) In this section, “appealable decision” means a decision of the Minister under—

Appeals against decisions of Minister.

- (a) *section 89* to refuse an application for an authorisation,
- (b) *section 89*, as applied by *section 92*, to refuse an application for the renewal of an authorisation,
- (c) *section 90* to impose conditions on an authorisation,
- (d) *section 90*, as applied by *section 92*, to impose conditions on an authorisation that is renewed,
- (e) *section 93* to amend an authorisation,
- (f) *section 97* to revoke an authorisation, or
- (g) *section 98* to serve a direction on the holder of an authorisation.

(2) A person aggrieved by an appealable decision may, within one month after being served with notice of the decision, serve a notice

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of the person's intention to appeal against the decision on the Minister in the form provided or specified by the Minister.

(3) On receipt of the notification, the Minister shall refer the matter to an Appeal Tribunal established under *section 101*.

(4) The Appeal Tribunal may invite the person and the Minister to make written submissions to it in relation to the appeal.

(5) The Appeal Tribunal shall notify the person, in writing, of the following matters:

- (a) the date and time of the hearing of the appeal;
- (b) that the person may attend the hearing;
- (c) that the person may be represented at the hearing by a barrister, solicitor or agent.

(6) An Appeal Tribunal may refuse to hear, or continue to hear, an appeal under this section if it is of the opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation.

(7) The Appeal Tribunal shall (unless the appeal is withdrawn, or discontinued or dismissed under *subsection (6)*) determine the appeal by—

- (a) affirming the decision of the Minister to which the appeal relates, or
- (b) substituting its determination for that decision.

(8) The Appeal Tribunal shall notify its determination in writing to the Minister and the person appealing.

(9) Within 3 months after the date on which an appeal is determined by an Appeal Tribunal, the Minister or person who appealed may appeal to the High Court on any question of law arising from the determination.

Appeal Tribunals.

101.—(1) The Minister may, by order, establish, for a specified period, an Appeal Tribunal or more than one Appeal Tribunal to adjudicate on appeals under *section 100*.

(2) An Appeal Tribunal shall be independent in the performance of its functions.

(3) The Minister may appoint a person who is a practising barrister or solicitor of not less than 7 years' standing to be a member of and constitute an Appeal Tribunal.

(4) The appointment shall be subject to such terms and conditions, including remuneration, as the Minister may determine with the consent of the Minister for Finance.

(5) A person constituting an Appeal Tribunal may at any time resign by a letter sent to the Minister, and the resignation shall take effect on the date on which the Minister receives the letter.

(6) The Minister may, at any time, revoke an appointment of a person under this section for stated misbehaviour or if, in the opinion of the Minister, the person has become incapable through ill health or otherwise of effectively performing the functions of an Appeal Tribunal.

(7) An Appeal Tribunal may determine its own procedure, subject to *section 101* and to any general directions given to Appeal Tribunals by the Minister in the interests of securing consistency of procedures in relation to appeals under this Chapter.

102.—(1) The Minister may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Minister in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

Provision of information by Garda Síochána as to whether or not person is fit and proper person.

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

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Minister with information in accordance with a request of the Minister under this section.

103.—(1) The functions of a State competent authority, in relation to designated persons, under *Chapter 8*, may be performed by the Minister to assist him or her in carrying out functions in relation to trust or company service providers under this Chapter.

Extension of powers under *Chapter 8* for purposes related to this Chapter.

(2) For that purpose, *sections 66* to *83* apply with any necessary modifications, including the following:

- (a) a relevant authorised officer has, in respect of trust or company service providers within the meaning of this Chapter, all of the functions that an authorised officer appointed by a State competent authority under *section 72* has in respect of designated persons;
- (b) a judge of the District Court, in the case of an application under *section 78* by a relevant authorised officer in respect of a trust or company service provider, has all of the functions that such a judge has, in the case of a similar application under that section by an authorised officer appointed by a State competent authority under *section 72*, in respect of a designated person;
- (c) *section 79* applies so as to enable a relevant authorised officer to be accompanied and assisted in the exercise of the officer's powers as referred to in that section;

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(d) *section 80* applies to a person who engages in conduct, referred to in that section, in relation to—

- (i) a relevant authorised officer, and
- (ii) any person accompanying and assisting the officer in accordance with *section 79* as applied by *paragraph (c)*.

(3) This section has effect whether or not the Minister is the State competent authority for any class of trust or company service providers.

(4) In this section “relevant authorised officer” means an authorised officer appointed by the Minister under *section 72*, as applied by this section.

Register of persons holding authorisations.

104.—(1) The Minister shall establish and maintain a register of persons authorised under this Chapter to carry on business as a trust or company service provider containing—

- (a) the name and the address of the principal place of business of each person authorised to carry on business as a trust or company service provider, and
- (b) such other information as may be prescribed.

(2) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(3) The Minister shall maintain the register at an office of the Department.

(4) Members of the public are entitled, without charge, to inspect the register during the ordinary business hours of the Department.

(5) A member of the public is entitled to obtain a copy of the register or of an entry in a register on payment of such reasonable copying charges as may be prescribed (if any).

(6) The holder of an authorisation to whom an entry in the Register relates shall, as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(7) In any legal proceedings, a certificate purporting to be signed by the Minister and stating that a person—

- (a) is recorded in the Register as the holder of an authorisation,
- (b) is not recorded in the Register as the holder of an authorisation,
- (c) was recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation, or

- (d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation,

is evidence of the matter referred to in *paragraph (a), (b), (c) or (d)* (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(8) The Minister may prescribe particulars for the purposes of *subsection (1)(b)* or *section 105* only if satisfied that those particulars reasonably relate to the business of trust or company service providers or to the regulation of the business of trust or company service providers under this Part.

105.—The Minister shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in *Iris Oifigiúil* a list of persons holding authorisations, together with other prescribed particulars (if any).

Minister to publish list of persons holding authorisations.

106.—(1) The holder of an authorisation shall—

- (a) retain at an office or other premises in the State such records as may be specified by the Minister, and
- (b) notify the Minister in writing of the address of any office or other premises where those records are retained.

Holders of authorisations to retain certain records.

(2) The requirement imposed by *subsection (1)* is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the holder of an authorisation, including the requirements specified in *section 55*.

(3) The holder of an authorisation shall retain the records referred to in *subsection (1)* for a period of not less than 6 years after—

- (a) in the case of a record made in relation to a customer of the holder, the last dealing with the customer, or
- (b) in any other case, the record is made.

(4) The holder of an authorisation may keep the records referred to in *subsection (1)* wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed on a holder of an authorisation under this section continue to apply to a person who has been the holder of an authorisation, but has ceased to hold an authorisation or to carry on business as a trust or company service provider.

(6) A requirement for the holder of an authorisation that is a body corporate to retain any record under this section applies to any body corporate that is a successor to, or a continuation of, the body corporate.

(7) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(8) A person who fails to comply with this section commits an offence and is liable—

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

CHAPTER 10

Other

Guidelines.

107.—(1) The Minister may, after consulting with the Minister for Finance, approve guidelines for the purpose of guiding designated persons on the application of this Part to those designated persons.

(2) It is a defence to an offence under this Part for the defendant to prove that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) In determining whether a defendant took all such reasonable steps and exercised all such due diligence, a court may have regard to any guidelines applying in relation to the person that have been approved by the Minister under this section and are in force, but nothing in this section limits the matters that a court may have regard to in determining whether a defendant took all reasonable steps and exercised all due diligence to avoid committing an offence.

Minister may delegate certain functions under this Part.

108.—(1) The Minister may, by instrument in writing, delegate any of the Minister's functions under *Chapter 8* or *9*, or under *section 109*, to a named officer or an officer of a particular class or description.

(2) A delegation under this section may be made subject to such conditions or limitations as to the performance of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) The Minister may, by instrument in writing, revoke a delegation under this section.

(4) A function delegated under this section may, while the delegation remains unrevoked, be performed by the delegate in accordance with the terms of the delegation.

(5) The Minister may continue to perform any functions delegated under this section.

(6) Nothing in this section shall be construed as affecting the application to this Act of the general law concerning the imputing of acts of an officer of a Minister of the Government to the Minister of the Government.

(7) In this section, "officer" means an officer of the Minister who is an established civil servant for the purposes of the Civil Service Regulation Act 1956.

109.—(1) A person who is a designated person pursuant to *section 25(1)(h)* shall register with the Minister in accordance with such procedures as may be prescribed or otherwise imposed by the Minister.

Registration of persons directing private members' clubs.

(2) A person who is required to register under this section commits an offence if the person fails to do so and is liable—

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

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

(3) The following particulars shall be entered into a register established and maintained by the Minister for the purposes of this section:

(a) the name of each designated person who registers under this section;

(b) the name and address of the premises of the private members' club in relation to which the person is a designated person;

(c) any prescribed information as may be reasonably required by the Minister for the purposes of this Act.

(4) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(5) The Minister shall maintain the register at an office of the Department.

(6) The Minister may prescribe particulars for the purposes of *subsection (3)(c)* only if satisfied that those particulars reasonably relate to the business or regulation of persons directing members' clubs as designated persons.

PART 5

MISCELLANEOUS

110.—(1) A notice or other document that is required or permitted, under this Act, to be served on or given to a person shall be addressed to the person by name and may be served or given to the person in one of the following ways:

Service of documents.

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or carries on business;

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- (c) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business;
- (d) if an address for service has been furnished, by leaving it at, or sending it by post in a pre-paid registered letter to, that address;
- (e) in the case of a direction to an individual or body (whether incorporated or unincorporated) under *Part 3* not to carry out any specified service or transaction at a branch or place of business of the body or individual, by leaving it at, or by sending it by post in a pre-paid registered letter to, the address of the branch or place of business (as the case may be);
- (f) if the person giving notice considers that notice should be given immediately and a fax machine is located at an address referred to in *paragraph (b), (c), (d) or (e)*, by sending it by fax to that machine, but only if the sender's fax machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section—

- (a) a company registered under the Companies Acts is taken to be ordinarily resident at its registered office, and
- (b) any body corporate other than a company registered under the Companies Acts or any unincorporated body is taken to be ordinarily resident at its principal office or place of business in the State.

(3) Nothing in *subsection (1)(e)* prevents the serving or giving of a direction or other document for the purposes of *Part 3* under any other provision of this section.

(4) This section is without prejudice to any mode of service or of giving a notice or any other document provided for under any other enactment or rule of law.

(5) This section does not apply in relation to the service of a notice on the Minister referred to in *section 100(2)*.

Offences —
directors and others
of bodies corporate
and unincorporated
bodies.

111.—Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the body, or a person purporting to act in that capacity,

that person is taken to have also committed the offence and may be proceeded against and punished accordingly.

112.—(1) This section applies to the disclosure in good faith, to a member of the Garda Síochána or to any person who is concerned in the investigation or prosecution of an offence of money laundering or terrorist financing, of—

Disclosure of information in good faith.

- (a) a suspicion that any property has been obtained in connection with any such offence, or derives from property so obtained, or
- (b) any matter on which such a suspicion is based.

(2) A disclosure to which this section applies shall not be treated, for any purpose, as a breach of any restriction on the disclosure of information imposed by any other enactment or rule of law.

113.—The Schedule to the Bail Act 1997 is amended by inserting the following paragraph after paragraph 34 (inserted by section 48 of the Criminal Justice (Miscellaneous Provisions) Act 2009):

Amendment of Bail Act 1997.

“Money Laundering.

35. Any offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.*”.

114.—(1) In this section, “Act of 1942” means the Central Bank Act 1942.

Amendment of Central Bank Act 1942.

(2) Section 33AK(5) (inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Act of 1942 is amended by deleting paragraph (n).

(3) The Act of 1942 is amended by inserting the following after section 33AN (inserted by section 10 of the Central Bank and Financial Services Authority of Ireland Act 2004):

“Application of Part to credit unions.

33ANA.—(1) This Part applies in relation to—

- (a) the commission or suspected commission by a credit union of a contravention of—
 - (i) a provision of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*,
 - (ii) any direction given to the credit union under a provision of *Part 4* of that Act,
 - (iii) any condition or requirement imposed on the credit union under a provision of *Part 4* of that Act or under any direction given to the credit union under a provision of that Part, or
 - (iv) any obligation imposed on the credit union by this Part or imposed

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by the Regulatory Authority pursuant to a power exercised under this Part,

and

(b) participation, by a person concerned in the management of a credit union, in the commission by the credit union of such a contravention.

(2) For those purposes—

(a) a reference in this Part to a regulated financial service provider includes a reference to a credit union,

(b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a credit union, of a provision, direction, condition, requirement or obligation referred to in subsection (1), and

(c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a credit union.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) This section has effect notwithstanding anything to the contrary in section 184 of the Credit Union Act 1997.”.

(4) Schedule 2 (substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) to the Act of 1942 is amended in Part 1 by inserting the following at the end of the Part:

“

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”.

Amendment of Courts (Supplemental Provisions) Act 1961.

115.—Section 32A(1) of the Courts (Supplemental Provisions) Act 1961 (inserted by section 180 of the Criminal Justice Act 2006) is amended as follows:

(a) in paragraph (d) (inserted by section 18 of the Criminal Justice (Surveillance) Act 2009) by substituting “Criminal Justice (Surveillance) Act 2009;” for “Criminal Justice (Surveillance) Act 2009.”;

(b) by inserting the following paragraph after paragraph (d):

“(e) any of the following powers under *Part 3* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*:

- (i) the power to order a person not to carry out any service or transaction;
- (ii) the power to revoke an order referred to in subparagraph (i);
- (iii) the power to make an order in relation to property if considered essential to do so for the purpose of enabling—
 - (I) the person who applies for the order to discharge the reasonable living and other necessary expenses incurred or to be incurred in respect of the person or the person’s dependants, or
 - (II) the person who applies for the order to carry on a business, trade, profession or other occupation to which any of the property relates.”.

116.—Section 28 (substituted by section 27 of the Central Bank and Financial Services Authority of Ireland Act 2004) of the Central Bank Act 1997 is amended, in the definitions of “bureau de change business” and “money transmission service”, by substituting the following for paragraphs (a) and (b) of those definitions:

Consequential amendment of Central Bank Act 1997.

“(a) by a person or body that is required to be licensed, registered or otherwise authorised by the Bank under a designated enactment (other than under this Part) or designated statutory instrument, or”.

117.—(1) In this section, “Act of 1994” means the Criminal Justice Act 1994.

Consequential amendment of Criminal Justice Act 1994.

(2) Section 3(1) of the Act of 1994 is amended in the definition of “drug trafficking” by substituting the following for paragraph (d):

“(d) engaging in any conduct (whether or not in the State) in relation to property obtained, whether directly or indirectly, from anything done in relation to a controlled drug, being conduct that—

- (i) is an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (“*Part 2* of the *Act of 2010*”) or would have been an offence under that Part if the Part had been in operation at the time when the conduct was engaged in, or
- (ii) in the case of conduct in a place outside of the State, other than conduct referred to in subparagraph (i)—

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- (I) would be an offence under *Part 2* of the *Act of 2010* if done in corresponding circumstances in the State, or
- (II) would have been an offence under that Part if done in corresponding circumstances in the State and if the Part had been in operation at the time when the conduct was engaged in, or”.

(3) Section 3(1) of the Act of 1994 is amended in the definition of “drug trafficking offence” by substituting the following for paragraph (e):

“(e) an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*, or under section 31 of this Act (as in force before the commencement of that Part), in relation to the proceeds of drug trafficking,”.

Consequential amendment of Criminal Justice (Mutual Assistance) Act 2008.

118.—Section 94(3) of the Criminal Justice (Mutual Assistance) Act 2008 is amended by substituting “*Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “section 31 of the Criminal Justice Act 1994, as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001”.

Consequential amendment of Criminal Justice (Theft and Fraud Offences) Act 2001.

119.—Section 40(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 is amended by substituting the following for the definition of “money laundering”:

“ ‘money laundering’ means an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*;”.

Consequential amendment of Investor Compensation Act 1998.

120.—(1) In this section, “Act of 1998” means the Investor Compensation Act 1998.

(2) Section 30(1) of the Act of 1998 is amended in the definition of “net loss” by substituting the following for subparagraph (iii):

- “(iii) money or investment instruments arising out of transactions in respect of which an offence has been committed under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (“Act of 2010”),
- (iv) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of Part IV of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2010*,
- (v) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of section 57 or 58 of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2010*, or

- (vi) money or investment instruments arising out of transactions in respect of which there has been a criminal conviction, at any time, for money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹².”.

(3) Section 35 of the Act of 1998 is amended by substituting the following for subsection (3):

“(3) Notwithstanding the time limits provided for in subsections (1) and (2), the competent authority may direct the Company or a compensation scheme approved under section 25, as appropriate, to suspend any payment to an eligible investor, where the investor has been charged with any of the following offences, pending the judgment of a court in respect of the charge:

- (a) an offence under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (“Act of 2010”);
- (b) an offence committed, prior to the repeal by the *Act of 2010* of any of the following provisions of the *Criminal Justice Act 1994*, under that provision:
 - (i) a provision of Part IV;
 - (ii) section 57;
 - (iii) section 58;
- (c) an offence otherwise arising out of, or relating to, money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹³.”.

121.—(1) In this section, “Act of 1997” means the Taxes Consolidation Act 1997.

Consequential amendment of Taxes Consolidation Act 1997.

(2) Section 898F (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

- (a) in subsection (3) by substituting “which is acceptable for the purposes of *Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “it acquires by virtue of section 32 of the *Criminal Justice Act 1994*”;
- (b) in subsection (4) by substituting “which is acceptable for the purposes of *Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “it acquires by virtue of section 32 of the *Criminal Justice Act 1994*”;

¹²OJ L 309, 25.11.2005, p.15

¹³OJ L 309, 25.11.2005, p.15

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(c) in subsection (5)(a) (substituted by section 124(1)(a) of the Finance Act 2006) by inserting “(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)” after “in accordance with this section”;

(d) by inserting the following paragraph after subsection (6)(a):

“(aa) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (a), to continue to treat that individual as so identified and so resident,

shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.”;

(e) in subsection (6)(b) by inserting “or (aa)” after “paragraph (a)”;

(f) in subsection (7) by inserting “(or as established, before the relevant commencement date, in accordance with this section as in force before that date)” after “this section”;

(g) by inserting the following subsection after subsection (7):

“(8) In this section, ‘relevant commencement date’ means the date on which *section 121(2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* comes into operation.”.

(3) Section 898G (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

(a) in subsection (2) by substituting “*Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “section 32 of the Criminal Justice Act 1994”;

(b) in subsection (4)(b) by substituting “*Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “section 32 of the Criminal Justice Act 1994”;

(c) in subsection (5)(b)(iii) by substituting “*Chapter 3 of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “section 32 of the Criminal Justice Act 1994”;

(d) in subsection (6)(a) (substituted by section 124(1)(b) of the Finance Act 2006) by inserting “(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)” after “in accordance with this section”;

(e) by inserting the following paragraph after subsection (8)(a):

“(aa) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (a), to continue to treat that individual as so identified and so resident,

shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.”;

(f) in subsection (8)(b) by inserting “or (aa)” after “paragraph (a)”;

(g) in subsection (9) by inserting “(or as established, before the relevant commencement date, in accordance with this section as in force before that date)” after “this section”;

(h) by inserting the following subsection after subsection (9):

“(10) In this section, ‘relevant commencement date’ means the date on which *section 121(3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* comes into operation.”.

122.—Section 36(1)(f) of the Taxi Regulation Act 2003 is amended by substituting “*Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*” for “*Part IV of the Criminal Justice Act 1994*”.

Consequential amendment of Taxi Regulation Act 2003.

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Section 4.

SCHEDULE 1

REVOCATIONS OF STATUTORY INSTRUMENTS

Title of Instrument (1)	Number and Year (2)	Extent of Revocation (3)
Criminal Justice Act 1994 (Section 32(10)(a)) Regulations 1995	S.I. No. 104 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(b)) Regulations 1995	S.I. No. 105 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(d)) Regulations 1995	S.I. No. 106 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(b)) (No. 2) Regulations 1995	S.I. No. 324 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(a)) Regulations 2003	S.I. No. 216 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) Regulations 2003	S.I. No. 242 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Amendment) Regulations 2003	S.I. No. 416 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2003	S.I. No. 618 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed Activities) Regulations 2004	S.I. No. 3 of 2004	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2004	S.I. No. 569 of 2004	The whole Regulations.

SCHEDULE 2

Section 24.

ANNEX I TO RECAST BANKING CONSOLIDATION
DIRECTIVE

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds.
2. Lending including, inter alia: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market¹⁴.
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest — rate instruments; or
 - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
15. Issuing electronic money.

¹⁴OJ L 319, 5.12.2007, p.1

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The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹⁵, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition according to this Directive.

¹⁵OJ L 145, 30.4.2004, p.1. Directive as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).