



STATUTORY INSTRUMENTS.

S.I. No. 533 of 2016



SOLICITORS (MONEY LAUNDERING AND TERRORIST
FINANCING) REGULATIONS 2016.

**SOLICITORS (MONEY LAUNDERING AND TERRORIST
FINANCING) REGULATIONS 2016.**

THE LAW SOCIETY OF IRELAND, in exercise of the powers conferred on them by sections 4, 5, 66 and 71 of the Solicitors Act, 1954, (as substituted by section 76 of the Solicitors (Amendment) Act, 1994 and pursuant to its appointment as competent authority under section 60 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and section 4 of the Solicitors (Amendment) Act, 2002) section 73 of the Solicitors (Amendment) Act 1994 and of every other power enabling them, and with the concurrence of the President of the High Court, hereby make the following Regulation.

PART 1

Citation, Commencement and Construction and Application

1. (1) These Regulations may be cited as the Solicitors (Money Laundering and Terrorist Financing Regulations) 2016.

(2) These Regulations shall come into operation on the first day of November 2016.

Definitions

2. (1) In these Regulations:

“Act” means the Solicitors Act, 1954 (No. 36 of 1954);

“Act of 1960” means the Solicitors (Amendment) Act, 1960 (No. 37 of 1960);

“Act of 1994” means the Solicitors (Amendment) Act, 1994 (No. 27 of 1994);

“Act of 2010” means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No.6 of 2010) as amended by the Criminal Justice Act 2013 (No.19 of 2013);

“Act of 2012” means the Personal Insolvency Act, 2012 (No. 44 of 2012);

“authorised person” means a person authorised in writing by the Society for the purpose of exercising any of the Society's functions pursuant to section 66 (as substituted by section 76 of the Act of 1994) of the Act and section 63 of the Act of 2010;

“business relationship”, has the same meaning as section 24 of the Act of 2010;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 21st October, 2016.*

“client” includes the personal representative of a client and any person on whose behalf the person who gave or is giving instructions was or is acting in relation to any matter in which a solicitor or his or her firm had been or is instructed; and includes a beneficiary to an estate under a will, intestacy or trust and a debtor under an insolvency arrangement; and also includes any person on whose account a solicitor receives, holds, controls or pays clients' moneys in the course of and arising from his practice as a solicitor;

“clients’ moneys” means moneys received, held or controlled by a solicitor arising from his or her practice as a solicitor for or on account of a client or clients, whether the moneys are received, held or controlled by him or her as agent, bailee, stakeholder, trustee or in any other capacity, including moneys received by the solicitor on account of outlays not yet discharged; provided that “clients’ moneys” shall not include—

- (i) moneys received, held or controlled by a solicitor in respect of which he or she is a controlling trustee or a non-controlling trustee, or
- (ii) moneys to which the only person entitled is the solicitor himself or, in the case of a firm of solicitors, one or more of the partners in the firm, or
- (iii) moneys placed on joint deposit account or joint deposit receipt other than where the payees are all solicitors practising in the same solicitors' practice, or
- (iv) (save as provided for under Regulation 8(2)(a) and 8(3)(b) of the Solicitors Accounts Regulations 2014 and without prejudice to the generality of the liability of a solicitor pursuant to the provisions of section 73 of the Act of 1994 and regulations made thereunder) interest received by a solicitor on clients' moneys held by the solicitor on account of his or her clients generally on an interest-bearing “general client account” as defined in Regulation 8(1) of the Solicitors Accounts Regulations 2014; or
- (v) moneys received, held or controlled by a personal insolvency practitioner in accordance with an insolvency arrangement;

“Council” means the Council of the Society;

“designated person” has the same meaning as section 25 of the Act of 2010;

“documents” includes deeds, wills, papers, books of account, records, vouchers, correspondence and files and shall be construed to include any documents stored in an electronic or other non-written form or on film or otherwise;

“moneys” includes moneys in a currency other than that of the State, cheques, bank notes, postal orders, money orders or any form of negotiable or non-negotiable instrument, moneys deposited or otherwise credited to a bank

account or moneys deposited or otherwise credited to a bank or other financial institution outside the State;

“money laundering” has the same meaning as Part 2 of the Act of 2010;

“personal insolvency practitioner” means a solicitor who is authorised in accordance with the Act of 2012 to carry on the practice of a personal insolvency practitioner;

“property” has the same meaning as section 2 of the Act of 2010;

“records” means the books of account and all other documents required to be maintained and kept by a solicitor arising from his or her practice as a solicitor;

“relevant independent legal professional” means a practising solicitor 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 including, without limitation, conveyancing services;
 - (ii) managing the money, securities or other assets of clients including, without limitation, providing litigation services to the extent that this involves the managing of money, securities or other assets;
 - (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:

“Society” means the Law Society of Ireland and, as appropriate, includes the Council or a committee appointed by the Council or a member of the Council or an employee or agent of the Society;

“sole practitioner” means a solicitor who is practising as a sole principal in a solicitor's practice;

“solicitor” means a practising solicitor;

“specified client” has the same meaning as specified customer in section 34 of the Act of 2010;

“terrorist financing” has the same meaning as section 2 of the Act of 2010;

“transaction” means the subject of a service carried out for a client by the independent legal professional of a kind referred to in paragraph (a) or (b) of the definition of “relevant independent legal professional” in this subsection;

“trust or company service provider” has the same meaning as section 24 and section 84 of the Act of 2010 and does not include a solicitor.

Application

3. (1) These Regulations shall apply to a solicitor who is a relevant independent legal professional, in the course of and arising from his or her practice as a solicitor, engaged in the provision of legal services, whether as a sole practitioner or as a partner in a firm of solicitors and shall, for the avoidance of doubt, apply to a solicitor carrying on practice as a personal insolvency practitioner as defined in the Act of 2012.

(2) Wherever in these Regulations an obligation is specified as being that of a solicitor, such obligation of the solicitor shall be a personal one notwithstanding that the solicitor may have caused some other person or persons to perform the act or function comprising such obligation; and it shall be assumed unless and until the contrary be shown to the satisfaction of the Society that such other person or persons had the express or implied authority of the solicitor to perform such act or function.

(3) These Regulations shall not apply to—

(a) a solicitor in the full-time service of the State within the meaning of subsection (3) of section 54 (as substituted by section 62 of the Act of 1994) of the Act; and

(b) a solicitor who is in the part-time service of the State, in respect of moneys received, held, controlled or paid by him or her in the course of such service.

(4) A solicitor, to whom clause (3) of this Regulation has applied at the time of he or she making application to the Society for a practising certificate for a practice year, shall be required to notify the Society if at any time during that practice year he or she proposes to change to being a solicitor to whom clause (1) of this Regulation applies; such notification to the Society to be made not later than fourteen days prior to such change taking place.

(5) Where the Society deems it appropriate in any particular circumstances, the Society may require a solicitor, who represents to the Society that he or she is a solicitor to whom these Regulations do not or should not apply, to verify such representation by means of a statutory declaration or in such other formal manner as the Society may direct; provided that the Society may, in addition, conduct their own investigation in order to confirm the veracity of any such representation.

PART 2**Investigation of Solicitors' Practices***Investigation*

4. (1) Where it appears to the Society, whether as a result of a complaint or otherwise, that it is necessary, for the purpose of investigating whether there has been due compliance by a solicitor with these Regulations and or the Act of 2010 or otherwise for the purpose of exercising any of the Society's functions under these Regulations the Society may appoint an authorised person and instruct an authorised person to attend, with or without prior notice, at the place or places of business of the solicitor, an authorised person may so attend at such place or places for that purpose.

(2) An authorised person who attends pursuant to clause (1) of this Regulation at the place or places of business of a solicitor shall inform the solicitor or any partner, employee or agent of the solicitor of the purpose of the attendance and may, in pursuance of that purpose, require the solicitor or any partner, employee or agent of the solicitor to do any one or more of the following things:

- (a) to make available to the authorised person for inspection all or any part of the solicitor's records;
- (b) to furnish to the authorised person such copies of the solicitors' records as the authorised person deems necessary to fulfil the purpose specified in clause (1) of this Regulation (whether or not such records or any of them relate also to other matters);
- (c) to give to the authorised person such written authority addressed to such bank or banks as the authorised person requires to enable the authorised person to inspect any account or accounts opened, or caused to be opened, by the solicitor at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised person deems necessary to fulfil the purpose specified in clause (1) of this Regulation.

(3) If a solicitor or the partner, employee or agent of the solicitor, who is required to make available records to an authorised person for inspection under clause (2) of this Regulation, refuses, neglects or otherwise fails without reasonable cause to duly comply with such requirement, the Society may, on notice to the solicitor, apply to the High Court for an order requiring the solicitor to make available for inspection at his or her place or places of business such records as the Society (including the authorised officer) deem necessary for the purpose specified in clause (1) of this Regulation or as the Court thinks fit.

(4) An authorised person who attends pursuant to clause (1) of this Regulation at the place or places of business of a solicitor shall be afforded by the solicitor (at the solicitor's expense) such facilities at such place or places of business to conduct his or her investigation as are reasonable and appropriate

in the circumstances, including accommodation with desk or table and chair or chairs (whether or not in a room separate from other persons) and photocopying facilities.

(5) Where, arising from an investigation by an authorised person pursuant to the foregoing provisions of this Regulation, it is considered by the Society:

- (a) that a report prepared by the authorised person discloses evidence of a material breach of these Regulations by the solicitor concerned or other misconduct by the solicitor as disclosed by his or her records, the Society may conduct such further investigations or make such further enquiries as the Society deem necessary in the circumstances;
- (b) that the solicitor should be required to attend at the Society's premises (or elsewhere within the State) for interview by the Society, the Society may so require the solicitor to attend; provided that, where the solicitor is to be interviewed in relation to matters contained in a report or reports of an authorised person, the solicitor shall be furnished with a copy of such report or reports in advance of such attendance, and the solicitor may attend such interview accompanied by another solicitor, by counsel or by his or her reporting accountant (or two or more of them), as the solicitor may deem fit;
- (c) that there has been a material breach of these Regulations by the solicitor concerned or that there has been other misconduct by the solicitor disclosed by his or her records (or both), the Society may make application to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor on the ground of alleged misconduct pursuant to section 7 (as substituted by section 17 of the Act of 1994) of the Act of 1960;

(whether or not the Society decide to make application to the Disciplinary Tribunal in the particular case) that there has been such a material breach of these Regulations by the solicitor concerned or such other misconduct by the solicitor as disclosed by his or her records (or both), the Society may require the solicitor to pay to the Society an amount, which, in the opinion of the Society, represents the cost thereby incurred by the Society, taking into account the nature and extent of the investigation, the preparation of a report or reports thereon, the further enquiries arising therefrom and any interview or interviews conducted by the Society consequential thereon.

(6) The Society may investigate the alleged breach by a solicitor of these Regulations and, to that end, may in respect of the solicitor concerned give directions to the solicitor.

(7) The Society may at any time terminate the authority of an authorised person and appoint another authorised person to carry out or complete an investigation pursuant to this Regulation.

PART 3**Policies and procedures***Risk assessment policies and procedures*

5. (1) A solicitor shall adopt policies and procedures, in relation to the solicitor's business to which these regulations apply, to prevent and detect the commission of money laundering and terrorist financing.

(2) In particular, a solicitor shall adopt policies and procedures to be followed by persons involved in the conduct of the solicitor's business, that specify the solicitor'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 Part 5.

(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 solicitor has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing,
- (b) the measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,
- (c) the measures to be taken to keep documents and information relating to the clients of that solicitor up to date,
- (d) the additional measures to be taken in accordance with section 39 of the Act of 2010 and the circumstances in which such measures are to be taken, and
- (e) the measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered.

(4) The solicitor 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).

(5) A solicitor shall ensure that persons involved in the conduct of the solicitor'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.

(6) A reference in this section to persons involved in the conduct of a solicitor's business includes a reference to employees, of the solicitor.

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

(8) Subsection (5) does not apply to a solicitor who is an individual and carries on business as a sole practitioner.

Records

6. (1) A solicitor shall keep records evidencing the procedures applied, and information obtained, by the solicitor in relation to each client.

(2) Without prejudice to the generality of subsection (1), a solicitor shall take the original or a copy of all documents used by the solicitor for the purposes of Part 4, including all documents used to verify the identity of clients or beneficial owners in accordance with Regulation 13.

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

(4) The documents and other records referred to in subsections (1) to (3) shall be retained by the solicitor for a period of not less than 5 years after-

- (a) in the case of a record referred to in subsection (1) the date on which the solicitor ceases to provide any service to the client concerned or the date of the last transaction (if any) with the client, whichever is the later,
- (b) in the case of a record referred to in subsection (3) evidencing the carrying out of a particular transaction by the solicitor with, for or on behalf of the client (other than a record to which paragraph (c) applies), the date on which the particular transaction is completed or discontinued, or
- (c) 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 client, the date on which the series of transactions is completed or discontinued, or
- (d) 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 client (other

than a record to which paragraph (b) or (c) 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 Criminal Justice Act 1994 immediately before the repeal of that provision by the Act of 2010.

(6) Subsection (4)(b) to (d) 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 the Act of 2010 and for that purpose—

(a) a reference in subsection (4)(b) to (d) to a record referred to in subsection (3) includes a reference to such a record, and

(b) a reference in subsection (4)(c) 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 solicitor 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 solicitor.

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

Responsibility of a partner

7. Each partner in a firm of solicitors shall be responsible for securing compliance by the firm with these Regulations.

PART 4

Client Due Diligence

Beneficial ownership

8. 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.

9. 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.

10. (1) In this regulation “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 regulation “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.

11. 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.

12. In this Part:

(1) “beneficial owner”, in relation to a legal entity or legal arrangement, other than where regulations 8,9,10, applies, means—

(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 regulation 8, 9, 10 or 11, or subsection (1) of this section, applies, means any individual who ultimately owns or controls a client or on whose behalf a transaction is conducted.

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

Client Due Diligence

13. (1) A solicitor shall apply the measures specified in subsections (2) and, where applicable, (4), in relation to a client of the solicitor—

(a) prior to establishing a business relationship with the client,

- (b) prior to carrying out an occasional transaction with, for or on behalf of the client or assisting the client to carry out an occasional transaction,
- (c) prior to carrying out any service for the client, if, having regard to the circumstances, including:
 - (i) the client, or the type of client, concerned,
 - (ii) the type of any business relationship which the solicitor has with the client,
 - (iii) the type of service or of any transaction or product in respect of which the service is sought,
 - (iv) the purpose (or the client'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 client's explanation of the source) of funds for any such transaction or product,
 - (vii) the solicitor has reasonable grounds to suspect that the client is involved in, or the service, transaction or product sought by the client is for the purpose of, money laundering or terrorist financing,

or

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

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

- (a) identifying the client, and verifying the client's identity on the basis of documents (whether or not in electronic form), or information, that the solicitor has reasonable grounds to believe can be relied upon to confirm the identity of the client including documents from a government source (whether or not a State government source);
 - (b) identifying any beneficial owner connected with the client 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 solicitor has reasonable grounds to be satisfied that the solicitor knows who the beneficial owner is, and
 - (ii) in the case of a legal entity or legal arrangement of a kind referred to in regulation 8, 9, 10 or 12, to understand the ownership and control structure of the entity or arrangement concerned.
- (3) Nothing in subsection (2)(a) limits the kinds of documents or information that a solicitor may have reasonable grounds to believe can be relied upon to confirm the identity of a client.
- (4) Without prejudice to the generality of subsection (2)(a), one or more of the following measures shall be applied by a solicitor under subsection (1), where a client who is an individual does not present to the solicitor for verification in person of the client's identity:
- (a) verification of the client's identity on the basis of documents (whether or not in electronic form), or information, that the solicitor has reasonable grounds to believe are reliable as confirmation of the identity of the client in addition to any documents or information that would ordinarily have been used to verify the client's identity if the client had presented to the solicitor for verification in person of the client's identity;
 - (b) verification of documents supplied, for the purposes of verifying the identity of the client under this section to the solicitor by the client;
 - (c) verification of the client's identity on the basis of confirmation received from an acceptable institution that the client is, or has been, a customer of that institution.
- (5) Notwithstanding subsection (1)(a), a solicitor may verify the identity of a client or beneficial owner, in accordance with subsections (2) and, where applicable, (4), during the establishment of a business relationship with the client if the solicitor has reasonable grounds to believe that—
- (a) verifying the identity of the client 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 client is involved in, or the service sought by the client is for the purpose of, money laundering or terrorist financing,

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

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

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

Simplified client due diligence

14. (1) A solicitor is not required to apply the measures specified in regulation 13 if the client is a specified client.

(2) A solicitor shall not apply the simplified client due diligence measures applicable to a specified client in any of the following circumstances:

- (a) the client concerned is from a place that is designated under section 32 of the Act of 2010;
- (b) regulation 13 (1)(c) or (d) or (4) applies;
- (c) the solicitor is required to apply measures, in relation to the client or beneficial owner (if any) concerned, under regulation 17.

Purpose and intended nature of a business relationship

15. (1) A solicitor 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 client prior to the establishment of the relationship.

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

(3) A solicitor shall monitor dealings with a client with whom the solicitor 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 solicitor's knowledge of the client and the client's business and pattern of transactions, and
- (b) any knowledge that the solicitor may have that the client may be involved in money laundering or terrorist financing.

16. (1) A solicitor is not required to comply with regulation 15(1) if the solicitor has reasonable grounds for believing that the client is a specified client.

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

- (a) the client concerned is from a place that is designated under section 32 of the Act of 2010;
- (b) Regulation 13(1)(c) or (d) or (4) applies;
- (c) a solicitor is required to apply measures, in relation to the client or beneficial owner (if any) concerned, under regulation 17.

Politically exposed persons

17. (1) In this Regulation:

“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;

“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;

“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;
- (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.

(2) A solicitor shall take steps to determine whether or not a client, or a beneficial owner connected with the client or service concerned, being a client 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.

(3) The solicitor shall take the steps prior to—

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

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

(5) If a solicitor knows or has reasonable grounds to believe that a client 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 solicitor shall—

- (a) ensure that approval is, formally documented by a sole practitioner, or is otherwise formally documented by senior management of the solicitor nominated for this purpose, before a business relationship is established with the client, and
- (b) determine the source of wealth and of funds for the following transactions:
 - (i) transactions the subject of any business relationship with the client that are carried out with the client or in respect of which a service is sought, or
 - (ii) any occasional transaction that the solicitor carries out with, for or on behalf of the client or that the solicitor assists the client to carry out.

and

- (c) apply such additional measures in the course of monitoring the business relationship with the client in accordance with Regulation 15 (including monitoring of the source of wealth and funds), that the solicitor considers to be warranted by the risk of money laundering or terrorist financing.

(6) If a solicitor knows or has reasonable grounds to believe that a beneficial owner residing in a place outside the State, and connected with a client or with a service sought by a client, is or has become a politically exposed person or an immediate family member or close associate of a politically exposed person, the solicitor shall apply the measures specified in subsection (5)(a) and (b) and (c) in relation to the client concerned.

(7) For the purposes of subsections (5) and (6), a solicitor 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 solicitor (whether obtained under subsections (2) to (4) or otherwise),
- (b) in a case where the solicitor has contravened subsection (2) or (3), information that would have been in the possession of the solicitor if the solicitor had complied with that provision, or
- (c) public knowledge,

there are reasonable grounds for concluding that the solicitor so knows.

(8) A solicitor who is unable to apply the measures specified in subsection (2), (4), (5) or (6) in relation to a client as a result of any failure on the part of the client to provide the solicitor with documents or information:

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

Additional due diligence measures

18. Where a solicitor has reasonable grounds to believe that the circumstances relating to a client, beneficial owner, service, product or transaction may present a heightened risk of money laundering or terrorist financing, the solicitor shall, as respects that client or beneficial owner, apply additional measures to those specified in this Part.

Reliance on relevant third parties

19. (1) In these Regulations, “relevant third party” means:

- (a) a person, carrying on business as a designated person in the State:
 - (i) that is a credit institution which means
 - (a) a credit institution within the meaning of Article 3(1) of the Banking Consolidation Directive (Directive 2013/36/EU), 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);
 - (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 of Ireland.

(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 (Directive 2005/60/EC), 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 of the Act of 2010, 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 solicitor may rely on a relevant third party to apply, in relation to a client of the solicitor, any of the measures that the solicitor is required to apply, in relation to the client, under regulation 13 or 15(1).

(4) A solicitor may rely on a relevant third party to apply a measure under regulation 13 or 15(1) only if—

- (a) there is an arrangement between the solicitor (or, in the case of a solicitor who is an employee, the solicitor's employer) and the relevant third party under which it has been agreed that the solicitor may rely on the relevant third party to apply any such measure, and
- (b) the solicitor is satisfied, on the basis of the arrangement, that the relevant third party will forward to the solicitor, as soon as practicable after a request from the solicitor, any documents (whether or not in electronic form) or information relating to the client that has been obtained by the relevant third party in applying the measure.

(5) A solicitor who relies on a relevant third party to apply a measure under regulation 13 or 15(1) remains liable, under regulation 13 or 15(1), for any failure to apply the measure.

(6) A reference in this section to a relevant third party on whom a solicitor may rely to apply a measure under regulation 13 or 15(1) does not include a reference to a person who applies the measure as an outsourcing service provider or an agent of the solicitor.

(7) Nothing in this section prevents a solicitor applying a measure under regulation 13 or 15(1) by means of an outsourcing service provider or agent provided that the solicitor remains liable for any failure to apply the measure.

PART 5

Reporting of Suspicious Transactions

20. In this Part a reference to a solicitor includes a reference to any person acting, or purporting to act, on behalf of the solicitor, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the solicitor.

21. (1) A solicitor who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a solicitor, that another person has been or is engaged in an offence of money laundering or terrorist financing as defined in the Act of 2010 shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds.

(2) The solicitor 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 solicitor 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 solicitor may have reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing if the solicitor is unable to apply any measures specified in regulation 13 (2) or (4), 15(1) or 17(2), (4), (5) or (6), in relation to a client, as a result of any failure on the part of the client to provide the solicitor with documents or information.

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

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

- (a) the information on which the solicitor's knowledge, suspicion or reasonable grounds are based;
- (b) the identity, if the solicitor knows it, of the person who the solicitor 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 solicitor 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 solicitor 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 solicitor 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) 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.

(9) A solicitor shall report to the Garda Síochána and Revenue Commissioners any service or transaction, that:

- (a) the solicitor provides or carries out in the course of carrying on business as a solicitor, and
 - (b) is connected with a place that is designated under section 32 of the Act of 2010.
- (10) Nothing in these regulations requires the disclosure of information that is subject to legal privilege.

Signed on behalf of the Law Society of Ireland pursuant to Section 79 of the Solicitors Act, 1954.

Dated this 18th day of October 2016.

SIMON J. MURPHY,
President of the Law Society of Ireland.

I consent to the making of the within Regulations pursuant to subsection (1) of Section 66 of the Solicitors Act, 1954, (as substituted by Section 76 of the Solicitors (Amendment) Act, 1994), to the making of the within Regulations.

Dated this 18th day of October 2016.

Mr. JUSTICE PETER KELLY,
President of the High Court.

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