

## **Designated Property Service Providers – Compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended**

### **Overview**

The Minister for Justice and Equality has prescribed<sup>1</sup> the Property Services Regulatory Authority (PSRA) as the State competent authority for property service providers for the purposes of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

As competent authority, the PSRA is tasked with monitoring property service providers who are described as “designated persons”<sup>2</sup> and taking measures that are reasonably necessary for the purpose of securing compliance by property service providers with the requirements of Part 4 of the 2010 Act.

It is the responsibility of Property Service Providers to interpret and to act in accordance with all relevant anti-money laundering legislation that applies to them. The purpose of this overview is to remind Property Service Providers of the important need to know and to comply with their statutory obligations as “designated persons” under the Act.

**Key anti money laundering responsibilities of property service providers** include -

#### **Internal Policies, Procedures and Training**

Property Service Providers must have in place appropriate policies and procedures for detecting and preventing the commission of money laundering or terrorist financing involving their business. Procedures must be sufficiently detailed in that they properly inform, and also be kept up to date. All staff involved in the conduct of the property service provider’s business must be provided with ongoing training on identifying money laundering activity and on steps to be taken once such activity is identified.

#### **Customer due diligence (CDD)**

Property Service Providers are required to identify and verify customers and, where applicable, the beneficial owners, prior to the establishment of a business relationship or the carrying out of an occasional transaction or service.

For certain high-risk categories of customer, enhanced customer due diligence steps must be taken.

The Department of Justice and Equality’s Anti-Money Laundering Compliance Unit has drawn up a detailed guide on the application of CDD measures.

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<sup>1</sup> S.I. NO. 453 of 2016

<sup>2</sup> Section 25(1)(f) of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

Property Service Providers are advised to take account of that Guide, a copy of which is attached to this overview for information.

In the event that Property Service Providers are unable to apply CDD measures due to failure on the part of customers to furnish the designated person with documents or information as required by law, then the Property Service Providers must refrain from providing the service or carrying out the transaction sought until the failure is rectified, and must discontinue any business relationship with the customer.

### **Record keeping**

Property Service Providers must keep records evidencing the actual customer due diligence procedures applied, and the information obtained, in relation to each and every customer. The records must be retained for a minimum of 5 years, including where the Property Service Provider has ceased to provide property services.

### **Reporting suspicious transactions**

A Property Service Provider who knows, suspects, or has reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing, must report that suspicious activity<sup>3</sup> to both

(1) The Garda Bureau of Fraud Investigation, Harcourt Square, Harcourt Street, Dublin 2, D02 DH42 Phone 01 6663776

And

(2) The Revenue Commissioners Suspicious Transactions Unit, Block D, Ashtowngate, Dublin 15, D15 XKP4 Phone 01 8277484.

A Property Service Provider must likewise report any service or transaction carried out in their capacity as a Property Service Provider that is connected with a place designated by the Minister for Justice and Equality as having inadequate procedures for detecting money laundering and terrorist financing.

### **Conclusion**

Property service transactions may be attractive to criminals seeking to launder, conceal or legitimise the proceeds of crime. Strict adherence to the obligations set out in anti-money laundering legislation will minimise the risks for Property Service Providers and reduce vulnerability to money laundering and/or terrorist financing activity.

The PSRA expects Property Service Providers to be able to demonstrate that they have in place appropriate anti-money laundering protections in compliance with statutory obligations. The PSRA will review compliance levels as part of its

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<sup>3</sup> A statement of that reporting obligation must be included in the property service agreement pursuant to Schedule 2 Part 1 of the Property Services (Regulation) Act 2011

ongoing onsite audit inspections of licensees pursuant to the Property Services (Regulation) Act 2011. This will include a reckoning of the level of suspicious activity reports made by Property Service Providers.

**Further reading and relevant publications** are available on the following websites:

[www.antimoneylaundering.gov.ie](http://www.antimoneylaundering.gov.ie) website of the Department of Justice and Equality's Anti-Money Laundering Compliance Unit

[www.fatf-gafi.org](http://www.fatf-gafi.org) website of the inter-governmental Financial Action Task Force (FATF) of which Ireland is a member

<http://ec.europa.eu/justice/civil/financial-crime/applying-legislation> website of the European Commission

## Extract from Department of Justice and Equality Anti-Money Laundering Compliance Unit on **Customer Due Diligence**

The first legal obligation on “designated persons” is to apply Customer Due Diligence (CDD) procedures as prescribed in **section 33** of the Act to their customers in specific circumstances and at certain times. The full provisions relating to the customer due diligence obligations for “designated persons” are contained Chapter 3 of the Act **sections 33 to 40**.

Customer Due Diligence (CDD) initially requires the “designated person” to be satisfied as regards the identification and verification of the customer’s identity- **Know Your Customer**.

CDD also requires the “designated person” to be alert to any activity which could be related to money laundering or terrorist financing and in particular to complex or unusually large transactions and all unusual patterns of transactions and to take guard against such risks. The measures that are to be applied are contained in **section 33(2)** of the Act.

There are special measures to be applied where there is a business relationship which includes the ongoing monitoring of the business relationship **see section 35 of the Act**. Information on the purpose and intended nature of a business relationship with a customer (*reasonably warranted by the risk of money laundering or terrorist financing*) must be obtained prior to the establishment of the relationship.

In addition steps must be taken to determine whether a customer or a beneficial owner residing outside the State is a “politically exposed person” or an immediate family member or a close associate of a politically exposed person **see section 37 of the Act**.

If a designated person is unable to obtain any required information, as a result of any failure on the part of the customer **no transactions should be conducted**. In such circumstances particular attention must be paid to the obligations to report suspicious transactions to the Garda Síochána and the Revenue Commissioners and the obligation relating to **“Tipping Off” see sections 41 to 53 of the Act**.

### **Know You Customer**

Knowing your customer and conducting business in the normal fashion are probably the key means of preventing money laundering. In respect of your customer, assess the risk and satisfy yourself of the identity and source of funds. **A good risk assessment policy and procedure is vital**.

### **Customer identification**

Customer Due Diligence requires the “designated person” to identify the cash customer and to obtain documents that will verify the customer’s and or beneficial owner’s identity. Documentation from a government source should

be provided e.g. passport, driving licence and this should be verified by a recent utility bill to confirm address if necessary **Section 33 (2) (a)** and **33 (2) (b)**. If the purchaser or beneficial owner is a company or other legal entity steps must be taken to confirm that the entity is bona fide. Records must be maintained of the steps taken to verify identity and copies of documents retained. This process must also be followed for any beneficial owner of the goods.

**Unusual customer behaviour**

It should be apparent to you when a customer behaves in an unusual manner. Business transactions are normally quite routine and any effort to deviate from routine may be enough to alert you to suspicious activity. In retail cash transactions there should be a clear source of funds e.g. Bank or Credit Union Loan, withdrawal from account etc.