Financial Action Task Force

Groupe d'action financière

THIRD MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

IRELAND

17 FEBRUARY 2006

TABLE OF CONTENTS

PAGE

Preface - information and methodology used for the evaluation 4

EXECUTIVE SUMMARY 5

1 Background Information 5
2 Legal System and Related Institutional Measures 5
3 Preventive Measures - Financial Institutions 6
4 Preventive Measures – Designated Non-Financial Businesses and Professions 10
5 Legal Persons and Arrangements & Non-Profit Organisations 10
6 National and International Co-operation 11

MUTUAL EVALUATION REPORT 13

1 GENERAL 13
1.1 General information on Ireland 13
1.2 General Situation of ML and Financing of Terrorism 16
1.3 Overview of the Financial Sector and DNFBP 17
1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements 23
1.5 Overview of strategies to prevent ML and TF 24

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES 34
2.1 Criminalisation of ML (R.1 and 2) 34
2.2 Criminalisation of TF (SR.II) 38
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) 41
2.4 Freezing of funds used for TF (SR.III) 48
2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32) 55
2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32). 64
2.7 Cross Border Declaration or Disclosure (SR.IX and R.32) 70

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS 71
3.1 Risk of ML or TF 72
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8) 72
3.3 Third parties and introduced business (R.9) 86
3.4 Financial institution secrecy or confidentiality (R.4) 87
3.5 Record keeping and wire transfer rules (R.10 & SR.VII) 88
3.6 Monitoring of transactions and relationships (R.11 & 21) 90
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) 92
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22) 98
3.9 Shell banks (R.18) 102
3.10 The supervisory and oversight system - competent authorities and SROs; Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25) 103
3.11 Money or value transfer services (SR.VI) 115

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS 117
4.1 Customer due diligence and record-keeping (R.12) *(applying R.5, 6, 8-11, and 17)* 117
4.2 Suspicious transaction reporting (R.16) (applying R.13 to 15, 17 & 21) 121

4.3 Regulation, Supervision, and Monitoring (R 24-25) 125
4.4 Other non-financial businesses and professions: Modern secure transaction techniques (R.20) 127

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS 128
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34) 132
5.3 Non-profit organisations (SR.VIII) 133

6 NATIONAL AND INTERNATIONAL CO-OPERATION 135
6.1 National co-operation and coordination (R.31) 135
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I) 137
6.3 Mutual Legal Assistance (R.32, 36-38, SR.V) 139
6.4 Extradition (R.32, 37 & 39, & SR.V) 146
6.5 Other Forms of International Co-operation (R.32 & 40, & SR.V) 151

7 OTHER ISSUES 154
7.1 Other relevant AML/CFT measures or issues 154

8. TABLES 155
Table 1. Ratings of Compliance with FATF Recommendations 155
Table 2: Recommended Action Plan to Improve the AML/CFT System 162

Preface - information and methodology used for the evaluation

1. The evaluation of the Anti-Money Laundering (AML)[1] and combating the financing of terrorism (CFT) regime of Ireland was based on the Forty Recommendations 2003 and the Nine Special Recommendations on TF 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Ireland, and information obtained by the evaluation team during its on-site visit to Ireland from 27 June to 8 July 2005, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Irish government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team which consisted of members of the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues: Mr. Wayne Walsh Deputy Principal Government Counsel, International Law Division, Department of Justice, Hong Kong, China (legal expert); Ms Stella Herrera Head International Affairs Central Bank of the Netherlands Antilles, Netherlands Antilles (financial expert); Mr. Mario Gara Adviser, Ufficio Italiano dei Cambi Servizio Antiriciclaggio Divisione Operazioni Sospette (financial expert); Mr. Phil Atkinson Head of the Terrorist Finance Team National Criminal Intelligence Service (NCIS) United Kingdom (law enforcement expert); Mr. John Carlson and Mr. Mark Hammond from the FATF Secretariat. The assessment team reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter ML and the financing of terrorism through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.[2]

3. This report provides a summary of the AML/CFT measures in place in Ireland as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Ireland's levels of compliance with the FATF 40+9 Recommendations (see Table 1).[3]

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1 See Annex 1 for a complete list of abbreviations and acronyms.

2 See Annex 2 for a detailed list of all bodies met during the on-site mission.
See Annex 3 for copies of the key laws, regulations and other measures.
See Annex 4 for a list of all laws, regulations and other material received and reviewed by the assessors.

3 Also see Table 1 for an explanation of the compliance ratings (C, LC, PC and NC).

EXECUTIVE SUMMARY

1 Background Information

4. This report provides a summary of the AML/CFT measures in place in Ireland at July 2005 (the date of the on-site visit). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Ireland's levels of compliance with the FATF 40 + 9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Irish Government recognises the need for an effective AML/CFT regime and is in the process of updating its ML/TF framework.

5. Narcotics offences provide a substantial source of the proceeds of crime in Ireland; considerable illegal proceeds are also derived from fraud-related offences, tax evasion, the evading of excise duties (taking advantage of price differentials from higher rates of excise duty in Northern Ireland) and criminal activity associated with terrorism.

6. Criminals, including terrorists, have used a variety of techniques to launder money. Irish authorities have noted that increasingly money launderers have used financial institutions, businesses or professions that are either not regulated or have a low compliance culture for AML to launder money. Investigations have indicated that credit institutions, money remittance companies, solicitors, accountants and second hand car dealerships have all been used in ML schemes.

7. Ireland has a modern, international financial services sector and a wide range of financial services and institutions operate from the jurisdiction. Depository corporations (such as banks, building societies and credit unions); financial markets (exchanges); insurance corporations and pension funds (life insurance and general insurance); other financial corporations, including financial intermediaries (such as Agency Fund Managers, investment business firms and stockbrokers); financial auxiliaries (such as insurance brokers); and money remittance dealers and bureaux de change.

8. A full range of Designated Non-Financial Businesses and Professions (DNFBPs) operate in Ireland: Real estate agents/auctioneers, dealers in precious metals and stones, lawyers (solicitors and barristers), accountants and trust and company service providers. There are also a number of private clubs that provide casino type gaming facilities.

9. Ireland is a republic, with a parliamentary system of government and a common law legal system with a Constitution. The Department of Justice, Equality and Law Reform is responsible for the development and implementation of the criminal law. The Department of Finance is responsible for policy and legislative implementation in relation to the financial sector.

2 Legal System and Related Institutional Measures

10. Ireland has a broad money laundering (ML) offence, which meets the FATF requirements; however the number of ML prosecutions and convictions remains low. ML is criminalised under the Criminal Justice Act (CJA) (1994) which had been in effect since 1994, and since 2001 the ML offence has applied to all indictable offences. Penalties under the CJA 1994 apply to both natural and legal persons under s.59 of the Act.

11. The offence of Terrorist Financing (TF) was established by the Criminal Justice (Terrorist Offences) Act (2005) and TF offences are also predicate offences for ML. The TF offence is criminalised in accordance with the provisions of the UN Convention for the Suppression of TF and UN S/RES/1373 (2001). The TF offence, however, does not currently cover the funding of a single terrorist or two terrorists acting in concert.

12. Between 2001 and 2004 inclusive, 15 people were charged with ML and 8 people have been convicted. Sentences being handed down on conviction generally appear appropriate (from 2 to 5 years imprisonment). There have been a relatively low number of convictions. A lack of comprehensive statistics on ML investigations, prosecutions and convictions prevents a full evaluation of effectiveness. There have been no prosecutions for TF since the offence was only implemented in March 2005.

13. Ireland's provisions for the confiscation of the proceeds of crime appear effective and comprehensive, and are available through both criminal and civil procedures. The CJA (1994) provides that where a person is convicted of any offence on indictment the court can require the payment of the person's benefits from crime. Between 2001 to 2004 freezing and confiscation measures under the CJA (1994) were taken in 14 cases covering a total amount of €800,000. In addition to conviction based confiscation, the Proceeds of Crime Act (1996) provides for the civil forfeiture of property which is shown, on the balance of probabilities, to be the proceeds of crime. Between 2001 and 2004 property to the approximate value of €43 million was frozen. The Criminal Justice (Terrorist Offences) Act (2005) provides the legislative basis for confiscation orders relating to the offence of TF.

14. Ireland has measures for the freezing of terrorist funds and has implemented UN Security Council Resolutions 1267 (1999) and 1373 (2001) under EU Council Regulations. These have direct force of law in Ireland and financial institutions are required to freeze assets from the date of such EU Regulations. Regulations made under the Criminal Justice (Terrorist Offences) Act (2005) further provide for penalties for non-compliance. This process is largely effective in informing the financial sector of their freezing obligations.

15. The Garda Bureau of Fraud Investigation (GBFI) hosts the FIU, which was established in 1995. The FIU receives STRs and after assessment disseminates them to financial investigation units within the Garda for further investigation. The FIU shares responsibility for the receipt of STRs with the Revenue Commissioners which investigates STRs in relation to possible tax /customs offences. The number of STRs received by the FIU has increased from 3,040 in 2001 to 5,491 in 2004, and 10,735 were received during 2005. The resources available to the FIU to effectively manage and conduct analysis on the increasing numbers of STRs, while also performing its other AML/CFT responsibilities are limited.

16. Adequate powers are available to the Garda, the CAB and Revenue Commissioners to gather evidence and compel the production of financial records and files from financial institutions and DNFBPs. The Irish authorities have sufficient powers to prosecute ML and TF offences; however the structures, staffing and resources to investigate these offences are also responsible for examining a range of white collar crimes. While legal measures are available to investigate and prosecute for ML or TF offences few cases lead to a successful prosecution.

3 Preventive Measures - Financial Institutions

17. The CJA (1994) (as amended) defines those financial institutions that are subject to AML/CFT obligations, classifying them as designated bodies under the Act. Designated bodies include all relevant financial institutions as defined. Designated bodies are obliged under s. 32(2) of CJA (1994) to identify customers, to retain records in relation to customers and transactions, to adopt measures to prevent and

detect ML and TF – including training employees and detecting and reporting suspicious transactions. The Irish legislative framework does not impose AML/CFT obligations on the basis of risk.

18. The requirements to conduct Customer Due Diligence (CDD) are met in part from the CJA (1994). Designated bodies are required to take reasonable measures to identify customers when establishing business relationships or when performing transactions over €13,000. These provisions also apply to identifying/verifying relationships established for legal persons or arrangements. No explicit provision requires the identity of the beneficial owner to be established and verified, nor does the legislation impose other CDD requirements. The application of s.32 of the CJA (1994) does not extend to those customers that had existing business relations prior to May 1995 except in cases where it is suspected that a service is connected with the commission of a money laundering offence. More extended CDD measures are outlined in guidance notes, however the guidance does not impose a directly enforceable legal obligation with adequate sanctions.

19. Section 32(6) of the CJA (1994) provides exemptions from CDD requirements where a customer is another designated body, or is corresponding body in an EU Member State or another prescribed state or country. All non-EU FATF countries, Liechtenstein, the Channel Islands and the Isle of Man have been prescribed. Despite this, the evaluation team were informed identification procedures are performed in practice regardless of whether a counterpart is a designated body or not.

20. There are no specific obligations regarding higher risk relationships for politically exposed persons (PEPs), correspondent banking or for financial institutions to have policies in place to prevent the misuse of technological developments in ML/TF. AML/CFT obligations on introduced business within the financial sector are currently contained in guidance.

21. Sectoral guidance notes complement the AML obligations under the CJA (1994) and provide additional more detailed information for the banking, securities, stockbroking insurance sectors and credit unions on how to implement AML/CFT measures. The guidance notes are issued by the Money Laundering Steering Committee (MLSC), which is made up of different government agencies and private sector bodies. The guidance notes provide an explanation on the requirements of the CJA (1994) and its amendments; provide a steer on internal controls, policies and procedures as well as dealing with many aspects of CDD, record keeping, STR reporting and education and training procedures. Guidance to financial institutions has also been provided in relation to TF after the enactment of the Criminal Justice (Terrorist Offences) Act (2005).

22. The guidance notes are comprehensive and provide financial institutions with a thorough explanation of how they could apply appropriate AML/CFT controls. However, the guidance notes do not impose mandatory requirements with sanctions for non-compliance as required by the FATF Recommendations.

23. Banking secrecy does not inhibit the implementation of the FATF Recommendations. The Irish AML/CFT framework appropriately reconciles the right to confidentiality of financial institutions' customers with competent authorities' need to access the information they may require to fulfil their AML/CFT duties.

24. Designated bodies are required under the CJA (1994) to keep records in relation to customer identification for five years after the business relationship has ended, and for transactions for five years after the date of the transaction. In addition, there are specific provisions requiring that companies/firms comply with explicit record and book-keeping requirements which are set out under legislation such as Companies Acts (1963 and 1990), Central Bank Acts (1989 and 1997), the Investment Intermediaries Act, 1995 and the Stock Exchange Act, 1995. There are no provisions imposing specific information gathering,

retention and onward transmission requirements with reference to wire transfers under Special Recommendation VII.

25. There is no explicit requirement to pay attention to all unusual, complex large transactions and transactions with no visible economic purposes, nor to further examine these situations and to set out these findings in writing. The guidance notes do however provide some assistance to designated bodies in recognising transactions that are potentially suspicious. The Financial Regulator distributes information on NCCT countries to financial institutions. The CJA (1994) also allows the Minister for Justice to designate countries where appropriate measures for the prevention and detection of ML have not been implemented. Countries are designated when counter measures are applied by FATF. Ireland recently revoked designations on the two outstanding countries (Myanmar and Nauru) which had counter measures removed from them.

26. Section 57 (1) of the CJA (1994) requires a designated body to report to the Garda and the Revenue Commissioners where they suspect that a ML offence has been or is being committed. The obligation to report also applies to any infringement of the AML/CFT preventive measures set out in s.32 of the CJA (1994). Section 36 of the Criminal Justice (Terrorist Offences) Act (2005) amended section 57 of the CJA (1994) and creates an obligation for designated bodies to report to the Garda and Revenue suspicions that an offence of TF has been or is being committed. Overall, the number of STRs received (see above) is comparable to other similarly sized jurisdictions, and comes from a range of different types of financial institutions. The number of STRs has risen over time as legislation has extended STR obligations and the number of reports received appears to be generally satisfactory. Reports are also being made in relation to suspected cases of TF.

27. The CJA (1994) imposes a general requirement on designated bodies to adopt measures to prevent and detect ML, and s.32 of the Criminal Justice (Terrorist Offences) Act (2005) extends this provision to include TF. Measures must include the establishment of procedures to be followed by employees in the conduct of business; and providing employees with instructions on the application AML measures. The guidance notes deal with more detailed measures - developing compliance management arrangements such as the appointment of a Money Laundering Reporting Officer (MLRO); ensuring the MLRO has access to relevant information; procedures for internal and onward reporting of suspicions and testing these procedures. Staff training is required under s.32 (9B) of the CJA (1994) and directors and mangers have to go through fit and proper checks by the Financial Regulator.

28. In relation to foreign branches and subsidiaries, the guidance notes recommend that a group policy be established to ensure that where possible overseas operations comply at a minimum with the standards set out in the Irish guidance notes. Legislation allows the exchanging of information when a supervisor may observe that a branch or subsidiary is unable to observe AML/CFT standards. However, this could be strengthened by requiring that particular attention should be paid to branches and subsidiaries in countries that do not, or insufficiently, apply the FATF Recommendations.

29. The banking authorisation process in Ireland effectively precludes the establishment and operation of “shell banks” within Ireland. However, Ireland does not prohibit financial institutions from entering into correspondent banking relationships with shell banks, nor do they need to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

30. As noted above, there are several sets of guidance notes that provide additional information on how financial institutions can, in practice, apply record keeping, internal controls and STR reporting requirements and the evaluation team found that in practice, financial institutions often adopted measures that are stricter than those posed in the guidance.

31. The Irish Financial Services Regulatory Authority, known as the Financial Regulator applies strict licensing and supervision requirements before authorizing financial institutions to become active in Ireland. Applications for authorisation must include detailed information on ownership including legal form and structure and this information is checked as part of a "fit and proper" review. The Financial Regulator is responsible for supervising and monitoring financial institutions for compliance with the Core Principles (in the banking, insurance and securities sectors), as well as compliance with AML/CFT legislation. On-site inspections are a significant component of an active monitoring process which seeks to confirm that all financial service providers operate within the terms of their authorisation.

32. Ireland follows a principles-based approach to regulation and supervision, placing responsibility on the boards and management of financial institutions to implement appropriate risk management systems and effective AML/CFT internal controls. The fitness and probity of those who manage financial institutions is monitored closely by the Financial Regulator.

33. The Financial Regulator requires designated bodies to take all necessary measures to effectively counteract ML and TF in accordance with the CJA (1994) and Criminal Justice (Terrorist Offences) Act (2005) and the relevant sectoral guidance notes. The Financial Regulator is adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. They have sufficient operational independence and autonomy to ensure freedom from undue influence or interference.

34. The Central Bank Act (1997) also gives authorised officers of the Financial Regulator the power to enter premises and seize and review documents and require a regulated financial service provider to submit a compliance certificate certifying that it has complied with all relevant obligations. Between May 2003 and 31 December 2004 there were a total of 497 inspections and review meetings with banks, insurance companies, investment/stock broking firms, funds service providers and credit unions.

35. The Financial Regulator is obliged to report to the FIU and the Revenue Commissioners suspicions of ML or TF offences, or a breach of Irish AML/CFT requirements, by a regulated financial service provider. However the Financial Regulator has very limited powers to directly apply administrative sanctions for failure to comply ML or TF obligations, and at present is unable to use its general powers of sanction for specific breaches of the CJA (1994), though such breaches are liable to criminal prosecutions under the Act. Failure by a regulated financial service provider, or its management, to comply with a statutory demand of the Financial Regulator for information or to inspect records etc, or the provision of false or misleading information, would make it liable to supervisory action. Types of general supervisory actions can range from inspection letters requiring appropriate remedial action to the revocation of a licence/authorisation to carry on business. In addition the Financial Regulator has powers to impose a broad range of administrative sanctions, including fines, for breaches of designated supervisory enactments. However, the range of sanctions available specifically for AML/CFT breaches is limited to criminal prosecution and certain supervisory actions by the Financial Regulator such as issuing letters to financial service providers requiring action to be taken to rectify breaches of the AML/CFT regulations or revocation of a licence/authorisation. Ireland is reviewing its administrative sanctions for AML/CFT breaches in the context of the implementation of the 3rd EU ML Directive.

36. Money transmission businesses or services that operate in Ireland will be supervised and monitored by the Financial Regulator in the same way as bureaux de change and all AML/CFT obligations that are applicable to the other institutions are also applicable to the money remitters.

37. Overall, the evaluation team found that the AML/CFT requirements contained in the CJA (1994), combined with the sets of guidance notes, go some way towards meeting the FATF requirements but do not fully set out the necessary legally enforceable and sanctionable obligations relating to CDD and

related preventive measures. This will need to be rectified by legislative and other changes. Further consideration could also be given to more fully incorporating a risk-based approach. The creation of the Financial Regulator has assisted in providing a consistent approach to AML/CFT supervision and regulation of financial institutions, and it is operating effectively, though it needs increased powers to sanction.

4 Preventive Measures – Designated Non-Financial Businesses and Professions

38. Most categories of DNFBPs operate in Ireland: real estate agents/auctioneers, dealers in precious metals and stones, solicitors and barristers, accountants and trust and company service providers. Ireland extends the same AML/CFT obligations for financial institutions to accountants, dealers in high value goods, solicitors and auctioneers and estate agents who are subject to the requirements of sections 31, 32, 57 and 59 of the CJA (1994). They are therefore subject to requirements to identity customers, keep records, have internal procedures to prevent and detect ML and TF and report STRs. Generally, the provisions lack effectiveness, since as noted above, the provisions impose limited requirements with respect to the application of CDD measures.

39. Trust and Company service providers are not covered by AML/CFT requirements as a separate DNFBP category despite the presence of specialist providers in Ireland. Casinos, including internet casinos, are illegal. However, it was noted that a number of private gaming clubs operate casino like facilities that create an AML/CFT risk, but which fall outside the scope of the CJA (1994). This lack of AML/CFT requirements for the trust and company service and gaming sectors was a matter of concern for the evaluation team.

40. Self-Regulatory Organisations (SRO) have assisted in the implementation of AML/CFT obligations for some of the DNFBP sectors, particularly in the production of sectoral guidance notes, though guidance regarding internal controls and the reporting of STRs is somewhat limited. Results achieved are also limited so far, with few STRs having been made by the DNFBP sector (less that 1% of all disclosures received in 2004).

41. Regulatory authorities and/or SROs have not been designated and empowered to apply sanctions for DNFBP's for non compliance with AML/CFT requirements and the bodies that do exist are not resourced to provide adequate oversight for AML/CFT compliance. Although breaches of AML/CFT requirements can be reported to the Garda, which can undertake prosecution action if appropriate, the position is similar to that for financial institutions, since the range of possible sanctions is limited.

5 Legal Persons and Arrangements & Non-Profit Organisations

42. A number of types of legal persons exist in Ireland; private companies, public companies, public companies limited by shares, credit unions, friendly societies and associations. The Office of the Director of Corporate Enforcement (ODCE) is responsible for enforcing compliance by companies and company officers with the requirements of the Companies Acts in Ireland. All companies and societies operating a business in Ireland are required to register with the Registrar of Companies or the Registrar of Friendly Societies. A list of shareholders is required to be registered annually with the Company Registration Office (CRO), and this data, together with other information, such as the directors, is made available to the public on the CRO website.

43. Individuals can obtain annual return information from the CRO for a small fee. This information will include the names and addresses of the directors and shareholders of the company. Any change in directorship must be notified to the CRO within 14 days, though the identity of directors is not verified. The law does not require disclosure to the CRO of beneficial ownership where the beneficial owner is a person other than the registered shareholder. Beneficial ownership information may be obtainable by use of police investigative powers, or through the appointment of an inspector under the Companies Act.

44. Ireland has a system of trust law that allows the creation of trusts. The settler, trustee or beneficiary under a trust is not recorded in any registry, nor do TCSPs hold any significant amount of information regarding trusts in Ireland. The Proceeds of Crime (Amendment) Act (2005) provides for application to the court for disclosure of the identity of persons for whom property is held in trust and under the Taxes Consolidation Act (1997) resident trustees can be obliged to give details of the name and address of every person in receipt of funds from the trust. Both for trusts and for companies, if the beneficial ownership or control structure is complicated then the details may be difficult to obtain and verify in a timely fashion. Ireland should broaden its requirements on beneficial ownership so that information on ownership/control is more readily available in a timely manner.

45. Ireland is in the process of reviewing its non-profit sector to ensure that there is appropriate oversight of the sector so it cannot be used to facilitate the financing of terrorism. Ireland should consider implementing specific measures from the Interpretative Note and Best Practices Paper to SR VIII or other appropriate measures.

6 National and International Co-operation

46. Procedures exist in Ireland to ensure that there is co-operation between relevant organisations at a national level. At a policy level Ireland is well represented within the EU structure and has been diligent in ensuring that EU directives are enforced. At an operational level Ireland participates within the EU framework and in a number of other recognised international fora including Europol, Interpol and the WCO. The evaluation team noted that departments and agencies co-operated as and when necessary, mostly through informal channels. The Money Laundering Steering Committee (MLSC) is the main structure for AML/CFT co-operation and co-ordination efforts providing a forum for national coordination and cooperation in relation to the development and implementation of policy and operational initiatives as well as for drafting and approving the sectoral guidance notes for financial institutions and DNFBPs.

47. Ireland has signed and ratified the Vienna Convention and signed the Palermo Convention, but has not yet ratified it, although the majority of its provisions are already implemented for AML purposes. The 1999 UN International Convention for the Suppression of the Financing of Terrorism has been signed, ratified and implemented.

48. Ireland is also party to a number of multilateral conventions containing provisions for Mutual Legal Assistance (MLA), including the Council of Europe Convention on Mutual Assistance in Criminal Matters 1957, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990.

49. Mechanisms have been put in place to ensure that Ireland can co-operate internationally and it has negotiated a number of MOUs. Bilateral MLA agreements have also been concluded with United Kingdom; Hong Kong, China; and the United States of America. A proactive approach to negotiating mechanisms for international co-operation should continue.

50. International assistance does not appear to be prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions. The implementation of the Recommendations concerning MLA appears to be working adequately in practice. Ireland has the basic legal mechanisms in place to facilitate requests. The majority of mutual assistance provisions require the establishment of dual criminality. In 2004, 106 requests for MLA were received. For the purposes of enforcing foreign confiscation orders, the provisions of the CJA (1994) apply as if the order were a domestic confiscation order.

51. Ireland has the ability to extradite for ML and TF under Extradition Acts 1965 to 2001 and has concluded bilateral extradition treaties with Australia and the United States of America which have also been applied under Part II of the 1965 Act. For EU states Ireland can utilise the procedures in the European Arrest Warrant allowing the efficient processing of extradition actions between member states without the requirement for dual criminality for certain types of offences, including ML and TF.

52. Other forms of co-operation are available to Irish authorities through the FIU, law enforcement to law enforcement and regulator to regulator channels. In 2004, 209 inquiries were made through the Egmont group. In general, these channels of co-operation appear to be operating effectively.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Ireland

1. A fully independent state since 1921, Ireland covers 70,280 square kilometres of the island of Ireland located in the North Atlantic Ocean. Ireland's population is approximately 4.04 million people and has expanded by nearly 500,000 since the mid 1990's. The country has a small, modern, trade-dependent economy with GDP growth averaging 7.8% in real terms over the last decade, compared to an average growth rate in the EU during the same period of 2.2%.[4] The capital city of Ireland is Dublin and the age of majority is 18.

2. Ireland has been a member of the European Union (EU) since 1973. Since joining the EU Ireland has moved from being an isolated country with a dependence on the UK as a main trading partner to become a prosperous state with the second highest per capita GDP in the EU[5]; up from twelfth in 1994. The EU provides Irish exporters full access to the European single market; this has contributed significantly to Ireland's economic success. This economic transformation has been marked by increased international trade and investment, employment growth and a higher standard of living. EU membership is pivotal to Irish Government policy[6] and provides a central framework within which the Irish Government pursues legislative and foreign policy objectives.

3. The Irish economy operates on open, free market principles with a large exporting sector. Many of the world's top multinationals operate in the information technology, pharmaceuticals and financial services sectors. The services sector[7] has increased in importance since the last mutual evaluation, in 1998 with two out of every three jobs now in services[8] with 20% of these service jobs in financial and other business services. The services industry accounts for 46% of GDP and about 80% of exports. In 2004 exports amounted to €117bn (80% of GDP) with the largest export markets in the euro zone (significantly Belgium, France, Germany, Italy and the Netherlands), the United Kingdom and the United States. Financial services are Ireland's fifth largest services export sector. Ireland's ratio of total assets of credit institutions to GDP is exceeded only in the EU by Luxembourg.

4. The state of Ireland is a sovereign, independent, parliamentary democracy. The National Parliament (*the Oireachtas*) consists of the President and two Houses: a House of Representatives (*Dáil Éireann*) and a Senate (*Seanad Éireann*). The functions and powers of the President, *Dáil* and *Seanad* are derived from the Constitution of Ireland (*Bunreacht na hÉireann*). All laws passed by the Oireachtas must conform to the Constitution.

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[4] Based on the average GDP of 15 members of the EU

[5] http://epp.eurostat.cec.eu.int/pls/portal/docs/PAGE/PGP_PRD_CAT_PREREL/PGE_CAT_PREREL_YEAR_2005/PGE_CAT_PREREL_YEAR_2005_MONTH_06/2-03062005-EN-BP.PDF.

[6] http://www.euireland.ie/ireland/irelandandeu1973to2003.pdf and http://www.eu2004.ie/templates/standard.asp?sNavlocator=7,92,128.

[7] Includes wholesale and retail; hotels and restaurants; transport, storage and communications; financial and other business services; public administration and defence; education; health and other services.

[8] The quarterly national household survey, 9 June 2005 indicated that there were 1,265,400 persons employed in the service sector (December 2004 – February 2005).

5. The country is administratively divided into 26 counties (29 local government administrative counties, as County Dublin is further spilt into four administrative areas) and political power is geographically divided into state, county and municipal levels.

6. The modern Irish legal system is derived from the English common law tradition. The Constitution of Ireland, the Basic Law of Ireland was enacted in 1937 and sets out how Ireland should be governed through a series of 50 articles.[9] The Constitution establishes the branches or organs of government, the courts and also sets out how those institutions should be run.

7. The Constitution provides for justice to be administered in public through the courts; the court in which a case is heard will vary depending on the type of offence committed. Summary offences and minor civil cases are dealt with by the District Court presided over by a District Judge. More serious cases are dealt with by the Circuit Court, presided over by a judge who sits with a jury. The most serious cases are heard in the High Court, presided over by a Judge. When criminal cases are being tried, the High Court is known as the Central Criminal Court; a Special Criminal Court deals with terrorism and offences against the State.

8. The Court of Criminal Appeal hears appeals from the criminal courts; the court of final appeal is the Supreme Court which is also the final arbiter on the interpretation of the Constitution. Members of the judiciary are normally drawn from practicing barristers.[10]

9. The Courts, subject only to the Constitution and the law, are independent in the exercise of their judicial functions. An independent Courts Service was established in 1999 to manage, support and maintain the courts system in Ireland.

10. Consultation from outside of government is considered when drafting new legislation. A two-way consultation for policy development is provided through a variety of public consultation mechanisms. These vary from public meetings and written consultation to compulsory consultation through legislation where a specific time period is allowed for submission by interested parties. The Regulatory Impact Analysis[11] initiative which is currently being drafted provides for formal consultation in advance of legislation being drafted by the government. All Irish legislation is available on the internet at www.irishstatutebook.ie.

11. The Irish government is committed to ensuring transparency and good governance in business. Under the Freedom of Information Act (1997) every person has the right to access official records held by government departments and certain other public bodies. It also provides the public with the right to be provided with reasons for decisions taken by public bodies.

12. The need for good corporate governance has been recognised as an issue of growing importance in Ireland and the legislative framework to ensure good governance has been recently strengthened. Two new Companies Acts in 2003 and 2005 have extended the existing law by providing *inter alia* for the establishment of a supervisory authority for the auditing and accounting professions (the Irish Auditing and Accounting Supervisory Authority) and for the transposition of new EU law in areas such as market abuse. The Office of the Director of Corporate Enforcement (established since late 2001) and the Companies Registration Office have also had a positive impact in recent years in improving compliance

[9] http://www.taoiseach.gov.ie/upload/static/256.pdf

[10] Traditionally solicitors have been eligible for judicial appointment to the District courts only. Since 1995 solicitors have been eligible for appointment to the Circuit courts and after four years service there, to the higher courts.

[11] http://www.betterregulation.ie/index.asp?docID=53

by companies, directors and others with their company law obligations. The Central Bank and Financial Services Authority (CBFSA) of Ireland Act (2004) provides for the establishment and functions of a regulatory authority sanctions panel and establishes a financial services ombudsman's bureau and consultative panels to advise the Irish Financial Services Regulatory Authority (the Financial Regulator). The Act also makes further provision for auditing the accounts of financial service providers and the regulation of money transmission businesses.

13. Measures to combat corruption are principally contained in the Prevention of Corruption Acts 1889 – 1995. These acts have been subsequently amended in the Prevention of Corruption (amendment) Act (2001) which ensured appropriate coverage of scope of the offence of corruption, penalising active and passive corruption involving employees, domestic and foreign public office holders and members of domestic and foreign Parliaments. The Act also increases the maximum penalties for those convicted of corruption.[12] The Proceeds of Crime (Amendment) Act (2005) substantially increased the powers of the Criminal Assets Bureau (CAB) to target the proceeds of all types of crime, including powers to seize the proceeds of white-collar crime and corruption.

14. Ireland has signed the UN Convention against Corruption and consideration is being given to the necessary legislative measures to enable Ireland to meet its requirements. Irish legislation has been enacted to meet the terms of the Convention, through the Prevention of Corruption (Amendment) Act (2001) and the Proceeds of Crime (Amendment) Act (2005).

15. In addition Ireland was evaluated in March of this year by the GRECO (Group of States against Corruption) under the aegis of the Council of Europe to monitor the implementation of international legal instruments adopted to combat Corruption. The report of the evaluators should be available later this year.

16. Ireland has ethical and professional requirements for criminal justice officials and other professionals such as lawyers and accountants. The national police force, An Garda Síochána (the Garda) has a Declaration of Professional Values and Ethical Standards to address the key concerns which challenge the efficacy of public policing. An Internal Affairs Section within the Garda is responsible for dealing with breaches of discipline by members of the Garda. Actions taken by the Internal Affairs section are detailed in the Garda annual report. In addition, The Garda (Complaints) Act (1996) created an independent Complaints Board to deal with complaints against members of Garda by members of the public.

17. The An Garda Síochána Act (2005) makes provision for the establishment of an independent body to be known as the Garda Síochána Ombudsman Commission. The primary function of the Ombudsman Commission will be to investigate complaints by members of the public against members of the Garda, and in this respect, will replace the existing Garda Síochána Complaints Board. The Commission will have comprehensive powers of investigation to deal with complaints and will have ultimate control and oversight of all complaints processed in accordance with the provisions of the Act. The Act also provides for the establishment of a new body to be called the Garda Síochána Inspectorate. The main functions of the Inspectorate will be to ensure that the Minister and the Department of Justice will have objective information on matters relevant to the functioning of the Garda in line with the aims of the Act and to make further and better provisions in relation to the Garda.

18. All solicitors in Ireland are required to be registered with the Law Society of Ireland and must obtain an annual licence - a practising certificate. The Law Society monitors compliance by all practising

[12] The Act increases the maximum penalties for those convicted of the offence of corruption to an unlimited fine or 10 years' imprisonment or both.

solicitors with detailed rules of practice and professional conduct contained in primary legislation (the Solicitors Acts, 1954 to 2002) and in various Statutory Instruments.[13]

19. Six accountancy bodies[14] are recognised by the Irish Minister for Enterprise, Trade and Employment. On receiving such a certificate the member must give an undertaking to observe codes of ethics, codes of conduct, independence and professional integrity**.**

1.2 General Situation of ML and Financing of Terrorism

20. As previously identified in the second mutual evaluation report, the major sources of illegal proceeds in Ireland in 2005 are generated from drug trafficking, tax evasion, offences in relation to the evasion of excise duties and criminal activities related to terrorism. However, a discernable change has been seen in the methods used by criminal gangs to launder their illicit proceeds. Financial Institutions are still used, but investigations have shown that drug traffickers in particular have laundered money through the purchase, usually with cash, of high value goods such as quality second hand cars. Criminals involved in tax evasion have been noted using off-shore investments as one of the preferred mechanisms to launder the proceeds of their criminal activities.

21. The proceeds of drug trafficking primarily originate from domestic drug trafficking offences. There is also some evidence that Ireland has been used as a transit point for the smuggling of cocaine from the Caribbean and South America to the United Kingdom and Europe and of herbal cannabis from Africa and South East Asia to the United Kingdom. There is no evidence to indicate that the drug trafficking problem is in decline.[15] Significant drug seizures in 2004 were valued at approximately €51 million.

22. Considerable criminal proceeds are derived from revenue and excise frauds obtained from predicate offences in Ireland and in other jurisdictions (principally the United Kingdom). Evasion of excise duty involves the smuggling of a variety of products – cigarettes, tobacco and fuel. Fuel smuggling is widespread along the border with Northern Ireland where smugglers take advantage of the price differential from higher rates of excise duty in Northern Ireland on road fuels. The laundering of Marked Gas Oil[16] is also a problem, again, particularly in the border area.[17] Immigration crime, intellectual property crime and vehicle crime are all identified in a joint Garda / Police Service of Northern Ireland cross border organised crime assessment as significant aspects of criminality occurring in Ireland.[18]

23. ML investigations have shown that criminal activity still results in the physical possession of large amounts of cash (particularly in drug trafficking cases). Investigations have also shown that credit institutions, money remittance companies, solicitors, accountants and second hand car dealerships have all been used by persons engaged in ML. The Irish authorities have noted that money launderers in Ireland

[13] S.I. 3 of 2004 and S.I. 416 of 2003

[14] The Institute of Chartered Accountants in Ireland (ICAI); The Institute of Certified Public Accountants in Ireland (ICPAI); The Association of Chartered Certified Accountants (ACCA); The Institute of Incorporated Public Accountants (IIPA); The Institute of Chartered Accountants in England and Wales ICAEW); The Institute of Chartered Accountants of Scotland (ICAS)

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[15] In 2003, 38 joint Garda/Customs investigations, resulted in substantial drug seizures and Operation Clean Street VII and VIII were conducted resulting in the apprehension of 208 persons for offences involving the sale and supply of drugs: http://www.garda.ie/angarda/statistics/report2003/annrep2003.pdf.

[16] Diesel marked with green dye for the exclusive use by farmers and fishermen.

[17] In the past two years the Irish Revenue detected and dismantled 13 illegal oil laundering plants, which if undetected could each have defrauded the State of an estimated €1m per annum.

[18] http://www.garda.ie/angarda/pub/CrossBorderReport.pdf

will seek out those entities which are not regulated and have a low compliance culture for AML. The common methods identified by Irish law enforcement through which criminals have laundered money in Ireland have been through:

a) the purchase of high value goods for cash
b) the use of credit institutions to receive and transfer funds in and out of Ireland
c) the use of complex company structures to filter funds
d) the purchase of properties in Ireland and abroad
e) the use of off-shore bank accounts.

24. The threat posed by the financing of terrorism is real and continues to be monitored by the Irish authorities. Domestic TF activity in relation to Northern Ireland has reduced since the cessation of violence accompanying the ceasefire in 1994. However, there is evidence that terrorist organisations have been engaged in criminal conduct to fund their activities and that prescribed terrorist organisations in Ireland have engaged in criminality. The main sources of illicit income are believed to be from donations, the robbery of goods, frauds and smuggling of contraband cigarettes, oils and fuels, including oil laundering, protection rackets and kidnapping.

25. International TF operations have generated funds from collections, the sale of false and forged documents, insurance frauds and the sale of counterfeit goods. Investigations have revealed a trend in relation to possible international TF. Loans are obtained from credit institutions and instructions given to electronically transfer the loan proceeds. The recipients of these funds are suspected to be involved with terrorist groups.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of Ireland's financial sector

26. The financial services sector plays an increasingly important role in the Irish economy; with some 52,000 people directly employed in the banking sector (35,000 are employed in providing retail services and 17,000 in wholesale and international services). An additional 18,000 people are employed by Irish banks operating outside of Ireland across Europe and the United States. A significant proportion of Irish bank profit is generated from abroad (as much as 40 to 50%).[19]

27. A number of different financial services exist in Ireland: depository corporations (such as banks, building societies and credit unions); financial markets (exchanges); insurance corporations and pension funds (life insurance and general insurance); other financial corporations, including financial intermediaries (such as Agency Fund Managers, investment business firms and stockbrokers); financial auxiliaries (such as insurance brokers); and money remittance dealers and bureaux de change. The following chart sets out the types of financial institutions that are authorised to carry out the financial activities listed in the Glossary of the FATF 40 Recommendations.

[19] Source: Irish Bankers Federation.

Overview of the financial institutions sectors

TYPES OF FINANCIAL INSTITUTION TO CARRY OUT FINANCIAL ACTIVITIES IN THE GLOSSARY OF THE FAFT 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that is authorise to perform this activity in Ireland
A. Acceptance of deposits and other repayable funds from the public (including private banking)	(1) bodies licensed to carry on banking business under the Central Bank Act (1971) or authorised to carry on such business under regulations made under the European Communities Act (1972) (2) a building society incorporated or deemed to be incorporated under S.10 of the Building Societies Act (1989) (3) a society which is registered as a Credit Union under the Credit Union Act (1997) (4) An Post – the postal service
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	(1) Unlicensed lenders who provide credit subject to the Consumer Credit Act (1995**)** (2) Entities (1), (2) and (3) in reply to **A** above. (3) Money lenders licensed under part VIII of the Consumer Credit Act, 1995 as amended.
C. Financial leasing (other than financial leasing arrangements in relation to consumer products)	(1) Unlicensed lenders who provide credit subject to the Consumer Credit Act (1995**)** (2) Entities (1), (2) and (3) in reply to **A** above.
D. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	(1) Entities (1), (2) and (4) in reply to **A** above (2) Entities authorised as money transmitters under Part V of Central Bank Act (1997) (as amended). (3) Electronic money institutions authorised under the European Communities (Electronic Money) Regulations 2002 (SI no. 221 of 2002).
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	(1) Entities (1) and (2) in reply to **A** above (2) Entities authorised as Electronic Money Institutions to issue Electronic Money under S.I. No. 221 (2002) Regulations entitled electronic money.
F. Financial guarantees and commitments	Entities (1) and (2) in reply to **A** above.
G. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.);	(1) Entities (1), (2) and (3) in reply to **A** above. (2) An investment company authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations (2003) as amended. (3) A management company of a unit trust scheme

(b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations (2003) as amended. (4) A management company of a Unit Trust Scheme authorised under the Unit Trusts Act, (1990) (5) An investment company authorised under part XIII of the Companies Act (1990) (6) A general partner of an Investment Limited Partnership authorised under the Investment Limited Partnership Act (1994) (7) A stockbroker authorised under the Stock Exchange Act (1995). (8) Certain investment business firms authorised under the Investment Intermediaries Act (1995).
H. Participation in securities issues and the provision of financial services related to such issues	(1) entity (1) and (2) in reply to **A** above (2) a stockbroker authorised under the Stock Exchange Act (1995) (3) certain investment product intermediaries authorised under the Investment Intermediaries Act (1995) (4) certain entities referred to in **G** above
I. Individual and collective portfolio management	(1) entity (1) and (2) in reply to **A** above (2) a stockbroker authorised under the Stock Exchange Act (1995) (3) certain entities referred to in **G** above (4) Certain investment business firms authorised under the Investment Intermediaries Act (1995**)**
J. Safekeeping and administration of cash or liquid securities on behalf of other persons	(1) entity (1) and (2) in **A** above (2) a Fund Administrator authorised under the Investment Intermediaries Act (1995) (3) a Fund Trustee/Custodian authorised in conjunction with collective investment schemes and which is regulated in the State. (4) Certain investment business firms authorised under the Investment Intermediaries Act 1995 and (5) a stockbroker authorised under the Stock Exchange Act (1995)
K. Otherwise investing, administering or managing funds or money on behalf of other persons	(1) entities (1) and (2) in **A** above (2) Certain investment product intermediaries authorised under the Investment Intermediaries Act (1995). (3) Certain entities referred to in **G** above. (4) A stockbroker authorised under the Stock Exchange Act (1995)
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	(1) a life assurance undertaking which is the holder of an authorisation under the Insurance Acts, 1909 to 1990 or under Regulations made under the European Communities Act (1972) (2) any person who is an insurance broker or an insurance agent for the purposes of the Insurance Act (1989) (3) certain investment product intermediaries authorised under the Investment Intermediaries Act (1995)

	(4) insurance intermediaries registered under the European Communities (Insurance Mediation) Regulations 2005.
M. Money and currency changing	(1) Entities (1), (2) and (3) in reply to A above (2) A bureau de change authorised under part V of the Central Bank Act (1997) as amended.

28. There are 81 depository institutions in Ireland (31 of which are branches of EU banks) that provide banking and other services. In 2004 these institutions were responsible for €790 billion in assets. 51 Life and 131 Non –Life insurance businesses operate in Ireland; there are 141 agency fund managers, 22 management companies, 39 administrators, 24 trustee companies providing various services to collective investment schemes and 127 investment business firms providing a range of investment business services to institutional and retail clients. 437 credit unions (mutual bodies that encourage saving and providing access to loans for their members) are approved by the Registrar of Credit Unions.[20] There are 1,079 mortgage intermediaries**.**

29. Investment and insurance services are provided by 2,460 retail intermediaries of which 1,995 are multi agency intermediaries and 465 are authorised advisors. In addition, there are 703 entities (583 certified persons (e.g. accountants) and 120 solicitors) providing services as investment or insurance intermediaries on an incidental basis. These activities are regulated by the professional body which is approved for that purpose by the Financial Regulator (for example, certified persons) or are exempt from requiring authorisation (such as solicitors).

30. Ireland has authorised three exchanges: The Irish Stock Exchange[21] and two futures and options exchanges[22.] As at 31 December 2004 the Irish Stock Exchange had a market capitalisation of €82,049 million in respect of equity and €33,031 million in respect of government bonds. Over 15,000 entities are listed on the exchange.

31. There are 11 stock broking companies who had an annual turnover of €186.4 million as at 31 December 2003 who are authorised as members of the Irish Stock Exchange. The amount of money traded on the exchange has increased significantly over the past two years - trading in equities on the Irish Stock Exchange in the first half of 2005 was €54.8 billion, up 46% over the same period in 2004. Average daily equity turnover also rose to €441 million from €298 million in the first half of 2005. Daily transactions on the equity market rose by 21% in the first half of 2005 to 3,149.[23]

32. The Central Bank and Financial Services Authority of Ireland (CBFSAI) Act (2004) has required money transmission services to obtain authorisation by 30 June 2005. At the time of the mutual evaluation on-site visit applications had been received from seven companies (four companies and three sole traders) to perform money remittance activity, these are undergoing the fit and proper checks / underwent fit and proper tests and 14 bureaux de change are currently supervised by the Financial Regulator.

[20] The Registrar of Credit Unions has been part of the Financial Regulator since 1 May 2003.

[21] http://www.ise.ie/

[22] FINEX and NYMEX, both of which are branches of a New York exchange and are regulated by the US Commodity Futures Trading Commission (CFTC).

[23] http://www.ise.ie/index.asp?locID=447&docID=391

33. There were 53 money lenders operating in Ireland in 2005[24], providing credit services. Their main activities include provision of money (cash loans), money and goods, money for goods vouchers.

34. The International Financial Services Centre (IFSC)[25] was established in 1987 and is located in Dublin. Companies that established operations in the IFSC were offered lower tax rates (10% corporation tax rate) than those establishing outside the centre. Since 2002 all new entrants pay corporation tax at the general rate of 12.5% and the special 10% corporation tax rate will cease for existing institutions at end of 2005 after which they will be taxed on the same basis as all other Irish companies. The companies benefiting from the IFSC 10% certification process must be resident and have a substantive presence in Ireland. The types of operations carried out are mainly within banking, corporate treasury, mutual funds and insurance. The entities operating in IFSC are often subsidiaries or branches of large international financial institutions. The requirements for establishing an IFSC-based company whose activities require authorisation and regulation by the CBFSAI are the same as similar non-IFSC operations and the ongoing supervision requirements applied are the same. Accordingly IFSC credit institutions, insurance and assurance undertakings are authorised and regulated in accordance with the relevant legislative provisions. Similarly, to the extent that IFSC entities engage in activities that fall within the scope of the Investment Intermediaries Act (1995) such firms are regulated in that context. Financial services companies that have been granted a tax certificate by the Minister for Finance are subject to Chapter VII of the Central Bank Act (1989). This applies to institutions establishing in the IFSC (other than those institutions which are subject to supervision under other legislative provisions, such as credit institutions, insurance and assurance undertakings).

B Overview of the Designated Non-Financial Businesses and Professional (DNFBP) sectors

35. **Casinos:** are included as a designated body for the purposes of S.32 of the Criminal Justice Act (CJA) (1994) under S.8 of Statutory Instrument (SI) 242 of 2003. Casinos, if they operate in Ireland, are therefore subject to ML legislation. There are no licensed casinos in Ireland, and no entities operate under the title of a casino.[26]

36. However, the evaluation team noted that there are private clubs operating in Ireland that offer casino-like facilities – poker, blackjack and roulette albeit they are not titled as 'Casinos'. Since these private clubs are not casinos under Irish legislation, they are not covered by the terms of SI 242 (2003). However, the assessment team were informed by the Irish authorities (subsequent to the on-site visit) that the specific designation of such private clubs under the CJA (1994) is being examined by the Department of Justice, Equality and Law Reform in consultation with the Office of the Attorney General.

37. **Auctioneers/Real Estate Agents:** All people who carry out, or hold themselves out, or represent themselves as carrying on the business of an auctioneer must hold an auctioneer's licence. Every person conducting an auction must be authorised to do so under an auctioneer's licence or an auction permit. A licensed auctioneer may also carry on the business of a real estate agent under the Auctioneers and House

[24] 50 as at January 2006

[25] http://www.ifsconline.ie

[26] SI 242 (2003) is footnoted: *'Following consultation with the European Commission, designation of casinos has been included in the Regulations, even though they are illegal in this jurisdiction, in order to comply fully with the terms of the Directive'*.

Agents Act (1947), s.2, 6 & 7 and the Finance Act (1950) s.8. A total of 2103 licences were issued in the year ended 5 July 2004.[27]

38. **Dealers in High Value Goods:** Dealers in high value goods, including precious stones, precious metals and works of art where payment for the goods is in cash are subject to the ML requirements under SI 242 (2003). Such dealers come within the complete ML requirements only where a transaction is in cash and for an amount in excess of €15,000.[28] There is no regulatory framework to ensure compliance of such dealers with their ML obligations.

39. **Lawyers, Notaries and other independent legal professionals:** In Ireland, the legal profession is represented by solicitors and barristers. There is no separate category of 'notary' as contemplated by FATF Recommendations.

40. In Ireland a solicitor tends to specialise in legal work which involves the provision of a wide-range of legal services outside the area of litigation, as well as the preparation of cases for court. Solicitors have a right of audience in all courts. However, they tend not to involve themselves in advocacy in the higher courts.

41. The profession of solicitor is governed by the Solicitors Act (1954) as amended (Solicitors Amendment Acts of 1960, 1994 and 2002). The number of solicitors practising as of 12 April 2005 was 6,732.

42. Solicitors are designated under SI 242 (2003) and therefore subject to the ML requirements under the CJA (1994). Barristers are not a designated profession for ML purposes.

43. A barrister is generally regarded as specialising in the preparation of cases for court and advocacy in court. A barrister is not allowed to take legal instruction from a member of the public except in a small number of instances where the client is another professional such as an accountant. The barristers' profession is known as "The Bar". Individually they are referred to as barristers or 'counsel'. The Honourable Society of the Kings Inns[29] provides the post graduate legal training for those who wish to practice at the Bar. Barristers do not normally deal directly with the public.

44. **Accountants/Auditors:** Auditors in Ireland perform a wide variety of tasks including undertaking audits of company accounts. Other activities of auditors and accountants include the provision of financial corporate advice in relation to audits, general accounting, investment business and taxation matters. There are six recognised accountancy bodies in Ireland[30].

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[27] Licences are issued by the appropriate Collector of Customs & Excise and are granted only when the application is accompanied by a Certificate of Qualification, specifying the name under which the holder may be licensed to carry on business and granted by a District Court Judge; a Certificate of the Accountant of the Courts of Justice, that the applicant maintains in the High Court a deposit of the value of €12,700 as a bond and a Tax Clearance Certificate issued by the Irish Revenue.

[28] As required by the 2001 EU Directive.

[29] http://www.kingsinns.ie/html/home.html.

[30] Institute of Chartered Accountants in Ireland; Members 14,193. Institute of Certified Public Accountants; Members 2,748. Association of Chartered Certified Accountants; Members in practice in Ireland 1,500. Institute of Incorporated Public Accountants; Members 212. Institute of Chartered Accountants in England and Wales; Members in practice in Ireland 62. Institute of Chartered Accountants of Scotland; Members in practice in Ireland 3

45. The establishment of the Irish Auditing and Accounting Supervisory Authority (IAASA) by the Companies (Auditing and Accounting) Act (2003) will create a body that will have a statutory responsibility for how accountancy bodies regulate and monitor their members, promoting adherence to high professional standards in the auditing and accountancy profession.[31]

46. **Trust and Company Service Providers:** "Trust and Company Service Providers" is not currently a category designated under Irish ML legislation, nor is it a regulated or licensed activity. The major providers of such services in Ireland are either solicitors or accountants. There are also a number of specialist company formation agents providing incorporation and company administration.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

47. Legal persons in Ireland may be established by Acts of the Oireachtas (Parliament) or pursuant to legislation dealing with specific corporation types, such as companies, co-operatives, industrial and provident societies and friendly societies. Part II of the Companies Act (1963) sets out the process for incorporation of a company and incidental matters.[32] Section 5 of the Industrial and Provident Societies Act (1893) establishes the requirements for registration of a Society.[33]

48. Ownership of a company resides with its shareholders and/or members. A register of all shareholders and members must be kept by every company at its registered address or at another location in the State as notified to the Registrar of Companies (s.116 of the Companies Act 1963 as amended). The Companies Act (1963) also makes provision under s.119 for the register to be made available for inspection by any member of the public on request. The register does not include notice of any trust (express, implied or constructive) (s.123).

49. In addition, the shareholding interests of company directors and secretaries in the company or in related companies must be disclosed and recorded in a register kept for that purpose (s. 53 of the Companies Act (1990)) and the register must be made available to any member of the public on request (s.60 of the 1990 Act). The powers of the company are set out in its articles of association. Every company is required to have a registered office address which must be notified to the Registrar of Companies (s.113 of the Companies Act (1963)). There is no statutory provision requiring incorporated Societies to maintain additional information other than a register of members except in the case of Building Societies and Credit Unions.

50. Every company is also required by s.202 of Companies Act (1990) to maintain proper books of account. The company is required to retain these books and documents for 6 years. These documents must be kept at the registered office address of the company or at such other place as the directors see fit. The company's directors are required to lay a balance sheet and profit and loss account (or equivalent) before the annual general meeting of the members. There is also an obligation on all companies to keep minutes of meetings of the company and of the directors, and these minutes may be inspected by the ODCE under s.145 of the Companies Act (1963) (as amended). Other than a register of members, there is no statutory provision for the maintaining of additional information for societies.

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[31] http://www.entemp.ie/press/2004/20040729.htm

[32] Documents required in forming a company: Memorandum of Association must contains the object of the Company which is signed by the subscribers; Articles of Association – internal rules of the company; Form AI – which contains the name and address of the directors and secretary, the name of the subscribers and a sworn declaration that all the information contained in the document is correct.

[33] Documents required in forming a co-operative/industrial & provident Society include: Rules containing the objectives of the Society; Form A – contains the names of the 7 members and secretary and signed by the applicant.

51. The ODCE is responsible for enforcing compliance by companies and company officers with the requirements of the Companies Acts in Ireland. The Registrar of Companies retains responsibility for enforcing the filing requirements of company law.

52. **Trusts:** No special form of words is necessary to create a trust in Ireland but case law has established certain requirements including that the persons intended to benefit must be certain. In Ireland a trust can be private, for the benefit of an individual or a class, public or charitable trust for the benefit of the public at large. Trustees are nominated by the creator of a trust to administer the property which is the subject of the trust on the terms set out in the trust instrument. The trustee(s) must keep accounts and produce them to any beneficiary when required. The most common forms of trust are charitable trusts; trusts in the form of occupational pension schemes and trusts created by a last will and testament. There is no public record or registry of trusts available in Ireland, though the Revenue Commissioners have a register of trusts where the trustee submits a tax return.

1.5 Overview of strategies to prevent ML and TF

53. The FATF second round mutual evaluation report noted that 'the policy and objective of the Irish Government is to combat ML particularly in the context of the fight against organised crime and drug trafficking, since drug trafficking is a major activity of organised criminal groups and is the major source of significant illegal proceeds in Ireland'.

54. Just prior to the second mutual evaluation report a number of high profile crimes connected to drugs led to the fight against ML receiving strong political and public support, and a consequent willingness to implement AML legislation.

55. The CJA (1994) implemented the requirements of the first EU ML Directive and applied standard AML provisions of customer identification, reporting of suspicious transactions, record keeping and other procedures to a specified financial sector. The CJA (1994) included provisions for an "all crimes" ML predicate offence.

56. Since the second mutual evaluation report the main changes on Irish AML legislation have been driven by the implementation of the Second EU ML Directive 2001. This was implemented into Irish law in 2003 through SI 242 (2003) designating the professions of accountant, auditor, estate agent, tax advisor and solicitor for the purposes of s.32 of the CJA (1994) and SI 3 (2004) that prescribed the activities of real estate agents/auctioneers to include the provision of services to a person in connection with the purchase or sale of land where payment for the land concerned is in cash and is not less than €13,000. Statutory obligations were placed on these entities in addition to financial and credit institutions to identify their clients and report any suspicious transactions to the Garda authorities (and also to the Irish Revenue (Tax Authorities) from 1 May 2003).

57. The Criminal Justice (Terrorist Offences) Act (2005) introduced the offence of terrorist funding and applies the existing AML legislation to TF.

A *AML/CFT strategies*

58. Ireland's AML/CFT initiatives aim to ensure a strong preventative and punitive legislative framework that fulfils the requirements of the international instruments to which Ireland is a signatory. The legislation allows for the confiscation of the proceeds of all crimes, including TF.

59. Ireland has legislation in place for freezing, seizing and confiscating the proceeds of crime through the Criminal Assets Bureau Act (1996) and the Proceeds of Crime Act (POCA) (1996). These acts facilitate the confiscation of criminal assets in situations where a person may not have been convicted, or

even prosecuted, of a criminal offence. The Criminal Justice (Terrorist Offences) Act (2005) gives effect to Ireland's obligations under a number of international instruments directed to terrorism,[34] including the UN Convention for the Suppression of the Financing of Terrorism (1999).

60. Implementation of the 3rd EU ML Directive will involve a general review of Irish ML legislation and practice. The review is intended to examine the proper balance between legislation and guidelines and the adequacy of the enforcement and sanction powers that can be imposed by the Central Bank Financial Services Authority against those institutions which it supervises in cases where there is a lack of compliance with AML requirements. Implementation will take place in tandem with implementation of obligations arising from other international instruments including the revised Council of Europe Convention on ML and the FATF revised recommendations.

61. The Irish government has also undertaken a programme for regulatory reform. A High Level Group on regulation was established after the OECD's report "Regulatory Reform in Ireland"[35] to develop and co-ordinate a "better regulation" agenda. A Government White Paper, "Regulating Better"[36] was published in January 2004 and a better regulation group comprised of senior officials was established to oversee implementation of the White Paper and to promote better quality regulation across the public service.

62. The ultimate objective of the Ireland's AML legislation is to have a sufficient deterrent and preventative effect so as to reduce the incidence of ML and TF. Ultimately, the effectiveness or otherwise of the legislation is gauged by police intelligence on developments on the extent of ML and TF. Developments in the methods employed by criminals and terrorist organisations to launder the proceeds of crime or to generate TF are kept under constant review.

B *Ministries*

63. **Department of Finance**: deals with policy and legislation relating to the financial sector. The Department is consulted by the Department of Justice, Equality and Law Reform in relation to all proposed ML legislation. The Department chairs the ML Steering Committee (MLSC)[37] established to facilitate the drafting of guidance notes for the various sectors covered by AML/CFT legislation. The MLSC consists of regulators, practitioners, representative bodies and enforcement agencies and meets regularly. Sectoral and specialist sub-committees meet as necessary to draw up or review guidance notes.

64. The Department of Finance also has responsibilities for TF ensuring that primary and secondary legislation has been implemented and that the correct enforcement framework is in place. The Department worked closely with the Department of Justice, Equality and Law Reform on the Criminal Justice (Terrorist Offences) Act (2005) which gives powers to the Minister for Finance to impose more stringent penalties for breaches of EU Regulations than had previously been allowed.

65. **Department of Justice, Equality & Law Reform:** is the department mandated to implement Government policy on crime and reform of the law in relation to crime. The Minister for Justice, Equality and Law Reform is the Central Authority in the State for Mutual Legal Assistance (MLA) in criminal

[34] European Union Framework Decision on Combating Terrorism; International Convention against the Taking of Hostages; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; International Convention for the Suppression of Terrorist Bombings.

[35] http://www.oecdbookshop.org/oecd/display.asp?lang=EN&sf1=identifiers&st1=422001071p1

[36] http://www.betterregulation.ie/

[37] The terms of reference of the Money MLSC are included in the annex .

matters. The Mutual Assistance and Extradition Division of the Department carry out the functions of the Central Authority. Requests for MLA from Ireland are directed to the Central Authority.

66. The Mutual Assistance and Extradition Division of the Department for Justice, Equality and Law Reform are also responsible for processing European Arrest Warrants (EAW) and for the administrative verification of extradition requests. The endorsement and execution of EAW's is the responsibility of the High Court. The Minister certifies that an extradition request has been made in accordance with the Extradition Act (1965) (as amended). The request can then be considered by the High Court.

67. **Department of Foreign Affairs:** only has a minor role in AML/CFT. They are Ireland's representative at the European Union attending the relevant committees responsible for listing of terrorist and terrorist organisations that are subject to freezing action under United Nations Security Council Resolutions (S/RES/1267 (1999) and 1373 (2001)).

68. **The Department of Enterprise, Trade and Employment**: is responsible for company law and is the parent Department of the Office of the Director of Corporate Enforcement, Company Registration Office and the Office of the Registrar of Friendly Societies. While the Office of the Director of Corporate Enforcement is charged with enforcing company law, it has no direct role in the area of ML or TF.

Law enforcement agencies including police and other relevant investigative bodies

69. **An Garda Síochána (Garda):** The Garda is the national police force in Ireland. The management and control of the Garda is the responsibility of the Commissioner, who is appointed by the Government. They are responsible to the Minister of Justice, Equality and Reform, which in turn is accountable to the Irish legislature, The Dail. There are two Deputy Commissioners and ten Assistant Commissioners. The Deputy Commissioner Operations co-ordinates the activities of the Assistant Commissioners, Crime and Security and National Support Services.

70. Geographically, the country is divided into six regions; each is commanded by an Assistant Commissioner. These regions are sub-divided into divisions and districts. The Dublin Metropolitan Division is primarily made up of the City and County of Dublin. Each of the 25 divisions has its own financial investigators. The Garda produce an annual policing plan which for 2005 contains eight strategic goals. Within Goal 2, one of the key performance indicators is "*the seizure of the proceeds of crime by the Criminal Assets Bureau*".

71. **The Garda ML Investigation Unit:** The MLIU is located in the **Garda Bureau of Fraud Investigation** which is part of the National Support Service headed by an Assistant Commissioner. This branch of the Garda deals with serious and organised crime. Crime & Security Branch task the FIU frequently with enquiries concerning TF matters. The FIU request Crime & Security Branch to conduct enquiries with external security services in relation to individuals or groups suspected of being involved in TF.

72. **The Financial Intelligence Unit (FIU):** The Irish FIU is located within the MLIU and was established in January 1995, is based in Dublin and is the national reception point for the receipt of Suspicious Transaction Reports (STRs). The FIU has been a member of Egmont Group of FIUs since 2001 and is a member of the MLSC attending the quarterly meetings.

73. Since 1st May 2003 there has been a requirement under The Central Bank and Financial Services Authority Act (2003) to additionally report STRs direct to Irish Revenue (Tax and Customs Administration) in addition to the Garda.

74. **The Garda National Drugs Unit:** The Garda National Drugs Unit is responsible for drug trafficking investigations. The Unit works closely with the MLIU and the Criminal Assets Bureau (CAB) on the financial aspects of major drug trafficking investigations.

75. **The Garda Security Service:** Ireland's Security Service is part of the Garda and is titled the Crime and Security Branch. This Branch works closely with external intelligence agencies, particularly the Police Service of Northern Ireland and co-ordinates all intelligence relating to domestic and international terrorism. Within the Crime and Security Branch the National Criminal Intelligence Unit deals with all criminal offences (other than terrorist offences). The MLIU works closely with Crime and Security Branch relating to both the financing of terrorism and criminal intelligence.

76. **The Criminal Assets Bureau:** The Criminal Assets Bureau (CAB) is a statutory body established under the Criminal Assets Bureau Act (1996). Their objectives are:

(a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal activity
(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and
(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b)

77. CAB is a multi agency body consisting of police officers, customs officers, tax officers and benefit agency personnel. In addition, the CAB has its own legal officer and forensic accountant. The CAB enforces civil forfeiture legislation in Ireland.[38]

Prosecution authorities including specialised confiscation agencies. If relevant - specialised drug agencies, intelligence or security services, tax & customs authorities.

78. **The Office of the Director of Public Prosecutions:** The Office of the Director of Public Prosecutions (DPP) was established by the Prosecution of Offences Act (1974). The Act provided for the transfer to the Director of all functions previously performed by the Attorney General in relation to criminal matters and election and referendum petition. The Director is independent in the performance of their functions.

79. The DPP enforce the criminal law in the courts on behalf of the people of Ireland; direct and supervise public prosecutions on indictment in the courts, including cases of ML and TF; and provide general direction and advice to the Garda in relation to summary cases and specific direction in cases where requested. The Chief Prosecution Solicitor provides a solicitor service, within the Office of the Director of Public Prosecutions, to act on behalf of the Director. The Office of the Director of Public Prosecutions is also the body responsible for making applications to the Court for restraint and confiscation orders, both domestic and international, relating to the proceeds of crime post-conviction under the CJA (1994) as amended and to international mutual assistance in criminal matters.

80. **The Revenue Commissioners (Tax & Customs Administration):** The Central Bank and Financial Services Authority of Ireland (CBFSAI) Act (2003) introduced legislation obliging designated bodies to submit STRs to the Irish Revenue in addition to the Gardai. The Irish Revenue investigates reports which appear to relate to tax offences.

[38] Details of CAB actions by way of proceeds of crime applications, revenue actions and social welfare actions (benefit agency) are supplied in the annex.

Financial sector bodies

81. **The Irish Financial Services Regulatory Authority (the Financial Regulator):** The Financial Regulator was established on 1 May 2003 as the single regulator of financial services firms in Ireland. The firms regulated by the Financial Regulator include banks, building societies, insurance companies, credit unions, investment and insurance intermediaries, mortgage intermediaries, funds, investment business firms, stockbrokers, exchanges, money lenders, bureaux de change and money transmitters.[39]

82. The Financial Regulator is a distinct component of the Central Bank and Financial Services Authority of Ireland (CBFSAI) with clearly defined regulatory responsibilities. The Financial Regulator also contributes to the work of the Central Bank in discharging its responsibility in relation to the maintenance of overall financial stability.

83. As part of its ongoing supervision, the Financial Regulator makes assessments of the adequacy of, and procedures adopted by, institutions to counter ML and TF and the degree of compliance with such procedures. The Financial Regulator uses the relevant sectoral guidance notes (issued with the approval of the MLSC) as criteria against which it assesses the adequacy of an institutions internal controls, policies and procedures to counter ML. The Financial Regulator conducts inspections and review meetings which can include assessments of such compliance and issuing of recommendations for improvements.[40]

84. The CBFSAI is involved, through its membership of the system of European Central Banks, in providing views on policy items related to prevention of ML such as European Central Bank opinions on new or revised Directives in this area. It is also the competent authority in respect of the financial sanctions regime.

DNFBP and other matters (Casino supervisory bodies, supervisor or other competent authority or SRO, for DNFBP, SRO for professionals such as lawyers, notaries and accountants)

85. **Casino supervisory body:** Commercial casinos are illegal in Ireland; there is no provision for "casinos" in Irish legislation. The evaluation team were informed that a review on whether to licence casinos in Ireland had been conducted in the past, but that it had been decided not to licence casino operations. Bookmakers require licences issued by the Revenue Commissioners, but are not designated under Irish ML legislation.

Supervisor or other competent authority, or SRO, for DNFBP

86. **Accountant and Auditors:** Under the Companies Acts (1963 and 1990), a person cannot act as an auditor of a company[41] or as a public auditor unless he or she is a member of a body of accountants recognised by the Minister for Enterprise, Trade and Employment.

87. The current system for overseeing the work of the audit profession is one of self-regulation by the industry with a limited amount of oversight of that self-regulation by the Department of Enterprise, Trade

[39] The financial institutions authorised and regulated by the Financial Regulator includes those institutions previously regulated by the Central Bank, Department of Enterprise Trade & Employment (DETE), Office of the Director of Consumer Affairs (ODCA) and Registrar of Friendly Societies.

[40] A summary of the legislation for which the Financial Regulator performs the functions of the Central Bank is set out in the Annex. All legislation can be accessed on the web on the Irish Statute Books site: www.irishstatutebook.ie.

[41] A company means all companies registered under the Companies Acts and is not limited to public limited companies or public interest companies.

and Employment, as the statutory authority with responsibility in the area. Day-to-day registration, regulation, inspection and discipline of statutory auditors are carried out by accountancy bodies.

88. **Real Estate Agents and Auctioneers:** Real estate agents/auctioneers are not currently supervised by a regulatory body. However two representative bodies: The Irish Auctioneers and Valuers Institute (IAVI)[42] and the Institute of Professional Auctioneers and Valuers (IVPAV)[43] represent the interests of over an estimated 50% of practicing real estate agents and auctioneers. These Institutes act as trade associations, but do not in any way inspect or have oversight of the activities of their members.

89. **Lawyers/Notaries:** The Law Society of Ireland activities are regulated by the Solicitors Act (1954) the society is responsible for the education of students wishing to become solicitors as well as having disciplinary power over those qualified as solicitors. Disciplinary matters for barristers are regulated by the Council of the Bar of Ireland.[44] The Bar, is not regulated by statute and the general conduct of its members of the Bar is controlled by a non-statutory body: The General Council of the Bar of Ireland, which has a code of conduct for its members. The Bar is not covered by s.32 of the CJA (1994) and is therefore not obligated to apply AML/CFT measures.

C *Approach concerning risk*

90. Irish legislation is not based on risk-assessments conducted in the manner or to the extent provided for in the revised FATF Recommendations. The Financial Regulator has not applied a specific risk-based approach in the area of ML or TF. The requirements set out under the CJA (1994) require all designated bodies to take reasonable measures to identify prospective customers. There are some exemptions when dealing with other designated bodies and for certain life insurance policies. The guidance notes for financial institutions have been developed for the different financial sectors and provide more specific guidance on the type of measures which should be used in different types of cases.

D *Progress since the last mutual evaluation*

91. Since the last evaluation of Ireland (1998) AML/CFT legislation has developed in line with Ireland's international obligations. The provisions of the CJA (1994) have been extended to include TF obligations. Section 21 of the Criminal Justice (Theft and Fraud) Act (2001) extended the definition of ML to make it an offence for a person to do any of a number of things in relation to a property, knowing or believing, or being reckless as to whether, that property is or represents the proceeds of criminal conduct. Other offences covered include concealing or disguising its true nature, or acquiring or possessing the property. Section 23 of the Act also allowed for the designation of states which, in the opinion of the Minister for Justice, Equality and Law Reform, do not have in place adequate procedures for the detection of ML.

92. The POCA (2005) defined the term 'proceeds of crime' to cover the proceeds of criminal conduct committed outside Ireland and property located outside the country. The Act also extended the provisions for cash seizure, which is suspected of being the proceeds of any criminal conduct.

93. Applying the provisions of the CJA, (1994) as amended, to TF, the Criminal Justice (Terrorist Offences) Act (2005) gives effect to a number of international instruments directed to terrorism. The Act makes provision for a number of additional measures directed in particular to the financing of terrorism

[42] http://www.iavi.ie/

[43] http://www.ipav.ie/

[44] http://www.lawlibrary.ie/docs/Welcome/4.htm

and terrorist groups for the purpose of complementing the UN Convention for the Suppression of the Financing of Terrorism (1999).

94. In addition to the primary legislation, secondary legislation through the implementation of Statutory Instruments[45] (SI's) has occurred since the last evaluation. SI 242 (2003) designated the professions of accountant, auctioneer, auditor, estate agent, tax advisor and solicitor for the purposes of s.32 of the CJA (1994); SI 416 (2003) provides that reporting requirements do not apply to the profession of accountant, auditor, solicitor or tax advisor with regard to information received or obtains from or in relation to a client under certain circumstances.

95. In the Second Round Mutual Evaluation Report conducted in 1996 the FATF evaluators noted that (paragraph 39, pp 11):

a) *[The International Financial Services Centre] IFSC Corporate Treasurers are not subject to the requirements of CJA (1994).*

Regulations under s.32 (10)(a) of the CJA (1994) designate as a category, any person engaged in carrying out as a principal activity any of the financial services designated under the Act. Accordingly any such persons are subject to the obligations in relation to prevention and reporting of ML, as set out under that Act. These activities include lending, leasing, safe-keeping and administration of securities.

b) *Paragraphs 52 and 58 observed that: A legislative basis for asset sharing is introduced.*

Provision was made in the EU Framework Decision on the Mutual Recognition of Confiscation Orders for Asset Sharing. Legislation to give effect to this provision will be necessary.

c) *Paragraph 56 suggested that: Bi-lateral mutual legal assistance agreements are made.*

A bi-lateral mutual legal assistance agreement came into effect with the UK in June 2004. A bi-lateral mutual legal assistance agreement was signed with Hong Kong in 2001 but has not yet been ratified as legislation is required to engage in mutual assistance with territories. This amendment will be provided for in the Criminal Justice (Mutual Assistance) Bill expected to be published before the end of 2005.

d) *Paragraph 85 recommended that: The CJA (1994) is amended to cover money remittance and transfer services.*

These bodies were prescribed as designated bodies under s.32 of the CJA (1994) by Regulations issued in June 2003 (effective from 15 September 2003) under SI 242 (2003).

e) *Paragraph 86 suggested that the: List of countries prescribed for exemption regarding identification (SI 106 of 1995) should not include Non-FATF countries (Channel Islands, Isle of Man).*

The designation of the Channel Islands and the Isle of Man has been reviewed; it was decided to take no further action in the light of progress made by these jurisdictions in adopting international ML standards.

[45] A Statutory Instrument is an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute: Statutory Instruments Act, 1947, http://www.irishstatutebook.ie/ZZA44Y1947.html

f) *Paragraphs 92 & 68 commented that it would: Appear logical that supervision of Insurance Companies should be shifted to Central Bank.*

In May 2003 the responsibility for supervision of insurance companies was transferred from the Department of Enterprise Trade and Employment to the Financial Regulator.

g) *Paragraph 96 suggested that: International agreements or MOUs be entered into with FIUs in other states.*

Since the last evaluation the FIU have signed 10 Memoranda of Understanding (MOU's) with FIUs in other jurisdictions relating to the exchange of information relating to ML and TF. A further twelve MOU's are under consideration and it is hoped to have these outstanding MOU's completed by the end of 2005.

h) *Paragraphs 26 & 72 & 93 noted that: Some additional measures should also be taken by government agencies in regard to bureaux de change.*

The Garda have worked with the Central Bank of Ireland on this issue and have targeted a number of unlicensed bureaux in ML investigations. One operation led to the conviction of its principal, the closure of the bureau and the confiscation of funds to the order of €3 million.

Since the supervisory regime for bureaux de change was put in place in 1997, bureaux de change are required to comply with authorisation and supervision requirements and as part of this process are subject to inspections and review meetings. A number of such reviews have taken place.

i) *Paragraph 34 observed: Very little general feedback has been given to financial institutions, though some information has been provided as part of general training.*

The FIU acknowledges the receipt of each STR and issues a feedback letter to designated bodies every six months on the current status of each STR filed by that designated body. The feedback letter shows the current status of the particular STR: Where possible, comments are added to the feedback letter by the FIU to inform the designated body for staff training purposes. The FIU informs compliance officers when production orders are to be served relating to accounts subject of STRs filed. This arrangement provides an opportunity to explain to the compliance officer the fact that a particular subject is under investigation. Case closed letters are issued to designated bodies when inquiries are complete and may contain feedback comments to the effect that the transaction was legitimate. However, in the case of the Revenue Commissioners, there is no direct feedback on a report by report basis due to confidentiality constraints in taxation legislation. Generic feedback reports are produced periodically with risk analysis sample bank reports, actions and suspicious activity examples. The Irish Revenue also engage with the financial sector and the other designated bodies in order to promote AML compliance.

The FIU participate at training seminars organised by various designated bodies. Such fora are useful for the presentation of sanitised cases, trends and emphasising the important nature of anti-ML measures e.g. identification. The FIU are committed to hosting annual meetings with compliance officers to discuss matters of mutual interest in combating ML.

j) *Paragraph 80 noted that: The work of the MLIU does not include a full range of operational, tactical and strategic analysis work…and….. The present staffing of the MLIU is inadequate to*

properly perform both the full intelligence function of an FIU and to investigate cases through to prosecution.

Since the last evaluation the strength of the MLIU has been increased to 12 Police Officers and with administrative support from two clerical officers. The staffing of the MLIU is under review at the present time.

k) *Paragraph 81 noted that: Few formal mechanisms exist for exchange of information with other parts of the Garda, though regular meetings, both formal and informal, take place with the CAB…. and it could be useful for the MLIU to enter into greater co-ordination and involvement with other bodies in relation to the use of STR.*

The MLIU co-ordinate financial enquiries for other police units involved in major criminal investigations. Intelligence is disseminated to Crime and Security Branch, both in relation to ML and TF. The Revenue investigates a large proportion of the total STRs as they may contain indications of Revenue offences. The Customs Service is a constituent part of the Revenue Commissioners.

l) *Paragraph 67 suggested: There should be closer liaison between the Garda and the MLRO.*

Regular contact occurs between the FIU and the MLRO's. In relation to the MLRO's at the major financial institutions this contact is on a daily basis. The FIU facilitate every request from MLRO's for speakers at staff training initiatives. The FIU is committed to hosting annual meetings with the MLRO's to enhance the partnership approach in combating ML and the financing of terrorism.

m) *Paragraph 68 commented that: The overall impression is that the reporting system is at early stage of development, and that considerable advances have been made, but that it could be further improved by working to increase the number of reports across the whole financial sector, eliminating inconsistencies in filtering, and concentrating more on non-cash ML.*

The number of STRs has increased year on year since suspicious transaction reporting commenced in 1995. Exponential increases have been experienced post the events of September 11th. An electronic reporting system is being developed and while banks remain the largest reporter of STRs other non-bank entities are making reports.

n) *Paragraph 90 noted that: The MLIU should review the capabilities of its current CLUE system, and consider whether other systems which may provide a more comprehensive capacity to provide analysis and feedback.*

The Clue Computer System has been replaced and the IT requirements for the FIU are kept under constant review. An online reporting system is being developed and is at a pilot stage. Analytical software is used by the FIU to analyse complex financial transactions.

Members of the FIU are trained in the use of analytical software. In addition, the services of two forensic accountants working at the Garda Bureau of Fraud Investigation are utilised to interpret financial information uplifted by the FIU in the course of ML investigations.

o) *Paragraph 88 commented that: The MLIU should also ensure that it maintains an open and regular channel of communications with the Central Bank regarding the regulatory issues that may be raised by some of the STR which it receives.*

Training seminars hosted by designated bodies are used by the FIU to deal with such issues as quality of STRs submitted by financial institutions. The FIU co-operates with the Regulators on issues that require supervisory intervention.

p) *Paragraph 87 noted that: Section 57 of the CJA (1994) which imposes the obligation to report STR is comprehensive in its scope, and also carries a penalty of five years imprisonment for failure to report. These factors should certainly encourage financial institutions to report, and the banking sector has done so. However, the MLIU believe that these results could be further improved, and this is certainly true for the results obtained from NBFI and within the IFSC.*

The banking sector makes the majority of STRs. However, there has been an increase in the number of reports made by the non-bank sector.

q) *Paragraphs 44 and 94 noted: There is no system for the declaration or monitoring of cash or financial instruments as they cross the border. Customs has had a number of cases regarding suspected drug cash seized as it enters or leaves the country.*

Section 20 of the Proceeds of Crime (Amendment) Act (2005) amends s.38 of the CJA (1994) to extend the seizure powers of the Garda and the Customs and Excise to cash suspected to represent directly or indirectly the proceeds of any crime or to be intended to be used in connection with any criminal conduct.

Section 22 of the Proceeds of Crime (Amendment) Act (2005) amends s.43 of the CJA (1994) to extend the definition of cash to include "notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bank drafts, bearer bonds and bearer shares".

r) *Paragraph 79 recommended that: It would seem more appropriate if an application for a [POCA 1996] disposal order could take place after a period of three years, as this would allow for a full legal hearing of the matter, and yet may reduce the concerns mentioned above.*

This recommendation was considered but it was decided to retain the seven year period as an appropriate length of time to allow for the preparation and consideration of applications against interlocutory orders under the Act.

Section 7 of the Proceeds of Crime (Amendment) Act (2005) inserts a new s.4A into the POCA (1996) to allow for a 'consent disposal order' to be made by the court where an interlocutory order has been in place for less than seven years on application with the consent of all the parties concerned.

s) *Paragraph 91 recommended that: The government will need to follow through with greater controls for the Irish Registered Non-Resident companies (IRNR) since there is a significant risk that this type of company is used as a shell company in other jurisdictions.*

The IRNR structure is no longer generally available. All companies registered under the Companies Acts are now regarded as being resident in the State for tax purposes, except for companies meeting specific criteria specified in the Finance Act (1999). The Revenue and the Registrar of Companies co-operate to ensure the registration process is effective. The registrar has power to strike companies off the register where they fail to supply Revenue with certain information.[46] Since 1999 the Revenue

[46] In 1998, 20,874 companies were incorporated in Ireland; 20,232 in period September 1999 to September 2000; 14,495 in period September 2000 to September 2001; 14,156 in period September 2001 to the 30 September 2002 and 14,207 in year ended 30 September/2003.

Commissioners have written to 97,898 companies seeking certain information for taxation purposes in line with the new provisions in the Finance Act (1999). Arising from this exercise, a total of 10,014 companies who failed to comply with the new reporting measures, were struck-off the register and dissolved by the Companies Office.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of ML (R.1 and 2)

2.1.1 Description and Analysis

Recommendation 1

96. Ireland has a broad ML offence that extends to a wide range of criminal conduct or indictable offences. The 1988 Vienna Convention has been ratified and Ireland is in compliance with the requirements of article 6.1 of the Palermo Convention.

97. ML has been a criminal offence since 1994 with the enactment of the CJA (1994). Section 31 (1) of the CJA (1994) (as substituted by s.21 of the Criminal Justice (Theft and Fraud Offences) Act (2001) describes the current extent of the ML offence:

98. A person is guilty of a ML offence if they know or believe that property is or represents the proceeds of criminal conduct, or being reckless whether it is or represents the proceeds of criminal conduct, he deals with the property in a number of specific ways. These include converting, transferring, handling or removing the property from the State; concealing or disguising the true nature, source, disposition, ownership or any rights with respect to the property; and generally acquiring, possessing and using the property.

99. *Property* means money and all other property, real or personal, including things in action and other intangible property. The offence provision stipulates that references to any property representing the proceeds of criminal conduct include references to the property representing those proceeds in whole or in part directly or indirectly.

100. It is not necessary that a person be convicted of the predicate offence in order to secure a conviction for ML. However, to avoid misinterpretation in light of operational experience in applying the 1994 CJA and to put the matter beyond doubt, a new provision in the Criminal Justice (Mutual Assistance) Bill (2005) will explicitly state that an indictable offence can be considered a predicate offence irrespective of whether or not a person has been convicted of that offence.

101. Section 31(1) of the 1994 Act extends the predicate offence to all criminal conduct. Criminal conduct is defined as conduct which constitutes an indictable offence; or where the conduct occurs outside the State would constitute such an offence if it had occurred inside the State and also constitutes an offence under the law of that other place. Criminal conduct also includes participation in such conduct and an indictable offence is one that generally carries a sentence of more than 12 months imprisonment of more. All the offences contained in the designated list of offences (as defined in the Glossary of the FATF 40 Recommendations) are criminal acts in Ireland except for the offences of participation in an organised crime group. However, a definition of "organised crime group" is included in the Criminal

Justice Bill (2004) which was, at the time of the mutual evaluation visit, before Parliament. A range of offences exist for most of the listed designated offences in existence.

Additional Elements

102. Predicate offences include all indictable offences. Under Irish law, crimes are classified as either summary offences or indictable offences. There is no categorisation *per se* in Irish law whereby the seriousness of the crime is determined according to the specific term of imprisonment attaching to that crime. Summary offences are offences of a minor nature and are those which are tried before a judge without a jury. Indictable offences are offences in respect of which the accused elects to be tried before a judge sitting with a jury.

103. Under general principles of Irish criminal law, persons can be prosecuted for the ancillary offences of conspiracy, attempt, aiding and abetting, facilitating and counselling the commission of ML offences. In addition, the definition of criminal conduct in s.31(7) of the 1994 Act includes participation in such conduct.

Recommendation 2

104. Section 31 (1) of the CJA (1994) makes ML an offence if a person "knowingly" or "believing" that property is or represents proceeds of criminal conduct or being "reckless" as to whether it is or represents such proceeds, deals with that property. The Act further provides that references to "believing" include references to thinking that the property was probably, or probably represented, such proceeds. "Reckless" is construed in accordance with s.16(2) of Criminal Justice (Theft and Fraud Offences) Act 2001, which provides that a person is reckless if he disregards a substantial risk that the property handled is stolen. For these purposes "substantial risk" means a risk of such a nature and degree that, having regard to the circumstances in which the person acquired the property and the extent of the information then available to him, its disregard involves culpability of a high degree.

105. The 1994 Act permits the intentional element of the ML offence to be inferred from objective factual circumstances. Section 31(3) provides that where a person does an act in relation to property in such circumstances that it is reasonable to conclude the person "knew" or "believed" the property was or represented proceeds of crime or "was reckless" with regard thereto, the person shall be taken to have so known or believed or have been reckless. If the court or jury however is satisfied having regard to all the evidence that there is reasonable doubt concerning such intent factual circumstances is not inferred. Section 31(4) of the 1994 Act contains a similar provision concerning intent when performing certain acts with or in relation to property believed to be the proceeds of crime.

106. Section 59 of the CJA (1994) does not preclude parallel criminal, civil or administrative proceedings. In particular, the CAB can take civil forfeiture action under the Proceeds of Crime legislation in relation to underlying funds or property of criminal origin.

Legal persons

107. The Interpretation Act (1937) extends the definition of a person to a legal person, including a body corporate. Section 59 of the CJA (1994) provides that where an offence is committed by a body corporate under the Act and the offence is proved to have been committed with the consent, connivance or neglect on the part of a person being a secretary, manager or any other officer of the body corporate, then that person is also liable for the offence. Body corporate is not defined under the Act or in Irish legislation generally, but it is understood to mean a body of persons having in law an existence and rights and duties distinct from those of the individual persons who from time to time form it.

108. The penalties under s.31(2) of the 1994 Act apply to both natural and legal persons. A person found guilty of an offence of ML on conviction or indictment is liable to a fine or to imprisonment for a term not exceeding 14 years, or to both. There is no maximum stated level of fine applicable for conviction on indictment.

Statistics

109. ML investigation files are passed by investigating authorities (the FIU, the Garda or the CAB) to the Office of the DPP (Director of Public Prosecutions) for directions as to the initiation of a prosecution. The total number of prosecutions in Ireland for the offence of ML since the enactment of the legislation in 1994 has been 53. Convictions have been secured in 36 cases at the date of the on-site visit, with some cases pending.

110. The number of persons charged and convicted for the offence of ML during the four year period 2001 to 2004 is as follows:

No of persons charged and convicted for the offence of ML 2001 to 2004				
	2001	2002	2003	2004
Charged	7	Nil	4	4
Convicted	4	2	Nil	2

111. In 2004/2005 (to mid year), the FIU submitted 12 ML investigation files to the DPP. Directions to prosecute for ML were received in 5 cases. A direction to prosecute under company law legislation was received in 1 further case. In 3 cases the DPP instructed that no prosecution should take place. The DPP was considering the remaining 3 investigations files at the time of the on site visit.

112. From the above investigation files 6 persons have been prosecuted for ML offences. Conviction details (where the case has been disposed of) and amounts at risk are as follows:

Conviction details – ML Convictions	
Case 1. DPP v F and M Offence: ML - Proceeds of Drug Trafficking	Sentence: F 5 years imprisonment, M 2 years imprisonment 1 year suspended. Court: Dublin Circuit Criminal Court Amount at risk: €50,000.00 – subject to confiscation proceedings.
Case 2. DPP v B Offence: ML - Proceeds of Drug Trafficking	Sentence: 2 years imprisonment Court: Dublin Circuit Criminal Court Amount at risk: €191,000.00 - Forfeited to the State.

113. Despite individual successes in cases such as these, the overall number of prosecutions and convictions for the ML offence appears low. Several recent court rulings have made the task of the prosecutor more difficult. In a decision in 2002 of DPP v McHugh, the Court of Criminal Appeal ruled that in order to sustain a conviction for ML the prosecution must prove as a fact the criminal origin of the property in question. There was no dispute that there was sufficient evidence from which the jury were

entitled to infer that the defendant knew the property, a large sum of money, was or represented the proceeds of drug trafficking. However, the controversy was about the quality of proof offered that the money was actually of criminal origin. The presence of traces of diamorphine on the banknotes did not establish that the notes themselves represented the proceeds of drug trafficking, and admissions made by the defendant of his suspicions and his placement of the banknotes in the attic was proof of his suspicion or belief but not proof of the fact the money did represent proceeds of drug trafficking. The conviction was accordingly quashed.

114. As noted above, the overall number of prosecutions and convictions for ML offences appears low. Convictions have been obtained in 36 cases from 53 prosecutions since the enactment of the legislation and on average there are about 3 convictions a year. The conviction rate stands around 68%. Whilst the conviction rate is not particularly unusual for a common law jurisdiction, the overall low number of prosecutions and convictions suggests that the implementation of the offence provisions could be improved. The Irish courts demand high standards of evidence and recent decisions, such as the McHugh case, have made the prosecutor's job more difficult.

115. The sentences being handed down on conviction, nevertheless, appear appropriate. The largest ML sentence handed down by the Irish courts was six years in the case of DPP v Jehle. The predicate offences in this case were frauds perpetrated in Switzerland and Luxembourg. The proceeds arrived electronically into two Irish financial institutions. A property was purchased using these proceeds and the same was made subject to a concurrent Proceeds of Crime application.

116. The ML offences are being used as a basis for investigations carried out by the Garda and cases are being referred to the DPP for consideration of a prosecution. But the overall number of prosecutions commenced is low, and it is not entirely clear why this is the case. From 2001 to 2004 STRs averaged between 3,000 to 5,000 a year and following initial assessment and referral by the FIU a significant proportion of these were subject to some in depth investigation by the Garda and CAB. It appears only a small number of cases end up being passed to the DPP for consideration of ML charges, and of those that are being passed for directions, no charges are directed in some cases, and other charges are being preferred in other cases.

117. The average number of prosecutions for ML offences is 4 a year over the last two years, with around a 50% conviction rate. It may be that the high standards of admissible evidence required by Irish courts, and the necessity to strictly prove all components of the offence is partly responsible for the low number of cases moving forward to prosecution, and then on to conviction. The case of McHugh has undoubtedly made the task of the prosecutor more difficult, because the criminal origin of the property is now an essential element of the offence that must be proved to the necessary criminal standard of beyond reasonable doubt.

2.1.2 Recommendations and Comments

118. Ireland has generally implemented the requirements of FATF Recommendations 1 and 2. The ML offences are broad in their scope and now extend to include all criminal conduct or indictable offences. The conduct includes conduct occurring abroad if it would amount to a criminal offence in Ireland and also constitute an offence in that other place. Intentional elements of the offence may be inferred from acts carried out by the alleged offender and the notion of recklessness has more recently been included in the mental element of the offence to strengthen it scope of application. Provision is also being made in the Criminal Justice (Mutual Assistance) Bill (2005) for specific clarification that whilst predicate offences include all indictable offences, it is not necessary that a person be convicted of the predicate offence. These adjustments over time to the original legislation enacted in 1994 are indicative of a positive approach adopted by the Irish authorities to keep the ML offence provisions up to date and workable.

119. The Criminal Justice Bill (2004) contains a provision to define "organised criminal group" and will criminalise the act of participating in an organised criminal group in accordance with provisions of the Palermo Convention. This will strengthen the current law, which relies on the offence of conspiracy to deal with organised crime.

120. Following the McHugh case, the ML offence has become similar to the offence of handling stolen property to the extent that not only must the prosecution prove that the person knew or believed he was handling stolen property (or proceeds of crime), but that the property was in fact stolen property (or of criminal origin). The requirement of proof of the criminal origin of funds could prove an onerous one for the prosecutor in ML cases and the Irish authorities should examine the implications of the McHugh judgement with a view to addressing any problems which may arise

121. It is also recommended that the Irish authorities consider devoting greater resources to the Garda to enhance the initial assessment of STRs and subsequent investigation of them so as to produce a larger number of cases referred to the DPP's Office for directions and consequently, for prosecution.

122. The range of sentences being handed down by the courts in cases where convictions are obtained do appear adequate and the courts appear willing to sanction offenders in a robust manner.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[47]
R.1	LC	• The number of prosecutions and convictions are low.
R.2	LC	• The regime for sanctions appears comprehensive, dissuasive and proportional; however the number of prosecutions and convictions are low.
R 32	PC	• More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions

2.2 Criminalisation of TF (SR.II)

2.2.1 Description and Analysis

123. Ireland has historical experience of domestic terrorism and the Offences Against the State Act (1939) provided for measures for the suppression by Government of unlawful organisations. These measures included the making of suppression orders, under which property (except moneys held in a bank) of unlawful organisations became forfeited and vested in the State. The Offences Against the State (Amendment) Act (1985) provided for a further procedure whereby moneys of suppressed organisations held at the bank might be recovered by Government. Under this legislation, two unlawful organisations (including splinter groups) in Ireland have been made the subject of suppression orders, the Irish Republican Army (IRA) and Irish National Liberation Army (INLA).

124. The enactment of the Criminal Justice (Terrorist Offences) Act (2005) has enabled Ireland to enhance its capacity to deal with the problem of international terrorism, and to meet commitments under international instruments directed to terrorism, including the UN Convention for the Suppression of the Financing of Terrorism (1999) and UN Security Council Resolution (S/RES/) 1373 (2001). Part 4 of the Act creates an offence of financing terrorism and provides for the confiscation, freezing and forfeiture of funds used or intended for use in financing the commission of terrorist acts.

[47] These factors are only required to be set out when the rating is less than Compliant.

125. Section 13 of the Criminal Justice (Terrorist Offences) Act (2005) provides for a new offence of financing of terrorism based on the offence defined in Article 2.1 of the Convention: Section 13 (1) makes it an offence to provide, collect or receive funds intending or knowing that they will be used in whole or in part to carry out terrorist acts. These acts are either (a) an act constituting an offence under Irish law and within the scope of any of the treaties listed in the annex to the TF Convention; or (b) an act intended to cause death or serious injury to a civilian or any other person not taking active part in hostilities in a situation of armed conflict and the purpose of which is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

126. Section 13(3) also makes it an offence to provide, collect or receive funds intending or knowing that they will be used in whole or in part for the benefit or purposes of a terrorist group, as defined in the EU Framework Decision on combating terrorism,[48] or in order to carry out an act that is an offence under the Framework Decision. A terrorist group is defined in Article 2 of the EU Framework decision as a structured group of more than two persons established over a period of time and acting in concert to commit terrorist offences.

127. This definition means that Irish law does not specifically criminalise the financing of terrorism when the funds are to be used by an individual terrorist or by two terrorists working together, in an arrangement which is something less than a structured group of more than two persons. The Irish authorities have noted that an individual would not be considered a terrorist unless he commits or attempts to commit a terrorist act, participates in or organises or contributes to the commission of a terrorist act within the definition of the term "terrorist" in FATF Special Recommendation II.

128. It is the view of the Irish authorities that it would be up to the courts to decide, in a particular case, whether or not the funding of such a person was an offence under s.13 of Criminal Justice (Terrorist Offences) Act (2005). Clearly, if the funds were to be used by the individual to carry out a terrorist act the person would be caught under the relevant provisions, but if the funds were to be used for any purpose (i.e. not limited to committing a terrorist act) then the position is far from clear.

129. Under s.12 of the Act, the term 'funds' has the same definition as the UN Convention on the Suppression of TF.[49] An offence is committed under s.13(1) or s.13(3) whether or not the funds are actually used to carry out the acts referred to in those in s.13(5)). Likewise, it is an offence to attempt to commit the offences of financing of terrorism under s.13(1) or 13(3) of the Act (s.13(2) and 13(4)).

130. The TF offences are also predicate offences for ML. Under s.31(1) of the CJA (1994) a person is guilty of ML if he performs acts in relation to property with the requisite knowledge or belief that the property represents proceeds of criminal conduct. Criminal conduct is defined to include conduct which would constitute an indictable offence in Ireland, and the offences of financing of terrorism are indictable offences under the Criminal Justice (Terrorist Offences) Act (2005).

131. Section 13(1) of the Act lists the acts that constitute terrorist acts for the purpose of the financing of terrorism offence. No limitation is placed on the location of the terrorist acts or the terrorist organisations in relation to the TF activities. Likewise, s.13(1) provides that a person may, subject to certain exceptions, commit the offence of financing terrorism inside or outside Ireland. Subsection (6) lists the circumstances

[48] http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf

[49] (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and
(b) any legal document or instrument in any form, including electronic or digital, evidencing title to, or any interest in, any asset, including, but not limited to, a bank credit, traveller's cheque, bank cheque, money order, share, security, bond, draft and letter of credit.

in which Irish courts will have extraterritorial jurisdiction, namely if the offence is committed on board an Irish ship or aircraft; by a citizen of Ireland; is directed towards an act against the State or a citizen; is directed towards an act against a State facility abroad, or is directed toward any act in s.13(1) in an attempt to the compel the State to do or abstain from doing any act.

132. Subsection (7), when read together with s.43, provides that in the case of a refusal to extradite the DPP may authorise the taking of proceedings in Ireland in relation to the person for acts committed outside the State other than those listed in subsection (6). In such cases the Irish courts will assert worldwide jurisdiction regardless of the circumstances in which the offending took place.

133. Unlike the ML offence, there is no express provision in the Criminal Justice (Terrorist Offences) Act (2005) which provides for the intentional element of the offence to be inferred from objective factual circumstances. However, as a general principle of law, the Irish court would be free to draw such inferences in appropriate cases.

134. Persons working in a body corporate as well as the body corporate itself can be proceeded against for an offence under s.45 of the Act. There are no provisions in law which would preclude the possibility of parallel criminal, civil or administrative proceedings, and parallel civil proceedings are possible under the Proceeds of Crime legislation in relation to terrorist funds.

135. TF is punishable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both. On conviction on indictment, the offence is punishable by an unlimited fine or imprisonment for a term not exceeding 20 years or both.

136. In view of the very recent enactment of the legislation creating the offence of financing of terrorism, it is too early to say how effectively the provisions are working in practice. However, STRs are being made, investigations are underway and a TF suspect was arrested in April 2005 and prosecuted for ML and fraud offences. In addition, steps have already been taken to freeze terrorist funds in a number of cases under the UN sanctions regime (see below). These related indicators, together with Ireland's own particular experience in dealing with terrorist type activity over the years, suggest that the TF offence provisions in the new legislation are capable of being put to effective use.

2.2.2 Recommendations and Comments

137. The Criminal Justice (Terrorist Offences) Act (2005) has criminalised the offence of TF in accordance with the provisions of the UN TF Convention and UN S/RES/1373 (2001). The offence provisions are therefore generally adequate and go most of the way towards meeting the FATF standards. However, FATF Special Recommendation II requires the criminalisation not only of the collection or provision of funds to carry out terrorist acts or for use by terrorist organisations, but also for use by individual terrorists. The offence provision in s.13 of the Criminal Justice (Terrorist Offences) Act (2005) criminalises funding of terrorist acts and terrorist groups. A "terrorist group" is defined in the legislation to mean a structured group of more than 2 persons established over time and acting in concert to commit terrorist acts.

138. The offence provision therefore does not extend coverage to the provision of funds to a single terrorist or to two terrorists acting in concert. Whilst it is true that if it can be shown the funds are or may be intended for use by an individual terrorist to commit a terrorist act then the offence will be made out, there may be cases where this will not be possible or cases in which the funds are provided not for the commission of terrorist acts but for other purposes such as general maintenance and living costs. It is recommended that the Irish authorities give consideration to amending the TF offence provision at an

appropriate time so as to make it applicable not only to terrorist organisations but also applicable to individual terrorists, in order to achieve full compliance with Special Recommendation II.

139. It is too early to assess the effectiveness of the implementation of FATF Special Recommendation II because the TF offence provision has only been operative since March 2005. No prosecutions have been commenced, however, investigations are underway and given the Irish experience with terrorism positive results can be expected.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	• The TF offence does not extend to the provision or collection of funds for the benefit of a group of less than three terrorists including a single terrorist (except where the funds are provided for use, in whole or in part, in order to carry out a terrorist act), due to the use and definition of the term "terrorist group" in the legislation. • It is too early to assess the effective implementation of the TF offence provisions, because they have only been operative since March 8 2005.
R 32	PC	• It is too early to assess the availability of statistics as the TF offence was only introduced earlier in 2005.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

140. In Ireland action can be taken under both criminal and civil law procedures to confiscate or forfeit proceeds of crime.

Criminal Confiscation

141. The CJA (1994) contains the provisions on the confiscation of the proceeds of crime following conviction. Under s.9 of the Act, where a person is *convicted of any offence on indictment*, the court can, on the application of the DPP, enquire into whether the person has benefited from the offence and, if satisfied that there has been such a benefit, the court can require the repayment of that benefit. The standard of proof for determining whether and to what extent the person benefited from the offence is applicable in civil proceedings, the balance of probabilities. However, the conviction itself must be obtained on the normal criminal standard, which is beyond reasonable doubt. If necessary, the property of the convicted person can be taken into possession and sold to satisfy the confiscation order.

142. Where the offence concerned is a drug trafficking offence (s.4 to 8 of the Act) the court is empowered to make assumptions about the origins of the defendant's property, e.g. that any property transferred to him or her in the six years prior to the proceedings were as payment or reward for drug trafficking (s.5). In addition, amendments contained in the CJA (1999) (s. 25-28) provide that on conviction for a drug trafficking offence the court will *automatically* determine whether the offender has benefited (unless the court is satisfied that the amount which might be recovered would not be sufficient to justify the making of a determination) with a view to making a confiscation order.

143. Sections 8A to 8E of the CJA (1994), as inserted by s.22 of the Criminal Justice (Terrorist Offences) Act (2005) provide a comprehensive legislative basis for confiscation orders relating to the offence of financing terrorism. The confiscation orders apply to both the proceeds of crime and

instrumentalities (i.e. funds used or allocated for use in connection with an offence of financing of terrorism). The procedures in these sections are similar to those in the 1994 Act relating to the confiscation of the benefits of drug trafficking.

144. Under the CJA (1994), the nature of the confiscation will depend on the order of the court in relation to the particular action. Section 10 of the CJA (1994) provides for statements relevant to the making of confiscation orders to be tendered to the court by the DPP or the defendant. For drug trafficking and TF cases, s.5 and s.8(B) (as inserted by s.22 of the Criminal Justice (Terrorist Offences) Act (2005)) of the CJA (1994) provide for assumptions to be made by the court in assessing the funds subject to confiscation unless that assumption is shown to be incorrect by the defendant.

145. In other words, the *burden of proof* shifts to the defendant to show that the funds in question are not subject to confiscation. There is a general safeguard whereby the Court must not make the assumption if it is satisfied that there would be a serious risk of injustice.

146. Section 61 of the CJA (1994) allows for the forfeiture of the instrumentalities of crime. It provides that, where a person is convicted of an offence and:

> "(a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued:
>
> (i) has been used for the purposes of committing, or facilitating the commission of, any offence, or
> (ii) was intended by him to be used for that purpose,
>
> or
>
> (b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which:
>
> (i) has been lawfully seized from him, or
> (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued".

147. The court may make a forfeiture order and may do so whether or not it deals with the offender in respect of the offence in any other way. This provision refers to all crimes including ML. The section goes on to define what is meant by facilitation of the commission of an offence and to set out certain safeguards in relation to the forfeiture. Section 61 (1A), as inserted by s.(17) (a) the Offences Against the State (Amendment) Act (1998) and amended by s.38 of the Criminal Justice (Terrorist Offences) Act (2005) applies these forfeiture provisions to the offence of financing terrorism.

148. In addition, s.38(1)(b) and 38(1A) (b) of the CJA, as amended by s.20(a) of the Proceeds of Crime (Amendment) Act (2005) provide for the seizure of cash that directly or indirectly is intended by anyone for use in any criminal conduct. The cash can be ultimately forfeited under the provisions of s.39 of the Act. Cash in these sections includes notes and coins and any currency, cheques of any kind, bank drafts, bearer bonds and bearer shares.

149. The evaluation team noted that whilst provisions do exist for the forfeiture of instrumentalities, the provisions in s.61 of the CJA (1994) quoted above apply to instrumentalities that were "seized from the defendant or in his possession or under his control at the time of his apprehension". Ireland expressed the view that this may also extend to *other* instrumentalities used in connection with the offence for which the person was convicted and the concept of possession and control would be interpreted on a broad basis.

Due to the absence of case law on the provision, the assessment team had insufficient information to form a view as to whether this was correct or not.

150. There is also no statutory procedure that dictates that a criminal confiscation should be pursued first prior to a civil case.

Civil Forfeiture

151. The POCA (1996) provides for the *civil* forfeiture of property which is believed, on the balance of probabilities, to be the proceeds of crime. Applications under the Act may be made by a member of the Garda not below the rank of chief superintendent or an authorised officer of the Revenue Commissioners (but in practice are made by the Chief Bureau Officer of the CAB, who is a chief superintendent.) If the High Court is satisfied, on the balance of probabilities, that a person is in possession or control of property which is or represents the proceeds of crime, it may order the freezing of the property and, after 7 years, its disposal for the benefit of the Exchequer. The belief of the applicant that property is the proceeds of crime is admissible as evidence, provided that the court is satisfied that there are reasonable grounds for the belief. The initial hearing is *ex parte*, but there is provision for a full interlocutory hearing after twenty one days where the respondent has an opportunity to show the High Court, again on the balance of probabilities, that the property is not the proceeds of crime. The 1996 Act does not contain provisions for the forfeiture of instrumentalities of crime.

152. During the previous FATF mutual evaluation of Ireland in 1998, it was recommended that the term required under the POCA before a disposal order may be granted by the court should be reduced from seven years to three. The Irish authorities considered the recommendation but it was decided to retain the seven year period as an appropriate length of time to allow for the preparation and consideration of application against interlocutory orders under the Act. Nevertheless, an amendment was made to the Act to allow for a consent disposal order to be made by the court where an interlocutory order has been in place of less than seven years on application and with the consent of all parties concerned (s.7 of the Proceeds of Crime (Amendment) Act (2005) inserts a new s.4A in the 1996 Act to this effect).

153. The CAB, which was set-up under the Criminal Assets Bureau Act (1996), has responsibility implementing the 1996 Act and for the identification, tracing and seizure of the proceeds of criminal activity. The Bureau is a multi-agency body tasked with applying a multi-agency law enforcement remit against the proceeds of crime, including corruption. It uses powers under the POCA 1996 and Revenue and Social Welfare legislation in targeting the profits of crime. The Bureau works under the control and direction of the Chief Bureau Officer. All action taken by the Bureau is subject to approval or appeal by the Irish Courts.

154. Overall, there are some important distinctions between the POCA (1996) and the CJA, (1994):

a) The confiscation provisions of the 1994 Act are employed following the conviction of the accused whereas, under the 1996 Act, the application may be made without any such conviction.
b) The 1996 Act applies to property which is worth at least €13,000 (formerly IR£10,000) and which is the proceeds of any crime.
c) The 1996 Act pursues the proceeds of crime rather than the individual concerned. Since the process relates to civil forfeiture, the standard of proof required to determine the proceedings or any issue relating to the proceedings under the Act is the "balance of probabilities" standard, (s.8), rather than the standard applicable to criminal proceedings for conviction of "beyond all reasonable doubt".

155. The POCA (1996) was amended in 2005 by the Proceeds of Crime (Amendment) Act 2005. The purpose of this amending Act was to make further provision in relation to the recovery and disposal of proceeds of crime and for that purpose to amend the POCA (1996), the Criminal Assets Bureau Act (1996), the CJA 1994 and the Prevention of Corruption (Amendment) Act (2001).

156. The Act bolsters the powers of CAB in its continuing efforts to target the proceeds of all types of crime and extends those powers to the proceeds of white-collar crime and corruption. The substantive provisions of the Act extend the proceeds of crime legislation to cover foreign criminality and corrupt enrichment. In addition, there are a number of technical provisions relating to court procedures, search powers and evidence.

Secondary Proceeds:

157. It is possible for secondary proceeds to be seized both under the CJA (1994) and the POCA (1996). The court will determine the extent of the proceeds of crime which are to be confiscated (s.4, 5, 6 & 9 of the CJA (1994) refer). Courts have decided in the past to reduce the amounts confiscated in certain circumstances as where a property for example is co-owned by a partner who had no involvement in the crime. In such cases properties have been divided and 50% of the proceeds of the sale of the property forfeited to the State. Expenditure by the criminal for the purposes of gaining the proceeds is not deducted in calculating the proceeds or benefit of the crime. Under the Act, the calculation of the amount to be recovered is the amount the court considers the respondent benefited from the crime. The value of the proceeds of crime is calculated with reference to proceeds or property which the defendant obtained or received at any time, directly or indirectly, from criminal activity.

158. The provisions in the POCA (1996) in relation to interim, interlocutory and disposal orders refer to property which constitutes, directly or indirectly, the proceeds of crime (s.2 to 4 refer). Section 5(3) of the Act additionally provides that such orders may be expressed to apply to any profit or gain or interest, dividend or other payment or any other property payable or arising, after the making of the order, in connection with any other property to which the order relates.

159. In relation to the procedure under the CJA (1994), if property is transferred to a third party for the purposes of avoiding a confiscation order then depending on the state of knowledge of that third party he may be guilty of a ML offence, which could in itself then be used as the predicate offence for the purposes of restraint or confiscation. "*Realisable property*" is defined in s.3 of the CJA (1994) as (a) any property held by the defendant or (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by the Act.

160. Similarly, the POCA (1996) provides for confiscation of property acquired by a third party or close relatives if it is established that the source of the funds to acquire that property is in fact the proceeds of crime.

Provisional Measures:

161. Laws do exist for provisional measures to prevent dealing, transfer or disposal of property subject to confiscation. Section 24 of the CJA (1994) and s.2 of the POCA (1996) provide for restraint orders in cases of criminal proceedings, and interim orders in the case of civil forfeiture.

162. In criminal proceedings, the DPP may apply to court for a restraint order, which prevents any dealings in, or in other words freezes, specified property in anticipation of a confiscation order, including where criminal proceedings have not commenced but are contemplated. If not already commenced, a

prosecution must be commenced within a reasonable time; otherwise the restraint order will be discharged.

163. By these procedures, an application may be made under s.24 of the 1994 Act to the High Court for a restraint order to prohibit any person from dealing with any realisable property in certain circumstances. Section 23 of the Act sets out the circumstances in which the High Court powers are exercisable. This can arise where (i) proceedings have been instituted against a defendant, those proceeding have not been concluded and a confiscation order has either already been made or (ii) it appears to the court that there are reasonable grounds to think that a confiscation order may be made. Through this mechanism, the State can freeze funds which are likely to be dissipated prior to conviction to ensure that such funds are available to meet a confiscation order. The procedures are used only for indictable offences.

164. Under the POCA (1996), the High Court may issue an interim order under s.2 freezing the property for a period of 21 days. In the subsequent hearing of an application for an interlocutory order (the main order freezing property) under s.3, the applicant, which in practice is the Chief Bureau Officer of the Criminal Assets Bureau, must persuade the High Court on the balance of probabilities that the property in question is the proceeds of crime and is worth €13,000 or more. If the High Court is so persuaded, on the basis of the evidence of the applicant, it must grant the order, unless the respondent (the person who claims to be the owner) satisfies the Court that it is not. Therefore, once the applicant establishes proof that the property is the proceeds of crime, the *burden of proof shifts* to the respondent to show that it is not. There is also a general safeguard whereby the Court must not make the order if it is satisfied that there would be a serious risk of injustice.

165. Section 24(4)(a) of the CJA 1994 and s.2(1) of the POCA 1996 provide that the initial applications may be made *ex-parte* in the case of restraint orders in cases of criminal proceedings and interim orders in the case of civil forfeiture.

Identification and Tracing:

166. Law enforcement agencies are given powers to identify and trace property that is or may become subject to confiscation. Section 11 of the CJA (1994) as amended by s.28 of the CJA (1999) and s.25 of the Criminal Justice (Terrorism Offences) Act 2005, gives power to the courts, in cases where an application to make a confiscation order has been made to order a defendant to give it such information as ordered. Failure to comply with this order is also an offence under this section.

167. Section 63A of the CJA (1994) as inserted by s.1 of the Disclosure of Certain Information for Taxation and Other Purposes Act (1996) provides for disclosure by Revenue officials of information to the Garda in relation to suspected profits or gains from unlawful activity.

168. The Garda can make applications to the District Court for search warrants for purposes of investigation including investigations into whether a person holds funds subject to confiscation and whether a person has benefited from an offence in respect of which a confiscation order might be made under s.64 of the CJA (1994) as amended by s.40 of the Criminal Justice (Terrorist Offences) Act (2005).

169. Sections 14 to 14C of the Criminal Assets Bureau Act (1996) (s.14A to 14C have been inserted by s.18 of the Proceeds of Crime (Amendment) Act 2005) provide extensive search and disclosure powers to the Bureau in relation to investigations into the proceeds of crime.

170. Irish authorities presently do not have legal provisions available to arrange monitoring of bank accounts, but a provision in the Criminal Justice (Mutual Assistance) Bill will amend the CJA (1994) to allow for these orders.

Third Parties and Voidance:

171. Laws and other measures are available for the protection of rights of bona fide third parties. Section 61(5) and 61(5A) of the CJA (as inserted by s.17(b) of the Offences Against the State (Amendment) Act (1998)) provide for the protection of the interests of third parties in property to be forfeited post conviction. In the case of restraint orders, under s.24 of the CJA notice of the order must be given to all parties affected by it and that person may make an application to discharge or vary it at any time. Under s.2 to 4 of the POCA (1996) provision is made for applications to be made to the court by third parties who may be affected by orders made under those sections for the discharge or variation of the order in question.

172. Likewise, provisions are available for the voidance of transactions which prejudice the ability of the authorities to recover property subject to confiscation. Section 60 of the CJA (1994) specifically provides for the voidance of dispositions designed to frustrate confiscation. The interim and interlocutory orders under s.2 and 3 respectively of the POCA (1996) prohibit the disposal or other dealing with the property in question. In addition, it is a ML offence under s.31 of the CJA (1994) if a person knowing or believing property represents proceeds of crime he handles the property with the intention of avoiding the making of a confiscation order or frustrating its enforcement. Such property may itself become subject to confiscation proceedings for recovery purposes.

Statistics

173. In relation to ML and the proceeds of crime generally, between 2001 to 2004, freezing and confiscation measures under the CJA (1994) (post proceedings) was taken in 14 cases covering a total amount of €800,000.

174. Civil forfeiture action has been taken to recover the proceeds of crime by the CAB since 1996, the details of the actions between 2001 and 2004 are outlined below:

Details of monies secured by the CAB under its powers for the period 2001 to 2004 Actions taken – Under the Proceeds of Crime Act			
Section 2 Interim Orders		Section 3 Interlocutory Orders	
2001	£1,872,654.72 (€2,377,781.00) Stg £ 491,114.09	2001	£1,342,951.10 (€1,705,196.15) Stg £ 279,635.70
Number Defendants Number of Orders	10 4	Number Defendants Number of Orders	18 7
2002	€3,709,086.00 Stg £ 17,802,004.00 US$ 5,558,377.00	2002	€2,504,669.00 Stg £1,993,094.00 US$ 5,247,821.00
Number Defendants Number of Orders	18 12	Number Defendants Number of Orders	11 7

2003	€3,045,842.00 Stg £ 12,150.00	2003	€71,699.00 Stg £ 557,070.00
Number Defendants Number of Orders	15 11	Number Defendants Number of Orders	6 6
2004	€1,033,742.18 Stg £ 6125	2004	€1,687,655.44 Stg £ 375
Number Defendants Number of Orders	11 10	Number Defendants Number of Orders	12 9
Revenue – Criminal Assets Bureau - Statistics			
Year Ending	Taxes Assessed	Taxes and Interest Demanded	Taxes Collected
31/12/2001	£14,678,657.00	£6,571,986.00	£18,556,321.00
31/12/2002	€9,954,554.00	€12,830,763.00	€10,003,816.00
31/12/2003	€7,045,114.00	€7,198,272.00	€9,991,022.00
31/12/2004	€5,519,473.75	€5,497,448.58	€16,408,649.08
Social Welfare – Criminal Assets Bureau - Statistics			
Year	Overpayments Assessed	Savings	Sums Recovered
2001	£249,976.00	£151,485.00	€166,279.82
2002	€350,347.00	€155,481.00	€51,909.36
2003	€518,885.00	€109,654.00	€199,702.77
2004	€262,048.84	€222,921.40	€273,073.61

Additional Elements

175. Although Ireland does not have laws that directly enable confiscation of property of organisations that are found to be primarily criminal in nature, the civil forfeiture scheme contained in the POCA (1996) does not require that a person be convicted of an offence. It targets the proceeds of crime and it only has to be shown, on the civil standard or proof, that the assets in question are proceeds of criminal conduct for them to be subject to forfeiture.

2.3.2 Recommendations and Comments

176. Ireland has implemented a comprehensive regime for the recovery of proceeds of crime, based on both criminal and civil forfeiture proceedings. The measures adopted are broadly consistent with the Vienna and Palermo Conventions for confiscation of property laundered from predicate crimes, including property of corresponding value. The competent authorities in Ireland are given sufficient powers to identify and trace property subject to confiscation, to obtain interim restraint orders, to void actions that will prejudice the State's ability to recover property and to protect the bona rights of third parties. Account monitoring orders are not yet available, but provision for them is made in the Criminal Justice (Mutual Assistance) Bill (2005).

177. The implementation of a civil forfeiture regime is not a strict requirement of the FATF Recommendations. Ireland has been a common law jurisdiction at the forefront of such an initiative. It has established a robust regime which is obviously producing good results. The ability that Ireland has to bolster its recovery regime by the use of civil forfeiture proceedings means that the authorities can continue their efforts in cases which cannot be or are not successfully prosecuted through the criminal route. The figures for recovery through the criminal route are not particularly high, but taking into account the recovery figures for civil forfeiture as well, the overall picture is reasonably healthy.

178. Ireland has no ability on the civil forfeiture side to recover instrumentalities of crime and the provisions contained in the criminal regime are arguably of limited effect due to the requirement that the property in question must be on or under the control of the defendant at the time of his apprehension. This has not reportedly caused problems in practice, but Ireland could consider strengthening its confiscation regime by extending its ability to recover instrumentalities used or intended for use in criminal offences.

179. Ireland has retained the 7 year rule before disposal orders can be made in civil forfeiture proceedings, although it has amended its law to allow disposal orders to be made by consent at any time. The assessors are of the view that the 7 year period is not necessary and could be shortened even in non-consent cases. However the Irish authorities disagreed with this view. They maintained that there is no evidence that the length of the period has reduced the effectiveness of the Proceeds of Crime legislation. On the contrary, they asserted that the strong nature of the legislation requires robust safeguards including a reasonable amount of time for applications to be made to the courts by third parties who are seeking to establish a legitimate interest in the property in question and to have it returned to them.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	C	• This Recommendation is fully met
R 32	PC	• Confiscation statistics appear to be comprehensive.

2.4 Freezing of funds used for TF (SR.III)

2.4.1 Description and Analysis

Special Recommendation III Freezing actions under S/RES/1267 and S/RES/1373

180. ***S/RES/1267:*** Ireland has implemented UN Security Council Resolution 1267 (1999) (S/RES/1267 (1999)) and its successor resolutions under EU Council Regulation (EC) No.881/2002 which imposes measures against the Al-Qaeda and the Taliban. These EU Regulations have direct force of law in Ireland and require the freezing of funds and economic resources belonging to persons designated by the UN Sanctions Committee and listed in the Regulations, and prohibit making funds or economic resources

available to such listed persons. EC No. 881/2002 requires the freezing of funds and economic resources belonging to persons designated by the Sanctions Committee and listed in the Regulations, and prohibit making funds or economic resources available to such listed persons. These lists are updated regularly by the EU, at which point assets are required to be frozen. Enforcement in Ireland by means of penalties for non-compliance is provided for by Regulations entitled Criminal Justice (Terrorist Offences) Act, 2005 s.42(2)) (Usama bin Laden, Al-Qaeda and Taliban of Afghanistan) (Financial Sanctions) Regulations and Regulations entitled Criminal Justice (Terrorist Offences) Act (2005) s.42(6)) (Usama bin Laden, Al-Qaeda and Taliban of Afghanistan) (Financial Sanctions) Regulations.[50]

181. These Ministerial Regulations, contained in Statutory Instruments create an offence for non-compliance with the Council Regulation and empower the CBFSAI to give directions or issue instructions for the purpose of administration and enforcement of the Regulations, as it sees fit. Any person who breaches the provisions of the Regulations commits an offence and is liable on conviction on indictment to a fine not exceeding the greater of €10,000,000 or twice the value of the assets in respect of which the offence was committed, or imprisonment for a term not exceeding 20 years, or both.

182. The EU list of designated persons is the same as the UN list of persons, and is drawn up upon designations being made by the UN Sanctions Committee. The process from settlement of the EU list to the making of the regulations under the Criminal Justice (Terrorist Offences) Act (2005) s.42 takes between two and four weeks – a period during which the funds and economic resources of listed persons and entities are required to be frozen, but in which penalties for non-compliance are not provided..

183. The Department of Foreign Affairs and the CBFSA of Ireland are the two competent authorities for Ireland for the purposes of the above mentioned Council (EC) Regulations. In that capacity they report directly to the European Commission and, in collaboration with the Department of Finance, the Department of Justice, Equality and Law Reform and the Garda, they apply the measures and mechanisms necessary to identify and investigate the assets, individuals and entities reported within the jurisdiction.

184. The Banks and other financial institutions are required to search their records and confirm to the Central Bank that they have done so in respect of the individuals and entities named under EU Regulations. These searches are usually carried out and reported on by the Compliance and ML Reporting Officers in the institutions concerned. Any difficulties are referred to the Central Bank for direction. The Central Bank reports directly to the Commission (EC) as required under the regulations. Any funds identified are frozen immediately and without prior notice to the listed persons involved.

185. Under Council (EC) Regulation No. 881/2002, Ireland has reported to the Commission the names of 5 individuals who maintained a total of 7 accounts which are now frozen. The aggregate current value of funds frozen is approximately €90,000. Enquiries are continuing to confirm the identities of two of these names. Another named individual currently has a legal action against the Council of the European Union. Problems with identifiers and verifying identities appear to remain the most significant difficulties encountered in the freezing of funds.

186. ***S/RES/1373 (2001):*** Is implemented in a similar way in Ireland to S/RES/1267 (1999) and enforcement of the EU Council Regulations is given effect by Regulations made by the Minister for Finance under the Criminal Justice (Terrorist Offences) Act (2005). The relevant EU Regulation Council Regulation (EC) No. 2580/2001, requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting of making available of funds and economic resources for the benefit of those persons or entities.

[50] Previously (prior to July 2005), the enforcement was provided for by Ministerial Orders made under the Financial Transfers Act (1992) and the European Communities Act (1972).

187. The Regulations made by the Minister of Finance to provide for enforcement of the EU Council Regulations are the Criminal Justice (Terrorist Offences) Act (2005) s.42(2)) (Counter Terrorism) (Financial Sanctions) Regulations and the Criminal Justice (Terrorist Offences) Act 2005 s.42(6)) (Counter Terrorism) (Financial Sanctions) Regulations. These regulations create an offence for non-compliance with the Council Regulation and empower the CBFSAI to give directions or issue instructions. The penalties for non-compliance are the same as those for breach of the regulations implementing S/RES/1267.

188. Any member State as well as any third party State can propose names for the list. The Council, of the European Union establishes, amends and reviews the list. However, as instruments of the Common Foreign and Security Policy (CFSP) must relate to a foreign policy objective, the asset freeze does not apply to terrorists whose objectives relate to matters which are internal to the EU, i.e. "domestic" or "internal" terrorists It was unclear to the evaluation team how efficient and effective the process is in practice and precisely how persons or groups get listed by the Council of the European Union as set out in Article 1 (4) of Common Position 2001/931/CSPF.

189. Other countries, mostly the United States, also update Ireland on additional designated terrorist-linked individuals whose assets are being blocked in those jurisdictions. These names are notified to the Department of Foreign Affairs, the Department of Justice, Equality and Law Reform, the Department of Finance and the CBFSA of Ireland which brings this information to the attention of the financial institutions for the purpose of making possible suspicious transaction reports to the Gardai.

190. Under the Offences against the State Act (1939) and its subsequent amendments, the Minister for Justice, Equality and Law Reform can require a bank to pay monies of an unlawful organisation in respect of which a suppression order has been made (the IRA and INLA) into the High Court. Assets of unlawful organisations may also stand forfeited to the Minister on application to the court. These provisions have now been extended by section 5 of the Criminal Justice (Terrorist Offences) Act (2005) to include terrorist groups that engage in, promote, encourage or advocate the commission in or outside the State of any terrorist activity. However, to date no suppression orders have been made under the Offences Against the State Act (1939) in relation to such groups.

191. Outside the list of persons designated for freezing purposes by the EU Council, Ireland has a limited capacity to freeze funds in accordance with S/RES/1373 (2001). It cannot use the EU enforcement regime to freeze funds in Ireland of other EU member citizens because they are not listed for freezing purposes under the Regulations. Neither can it use the EU regime to freeze funds of other persons not on the list upon request of other jurisdictions.

192. The Criminal Justice (Terrorist Offences) Act (2005) does provide a court-based mechanism for the freezing and confiscation of terrorist funds. Under s.14 of the Act, a senior officer of the Garda can make an *ex parte* application for an order to the court prohibiting a person from disposing of funds or diminishing their value, for 40 days, and the court may grant the application where it is satisfied that the funds are being used or may be intended for use in committing or facilitating the commission of a terrorist offence or an offence of financing terrorism. This can be followed by an application for an interlocutory order and where that order has been in operation for 7 years the court may dispose of the funds.

193. However, the provisions fall short of meeting the requirements of S/RES/1373 (2001) to the extent that the applicant must, to an evidential standard in court, satisfy the court that the funds in question are being used or may be intended for use in committing terrorist acts. The requirement under S/RES/1373 (2001) is to without delay freeze all funds and assets of designated terrorists, whether or not the particular funds in question may be intended for use in a terrorist act.

194. In addition, it is unclear whether overseas jurisdictions will be able to use this court-based mechanism to freeze funds in Ireland upon request. Unlike the freezing and confiscation provisions in the CJA (1994) for proceeds of crime, there is no separate gateway in the Criminal Justice (Terrorist Offences) Act (2005) to enable freezing of funds by the courts upon foreign request. Section 14 requires a member of the Garda, on application, to satisfy the court of certain evidential matters to obtain the freeze order. Whilst the evidential burden may be more readily discharged in the context of a domestic investigation, it is less clear how the burden would be discharged in the context of a foreign request to freeze or when a person is identified on the basis of an international list (other than the EU list) arising from a STR made by a financial institution. In such a case, the Garda would not be acting on the basis of its own investigation but on the basis of evidence or a listing provided from a foreign authority. Further, under these provisions the funds must be used or intended for use to commit an offence under s.6 (terrorist acts) or s.13 (TF) of the Act. These offences extend to acts committed outside the State but only in defined circumstances and where there is a causal link to Ireland (except that if extradition is refused, the DPP can assert worldwide jurisdiction to prosecute the offender). It is therefore questionable whether the provision can be used when the funds are to be used to commit foreign terrorist offences which may not strictly be offences under s.6 or 13 of the Act. Ireland takes the view that the section 14 procedure is available on foreign requests and was intended for such purposes. There have been no actual cases of foreign requests since the enactment of the legislation to freeze terrorist funds and therefore evidence of the appropriate practice in such cases is presently unavailable.

195. Section 42 of the Criminal Justice (Terrorist Offences) Act (2005) does empower the Minister for Finance to make regulations directed to freezing terrorist funds which will enable breach of the regulations to be an indictable offence. However, the Minister's regulation making power is limited to acts adopted by the institutions of the European Communities which, in the opinion of the Minister, are for the purpose of, or will contribute to, combating terrorism. Therefore, any such regulations cannot extend beyond application to the list of persons so designated by the Council of the European Union as being subject to an asset freeze.

196. The EU Regulations implementing S/RES/1373 (2001) do extend to freezing funds or other assets jointly owned or controlled by designated terrorists and terrorist organisations, as well as entities acting on behalf of such persons and entities (Article 3(3) of (EC) No. 2580/2001). The EU Regulations implementing S/RES/1267 (1999) do not contain similar express provisions, they simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list (Article 2(1)). However, it is also prohibited to make funds available, directly or indirectly, to or for the benefit of a natural or legal person, or group or entity designated on the list (Article 2(2)).

Communication to financial institutions and procedures:

197. The CBFSA of Ireland, acting under the delegated authority of the Minister for Finance, advises, directs and receives reports from the various bodies in the financial system in relation to all additions or changes to the EU Regulations and/or listings. The Bank also requests cooperation in respect of individuals or entities identified on similar listings received from other countries seeking cooperation in relation to the combating of terrorism, and in such cases those institutions are advised to make STR's to the Garda.

198. All official communications to and responses from the financial system are in writing while many advisory or informal contacts take place by telephone or at meetings. However, these systems for communicating action taken are generally limited to the financial institutions and do not extend to designated non-financial businesses and professional under s.32 of the CJA (1994) nor to the public.

199. Guidance Notes on the Offence of Financing of Terrorism and the Financial Sanctions Regime for Bodies Designated under s.32 of the CJA (1994) were issued in March 2005 following the enactment of the Criminal Justice (Terrorist Offences) Act (2005).

200. The guidance notes are a recommendation to good practice. The notes include some explanation of the offence provisions and freezing mechanisms contained in the 2005 Act and under the EU Regulations. They give some practical guidance to assist recognition of cases of financing of terrorism, and outline obligations for training of employees. The notes also give specific advice concerning appropriate action to be taken when positive or near matches are found for listed persons and entities. The guidance notes extend to financial institutions and designated non-financial business and professions, but not to other persons or the public at large.

Process for de-listing and unfreezing

201. Delisting procedures exist both in relation to funds frozen under S/RES/1267 (1999) and S/RES/1373 (2001). For the former, (EC) No. 881/2002 provides that the Commission may amend the list of persons on the basis of determination by the UN Security Council or the Sanctions Committee (Article 7). For the latter, (EC) No. 2580/2001 provides that the competent authorities of each member State may grant specific authorisations to unfreeze funds after consultations with other member States and the Commission (Article 6). In practice, a person wishing to have funds unfrozen in Ireland would have to take the matter up with the competent authorities who, if satisfied, would take his case to the Commission and/or the UN. To date, no such cases have occurred in Ireland. The same procedure would apply to funds or other assets of persons inadvertently affected by freezing upon verification that the person is not a designated person.

202. The provisions of Regulation (EC) No 881/2002 have been amended by Regulation (EC) No 561/2003 to include a procedure for authorizing access to funds or economic resources in keeping with S/RES/1452 (2002). However, no funds that have been frozen (5 cases), have been released.

203. However, in August 2003, Ireland applied for, and received, approval from the 1267 Committee to allow social welfare payments to be made to an individual to meet the basic needs of his family in accordance with the criteria set out in paragraph 1(a) of resolution 1452 (2002). In December 2003 Ireland received approval from the 1267 Committee to increase the levels of payment to this individual in line with national budget increases. The procedures are therefore working in practice, and the same procedure would be followed for an application authorising access to funds frozen under S/RES/1267 (1999).

204. Specific provisions do exist in (EC) No. 2580/2001 for release of basic expenses and related costs, and application must be made to the competent authority of the member State in whose territory the funds have been frozen (Article 5). Funds in an account of one individual have been frozen in Ireland under this Regulation. No application for access to funds has been made.

205. Persons and groups, who are dissatisfied with action taken to freeze their funds or assets and who wish to challenge such action, can apply to the Court of First Instance of the European Communities for a remedy. In the case of an adverse judgment they can appeal to the Court of Justice of the European Communities. It may also be possible for them to bring a case before the European Court of Human Rights in Strasbourg. The two cases concerning Irish residents were directed against the Council of the EU as well as the Commission. Judgment is pending by the Court of First Instance in relation to the individual designated pursuant to Council Regulation (EC) No 881/2002. In relation to the individual designated pursuant to Council Regulation (EC) No 2580/2001 the case was dismissed by the Court of First Instance on 18 November 2005.

Freezing actions other than S/RES/1267 and S/RES/1373:

206. Provisions exist in the CJA (1994) and in Part IV of the Criminal Justice (Terrorist Offences) Act (2005) for the confiscation and forfeiture of terrorist funds.

207. The confiscation of property, the ability for competent authorities to have adequate powers to identify and trace property and steps to prevent actions that would prejudice the ability to recover property subject to confiscation under FATF Recommendation 3 apply in relation to the freezing, seizing and confiscation of terrorist related funds or other assets in the context of a person found guilty of financing terrorism or an attempt to finance terrorism.

208. The CJA (1994) (as amended) provides that where a person has been sentenced or otherwise dealt with by a court in respect of an offence of financing terrorism, the Director of Public Prosecutions may apply to the court to determine whether the person holds funds subject to confiscation, i.e. funds used or allocated for use in connection with an offence of financing terrorism, or funds that are the proceeds of such an offence. If the court determines that a person holds funds subject to confiscation it must determine the amount to be recovered and make a confiscation order requiring the person to pay that amount. All the procedures and safeguards in the CJA (1994) that apply to funds which are the benefits of drug trafficking or other criminal activity also apply to terrorist funds subject to confiscation.

209. Civil forfeiture provisions exist under Part IV of the Criminal Justice (Terrorist Offences) Act (2005) for the making of interim and interlocutory orders to freeze terrorist funds under s.14 and 15. Under s.16 of the 2005 Act the Court may make a disposal order where an interlocutory order has been in force for not less than seven years. These mechanisms are similar to the mechanisms contained in the Proceeds of Crime legislation for civil forfeiture.

210. Protection is given to the rights of bona fide third parties in cases of property to be forfeited post conviction, including convictions in terrorist or financing terrorism offences, under s. 61(5) of the CJA (1994). In the case of restraint orders, under s.24 of the CJA notice of the order must be given to all parties affected by it and that person may make an application to discharge or vary it at any time. Sections 14 to 16 of the Criminal Justice (Terrorist Offences) Act (2005) also make provision for the protection of rights of third parties in relation to interim, interlocutory and disposal orders.

211. Section 19 of the Criminal Justice (Terrorist Offences) Act (2005) also entitles any person to compensation if he or she can show to the satisfaction of the Court that (a) he or she is the owner of funds which were the subject of an interim, interlocutory or disposal order and (b) the funds were not being used or intended for use in committing or facilitating the commission of a terrorist offence or a TF offence.

Sanctions for non-compliance and monitoring mechanisms:

212. Financial Institutions are monitored by the Financial Regulator for compliance with relevant legislation and rules governing obligations under FATF Special Recommendation III, but designated non-financial businesses and professions generally are not monitored. Criminal sanctions for non-compliance do exist under the CJA 1994, the Criminal Justice (Terrorist Offences) Act (2005), and under the Financial Transfers Act (1996) and the European Communities Act (1972) in relation to the EU Regulations. These criminal sanctions extend to non-financial businesses and professions but are exercisable in all cases by the Garda rather than the Financial Regulator. The Guidance Notes on TF are not binding on financial institutions nor the designated non-financial businesses and professions. Sanctions for non-compliance with the EU Regulations are enforceable by the Minister for Finance and the CBFSAI.

213. The implementation of S/RES/1267 (1999) has been effective and accounts have been identified and funds frozen. There exists in Ireland a reliance on EU regulations to implement the procedures in law, and whilst the EU lists are updated immediately or shortly after changes to the UN list, thereby requiring funds to be frozen, there is some small delay in preparing and publishing the Ministerial Regulations which provide for enforcement of penalties for non-compliance with the EU regulations. There is no evidence to suggest that this has caused problems in practice. It appears that financial institutions in Ireland closely monitor the publication of the amended UN lists and will make immediate STR reports to the Garda if any accounts are identified directly from the list. The Garda is able to give instructions in relation to those accounts. Following amendment to the EU lists, accounts of listed entities or individuals are immediately frozen.

214. The implementation of S/RES/1373 (2001) is less effective. Again, the implementation is dependent upon the relevant EU regulations and a list drawn up by the Council of the European Union. The regulations do not apply to "domestic" or "internal" terrorists for asset freezing purposes and there are no subsidiary domestic avenues available in Ireland which would enable the immediate freezing of such a person's funds. The same applies to other persons not on the EU list but who have been designated by other overseas jurisdictions as a terrorist or involved in terrorist activities. The procedures under s.14 of the Criminal Justice (Terrorist Offences) Act (2005) to apply for interim orders, for both domestic and overseas requests to freeze funds, require proof to an evidential standard before a court that the specific funds in question are being used or may be intended for use in committing or facilitating a terrorist type offence. The section has not been the subject of any applications by the Garda to date, so clear guidance from the courts as to the parameters of its operation is not available.

2.4.2 Recommendations and Comments

215. Ireland has implemented S/RES/1267 (1999) and has frozen accounts of persons listed by the UN Sanctions Committee. The reliance on the EU listing system means that there is a delay between listing by the UN Sanctions Committee and listing by the EU. The necessity to make ministerial orders each time enforcing penalties for non-compliance with the EU lists as they are amended means that there is a delay between listing by the EU and the eventual making of the orders in Ireland, but in practice this does not appear to be causing problems because freezing of assets is a requirement from the date of publication of the EU Regulation.

216. Ireland's implementation of S/RES/1373 (2001) is less effective. Outside the listing of terrorists by the Council of the European Union, the Irish authorities have no clear ability to designate as terrorists for asset freezing purposes persons who are not listed in EU Regulations for that purpose, or other international lists designated as terrorists by other jurisdictions. The provisions contained in the Offences Against the State Act enabling the making of suppression orders for unlawful organisations and the

consequent provisions for forfeiture of their property has been extended to terrorist organisations operating both inside and outside Ireland, but no suppression orders in relation to such organisations have been made (apart from pre-existing orders for the two domestic organisations IRA and INLA).

217. In addition the two European regulations, 881/2002 and 2580/2001 definitions of terrorist funds and other assets subject to freezing and confiscation do not cover the full extent of those given by the UN Security Council or FATF, especially the notion of control of the funds does not feature in 881/2002.

218. The mechanism contained in s.14 of the Criminal Justice (Terrorist Offences) Act (2005) for interim orders to restrain property is limited to funds that are being used or are intended for use in terrorist offences. It falls short of the requirement to freeze *all* funds of designated terrorists whatever the intended use or purpose of those funds. In addition, it is unclear how the mechanism in s.14 will work in relation to international requests to freeze funds of terrorists. Ireland should adopt additional legislative measures to allow for the immediate freezing of funds of designated terrorists outside and independent of the EU listing mechanism. One way to achieve this would be to provide for an administrative freezing mechanism, subject to review by the courts, for designated terrorists (in particular those falling outside the EU listing mechanism).

219. Ireland has clear and well established communication channels with financial institutions for dissemination of information, but does not have an effective system for communicating actions taking under freezing mechanisms to designated non-financial businesses and professions. Likewise it does not adequately monitor non-financial businesses and professions for compliance with measures taken under the Resolutions, notwithstanding that criminal penalties for non-compliance do exist in law.

220. Ireland does have confiscation measures in place for property that is the proceeds of, or used in, or intended for use in the financing of terrorism and terrorist acts. Measures are available under the criminal confiscation route, and also under the Offences against the State Act in relation to unlawful organisations and under the Criminal Justice (Terrorist Offences) Act (2005).

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	• Ireland has limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system. • Ireland does not effectively communicate measures taken under freezing mechanisms to DNFBPs. • Ireland does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds, notwithstanding the existence of criminal penalties for non-compliance.
R 32	PC	• Statistics on freezing of FT funds are adequate.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and Analysis

Recommendation 26:

221. The Financial Intelligence Unit (FIU) was formed in 1995 following the enactment of the CJA (1994) that required designated institutions to report STRs. The FIU is part of the Garda and operates autonomously within the Garda Bureau of Fraud Investigation (GBFI)[51] as a law enforcement style FIU that is able to exchange information within and outside the Garda through police information exchange channels. The FIU has the following roles and responsibilities:

a) Receiving Suspicious Transactions Reports (STRs) from designated bodies.
b) Analysing and disseminating STRs for investigation by law enforcement agencies.
c) Liaising with the Revenue Commissioners.
d) Providing a facilitation service for financial enquiries made by the police service.
e) Co-operating with law enforcement agencies in other jurisdictions in matters relating to ML and TF. This includes exchange of intelligence, mutual legal assistance requests and training for foreign FIUs.
f) Acting as the single point of contact for the Egmont Group in the exchange of financial information, on the basis of reciprocity or mutual agreement with other FIUs.
g) Representing the FIU on the ML Steering Committee (MLSC).
h) Providing expert input and feedback at regular seminars and training sessions for the financial sector.

Receiving STRs

222. There is no obligation for designated bodies to report STRs directly to the FIU, the CJA (1994) only requires that a report is made to the Garda. However, in practice STRs are submitted on paper to the FIU. Currently all STRs submitted by designated bodies are received by fax, post or hand delivered. There is a recommended form for submission of STR information, the ML1, which is included in the guidance notes for designated bodies. The form outlines the preferred information that the FIU would like included on an STR and contains the key information useful to the FIU. Once received in the FIU, STRs are manually input into the Garda Financial Intelligence network (GFIN). GFIN is a case management system that records the progress of STRs and allows the FIU to keep a record of those STRs disseminated outside the MLIU. An on-line reporting system is currently being tested with two financial institutions and it is hoped that in the future STRs can be captured electronically.

Liaising with the Revenue Commissioners:

223. Schedule 1, Part 17 of the Central Bank and Financial Services Act (2003) amends s.57 of the CJA (1994) and requires STRs to be reported to the Revenue Commissioners (in addition to the FIU). Those STRs that appear to relate to the committing of revenue offences are dealt with by the Suspicious Transactions Reports Office (STRO) within the Revenue Commissioners. The STRO receives STRs, analyses and then disseminates them to investigative operational areas where they are examined with a view to possible prosecution of offenders or other appropriate intervention if a taxation offence is discovered. The allocation of STRs between the FIU and the STRO is conducted manually; there is no mutual compatibility between the IT systems of the FIU and STRO. However, since 2003 both agencies have been working on an online reporting system operating off a single platform and expect that this system will begin operation in 2006.

224. Though not formally structured, there are monthly liaison meetings between the FIU and the STRO to organise the allocation of STRs between the FIU and the Revenue Commissioners. If there is overlap in interest for either investigation or intelligence building, the FIU has priority for developing cases. In

[51] The GBFI has national responsibility for white collar crime including computer crime, counterfeit currency and payment card fraud

certain circumstances, as a result of this process, STRs will be passed to the CAB for action. Overall, the evaluation team was informed that approximately 80% of STRs are allocated to the STRO. The STRO provides feedback on these STRs; this is separate to the feedback provided by the FIU to reporting entities.

Analysis and dissemination of STRs:

225. Once received by the FIU the STRs that are not designated to the Revenue Commissioners are analysed. On the basis of an initial assessment of the information such as the size of the transaction (above €30,000) or links to other intelligence identified by the FIU, a decision is made on where to disseminate the STR. STRs will be disseminated to either one of the two teams within the MLIU, the CAB, other units within GBFI or financial investigators in the police divisions around the country. The initial filtering of STRs and the decision of where to initially allocate them for further development occurs on a case-by-case basis and is conducted manually.

226. If the FIU decides on the information provided and the research undertaken that the STR supports an investigation, then case papers will be prepared by one of the MLIU teams. If an STR has been disseminated to a divisional financial investigator, the MLIU will assist the investigator where appropriate in the preparation of case papers. In more complex investigations, the MLIU is able to have direct access to two forensic accounting within the GBFI. The evaluation team were informed that investigations conducted in the MLIU were resource intensive and could last for between a year and 18 months

227. Further information will often be obtained from the original disclosing institution or business before steps are taken to gather evidence (by issuing production orders on financial institutions). Following the preparation of an evidential case, an investigation file is submitted to the DPP where a decision is made whether to initiate any criminal proceedings.

228. The analysis of STRs is currently limited by the information technology available within the FIU. Analytical software is available and is used by the MLIU to analyse complex financial transactions, but owing to the limited ability to interrogate with the GFIN database, this is normally utilised only for specific case development. Whilst there is direct access to the main Irish Police Database (PULSE) within the FIU there is no I.T. link between the two systems.

Breakdown of STR's analysed and disseminated				
	2001	2002	2003	2004
No. of STR's received by MLIU	3040	4398	4254	5491
Breakdown of STR's dealt with by MLIU				
Financial Intelligence Unit	2234	1717	2854	3846
Investigation Team 1	N/A	257	133	159
Investigation Team 2	N/A	509	227	337
Other GBFI Units	N/A	12	17	67
Total	2234	2495	3231	4409

No. of STR's disseminated to CAB	36	110	56	72
No. of STR's to Divisional Investigators	770	1793	967	1010

229. The majority of STRs received are dealt with within the MLIU (3846 in 2004, out of a total of 4409). However, many of these whilst nominally shown to be allocated to the MLIU are in fact passed to the STRO for action. In addition, around 25% of the total STRs are disseminated to the Garda Divisional investigators for their action (1010) and a small number are disseminated to CAB (72 in 2004) for investigation. The turnaround time for an STR will vary depending on how much research and analysis is conducted, the average turn around time from receipt to dissemination is four weeks.

230. Under s.57(2) of the CJA (1994) a person or body charged by law with the supervision of designated bodies has a statutory obligation to report to the Garda and the Revenue Commissioners where it suspects that an offence has been or is being committed under s.31 (ML) or s.32 (identification, record-keeping, training, procedures). Twenty STRs have been received from regulatory authorities over the past 5 years. All STR's filed by the Financial Regulator are investigated and two prosecutions occurred in relation to STR's filed by the Financial Regulator; one related to a bureau de change operator who was convicted of ML offences and sentenced to five years imprisonment. A second STR filed by the Financial Regulator led to the prosecution of three individuals for company law offences. A number of other STR's filed by the Financial Regulator are under active investigation.

Guidelines:

231. There is no direct guidance from the FIU on ML and TF matters other than indirectly through the MLSC approved guidance notes provided for designated bodies. However the evaluation team did note that following the enactment of the Criminal Justice (Terrorist Offences) Act (2005) new guidance notes were issued to update designated bodies on their obligations in relation to countering TF. The content included notes on the recent legislation and types of terrorist finance. The issue of effective financial sector staff training was also highlighted.

232. Representatives from the financial sector in Ireland indicated that they followed international guidelines in relation to ML and TF trends and indicators. This was supplemented by training provided by the Garda and the Revenue Commissioners.

233. The FIU and the STRO organise and participate in frequent training sessions and seminars on ML and TF with the financial sector and other designated bodies. Any feedback provided is broad based around sanitised case studies. The FIU indicated to the evaluation team that there are plans to disseminate both ML and TF typologies.

234. In the past 3 years the MLIU have participated in 24 training sessions with various designated bodies. At these meetings feedback is provided on a generic basis in the context of risk assessment and sanitised reports of operations. The FIU indicated that there are plans to prepare comprehensive typologies for distribution to the financial industry. To provide regular feedback, the FIU has committed to meeting all MLROs as a group on an annual basis. However, no meeting took place in 2004, although there was sector specific input. One collective meeting took place prior to the mutual evaluation in 2005 and another is scheduled for later in 2005.

Access to information:

235. The FIU has access to a number of information sources with which it is able to enhance information received in STRs. It has indirect access to CAB, Crime and Security, the Garda National Drugs Unit, Revenue Commissioners, Social Welfare and Land Registry information. The Garda can also request additional information from the Revenue Commissioners under the Disclosure of Information and Other Purposes Act (1996) and has direct access to a wide range of open sources and commercial databases, such as *Worldcheck*, and indirectly to other agency registers and records. The FIU has access to Egmont Secure Web through which it can request information from foreign FIUs and can conduct checks through Interpol and Europol police channels.

236. Information held by a financial institution is accessible by the Garda on a formal basis under s.63 of the CJA (1994), as amended by s.39 of the Criminal Justice (Terrorist Offences) Act (2005) which provides for a court order (production order) to make material available. This excludes access to material subject to legal privilege. Informally, the Garda working in the FIU can and does request identification details of persons under investigation. The FIU can request transaction information but the practice is not to request transaction records without the service of an appropriate court order. The person who holds the material must produce or allow access to the material within seven days, unless the District Judge orders otherwise.

237. The CJA (1994) (as inserted by s.1 of the Disclosure of Certain Information for Taxation and Other Purposes Act (1996)) gives authority to the Revenue Commissioners to disclose information for the purpose of an investigation into an offence under s.31 of the Act.

Obtaining additional information:

238. Further information can be obtained by the Garda in the FIU by the serving of production orders (see paragraph 284).

Protection of information:

239. There is no statutory provision governing the dissemination or protection of STR information. However, the sensitivity and confidentiality of this type of information is emphasised when information is disseminated to investigators. The Garda are not subject to the Freedom of Information Act (1997), therefore the issue of release of information under this Act does not apply.

240. Under Section 57 designated bodies cannot be subject to liability in relation to reports made in good faith. The Garda also give an undertaking that they will not disclose information. Garda also seek evidence arising from an STR under court order thus removing any threat of liability for persons/designating bodies in relation to the giving of evidence.

241. The Revenue Commissioners are subject to the Freedom of Information Act (1997). Following a request made by a taxpayer (who had been subject to an STR) to have information from their tax file released under the Act, the Revenue determined that under s.46 (1) (f) of Freedom of Information Act (1997) which deals with exclusions, the STR and even its existence were not required to be notified to the applicant because the legislation states "among the records excluded from the Act are those whose disclosure could reasonably be expected to reveal or lead to the revelation of:

- The identity of a person who has provided information to a public body in confidence in relation to the enforcement of criminal law or
- Any other source of such information provided in confidence to a public body".

AML/CFT Strategy:

242. Ireland's approach to ML is part of an overall policy on tackling crime.[52] In 2004, the Cross Border Organised Crime Assessment[53] was produced jointly by the Garda and Police Service of Northern Ireland, providing an overview of criminality common to both Northern Ireland and the Republic of Ireland. In the report there is a summary of ML and the work of CAB in targeting criminal assets. The work of CAB is mentioned in the Garda Policing Plan.

243. Whilst there is no specific documented AML/CFT strategy, ML and TF are incorporated in the overall anti-crime initiatives. The first priority of the Policing Plan 2005 for the Garda is to reduce the threat of subversive and terrorist activity through intelligence-led policing and international co-operation. The investigation of STRs with a TF nexus falls within the ambit of this strategic goal. Similarly the Garda have a strategic goal dealing with crime namely to reduce the incidence of organised, drug related, serious crime and criminal behaviour. This strategic goal incorporates actions to deal with the seizure of the proceeds of crime by the CAB. STRs received by the FIU are exploited fully to achieve this goal.

FIU cooperation:

244. The FIU has been a member of Egmont since 2001 and actively participates in the exchange of financial intelligence. They are also an observer at FIU.net but not yet connected to the network. FIU.net is a trans-European virtual computer network connecting FIUs and permitting the exchange of financial intelligence relating to ML and TF through secure links. The FIU.net Project is supported by the European Commission. Members of the FIU.net Project Team are in discussions with the FIU and the Department of Justice, Equality and Law Reform. There are no technical impediments to full participation and it is anticipated that this matter will be progressed during 2006.

245. Since the last evaluation the FIU have signed 10 Memoranda of Understanding (MOU's) with FIUs in other jurisdictions relating to the exchange of information relating to ML and TF. A further twelve MOU's are under consideration and it is hoped to have these outstanding MOU's completed by year end.

Recommendation 30:

Structure, funding, staff, technical and other resources for FIU

246. The FIU is located as a sub unit of the MLIU which is contained within the Garda and its structure, resources and staff is allocated in line with the Garda's overarching strategy on combating fraud and ML. The human and technical resources currently allocated to the MLIU are able to provide a limited service to the number of STRs received in 2004 (5491) and the issue of the staffing of the FIU is currently under review. The FIU will be pressured to deal with any rise in reporting.

247. The FIU has an establishment of 12 police officers with administrative support from 2 clerical officers who are employed to input information from STRs submitted to the FIU database. The evaluation team noted that the FIU is currently under resourced by 3 persons, one Detective Sergeant and 2 Detective Gardai.

248. Each member of the MLIU completes a ML/Financial Investigation Course. This is in addition to the Detective Training and Fraud Investigation Courses. Several of the staff have a high level of expertise with external qualifications relevant to their employment, in business computing and accounting. Overall, the MLIU works to its current capacity, but is hampered by its lack of effective IT systems. Initial

[52] www.justice.ie Speech by Minister of Justice 28th April 2005.

[53] www.garda.ie/angarda/pub/CrossBorderReport.pdf.

analysis is limited and further analysis for both tactical and strategic action is restricted by the ability to easily connect to other relevant IT packages.

249. Two support staff will be inadequate to deal with the anticipated rise in STRs received. The absence of a dedicated position for a financial analyst or a system in place to perform such a function indicates that the MLIU is intended to perform a limited role. This does not reflect on the motivation and expertise of the staff in the MLIU, as several of the staff are capable of fulfilling an analytical function. The implementation of an on-line reporting system of STRs, expected in the first quarter 2006 will greatly assist in processing the STRs and may allow the support staff to perform other duties.

250. Approximately 80% of the STRs submitted to the FIU and STRO are indicative of tax offences and are currently being investigated by the Revenue Commissioners STRO. There are regular liaison meetings held between the MLIU and STRO. In Ireland there is a strong policy focus on the need to tackle revenue offences. This is reflected in some of the work of CAB, using its revenue powers to target organised crime. The small number of successful convictions for ML could be interpreted as a reflection of this focus. Feedback from designated bodies on what types of suspicions would warrant STRs to be reported confirmed an emphasis on revenue offences; this was particularly so in the case of the credit unions. The FIU will need to ensure that any extra demands caused by the dual reporting regime are effectively managed. There is a clear distinction between the three units, the MLIU, CAB and the STRO,. The FIU focus on criminal investigation and prosecution with the latter two bodies concentrating on civil prosecutions and asset recovery while Revenue Commissioners rely on both civil penalties and criminal prosecutions in order to advance its law enforcement agenda.

251. The MLIU does not have a separate budget but receives its finances as a department of the Garda. In common with other law enforcement agencies there is competition for resources, human, technical and financial. The overall priorities in the area of ML currently appear to be in the successful CAB. The long term Garda strategy, contained in the Action Plan 2003-2006, intends to devolve budgets locally, but it is not certain as to what direct effect this would have on the future of the MLIU and FIU finances.

252. Whilst the overall resources allocated to STRs across all departments may be reasonable, a minimal amount is allocated in the MLIU to ensure that as the host of the national FIU and the office responsible for the initial assessment of STR information, they can thoroughly identify research and enhance STRs and associated intelligence relating to serious and organised crime. The result of this is that a significant quantity of the information submitted as STRs may be disseminated to the investigating teams with limited analysis.

Training:

253. Each member of the FIU is training in financial investigative techniques and several of the staff have a high level of expertise with external qualifications relevant to their employment, in business computing and accounting. All of the functions of the FIU, except the support and input functions, are carried out by police personnel. A Detective Sergeant is designated to deal with TF matters and works closely with the Garda Crime and Security Branch.

254. Garda members of the CAB have also completed a Detective Training Course, and the Fraud Investigation Course. CAB members also receive analytical training and use analytical tools in their investigations. Revenue officers attached to CAB have completed forensic accounting courses and members of Customs undertake a Proceeds of Crime Cash Investigations Course.

255. Over the past 18 months the Irish FIU have participated in 8 PHARE[54] and other EU sponsored programmes. The Irish FIU is currently participating in two other EU programmes organised by the Portuguese FIU and the Scottish Drug Enforcement Administration. Eight of these programmes included the Irish FIU hosting study visits from FIUs in other countries including Poland, Bulgaria, Lithuania, Czech Republic, Russian Federation and Portugal. The study programmes would cover such topics as legislation, freezing powers, and investigative techniques, onsite visits to Revenue Commissioners, regulator and financial institutions.

Recommendation 32: Statistics gathered by FIU.

256. The FIU produces the following statistics relating to ML and TF :

a) The numbers of STRs received
b) Breakdown of STRs analysed and disseminated
c) Number of STRs resulting in investigation, prosecution or conviction for ML, TF or underlying predicate offences
d) Figures relating to production orders in ML Cases
e) Breakdown of reports by institution type
f) List of individual reporting institutions and bodies
g) Requests for assistance by foreign FIUs and other bodies
h) Details of requests through Egmont

257. The numbers of the STRs received by the MLIU are published in the Garda Annual Report. The Department of Justice receives quarterly statistics of the number and value of STRs, the reports that led to initial investigations by the Garda into ML and other criminal activity, the number of such reports which, upon investigation, are deemed not to relate to criminal activity, and the value of such reports. However, the FIU does not publish periodic reports on its activities.

Suspicious Transaction Reports (STRs) received by FIU between 2001 and 2004	
Year	Reports Received
2001	3,040
2002	4,398
2003	4,254
2004	5,491

258. Over the last four years the number of STRs received by the FIU has increased from 3040 in 2001, to 5491 in 2004 (see section 3.7 for more detailed statistics). An increase of nearly 100% in three years. The explanation provided to the evaluation team for the rate of growth was firstly, a greater awareness of ML and terrorist obligations by designated bodies post September 11 2001, and secondly, the requirement since May 1 2003 to report STR offences that included tax offences to the Revenue Commissioners and thirdly, due to the extension of the reporting requirements September 2003 to include certain DNFBPs. The 2002 and 2003 figures were probably distorted by the fact that many policyholders, particularly those with unit linked policies, would have decided to surrender their policies during this period as equity markets collapsed and life companies reported some of these surrenders as being suspicious probably in circumstances where they were unable to establish that the surrenders were not suspicious.

[54] http://europa.eu.int/comm/enlargement/pas/phare/

259. Between 2001 and 2004, 550 STRs have been received by the FIU in relation to possible TF activities since 11 September 2001. Forty two of these STRs have resulted in TF investigations. Two prosecutions have been instituted arising from these STRs, but not in relation to the specific offence of financing of terrorism which was only criminalised following the enactment of the Criminal Justice (Terrorist Offences) Act on 8 March 2005. The DPP gave directions in 2 cases to prosecute 2 individuals for breaches of the compliance provisions of the CJA (1994) s.32. One conviction was secured and the defendant was given the benefit of the Probation Act. The second defendant had his charges withdrawn and was subsequently deported from Ireland.

260. The evaluation team were informed that for 2005, over 5,000 reports had been received by the FIU in six months (compared to 5491 received in the whole of 2004). Analysis of the STRs statistics provided by the FIU revealed that only a minority of the potential designated institutions are currently reporting STRs. It would therefore seem more than likely that the number of STRs will continue to rise.

261. In addition, the increasing number of MOUs that are being negotiated and the large amount of international business conducted by Irelands financial institutions will increase the probability of an increase in international requests for information both to and from Ireland. The increased STR and foreign requests will require increased resources in the FIU.

262. Statistics collected by the FIU are limited at present; this is in part due to the lack of IT, including the absence of a management system that can collect detailed information in relation to STRs and subsequent ML investigations. With the increase in reporting, existing systems will be tested in providing adequate management information and credible statistical data.

2.5.2 Recommendations and Comments

263. The FIU is currently located within the Garda and benefits from the infrastructure and resources of the national police service and as a law enforcement FIU has the dual responsibility of an FIU as envisaged by the FATF recommendations and an investigative agency. However, the FIU as a section of the GBFI results in the FIU being dependent on the availability of resources allocated to investigation of financial crime in general.

264. The staff of the FIU, with the exception of the two administrative staff, are all members of the Garda and are therefore able to be trained as financial investigators. The rise in STRs received by the FIU means that trained investigators spend time examining and researching STRs rather than on ML case development.

265. Dual reporting of STRs to both the FIU and the Revenue Commissioners and the absence of an ability to automatically cross reference STRs also means that additional time is required administering the allocation of STRs between the FIU and the revenue. The FIU and the Revenue Commissioners should continue to address issues of compatibility and efficiency as part of the introduction of the new on-line reporting system.

266. The absence of integrated IT within the FIU with little or no specialist analytical capabilities in the FIU, either trained analysts or integrated analytical software to dedicate to case development means the value added to STRs submitted is limited. This lack of system connectivity hampers the effectiveness of the FIU both in tactical and strategic analysis. Good quality analysis from the FIU could assist both in the development of evidence for ML prosecutions and intelligence for the development of Irish typologies and indicators. This would assist both policy makers in formulating AML/CFT policy and designated bodies to submit good quality STRs.

267. The STR reporting regime could be more efficient if information was promptly received in the FIU and STRO in a consistent format. As the obligations on the number of designated bodies required submitting STRs becomes larger, it may be advisable to ensure that designated bodies submit information in a standard format or reporting form and that the larger reporting institutions are able to submit reports promptly and electronically. This will increase the ability of the FIU to operate efficiently.

268. The FIU requires more resources in the form of additional technology, particularly analytical tools, improved management information capabilities to enable a range of statistics to be produced and analysed. This will enable the FIU to produce more detailed information on Irish ML/TF trends and indicators to produce reports for policy makers and for general publication. This would be in addition to the information currently provided at training seminars for designated bodies.

269. It is suggested that the FIU should be subject to an external review. The review should examine the current and future workload of the FIU and examine ways in which the FIU can provide quality information to support ML or TF investigations and ML methods and trends to inform the other departments involved in AML/CFT in Ireland.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors underlying overall rating
R.26	LC	• The FIU as a whole meets most of the individual requirements of the FATF methodology. However, its ability to operate effectively is limited by resources available to do a number of important tasks: to encourage quality STRs from designated bodies, research and develop intelligence for ML and TF investigations from STR information and provide management information to assist the overall AML/CFT effort. The role and effectiveness of the FIU is therefore limited. • The FIU does not release periodic reports or conduct strategic analysis.
R.30	LC	• The FIU is not currently resourced to cope with the rise of STRs experienced since the introduction of new legislation requiring additional entities to report STRs. • The FIU has limited technical and human resources to allow it to effectively manage and evaluate STRs and produce detailed analysis and ML/TF trends and indicators • The dual reporting requirements to the FIU and STRO in the absence of an integrated STR database increases the administrative burden on the work of the FIU reducing the resources that can be dedicated to research and investigation.
R.32	PC	• The FIU only produces limited statistics, the quality of the statistics provided needs to be improved and these statistics made available to law enforcement and policy makers. Irish authorities should take into account an examination of the effectiveness of the systems in place.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32).

2.6.1 Description and Analysis

Recommendation 27

270. Ireland has an inclusive network of law enforcement and prosecution authorities who have responsibility for investigating ML and TF. The Garda have national responsibility for policing within Ireland; this includes the investigation of both ML and TF.

271. The Garda Bureau of Fraud Investigation (GBFI) has national responsibility for investigating serious cases of commercial fraud, cheque and credit card fraud, computer fraud incidents of counterfeit currency and ML offences. Within the GBFI the MLIU investigates ML cases developing information on ML which can then be investigated within the MLIU or disseminated to regional Garda financial investigators who have responsibility of developing local ML investigations. TF investigations are the responsibility of the MLIU. The MLIU works closely with Crime and Security branch in this matter with the latter Unit responsible for interaction with external security services.

272. The STRO section of the Revenue Commissioners is responsible for the investigation of ML offences in relation to possible tax offences. The customs service, as part of Revenue Commissioners, are committed to the EU Drugs Strategy,[55] which focuses on the reduction of ML and effective co-operation between customs, police and prosecuting authorities. It also plays a part in the protection of national and EU frontiers co-operating with the CAB by combating drug trafficking and associated activities.

273. The DPP is responsible for ensuring that ML and TF offences are properly prosecuted and decides on the freezing and confiscation measures post-charge or conviction.

274. Depending on the operational circumstances it is possible to waive arrest in cases of suspected ML, in order identify the suspects involved. The issue of an arrest is an operational matter while the issue of prosecution for an ML offence is a matter for the DPP.

Additional Elements

275. The Garda, CAB, Garda National Drugs Unit and the Crime and Security Branch and the Revenue Customs Service all have the ability to use special investigative techniques such as undercover operations or controlled deliveries.

276. The Garda has the authority to conduct technical surveillance to gather intelligence. The powers are contained in the Interception of Postal Packets and Telecommunications Messages (Regulation) Act (1993). However, the evaluation team were informed that the MLIU has not carried out any undercover operations relating to ML.

277. As previously mentioned the CAB was established as a multi-agency office to identify, trace and seize the proceeds of criminal activity under the Criminal Assets Bureau Act (1996). The Bureau is tasked with taking action against the proceeds of crime, including corruption. Within the CAB, all officers retain the investigative powers of their parent agency and are able to share this information when developing ML cases. CAB utilises the POCA (1996) and revenue and social welfare legislation in targeting the proceeds of crime. The Bureau works under the control and direction of the Chief Bureau Officer. When CAB commences an investigation it gathers information from the Revenue Commissioners, social welfare and law enforcement. It also obtains production orders to get information from financial institutions. The CAB receives and investigates STRs disseminated from the FIU.

[55] http://europa.eu.int/comm/health/ph_determinants/life_style/drug/documents/drug_strategy0512_en.pdf

278. The CAB has been successful in seizing the proceeds of crime under the POCA (1996) and has restrained €43 in interim orders between 2001 and 2004.

279. Outside the CAB there is little or no multi-agency action taken against ML or TF. The Garda have worked with the Police Service of Northern Ireland to produce a threat assessment of criminality (including ML) in the border areas between Ireland and Northern Ireland. There are no other public or law enforcement analyses or studies that have been produced in relation to ML and TF methods, techniques and trends.

280. The FIU has, however been involved in training and information exchange seminars and has provided input into EU and PHAR programme workshops. There have been study visits with Poland, Lithuania, Russia, Portugal and Turkey under the umbrella of the European Commission PHAR programme. The MLIU also regularly attends and participates in FATF Typologies exercises.

Recommendation 28 (Powers to compel production of, search, and seize and obtain financial records and files)

281. Sections 63 and 64 of the CJA (1994) as amended by s.39 of the Criminal Justice (Terrorist Offences) Act (2005) allow the Garda, to serve a court order to compel the production of material, search premises and obtain information in relation to police investigations, including those for ML and TF. The material that can be obtained includes bank account records, customer identification records, and other records maintained by financial institutions, excluding items subject to legal privilege from entities or persons as necessary to conduct investigations of ML, TF and other predicate offences.

282. The Garda, CAB, National Drugs Unit and Crime and Security Branch have the power to serve court orders and are therefore able to compel the production of financial records and files from financial institutions and DNFBPs. The FIU can request information from designated bodies in the absence of a Court Order but will only use material from a designated body in investigations if it has been secured by a relevant court order (often termed a production order).

283. A production order is served on a financial institution, requiring them to produce the material specified in the order for possible use in a criminal inquiry. An order can only be obtained by a serving member of the Garda on request from a judge. There are additional powers under CJA (1976) to inspect and obtain material. The Garda also have the powers to direct a person or body to take actions, including blocking transactions under S.31 (1) (8) of the CJA (1994) (as amended). The evaluation team were informed that the introduction of monitoring orders to require financial institutions to pro-actively monitor accounts was being considered under future Irish legislation.

Production Orders for ML Cases			
2001	2002	2003	2004
58	232	172	78

284. There were 78 production orders served in 2004 in relation to suspected ML offences. No production orders for TF have been obtained since the enactment of the Criminal Justice (Terrorist Offences) Act (2005) in March 2005. However, 8 production orders have been obtained in TF investigations under ML provisions where another offence was disclosed. Despite the absence of formal production orders, sufficient information has been obtained from designated bodies and passed through the appropriate channels to the Crime and Security Branch. The mutual evaluation team were informed

that the 2002 figures are significantly higher than the other years due to a number of investigations involving multiple bank accounts.

285. Under s.14 Criminal Assets Bureau Act (1996) a search warrant can be granted by a judge of the District Court on hearing evidence from a bureau officer who is a member of the Garda. The warrant allows officers to search a named address, or persons found at that address, and seize and retain any material found at, or in possession of a person present at the time of the search, if there is belief that this material relates to assets or proceeds of criminal activities. In 2003 the CAB 116 warrants were obtained under s.14 of the Criminal Assets Bureau Act (1996) in addition to 169 orders made under s.63 of the CJA (1994) for additional material.

286. The Garda has the authority to conduct technical surveillance to gather intelligence under the Interception of Postal Packets and Telecommunications Messages (Regulation) Act (1993). As a matter of practice the Garda can also take witness statements. Witnesses are invited to make statements and are generally forthcoming. A witness may refuse to make a witness statement, in such circumstances the investigating officer would record a note of what transpired. There is no compunction on a witness to make a statement and no offence is committed by not so doing. This situation contrasts with Tribunals of Inquiry where witnesses can be found to obstruct or fail to co-operate with the Inquiry by refusing to answer questions or supply documents.

Recommendation 30: Structure, funding, staff, technical and other resources of Law Enforcement and other prosecution agencies:

287. Law enforcement and prosecution agencies in Ireland are funded to meet the national goal of the Department of Justice, Equality and Law Reform to take an effective and balanced approach to tackling crime.[56] The FIU and the Revenue Commissioners are responsible for the receipt of STR information; the Garda submit criminal investigation files to the DPP with a view to criminal prosecution and the CAB pursues civil forfeiture. The number of staff and budget for each agency is:

Structure, staff and funding of law enforcement and prosecution agencies		
Agency	Staff	Funding per year
The Garda	Total 12,000 staff (25 Financial Investigators attached to the Garda divisions)	Overall budget: €1.159. Billion[57] Budget for GBFI, MLIU and FIU is met from a central budget
Revenue Commissioners	7,000 staff STRO: 8 staff 140 staff in operational areas in districts investigating tax evasion	Overall budget: €350 million Budget for STRO: €458,000
The GBFI (including the FIU)	61 police officers (12 in the FIU) 2 administrative support staff	Approximately €5 million (GBFI)
The CAB[58]:	Garda Bureau Officers (29) Administrative, Professional &	€5,711,000

[56] http://www.justice.ie/80256DFD00637EE0/vWeb/pcSSTY5UBER3-en

[57] Source: Justice Group of Votes-Estimates 2005: Appearance before the Select Committee on Justice, Equality, Defence and Women's Rights.

[58] CAB Annual Report 2003, p 7 and 8

	Technical (9) Revenue Bureau Officers (8) SFA Bureau Officers (4) Chief Bureau Officer (1) Bureau Legal Officer (1)	
The DPP	16 staff (4 specialised in reviewing ML offences)[59]	N/A

Integrity Standards:

288. Regulations exist within the Garda to deal with discipline amongst its members. An Internal Affairs section is responsible for dealing with breaches of discipline by members of the Garda. The penalties include words of advice, caution and reduction in pay or dismissal from the service. The actions taken by the Internal Affairs section are reported in the service's annual report. The Garda Síochána (Complaints) Act (1996) created an independent Complaints Board to deal with complaints against members of the Garda by members of the public.

289. The new Garda Síochána Ombudsman Commission will investigate complaints against members of the Garda Síochána and in that respect will replace the existing Garda Síochána Complaints Board. The Commission will have comprehensive powers of investigation to deal with complaints and it will have ultimate control and oversight of all complaints processed in accordance with the provisions of the Act.

290. An Internal Audit Section performs periodic and systematic audits of functional areas (financial, operational and resources) and reports on practices that require amendment or change. Thematic audits can be performed on the direction of the Garda Commissioner.

291. The Office of the Revenue Commissioners has a code of conduct similar to that of the rest of the Irish Civil Service. The Revenue itself is subject to an annual audit examination by the office of the Comptroller and Auditor General. The findings of this audit are published in an annual report. There is also an official ombudsman appointed by the government. Out of a total of 90 complaints made in 2004, 3 were in relation to Customs.

Training:

292. There is internal training on ML for staff at the DPP. Solicitors receive ML awareness during their qualification training. There is no ML or TF training for judges, barristers or court staff. Training for MLIU staff (which includes the Garda) is covered in paragraph 248.

293. The resources currently dedicated to Ireland's fight against ML and TF appear to have an emphasis on pursuing civil forfeiture and revenue offences. The CAB and Revenue Commissioners have more staff available to analyse information and follow investigative leads. The MLIU and FIU are relatively less resourced.

Recommendation 32: Statistics - investigations, prosecutions, and convictions

[59] The evaluation team was informed that 4 out of 16 staff from the DPP specialised in reviewing ML offences. There is no specific training for this discipline, it is considered that current Irish ML/TF legislation is adequate.

294. The MLIU has initiated a number of ML investigations resulting from STRs received, including 42 in relation to TF. Since the enactment of the CJA (1994) there have been 53 prosecutions for ML and 36 convictions.

295. The number of production orders for ML and TF has progressively declined since 2002, when 232 were served; 172 were served in 2003 and 78 in 2004. There has been no action taken under Criminal Justice (Terrorist offences) Act (2005).

296. Given the size of Ireland's financial markets and the detection of significant amounts of money suspected to be linked to criminality by the CAB there have been only a small number of persons convicted for ML offences. It was explained to the team that a number of ML cases were identified by the MLIU, but that often the decision of the DPP was to proceed with prosecuting the predicate offence where that offence is more likely to be proved (see comments made in paragraph 118 regarding the McHugh case).

297. Analysis of the effectiveness of ML and TF investigations, prosecutions and convictions is limited by the availability of accurate statistics. Cases submitted by the MLIU to the DPP are not recorded in the same manner. ML case files sent from the MLIU may be recorded under a different category of offence by the DPP.

2.6.2 Recommendations and Comments

298. The use of special investigative techniques for the progression of ML and TF inquiries within an appropriate legislative framework is encouraged. It is not illegal to use special investigative techniques such as intercepting telecommunications. In order to optimise the utility of this intelligence, appropriate guidelines would be beneficial.

299. It would assist in both providing management information for government and in indicating feedback to disclosing financial institutions and DNFBPs, if there were a common method of recording ML and TF cases.

300. It is recommended that any future review of Irish AML/CFT systems should examine the effectiveness of the development of cases for prosecution for ML and TF between law enforcement and the DPP and that more strategic analysis is conducted into ML and TF methods and trends. The outcome of this analysis should be circulated to law enforcement, policy makers and the financial and DNFBP sector. More information circulated more widely amongst the departments who have a responsibility for AML/CFT would raise awareness of current issues and compliment any ongoing training.

301. Consideration should be made into to how the resources dedicated to the overall tacking of crime can lead to more successful ML and TF investigations and prosecutions.

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors underlying overall rating
R.27	C	• Recommendation is fully met
R.28	C	• Recommendation is fully met
R.30	LC	• The low number of investigations, prosecutions and convictions for ML and TF offences would indicate that insufficient resources are currently being dedicated to ML and TF investigations.

R.32	PC	• More comprehensive statistics should be kept on ML / TF investigations.

2.7 Cross Border Declaration or Disclosure (SR.IX and R.32)

2.7.1 Description and analysis

Special Recommendation IX

Authority to obtain further information and restrain currency or bearer negotiable instruments

302. Ireland has a system for seizing cash crossing the border; however this is not a disclosure or declaration system as envisaged by Special Recommendation IX. Under Section 38(1) and (1a) of the Criminal Justice Act, (1994), as amended by the Proceeds of Crime (Amendment) Act, (2005), the Garda and Revenue Officers have cash seizure powers in relation to all crimes inside Ireland as well as those at point of entry. These powers allow the Garda and Revenue Officers to search for and seize cash where it is over a prescribed amount (currently €6500) and where there is "*reasonable grounds for suspecting"* that the cash is the proceeds of crime or intended for use in any criminal conduct. "*Cash*" in this context includes bearer negotiable instruments. Powers to detain cash under these provisions are for an initial period of forty eight hours and thereafter for further periods of three months, subject to a maximum of two years, on the authority of the District Court for the purposes of investigating the origins and derivation of the seized funds. These measures are intended to extend the authorities powers to seize and confiscate the proceeds of crime.

303. Interventions are based on the use of risk analysis, intelligence and profiling. Over €2.3 million has been seized since 1994 under s.38 (1) of the CJA (1994). During 2003, a total of 9 seizures were made, amounting to €585,300, in 2004 13 seizures totalling €564,759 were made and in 2005 15 seizures were made totalling €516014. Since the implementation of the 2005 Act there have been 6 cases of cash seizures relating to all crimes (TF, drug trafficking and fraud). One of these seizures was suspected of being for TF. Customs record all registered searches for suspected illegal movements of cash.

304. There is no obligation on the Irish authorities to scan containerised cargo or the postal system for cross border movements of cash, although the option is available under general customs powers. (A mobile X-ray container scanner was purchased by the Customs Service in 2005 to detect the smuggling of contraband.) Under the Proceeds of Crime legislation Customs have the power to question and search passengers where there are suspicions in relation to cash that may be derived from, or connected with, criminal conduct. However, when questioning a person who is suspected of being in possession of significant amounts of cash at importation or exportation there is currently no requirement on that person to make a disclosure to Customs. Therefore the possibility of detaining or prosecuting such person for failing to make a disclosure does not arise. Ireland currently also has no legislative requirement to report cross border transportation of currency or bearer negotiable instruments.[60]

305. Ireland has a number of international co-operation agreements by way of mutual assistance treaties between customs organisations. The Revenue Commissioners and Customs are members of the World Customs Organisation (WCO).

306. Movements of gold, precious metals or precious stones into or out of the EU must be reported to Customs. Customs officials were able to describe to the mutual evaluation team, cases of successful

[60] EU regulation 1889/05 0f 25 October 2005 on control of cash entering or leaving the Community will require such declarations and enforcement provisions will be introduced into domestic law.

intelligence led interceptions of €3 to €4 million of precious metals where criminals had attempted to smuggle the metals into Ireland.

Additional Elements

307. Information on cash seizures at borders are recorded by Customs. All cash seizures are subject to a formal investigation in order to seek forfeiture of the cash through the courts under s. 38 CJA (1994). As part of the investigative process, formal written enquiries are made with the MLIU/FIU in respect of each individual seizure. In this way the MLIU is advised of all cash seizures made by Customs. Some of these detections by Customs have led to the initiation of ML prosecutions by the Garda.

308. The Irish authorities identified that significant criminal proceeds are generated in cash and criminals and terrorists will often try to move these abroad and, to counter this, all Customs enforcement officers employed at ports and airports and the land frontier are engaged in the seizure of criminal cash. Additionally, there are three investigators employed full-time in the Investigations & Prosecutions Division taking such seizures through the legal process to seek forfeiture.

2.7.2 Recommendations and Comments

309. It is recommended that Ireland take action to implement the measures as outlined in the Interpretative Note and Best Practices Paper for Special Recommendation IX and integrate cash seizure measures and powers into their national approach for fighting ML and TF.

2.7.3 Compliance with Special Recommendation IX and Recommendation 32

	Rating	Summary of factors underlying rating
SR.IX	PC	• There are no powers to obtain a truthful disclosure upon request by individuals suspected of physical cross-border transportation of cash or bearer negotiable instruments. • No sanctions are available for false declarations/disclosure. • Measures are not currently in place to fully comply with SR IX.
R.32	PC	• Statistics on cash seizures and the outcome of searches are adequate

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

310. Irish AML obligations for financial institutions are primarily contained in the CJA (1994) which has, since 1998, been amended by the Criminal Justice (Theft and Fraud) Act (2001), the POCA (2005) and the Criminal Justice (Terrorist Offences) Act (2005). Various statutory instruments have broadened the number of designated bodies covered by this legislation. Direction is provided to designated bodies through a series of guidance notes that are published for individual financial sectors[61]. The guidance notes are prepared and approved by the ML Steering Committee (MLSC). Guidance notes have been issued for credit institutions (May 2003), other financial institutions (June 2003), life insurance companies and intermediaries (February 2004) and stockbrokers (February 2004). The Registrar of Credit Unions issued

[61] http://www.finance.gov.ie/viewdoc.asp?DocID=1210

its own guidance notes in April 1995 (updated in September 2004), as did the Funds Industry Association (the May 2005 updated version of the latter document was provided during the evaluation).

311. The guidance notes "*are recommendations as to good practice but do not constitute a legal interpretation of the* [Criminal Justice] *Act*".[62] All provisions contained in the guidance notes are therefore not directly enforceable and are not subject to an adequate range of administrative sanctions. The evaluation team noted, however, that the Financial Regulator assesses the adequacy of financial institutions' procedures to counter ML and TF against the provisions contained in the guidance notes.

3.1 Risk of ML or TF

312. The Irish AML/CFT system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations. However, in line with the 2nd EU ML Directive, Ireland has extended AML/CFT obligations to certain DNFBP sectors and it is the intention of Irish authorities to implement the 3rd EU ML directive after a review of the current AML/CFT system. The guidance notes, do take account of different risk situations, such as non-face to face business.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5:

313. Section 32, (1) of the CJA (1994) (as amended) defines those financial institutions that are subject to AML/CFT obligations, classifying them as designated bodies under the Act. The following institutions are included within the definition of designated bodies:

a) banks
b) building societies
c) life insurance companies
d) the national post service (An Post)
e) credit unions
f) stockbrokers
g) bureaux de change
h) persons authorised to carry on a money broking business
i) societies licensed to carry on the business of a trustee savings bank
j) a person providing a service in financial futures and options exchanges
k) ACC Bank plc
l) ICC Bank plc
m) money lenders

314. Section 32 (10), paragraphs (a) and (b) of the CJA (1994) allows the Minister of Justice, after consultation with the Minister of Finance, to designate any other person or body which may provide services "*involving the acceptance or holding of money or other property for or on behalf of other persons*" or which may perform activities "*liable to be used for the purpose of committing or facilitating the commission of*" the offences of ML or terrorism financing.

315. The assessment team were advised that this provision has not been used to define risk-based criteria for AML/CFT. Nonetheless, this provision has been widened several times to include the following entities and activities under the AML/CFT legislation, under 32(10)(a): S.I. 104 (1995), S.I. 216 (2003),

[62] Quoted on the front page of guidance notes for credit institutions.

S.I. 242 (2003), SI 416 (2003); under 32(10)(b): SI 105 (1995), SI 324 (1995), SI 3 (2004); and under 32(10)(d): SI 106 (1995), SI 618 (2003) and SI 569 (2004).

a) Accountants,
b) Auctioneers,
c) Auditors,
d) Estate agents,
e) Tax advisors,
f) Solicitors,
g) Dealers in high value goods,
h) Electronic money institutions
i) any person in the State who, as a principal activity carries out one or more of the operations which are included in numbers 2 to 9 and 11, 12 and 14 of the list annexed to Council Directive 89/646/EEC i.e.

- Lending,
- Financial leasing,
- Money transmission services,
- Issuing and administering payments,
- Guarantees and commitments
- trading for own account or for account of customers in: (a) money market instruments, (b) foreign exchange, (c) financial futures and options, (d) exchange and interest rate instruments, (e) transferable securities,
- Participation in share issues and the provisions of services related to such issues.
- Advice to undertakings on capital structure, industrial strategy and related questions and advice and services related to mergers and the purchase of undertakings.
- Portfolio management and advice.
- Safekeeping and administration of securities.
- Safe custody services.

316. All relevant financial activities and entities appear to be included in the scope of application of Irish AML/CFT regulation. Section 32 (6) and (10) of the CJA (1994) allows exceptions and carve-outs in cases when a designated body in Ireland may be conducting business with an entity that would be designated in Ireland and that entity is located in certain nominated jurisdictions.

317. There are obligations under s.57(2) of the CJA (1994) on persons charged by law with supervision to report to the Garda (and from 1 May 2003 the Revenue) suspicions of ML offences by designated bodies under Section 31 or 32 of the CJA (1994). Thus supervisors as well as designated bodies are obliged to report STRs if in the course of their business they suspect ML or TF.

Anonymous accounts and accounts in fictitious names:

318. Anonymous or numbered accounts are not allowed to exist in Ireland. Section 32 (3) of the CJA (1994) requires designated bodies to "*take reasonable measures to establish the identity*" of a person to whom they provide services of a financial nature in the following instances:

a) the services are provided on a continuing basis
b) with reference to a transaction or a series of linked transactions which amount to €13,000 or more
c) in cases where ML is suspected

319. Such business relationships cannot be held under fictitious names. Section 32 (13) establishes sanctions for anybody that provides false or misleading information.

320. Section 32 (4) of the Act requires that, should the overall amount of funds involved be unknown when the transaction is performed, identification is undertaken when it is established that such amount exceeds the relevant threshold. Subsection (10), paragraph (c) allows the Minister of Justice, following consultation with the Minister of Finance, to set a different threshold for the purpose of customer identification.

321. The provision, as it currently stands, does not satisfy the FATF Recommendation 5 in the following areas:

a) Entities should be required to undertake and complete the process of identifying and verifying the identity of their customers, irrespective of the type of steps that such obligation may involve;
b) There is no provision explicitly addressing wire transfers;
c) There is no provision requiring a Customer Due Diligence (CDD) procedure to be completed in all cases when TF is suspected;
d) Unless doubts about the veracity of the customers' available information lead to suspicion that a certain transaction or business relationship is connected to ML, there is no requirement that the identification procedure be re-enacted (e.g. where customers data is considered inadequate or untrue with reference to existing customers at the date AML/CFT regulation was implemented)

322. Guidance Notes lay out comprehensive procedures outlining what measures should be considered reasonable for financial institutions to establish the identity of their customers. The notes are drafted and issued with the approval of the MLSC.[63] The references in Sections 3 and 4 of the report, when referring to guidance notes will make reference to the notes for credit institutions. Sectoral guidance notes will be mentioned where appropriate.

***Account opening and CDD**:*

323. With the provisions set out in the CJA (1994) (as amended), the guidance notes only address the identification stage of the CDD procedure. The guidance notes acknowledge that Know Your Customer (KYC) is "*the fundamental principle of good banking practice*" and that "*having a sound knowledge of a customer's business and pattern of financial transactions and commitments* "is the most effective tool in preventing and detecting ML. However, there is no requirement for a proper CDD procedure to be undertaken by financial institutions as envisaged by Recommendation 5.

324. Guidance on how to establish identity (as set out, for example in paragraph 45 of the Guidance Notes for Credit Institutions) requires true name and address verification. This guidance sets out details on the type of documentation/methods that should be used in verifying identity and address. Identification verification is addressed in the guidance notes, stating that "*no single form of identification can be fully guaranteed as genuine or representing correct identity*". The additional checks that financial institutions

[63] Guidance Notes for credit institutions (May 2003), other financial institutions (June 2003), life insurance companies and intermediaries (February 2004) and stockbrokers (February 2004). The Registrar of Credit Unions issued its Updated Guidance Notes in September 2004, as did the Funds Industry Association (the May 2005 updated version of the latter document was provided during the evaluation). Guidance specifically concerning the financing of terrorism was issued to the benefit of all designated bodies in March 2005.

may wish to undertake for credit and risk management purposes may assist the CDD process, but lie outside the scope of ML procedures. The guidance (paragraphs 45-47) also provides a list of documents that are acceptable in establishing the customers' identity.

325. Verification measures are required (paragraph 49 guidance note for credit institutions) when, in the case of non-face-to-face relations, "*initial checks fail to identify the prospective customer or give rise to suspicions that the information provided is false*". Also, the identity of foreign personal customers may be verified "*from a reputable credit or financial institution in the applicant's country of residence*".

326. In addition, banks' guidance notes allow for cases when a prospective customer already entertains a business relationship with another credit institution. In this instance, the two institutions involved may seek verification of the identity and exchange the relative documentation (paragraph 57).

327. The guidance notes state, with reference to electronic fund transfers, that customers "*are encouraged*" to include information concerning both the sender's and the recipient's name and address. Should this information fail to be attached to the transfer, then the records of the sender's name and address should be retained by the originating credit institution.

328. The evaluation team found that in practice, financial institutions often adopted measures that conform to stricter standards than those posed by the regulatory requirements. On the basis of the documentation provided by one of the biggest Irish credit institutions, the identification process is aiming at not only establishing and confirming the customer's true name and address, but also clarifying the purpose and nature of the business relationship, defining the source of the funds involved in the transactions being performed and establishing the consistency of the transactions themselves with the bank's known customer's profile.

329. Representatives of the insurance industry advised the examiners that a significant amount of information is collected on prospective customers. In the life sector, a financial profile is undertaken at the establishment of a contractual relationship. However, the procedure allows that if the settlement originated from another financial institution then lesser measures could be taken.

330. Conversely, the guidance notes for the funds industry explicitly address the issue of the source of the funds used to purchase financial instruments, although, should another financial institution, such as a bank be involved in the settlement, the verification goes as far as establishing that the payment is not performed directly by third parties.

331. Comprehensive CDD assessments of credit unions' customers are made easier in practice as membership is usually based on geographical area or a particular occupation. Customers are therefore often personally known to credit union officers. CDD requirements and the operational practices of credit unions appear to conform to particularly high standards.

332. Money remitters and bureaux de change normally process transactions involving single transactions or movements of money which are often significantly lower than those observed in other areas of the financial sector. Customers are required to provide items of identification for transactions of a value no less than the euro equivalent of US$1,000, whilst similar requirements for the address information have to be implemented at the threshold of a euro equivalent value of US$2,000. The average value of the transactions processed by remitters and bureaux de change is generally lower than any thresholds applied. For transactions lower than US$1,000 customers are able to just state their name.

333. Section 32 (3) of the CJA (1994) requires designated bodies to take "*reasonable measures*" to establish their customers' identity, but does not establish explicitly what documentation can be acceptable.

The guidance notes contain an extensive list of documents that designated bodies may consider acceptable for customer identification purposes, depending on the different type of customer as resident and non-resident, personal or corporate. These are further distinguished in subcategories (e.g. students and young people, clubs and societies or trusts). There is a wide range of acceptable documents, structured in a multi-tier fashion, so that failure to provide documentation grouped in a higher category could be bypassed, should any document belonging to a lower group be produced. It is acknowledged that assistance in the verification of the name and address of a perspective customer can be provided by " *an introduction from a respected customer, personally known to a member of management in the branch or office in the credit institution concerned*" (paragraph 45 (v)).

334. The intention of these provisions is understandable when assessed against the background of Ireland's regulation of personal identification. There is no national identity card in Ireland, and it is not compulsory for Irish residents to possess an identification item of a specific type. The setting of particularly strict standards by AML/CFT regulation could financially exclude certain categories of customers, who may not be in the position to produce a passport or a driving license. In this respect, guidance notes explicitly state that "*any measures adopted should not deny a person access to financial services solely on the grounds that they do not possess certain specified identification documentation*". However, abnormal circumstances in which a customer may be unable to produce identification documentation could be held as suspicious in its own account, thus giving rise to the obligation to file an STR.

335. The actual practice financial institutions have adopted attempts to accommodate the two issues outlined above. Financial Institutions establish a general policy conforming to strict identification standards, and also provide for risk-mitigating measures to be applied when those standards cannot be complied. In this fashion, the provisions contained in the regulation are adequately accommodated, and at the same time the higher risk that such circumstances may be associated with are addressed.

336. In practice, in the vast majority of cases identification is required and a customer's passport or driving licence are normally the requested forms of identification. When those are not available an account may be opened only further to the authorisation of a manager and notification to the ML Reporting Officer (MLRO). In giving their authorisation, the manager is required to take into account any circumstance, such as the value of the transaction performed by the new customer that may make it sensible to depart from the general procedure.

Identification of legal persons:

337. The provision on establishing business relationships and occasional transactions under section 32 (3) of the CJA (1994) requiring designated bodies to "*take reasonable measures to establish the identity*" of any person to whom they provide a financial service also applies to verifying beneficial owners or the legal persons or arrangements.

338. Provisions explicitly addressing the identification procedures to be applied to corporate customers are contained in the guidance notes. These only define the identification stage of the CDD process, without clearly defining what procedures should be undertaken in order to adequately and exhaustively implement the *KYC* measures.

339. Guidance notes for financial institutions distinguish between corporate customers, clubs and societies, partnerships and trusts. The first category is further split between legal persons incorporated in Ireland and those incorporated abroad. For the former, the designated documentation adequately satisfies identification requirements as set out in the FATF Recommendations and immediate verification can be sought at the Company Registration Office.

340. For foreign companies it is suggested that a reference should be obtained from the company's or its directors' bankers abroad. In addition, legal advice may be sought to verify the legal status and reliability of the documents provided. Similar requirements are posed for partnerships.

341. In relation to trusts, the guidance notes state that "*it is prudent*" to identify not only the trustees, but also the beneficiaries, when these are determined, in addition to obtaining a copy of the trust deed.

342. When identifying clubs or societies, "*two elected officials and two signatories of the account*" are required to be identified. This seems to set slightly weaker standards than those applied to other legal arrangements.

343. The evaluation team were assured that the actual procedures adopted by financial institutions complies with the requirements as set out in the guidance notes. Corporate customers were indicated as having a minor role in the insurance sector; insurance products usually purchased by these clients can be held to be low risk, mainly pension schemes and coverage for employees' loss of income.

Identification of beneficial owners:

344. The requirement to identify beneficial ownership is contained in s. 32 (5) of the CJA (1994), which requires that where a designated body proposes to provide a service for a person to whom it knows or has reason to believe to be acting for a third party, it shall take *"reasonable measures"* to establish the identity of the third party. While the wording of s.32 (5) is not precisely in line with criteria 5.5 because the obligation to take reasonable measures applies to both the identification and verification, the Irish authorities stated that financial institutions would have to conduct such identification and verification.

345. Guidance notes explicitly address the identification of clients (paragraph 61). When the financial institutions' direct customer is not a designated body, then "*reasonable measures*" must be taken to establish the identity of those on behalf of whom the intermediary is acting.

346. The assessors were advised that in the insurance industry the connection between the holder of the policy and the beneficiary is investigated at the outset of the business relationship, to establish whether the beneficiary is entitled to be nominated. Evaluators were made aware that it is illegal to conclude an insurance policy in favour of someone who does not have an insurable interest. The policy beneficiaries are identified when placing a claim, in accordance with the general identification requirements.

347. No legally binding provision establishes adequate obligation requiring financial institutions to make enquiries for the beneficial owner(s) of corporate customers. However the guidance notes do encourage institutions to take measures. In paragraph 66 of the guidance, it notes that particular care should be taken in verifying the legal existence of corporate entities and of persons purporting to act on behalf of the company, with the aim of looking behind the corporate entity and identifying those who have ultimate control over the business and company assets. Enquiries should be made to confirm that the company exists for legitimate trading or economic purposes and it is not merely a 'brass-plate company' where the controlling principals cannot be identified.

348. The provisions in paragraph 69 of the guidance notes outline the documentation that financial institutions collect in order to ensure that the information possessed is relevant. With a focus on private or listed companies, it is required that the holders of shares of capital over 10% be identified and cross-checked at the Companies Registration Office and explanation of any discrepancies between information provided by the company itself and those extracted from the Registry be sought. Moreover, if a significant shareholder, for instance, one with a stake over 25% of the outstanding shares, is another company, it is recommended that the beneficial owner is established. However, failing to do so

adequately does not require that financial institutions go any further than paying particular attention to the business relationship with the corporate customer.

349. For trusts, the guidance notes state (paragraph 65) that "*it is prudent*" to identify not only the trustees, but also the beneficiaries. The evaluation team noted that financial institutions in Ireland established practices for corporate customers that appear to strictly comply (and in some cases go beyond) the steer given by the guidance notes.

350. There is no requirement subject to adequate sanctions that establishes obligations requiring financial institutions to investigate the purpose and intended nature of the business relationship.

351. The guidance notes (paragraph 14) require that institutions at all times pay particular attention to *KYC* principles. Accordingly, it is required (paragraph 95) that a suspicious transaction will often be one which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for that type of account. Therefore the first key to recognition should be to know enough about the customer's business to recognise that a transaction, or series of transactions, is unusual. Many financial institutions and banks in particular, make use of suspicious transaction detecting computer packages to automatically identify those transactions that appear unusual or inconsistent with the customer's profile.

352. There is, no law or regulation establishing an adequate obligation requiring financial institutions to conduct ongoing due diligence on their customers. The guidance notes contain some provisions which, albeit indirectly or partially, address the issue of ongoing monitoring of customers' business relations.

353. The guidance notes for the funds industry (paragraph 4) require that institutions ensure that investor's subscription funds originate from or are transferred to a bank account held in the investor's name and not in the name of a third party.

354. The evaluation team was informed that financial institutions' staff are trained to perform ongoing due diligence to ensure that transactions are consistent with the customer's profile. They make use of software to automatically detect transactions that may be unusual or inconsistent with the customer's profile. However, the rate of transactions being reported relative to the number identified by such software was said to be low, indicating a high filtering rate.

355. The guidance notes state (paragraph 30) that as good business practice any subsequent changes to customer identification details that are brought to the attention of the credit institution should be recorded as part of the KYC process. This however, does not appear to pose an obligation on financial institutions to take steps to ensure that their customers' files are constantly updated. Conversely, the process of updating customers' files is only undertaken when changes to the details of a client are brought to the attention of the financial institutions. Some developments have taken place such that there is a growing tendency to develop a process of updating customer's files by incorporating it into an annual review process in conjunction with it being brought to the business's attention directly.

356. There are currently no specific requirements in legislation on enhanced due diligence. The assessment team was advised that these requirements will be implemented as part of the EU 3rd AML Directive.

357. The only instances of measures to be applied in higher risk circumstances in the guidance notes are with reference to non-resident personal or corporate customers. Since it is acknowledged that the process of verifying the data of non-resident customers may be more difficult, in these cases financial institutions may wish to implement special procedures such as linking transactions, obtaining extra information and

fact finding for CDD purposes. Additional precautionary measures may be implemented in connection with countries that do not or insufficiently apply the FATF Recommendations (see Recommendation 21).

358. The guidance notes state - with reference to corporate customers (paragraph 66) that "*corporate accounts, even when fronted by legitimate trading companies, are the most likely vehicles for large scale ML*". It is suggested that financial institutions should pay special attention to such business relations, although no identification measures other than those previously described. Special identification procedures are established for non face-to-face businesses in the guidance notes adequately addressing the risk associated to this type of business. A description of such procedures is provided in paragraph 400.

359. The risks associated with bearer shares are mentioned in the guidance notes for the funds industry (paragraph 3.2.8). The envisaged procedure for such entities requires that:

a) the shares are held at "an authorised or recognised custodian (an institute licensed in an acceptable jurisdiction)"; the custodian must confirm that the holders of the shares have been identified; should the shares be held outside a recognised custodial system, this circumstance would amount to an indicator of suspicion
b) the corporation must disclose the identity of the shareholders and of any other individual having a stake in the company

360. It must also be confirmed that the shares cannot be delivered to any other recipient but an authorised custodian and that the Financial Regulator requires Irish authorised investment funds to issue shares in registered form and does not permit the issue of bearer shares.

361. Overall, most financial institutions have not developed customer acceptance policies or schemes whereby customers are classified on the basis of risk. The assessment team were advised that the funds industry may be in the course of developing such a policy and that some credit institutions are also in the process of developing a customer acceptance policy in terms of risk categorization.

Lower / Higher Risk:

362. Section 32 (6) of the CJA (1994) states that AML obligations shall not apply where a designated body provides a service for another designated body or a body corresponding to a designated body in an EU Member State or state or country prescribed by the Minister of Finance. In accordance with these provisions, all non-EU FATF countries, Liechtenstein (as an EEA country) and also the Channel Islands and the Isle of Man (as a result of international agreements) were prescribed to that effect by SI 106 (1995), 618 (2003) and 569 (2004).

363. In line with the 1st EU ML Directive, s.32 (7) and (8) provide exceptions to identification requirements when applied to life insurance undertakings in certain circumstances:

a) When the value of the periodic premiums to be paid in any twelve month period does not exceed €900[64], or €2,300 in the case of single premiums
b) In the case where the policy is issued in connection with a pension scheme taken out by virtue of the occupation of the person to be insured, provided that the policy in question does not contain a surrender clause and may not be used as collateral for a loan

[64] Euro substitution amount for Ir £ as specified in Eurochangeover (Amounts) Act,2001 – Schedules 3 and 4 effective from 1 January 2002.

c) With reference to a transaction, or a series thereof, settled through a payment made from an account held in the name of policy holder with a designated body or a foreign entity corresponding to a designated body.

364. Section 32 (10A) provides that general exceptions may be introduced as far as the obligations posed on designated bodies are concerned. It has so far been used to identify certain non-financial entities as designated bodies and to introduce limitations to the obligations that legal professionals are required to comply with pursuant to their legal privilege.

365. The guidance notes also allow (paragraph 46) designated bodies to depart from the customary customer identification procedure in "*certain* exceptional *circumstances*". This is limited to Irish residents who are unable to provide appropriate documentation, and requires other circumstances, such as the value of the transactions performed by the customer to be taken into account.

366. In such cases, the establishment of the business relationship must be authorised at managerial level and the manager involved should take record of the circumstances justifying the departure from the standard procedure, stating at the same time that they are satisfied that the identity of the customer has been established. Under no circumstances should standard procedures be denied, if ML is suspected.

367. Customer identification requirements do not need to be followed if the designated entity's direct customer is another designated body (see s.32 (6) of the CJA (1994). Moreover, the guidance notes (paragraph 68) allow for simplified identification procedures to be applied to corporate customers, should they fall into one of the following categories:

a) a company, or a subsidiary thereof, quoted on a stock exchange in a EU member or in one of the countries designated by the Minister of Justice ;
b) a private or unquoted public company, the majority of whose directors are already known to the credit institution.

368. The guidance notes, qualify the provision set out under subsection (6) above by requiring (paragraph 38) that the customer entity be:

a) authorised and supervised by a regulatory body
b) subject to AML regulation setting equivalent standards as those set out in EU regulation and FATF Recommendations;
c) complying with identification and record-keeping obligations equivalent to those applicable pursuant to Irish regulation.

369. The provisions establish full exemptions to the scope of application of the CDD obligation, rather than allowing for simplified or reduced CDD procedures.

370. Despite the possibilities for simplified measures, the evaluation team were informed that designated bodies adopt a stricter approach to the business relations they entertain with each other, since the identification procedures are performed regardless of whether the counterpart is a designated body or not. Most notably, in those cases when relations are entertained with non-financial designated bodies the standard identification procedure was said to be normally applied.

371. Representatives from the industry also maintained that stricter standards than those provided for in the regulation are applied to non-EU countries, regardless of their membership of the FATF. On the basis of the documentation made available to assessors, financial entities internal procedures require analogous standards are applied to both EU and FATF member jurisdictions.

372. The exemptions from the requirement to identify established within s.32 apply to all circumstances listed under (3) and thus also cases when ML is suspected. Conversely, the guidance notes allow financial institutions to depart from standard identification procedures in "*certain* exceptional *circumstances*" (paragraph 46), and recommend that the exemptions should not occur when ML is suspected. This should be resolved by clarifying the scope of the exemption in the CJA (1994)[65].

Timing of verification

373. Section 32 (3) of the Criminal Justice Act 1994 as amended requires that 'a designated body shall take reasonable measures to establish the identity of any person for whom it proposes to provide a service of a kind mentioned in subsection (2)'. It is implicit from the above legislative requirement and in particular the word 'proposes', that identity must be established prior to or during the course of establishing a relationship or providing a service. However, there is a potential inconsistency in that the Guidance Notes recognise the practical reality that it will not always be possible to identify and verify identity prior to establishing a relationship. The guidance notes (paragraph 34) state that financial institutions should not proceed to establish a business relationship with a new customer or to perform a transaction for them until satisfactory evidence of identity has been established. A customer's identity may be established "*as soon as reasonably practicable*" after the application for account opening and, after deposit has already been accepted, only in exceptional cases.

374. The guidance notes do not define the criteria under which financial institutions may interpret what is meant by *exceptional case* and *reasonably practicable*. It is up to financial institutions, "*at an appropriately senior level*" to determine that, taking into account, among other things, "*what is known about the prospective customer, the nature of the business, the geographical location of the parties and whether it is practical to obtain the identification evidence before the account is opened*". The guidance notes do indicate that, following the initial deposit, no further transactions should be finalised before the customer has been adequately identified.

375. The guidance notes for the funds industry (paragraph 3.2.14) indicate that institutions may process an initial subscription in cases when the investor does not provide all relevant documentation up-front, but only if there is no suspicion of ML. Funds may not be redeemed or distributed until all documentation has been provided and where no further transactions are permitted on the account until the identity of the customer has been established.

376. However, both in the guidance notes for the funds industry and in those for credit institutions it remains unclear what consequences would occur, should identification fail to be completed successfully. A clearer provision is contained in the guidance notes for financial institutions (paragraph 79), where it is required that identity verification is completed before the transaction is settled. This provision may be overridden if "*there are good reasons making this impractical*". Nonetheless, "*if satisfactory evidence has not been obtained in reasonable time, then the business relationship or one-off transaction should not proceed any further*" which may also imply that "*financial institutions may freeze the rights attaching to a transaction after it has been dealt with but before settlement or delivery*". Financial institutions are required to establish procedures whereby transactions may be frozen or unwound.

377. In relation to non face to face businesses, paragraph 49 of the guidance notes it is required that, should "*initial checks fail to identify the prospective customer or give rise to suspicions that the information provided is false*", additional verification measures should be applied. If the outcome of such

[65] An amendment to this section is being included in the Criminal Justice (Miscellaneous Provisions) Bill currently in preparation which will clarify the scope of the exemption

additional measures indicates that the information provided had been false, an STR should be filed to the FIU.

378. The financial industry indicated that in practice a blocking procedure is applied in all cases when the identification is not finalised within the application stage of the opening of an account. This implies that no further transactions should be performed and that the deposit shall be reimbursed.

379. Should the overall amount of funds involved be unknown when the transaction is performed, identification is undertaken when it is established that such amount exceeds the relevant threshold. It remains to be clarified when a transaction may be performed with no indication of the amount of funds involved, unless this refers to cases when the financial institution has already committed to finalise the transaction itself.

380. Alternatively, this instance may be associated to the case illustrated both in the guidance notes for stockbrokers (paragraph 37) and for financial institutions (paragraph 76) when it is required that, "*if this has not been done previously*", customer's identity should be established at the point when the latter cashes in an investment, if the amount payable is over the relevant threshold, which may only occur if the initial investment was below the threshold. No provision requiring that ML risk is adequately managed is established.

381. The guidance notes for stockbrokers (paragraph 34) require that any departure from standard procedures, as far as the timing for verification is concerned, should be authorised in advance by the MLRO. The assessors were advised that in the insurance industry the connection between the holder of the policy and the beneficiary thereof is investigated at the outset of the business relationship, to establish whether the beneficiary is entitled to be nominated.

Existing customers:

382. The application of s.32 of the CJA (1994) does not extend to those customers already entertaining business relations with designated bodies prior to the date when the provision came into force. AML requirements are not to be applied retrospectively. The guidance notes, explicitly state (paragraph 36) that designated bodies "*are not expected*" to identify existing customers as at 2 May 1995. Where a bank's existing customer establishes after that date a business relationship with an entity belonging to the bank's group, then the customer need not be identified (paragraph 42 (a)).

383. Assessors were advised that this customarily takes place across the entire financial sector, should an old customer establish a new business relationship with the same financial institution. However, such practice seems at odds with some provisions contained in the guidance notes, which define a series of exemptions to the identification requirements: for instance, should a bank's existing customer as of 2 May 1995 establish after that date a business relation with an entity belonging to the bank's group, then the customer may not be identified (paragraph 42 (a)). It appears contradictory that identification is established for old customers when they establish a new relationship with the same financial institution, but such procedure is not applied if the relationship is established at a different institution. Paragraph 37 of the Guidance Notes for credit institutions states that a credit institution is required to establish the identity of an existing customer where there is a suspicion that the service being provided is connected with the commission of ML offence. In such a situation the institution should report the suspicion to the FIU and should also seek advice from the FIU before seeking to establish the customer's identity, particularly if this would involve an approach to the customer or an approach, which would be likely to come to the attention of the customer.

384. The provision in the guidance notes requiring that customers' records be updated seems to refer only to post-May 1995 customers and does not seem relevant for financial entities' clients before that date. Since identification requirements only apply to customers establishing new business relations after 2 May 1995. Hence, with reference to pre-1995 customers, since they have not undergone any identification and are not expected to be subject to identification, it may theoretically be possible for them to hold accounts under false or fictitious names.

Recommendation 6:

385. There are currently no specific legislative or other enforceable requirements in relation to Politically Exposed Persons (PEPs). These will be introduced in legislation to be enacted to implement the revised 3rd EU Directive. So far, however, no specific provision is either contained in the guidance notes that PEPs are to be subject to different procedures than those applicable to other customers that have been illustrated under the previous criteria. The Financial Regulator did, however, write to all regulated institutions after the issuance of the 40 Recommendations (2003) to advise them of the revision of the Recommendations, which included revisions of Recommendations 6, 7 and 8.

386. Some of Ireland's financial institutions are already implementing certain extra measures. For example, one of Irish biggest credit institutions has a special account opening procedure defined for PEPs, who are defined "*individuals who are or have been heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important party officials*". However, the evaluation team noted that other parts of the financial industry have largely ignored the issue of PEPs so far.

Recommendation 7

387. There are currently no legislative or other enforceable requirements in relation to cross-border correspondent banking. It was indicated to the evaluation team that these will be introduced in legislation enacted to implement the 3rd EU ML Directive.

388. There is no advice contained in the guidance notes. The only possible applicable measures to correspondent banking are those concerning client accounts and cross-border relationships between financial institutions that have been illustrated in Recommendation 5. Therefore, correspondent accounts are currently susceptible to undergo simplified CDD procedures, if the correspondent institutions belong to an EU or FATF member country, or other countries prescribed for that purpose by the Ministry of Justice.

389. The evaluation team was informed; however, that institutions have been advised of the requirements as set out in the revised FATF Recommendations and are expected to be aware of these requirements in a letter sent from the Financial Regulator in June 2003.

Recommendation 8

390. There are no specific legislative or other enforceable obligations addressing the risks posed by the application of new technological instruments to the provision of financial services, nor is any mention made thereof in the guidance notes. The guidance notes outline the special identification procedures that financial institutions should undertake when providing services on a non face-to-face basis (paragraphs 48 to 53). It is acknowledged that the use of non face-to-face techniques involves a particular ML risk. Therefore, steps should be taken in order to tackle such risks adequately, ensuring that "*there is sufficient communication to confirm* [clients'] *personal identity and address*" and that procedures are in place which may enable the ongoing monitoring and scrutiny of non face-to-face business relations. Training of staff

having contact with non face-to-face customers and involved in the management of such business relationships is indicated as crucial.

391. The guidance notes set out a list of measures to be taken in order to ensure that the general *KYC* principle is met, also with reference to non face-to-face businesses. A detailed checklist of documentation that neither resident nor non-resident non face-to-face customers are required to submit is determined, with the associated steps financial institutions are required to take in order to cross-check the information contained in the documentation provided.

392. Should "*initial checks fail to identify the prospective customer or give rise to suspicions that the information provided is false*"(paragraph 53), then additional verification must be undertaken, with a view of filing an STR to the FIU, if the suspicion that the information provided is indeed false turns out to be well-grounded.

393. Within the applicable identification procedures, a crucial role is played by indirect identification, which takes place when a non face-to-face business relationship originates from transfers from, or the deposit of a cheque drawn on another financial institution. Such procedure can only occur under the following cumulative conditions:

"*(i) the service to be provided is a fixed term, fixed amount deposit or investment related product which does not provide cheque or other money transmission facilities; and*

(ii) on the maturity of which the proceeds may be repaid only to the applicant or reinvested in a further similar deposit or fixed investment in the name of the applicant; and

(iii) it is reasonable in all the circumstances for payment to be made by post or electronically or for the details of the payment to be given by telephone; and

(iv) payment is to be made from an account held in the name of the person to whom the service is to be provided at another credit institution in a member state of the European Union or one of the other countries [designated by the Minster of Justice]*; and*

(v) there is no apparent variation between the signature on the copy and the signature obtained on any other document received from the customer (e.g. account opening form, agreement to terms of business etc.) and that the format of the copy document is consistent with the official format of that document for the country in question (e.g. layout, number format etc.)."

394. Similarly with the use of new technological instruments, financial institutions indicated that business relationships very rarely are established and maintained on an exclusively non face-to-face basis, but that such channels are deployed to the end of finalising single transactions by clients already entertaining long-standing business relationships. In some branches, such instruments were indicated as not being cost-effective and therefore their implementation was sensed as being unprofitable.

3.2.2 Recommendations and Comments

395. Although the guidance notes are extensive, and contain a large amount of useful guidance, they are not directly legally enforceable and this represents a crucial deficiency in Irish AML/CTF legislation. Most of the provisions concerning the identification and verification procedures are only laid down in guidance; they are not imposed by law or regulation (as required for certain FATF obligations) nor are they imposed by other enforceable means (as defined) as there are not effective, proportionate and dissuasive sanctions for persons that fail to comply with the guidance notes. Therefore the current regulatory framework does not meet most of the essential criteria.

396. Nonetheless, regardless of their regulatory status, the guidance notes provide financial institutions with a set of guidelines to comply with AML/CFT requirements. Indeed, designated bodies seem to

comply diligently with the guidance. However, the guidance notes themselves seems to feature two significant shortcomings.

397. The CDD procedure, as currently outlined in the guidance notes, focuses exclusively on the identification stage, which is described in great detail. However, CDD requirements exceed the simple identification of a customer, encompassing all steps necessary to satisfy the general *KYC* principle. The guidance notes only make a broad reference to full CDD requirements and fail to indicate what designated bodies should do to actually implement an exhaustive CDD policy.

398. The evaluation team did find that banks and other financial institutions appear to be already adopting adequate CDD procedures, in compliance with their own internal AML/CFT corporate policies.

399. There is no systematic definition of a risk-based approach in the guidance, although the required degree of compliance with some measures is indeed graduated in accordance with an implicit scale of ML risk. The possibility of meeting AML/CFT requirements on a risk-sensitive basis would certainly benefit those financial institutions which appear to be exposed to a lower ML threat, but are required to implement the full range of AML/CFT measures.

400. Moreover, by graduating identification requirements on the basis of risk, the excessively wide range of documents that are acceptable for identification within the current framework could be more sensibly reconciled with the objective of limiting financial exclusion, without imposing general identity document obligations across the board.

401. To bring the regulatory framework up to the current FATF standards it would be necessary to ensure that most of the provisions contained in the guidance notes are subject to an adequate range of effective, proportionate and dissuasive sanctions for persons that fail to comply with them. However, such provisions would also have to be extended. Evaluators were advised that a review of the AML/CFT regulation will be carried out in order to ensure that Ireland complies with the new 3rd EU ML Directive. It would be necessary that steps be taken to widen the scope of the requirements beyond the mere incorporation into Irish law of the new EU regulation.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	• Financial institutions are not currently required to undertake full CDD measures on establishing business relations, when carrying out occasional transactions over €13,000 or in circumstances in relation to SRVII and there is no requirement to identify in cases where TF is suspected. • A number of requirements which should be explicitly set out in law or regulation are now currently implicit or established only in guidance. For example: • ongoing due diligence; • identification of the beneficial ownership of legal persons; • Certain requirements such as obtaining information on the nature and purpose of the business relationship and timing of verification requirements are not required by "other enforceable means" (as defined) • There is no legally binding provision for enhanced CDD measures and guidance is weak on the requirements concerning consequences of failure to complete CDD.

		• In the context of a future risk-based approach there should be a review of the documents and data that is relied upon for customer identification and verification. • Provisions addressing identification of existing customers are limited to cases to where ML is suspected.
R.6	NC	• There are no legislative or other enforceable obligations currently in force.
R.7	NC	• There are no legislative or other enforceable obligations currently in force.
R.8	PC	• Limited measures have been taken in guidance for non -face-to-face business and new technologies.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

402. No legally binding provision regulates the relationship between designated bodies and third parties in charge of performing some steps in the CDD procedure. However, intermediaries, such as insurance agents and brokers and mortgage intermediaries operating on behalf of some designated bodies are subject to AML/CFT regulation on their own account.

403. The guidance notes specifically address instances involving two designated bodies. Paragraph 43 refers to the case in which a financial institution performs a single transaction on behalf of a customer introduced by another financial institution, based either in Ireland, in the EU or in one of the countries designated by the Ministry of Justice as a corresponding designated body (see paragraph 373). In this circumstance, the introducing entity must provide, along with the customer's personal details, a written undertaking stating that the customer's identity has been established, thus allowing the introduced body to avoid undertaking the identification process anew.

404. However, if the customer establishes a business relationship with the introduced entity, then they must be identified by the latter, although it can rely, at the verification stage, with the documentation provided by the introducing body. Conversely, identification may not be performed again, should the two bodies belong to the same financial group (paragraph 42) and provided that documentation is freely available to all parties involved.

405. The guidance notes regulate the cases in which a financial institution acquires the whole business of another financial institution. In these circumstances, identification should be undertaken again only if the institution receiving the business fails to confirm with the other institution that in identifying its customers it has complied with the regulatory obligations and cannot provide it with the customers' records. Instances in which customers may be introduced by intermediaries other than designated bodies are just given a short mention in the guidance notes.

406. In the case of introduced business the guidance notes establish the principle (paragraph 64), regardless of whether the introducing intermediary is a designated body or not, the obligation to identify the customer remains with the financial institutions to which the customer is introduced. However, in the guidance this principle is mainly associated to the case "*where an intermediary is acting as a contractually appointed agent for the* [financial] *institution*", which is not relevant to Recommendation 9.

3.3.2 Recommendations and Comments

407. No legally binding provision regulates the relationship between designated bodies and third parties in charge of performing some steps in the CDD procedure. The wide-ranging scope of application of Irish AML/CFT regulations means that most of the intermediaries that are likely to introduce customers to a financial institution are designated bodies themselves and, as such, are required to comply with identification obligations on their own account.

408. The provisions contained in the guidance notes do establish the principle whereby the obligation to identify its customer's remains with the financial institution to which the business relation has been introduced. However, the approach taken appears piecemeal and is mainly associated to a scenario where the intermediary has a contractual link with the financial institution, which does not fall within the category of introduced business (as defined in Recommendation 9).

409. It would be beneficial if an indication of which agents or intermediaries, other than designated bodies, could act as third parties were provided, and that the steps of the CDD process which such intermediaries could be entrusted with were specified. The necessary preconditions (as set out in Recommendation 9) could then be more fully developed.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	• No legally binding obligations currently in force governing identification carried out by third parties or introducers on behalf of designated bodies.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

410. There are no statutory or other financial institution secrecy or confidentiality laws in Ireland that inhibit the implementation of the FATF Recommendations. The Irish AML/CFT framework reconciles the right to confidentiality of financial institutions' customers with competent authorities' need to access the information they may require to perform their supervisory, investigative and judiciary activities, with particular attention to those relevant to AML/CFT regulation.

411. Traditionally the issue of confidentiality regarding financial services has arisen in the area of banking. However an analogous duty may arise in other financial services relationships where there is an express or implicit understanding between the parties that the customer's information will be confidential (e.g. a brokerage service or insurance undertaking). The duty arises under common law, from an express or implied term in the contract governing the relationship between the financial institution and its customer.

412. Breach of the duty will give rise to a claim against the financial institution for damages if a loss is occasioned by virtue of the breach. The above duty is not an absolute one, however. There are the following exceptions:

a) where the customer consents to the disclosure;
b) where there is a duty to the public to disclose;

c) where it is in the interests of the bank to disclose (e.g. to protect its own position *vis a vis* the customer in a court case); and
d) disclosure under compulsion of law (e.g. under the CJA (1994) or to the Financial Regulator under its statutory inspection powers).

413. Effectively, this means that institutions can, and do provide the necessary information to competent authorities.

414. There are no secrecy or confidentiality laws that inhibit the sharing of information between the competent authorities where this is required under the FATF Recommendations. Industry associations, and more noticeably the banks, do operate occasionally as information clearing houses to the benefit of their associates.

415. However, despite the lack of such mechanisms the secrecy and confidentiality laws does not inhibit the application or Recommendations 7, 9 and Special Recommendation VII since there are no measures currently in force for these Recommendations.

3.4.2 Recommendations and Comments

416. Ireland should ensure that when implementing Recommendations 7, 9 and Special Recommendation VII, that secrecy and confidentiality laws do not inhibit financial institutions from relevant exchanges of information.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	The Recommendation is fully met.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

417. Section 32, (9) of the CJA (1994) requires that designated bodies retain the following documentation "*for use as evidence in any investigation into ML or any other offence*":

a) a copy of all materials used to identify a customer or prospective customer;
b) the original documents or copies admissible in legal proceedings relating to any transaction.

418. Documents must be retained for a period of 5 years after the business relation has ended or the last transaction has been executed.

419. The guidance notes qualify the requirements of the CJA (1994) in paragraphs 84 to 91. Customer records are referred to as mainly identification material. Transaction records are specified as "*records in support of entries in the accounts in whatever form they take e.g. credit/debit slips or cheques, bank waste sheets etc*". It is acknowledged that the form in which records are retained should strive to reconcile the need to reduce the volume and density of records with the requirement that their status as proof of evidence is preserved.

420. Specific provisions are applied as far as suspicious transactions are concerned, in order to enable law enforcement and the judiciary to "*compile a satisfactory audit trail for suspected laundered money*". The following data must be retained:

a) the identity of the beneficial owner of the relevant account(s);
b) the volume of funds flowing through such account(s);
c) only for selected transactions, the origin and destination of funds from which they were deposited or withdrawn.

421. Alongside the obligations expressly posed by AML/CFT regulation, there are an extensive set of specific provisions requiring that companies comply with explicit record and book keeping requirements. Section 147 of the Companies Act (1963) requires that every company keep books of accounts relating to, among other things, "*all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place*". Such books should be kept so as "*to give a true and fair view of the state of the company's affairs and to explain its transactions*". Each single record is to be kept for 6 years from the date to which it relates. Infringements are punishable with a 6 months imprisonment or a fine.

422. Section 147 of the Companies Act (1963) is referred to in provisions concerning book keeping requirements applicable to some financial categories, although S.202 of the Companies Act (1990) seems to have replicated, and widened the requirements laid down in such regulation.

423. Section 17 of the Central Bank Act (1971) requires credit institutions to keep proper books and records enabling the Central Bank to discharge its supervisory function. The Central Bank may require records to be kept by credit institutions in addition to those books and records mentioned in s.147 of the Companies Act (1963). Section 17 is applicable to any entity authorised to carry out a money broking business, under S.112 of the Central Bank Act (1989), and to money remitters, under s.36 of the Central Bank Act (1997). Section 76 of the Building Societies Act (1989) essentially replicates the wording of s.147 and 202 of the Companies Act (1990).

424. Section 19 of the Investment Intermediaries Act (1995) specifies that the supervisory authorities may specify the books and records that investment business firms shall retain for the period that the supervisory authority may establish. Section 13 of the Insurance Act (1989) establishes that "*an undertaking shall maintain at its registered office or place of business in the State proper records of all business carried on by the undertaking in the State under its authorisation*." The applicable regulation for money lenders, as contained in s.101 of the Consumer Credit Act (1995), lays down a significantly detailed list of data records that must be retained by such intermediaries for 5 years. Records include, among other information, the name and address of the borrower, the amount of the credit granted, the date the credit is advanced and the amount of each repayment instalment.

425. Records retained for book-keeping purposes, in compliance with auditing and prudential obligations are certainly appropriate in connection with some of, but not all, the objectives pursued by AML/CFT regulation. The latter fails to require designated bodies to carry out an exhaustive CDD procedures; the type of records that financial institutions retain does not accordingly meet all the record-keeping requirements as set out by Recommendation 10.

426. It is implicit in s.32 (9) that such records retained are accessible by competent authorities performing investigations. Section 63 (1) of the CJA (1994) allows a member of the Garda to apply to a judge in order to gain access to any material relating to an investigation into a ML offence or an offence of TF.

427. Alongside the obligations expressly posed by AML/CFT regulation, other provisions require banks, funds, building societies and money lenders to allow competent authorities access to their records.

Special Recommendation VII:

428. No legally binding provision imposes specific information gathering requirements with reference to wire transfers. The evaluators were advised that appropriate regulations will be introduced as a result of any final agreement that may be reached in the context of proposed EU Regulation on information to accompany transfers of funds.

429. The guidance notes encourage (paragraph 94), subject to any technical limitations, ordering customers to include information on their own name and address and that of the beneficiary for all credit transfers made by electronic means, both domestic and international, regardless of the payment or message system used. In cases where this information is not contained in the message, the originating credit institution should retain full records of the ordering customer. Funds transfers where both ordering and beneficiary customers are credit institutions are exempt from this requirement.

430. The actual banks' procedures, as explained to the team of evaluators, require that transfers lacking all required information are not processed and that incoming wire transfers were usually monitored against relevant sanctions lists. No such requirement, however, was explicitly posed in the material defining the procedures implemented in one of Ireland's main credit institutions.

3.5.2 Recommendations and Comments

431. Record retention requirements for financial entities are derived from the combined wording of the provisions contained in AML/CFT regulation and of general book keeping obligations applicable to all corporate entities. The obligations posed by such provisions seem to generate standards that are uniformly implemented across the spectrum of almost all financial activities.

432. An EU Regulation will introduce a legally binding requirement that will oblige financial institutions to collect and transmit the necessary originator information. Irish authorities should work with the Irish Payment System Organisation (IPSO) to ensure the requirements of Special Recommendation VII are smoothly implemented. The industry is reportedly already working with IPSO on the development of a policy and technical enhancements to deliver on the requirements of SR VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	C	The Recommendation is fully met
SR.VII	NC	• The requirements for transfers to record include and maintain originator information is limited and currently only contained in guidance. • There is no obligation to verify that the originator information is accurate and meaningful. • There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete.

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

433. There are no explicit provisions that impose a direct obligation on designated bodies to detect and monitor transactions that may feature unusual or suspicious patterns. Section 32 (9A) of the CJA (1994) requires designated bodies to adopt measures to detect (and prevent) the commission of the offence of ML and TF. Such measures are defined in s.32 (9B) and, include the following:

a) the establishment of procedures to the end of detecting the commission of such (ML and TF) offences;
b) the definition of instructions to be supplied to management and employees;
c) the training of the latter so as to enable management and employees to identify transactions that may be related to the offences as indicated in s.(9A).

434. One could imply from these provisions that transactions that may be associated to ML or TF would feature some unusual elements that could support the suspicion that there may be underlying unlawful activity. Examples of potential anomalies are contained in the guidance notes (paragraph 96 and 97). The guidance notes for financial institutions other than banks also provide a much more exhaustive list of indicators to assist detecting unusual transactions than those included in the guidance notes for credit institutions.

435. The general principle underlying the list of indicators establishes that "*a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account"*. However the requirement that transactions or activity should be detected and monitored is not posed explicitly in law or guidance, the guidance provides a listing of unusual transactions and conduct, which is sometimes incomplete.

436. The only requirement that records concerning suspicious transactions should be presented in a written form is contained in guidance notes (paragraph 104) where it is suggested that "*it would be prudent for internal procedures to require that reports of suspicious transactions to the*" MLRO are made in written form.

437. In practice it appears that the procedures adopted by financial institutions often seek to clarify the purpose and nature of the business relationship, seeking to identify the source of the funds involved in the transactions being performed and establishes the consistency of the transactions themselves with the bank's known customer's profile.

Recommendation 21

438. Under s.57A (1) of the CJA (1994), countries where appropriate measures for the prevention and detection of ML have not been implemented can be designated by the Ministry of Justice, after consultation with the Ministry of Finance. In practice this provision has been used to designate countries that have been listed by the FATF for countermeasures, but not countries that were merely listed as NCCT countries. Those jurisdictions that have been identified by the FATF as requiring additional countermeasures are designated under Statutory Instruments which require all transactions with such jurisdictions to be reported to the FIU. When additional countermeasures are removed by the FATF the Statutory Instruments are revoked. However, institutions are advised to continue to monitor transactions with any jurisdictions that remain on the FATF Non-Cooperative Countries and Territories (NCCT) list and report any suspicions to the FIU.

439. Once countries are designated the mechanism requires designated bodies to report all transactions that may be linked to the prescribed countries. In 2003, 7 reports were filed, 18 were filed in 2004. Letters are issued by the Financial Regulator to all known MLROs providing them with updates on the NCCT list requiring them to pay special attention. No additional scrutiny of the actual AML/CFT regulation implemented in other jurisdictions is exercised.

440. Although there is legal power under s.57A CJA (1994) to designate other countries that do not apply or insufficiently apply the FATF Recommendations, no such designations have been made to date. However, among the indicators to be deployed for the detection of suspicious transactions, a mention is made of "*countries which are commonly associated with the production, processing or marketing of drugs;* (…)*; tax haven countries*". This does not define countries with inappropriate AML/CFT regulation. There is also no explicit requirement to examine and monitor transactions that do not have apparent economic or lawful purpose from countries designated under s.57A (1) of the CJA (1994) and to make findings available to competent authorities, or to apply counter-measures to countries which continue to insufficiently apply FATF Recommendations.

3.6.2 Recommendations and Comments

441. More explicit and comprehensive provisions should be introduced with regard to transaction monitoring and detection measures that should be adopted by designated bodies. The guidelines are essentially focused on the listing of indicators and examples of suspicious transactions, which, though useful are simplified. Legally binding provisions should also require that the background of such transactions be adequately investigated and that findings in this respect should be retained in written form.

442. Provisions currently in force are focused on the automatic reporting of transactions associated with those countries or jurisdictions with inadequate AML/CFT systems such as NCCTs. The Irish authorities should introduce mechanisms allowing designated bodies to be made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards and accordingly define safeguards ensuring that financial institutions and entities, based in countries featuring inadequate degrees of compliance, seeking access to the Irish financial sector are appropriately monitored.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	• There is no explicit requirement to pay attention to all unusual, complex large transactions and transactions with no visible economic purposes, nor to further examine these situations and to set out these findings in writing.
R.21	PC	• There is no requirement to examine and monitor transactions from countries who insufficiently apply FATF Recommendations that have no apparent economic or lawful purpose, or to make these findings available to competent authorities.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis[66]

443. Section 57 of the CJA (1994) sets out the obligations on reporting suspicious transactions. Section 57 (1) requires a designated body and their employees to report to the Garda and the Revenue

[66] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts should be read together.

Commissioners where they suspect that an offence under s.31 (ML) has been or is being committed. The offence of ML is based on any criminal conduct and accordingly covers all indictable offences. The obligation to report is extended to any offence, as set out in s.32 of the CJA (1994) (as amended).

444. Section 36 of the CJA (2005) amends s.57 (1) of the CJA (1994) by extending the obligations on designated bodies and their employees to report to the Garda and the Revenue, suspicions that an offence of TF, as defined in s.13 of the Act, has been or is being committed in relation to the designated body's business.

445. In addition, under s.33 3AK(3) the Central Bank Act (1942) (as inserted by s.26 of the Central Bank and Financial Services Authority of Ireland Act (2003)) on disclosure of information, the Financial Regulator is obliged to report to the Garda and Revenue Commissioners any information relevant to that body that leads it to suspect that a criminal offence may have been committed by a supervised entity or a supervised entity may have contravened a provision of an Act to which this section relates.

446. Section 57(3) of the CJA (1994) requires designated bodies to define the internal procedures to be followed by its employees in order to file STRs internally (see section 3.8 of the report). The guidance notes specify (paragraph 99) that an employee is in compliance with their obligation to report a suspicious transaction if they have reported their suspicion in accordance with the internal procedure established within their designated body.

447. The guidance notes attribute to the MLRO the responsibility to decide whether a transaction that has been reported to him needs to be reported to the Garda and the Revenue Commissioners.

448. The guidance notes for financial institutions (paragraph 99) state that "*financial institutions must refrain from carrying out* [suspicious] *transactions* (…) *until they have apprised*" the Garda and the Revenue. The guidance notes then specify (paragraph 108) that, when this is impossible or when reporting may "*frustrate efforts to pursue the beneficiaries of a suspected ML operation*", then the STR must be filed immediately after the transaction has been carried out. No reference as to the timeliness of the report is made in the documentation.

449. The FATF second round mutual evaluation of Ireland commented there was often a time lag elapsing between the execution of a transaction and when it was reported to the FIU. Evaluators were advised that an improvement in this respect has been achieved. However, the timeliness whereby STRs are transmitted to the FIU could be further significantly improved. Part of the reason for the delay is the lack of an on-line reporting system. Such a system is in the process of being developed in order to facilitate and speed up the reporting process.

450. Section 57 (1) of the CJA (1994) requires that any transaction held to be suspicious should be reported to the Garda and the Revenue Commissioners, regardless of the amount. The reporting obligation refers to the suspicion that a relevant offence has been committed in relation to the business activity carried out by the designated body. It can only be inferred that the report is required to be produced under s.57 irrespective of whether a transaction has been performed or not.

451. The ML offence defined in s.31 of the CJA (1994) refers to all indictable offences, including tax offences. Section 57 (1), establishes the reporting obligation, referred to s.31 applies also to tax offences. In addition, the guidance notes specify (paragraph 16) that tax-related reasons may be used for screening ML operations by justifying the elements of suspicion associated to an unusual transaction with tax purposes. As a consequence of the breadth of definition of the ML offence, designated bodies are not required to identify what unlawful conduct underlies a suspicious transaction, since their obligation is merely that of reporting the suspicion that there may be an underlying criminal offence.

452. Under s.7 of the POCA (1996) when unlawful conduct occurs outside Ireland, it can be held to be a predicate crime for ML if it is a criminal offence both domestically and under the law of the country or the territorial unit in which it occurs.

STR Results

Breakdown of Reports by Financial Institution				
Institution Type	2001	2002	2003	2004
An Post	19	46	51	32
Bank	1481	2822	3059	3883
Building Society	1110	267	211	165
Bureaux de change	18	17	2	Nil
Credit Card Company	3	45	24	39
Credit Union	89	119	110	506
Foreign Bank	15	174	61	0
Insurance Company	82	205	123	98
Investment Managers	17	22	25	47
Money Remittance Company	196	681	583	661
Stock Brokers	5	0	3	1
Regulatory Authority	5	0	2	13
Total	3031	4398	4254	5464

453. The number of STRs filed has been increasing since 2001 and, the bulk of the reports (over 83%) come from the banking and building society sector. The largest numbers of STRs are received from the banking sector (3883 in 2004) and the major clearing banks account for over 75% of the STRs received (5 banks account for nearly 90% of all STRs filed by credit institutions). Eleven of the 44 credit institutions to carry out banking business[67] in Ireland have submitted STRs in the past 4 years.

454. Notable trends include the decline in reports made by building societies and bureaux de change (since Ireland's entry into the Euro zone in 2002), and the relatively high number of reports made by credit unions and money remitters. There has been consolidation in the building society sector over recent years which took the form of some amalgamations of smaller societies with larger societies and two conversions of larger building societies to banks. There are currently 3 building societies one of which is also part of one of the major domestic banking groups. Credit unions represent the highest concentration of STR by individual institutions within a sector; over 130 credit unions have submitted STRs. The evaluation team were informed that the majority of credit union reports are related to potential Revenue offences. Relatively few STRs have been made by stockbrokers.

455. The difference in numbers of reports received from different sectors may, in part be due to differing rates of 'filtering' of STRs by the designated institutions. The evaluation team were informed that in the

[67] Under s.1 (a) of S. 1 of the Disclosure of Certain Information for Taxation and Other Purposes Act (1996)

funds industry 90% of the reports received internally by the MLRO are filtered out, with 10% submitted as STRs; whereas with credit unions only a very small minority of reports made internally were not passed on as STRs.

456. Overall, the number of STRs received is comparable to other jurisdictions that operate an exclusively suspicion-based STR regime. The number of STRs has risen over time as legislation has extended STR obligations and the number of reports, and the trends appear to be generally satisfactory. Despite this, and given the broad scope of the ML offence, the concentration of reporting from particular sectors and the small number of institutions within these sectors that report STRs reveals inconsistencies between sectors and institutions in their reporting patterns. This should be kept under review.

457. Designated bodies are required to report where they suspect that a ML offence under s.31 of the CJA (1994) has been committed. The ML offence extends to conduct occurring outside the state on the basis of dual criminality. Financial institutions are therefore obliged to submit an STR where there is a suspicion that the funds are proceeds of foreign criminal acts that would have constituted a predicate offence for ML domestically.

Special Recommendation IV

458. Section 36 of the Criminal Justice (Terrorist Offences) Act (2005) amends s.57 of the CJA (1994) by extending the obligations on designated bodies and their employees to report to the Garda and Revenue suspicions that an offence of financing of terrorism has been or is being committed.

459. The evaluation team were informed that the reporting obligation concerning transactions suspected to be linked to TF is not limited to those individuals or organisation contained in the lists of suspected terrorists that are circulated by national and international bodies. Designated entities are required to also report those cases where there is a suspicion that legitimate funds may be used for financing terrorists, terrorist organisations or terrorist acts.

460. A breakdown of STRs made by institutions in relation to suspected TF was not available. However, between 2001 and 2004, 550 STRs were received indicating a suspicion of TF.

Recommendation 14

461. The protection of employees of designated bodies is ensured by s.57 (7) of the CJA (1994), stating that pursuant to a suspicious transaction disclosure made in good faith the person making the disclosure should not incur a liability of any kind for breaching any statutory or other restriction upon the disclosure of information.

462. Section 58 (2) of the CJA (1994) states that where a report has been made under s.57(1) or (2) of the Act, a person who knowing or suspecting that such a report has been made makes any disclosure which is likely to prejudice any investigation arising from the report shall be guilty of a “tipping off” offence.

463. The qualification of the “tipping off” offence to only apply in situations where the disclosure that an STR has been made, to situations where it is “*likely to prejudice*” an investigation, infers that there is a degree of discretion in disclosing if an STR has been made. The evaluation team were informed that institutions which submit STRs have a close liaison with the FIU to ensure that any actions taken in relation to subjects of STRs do not prejudice investigations and while the legislation states that for a tipping off offence to be proven, disclosure must be shown to be "*likely to prejudice*" an investigation, the evaluation team were persuaded that this presented a very low evidentiary threshold.

464. The guidance notes require reports to the Garda and Revenue to be submitted by the MLRO who will be the main point of contact with the Garda or Revenue. Paragraph 111 of the guidance notes for credit institutions state that the origins of financial disclosure are not revealed because of the need to protect the disclosing institutions and to maintain confidence in the disclosure system. When a case is prepared for Court, if an STR exists it is classified as sensitive material and is not openly available.

465. In spite of provisions in the guidance, designated bodies did express concern over the degree of confidentiality applicable to STRs and over the effectiveness of the safeguards that are intended to prevent identification of the staff filing an STR.

466. Section 57(6) of CJA (1994) states that, in assessing compliance with the reporting obligation, "*a court may take account of any relevant supervisory or regulatory guidance which applies (…).*" Rather than affording any particular legal status to Guidance, it seems that such provision can be more appropriately appealed to in case of non-compliance, for instance, a defendant could plead the provision contained in the guidance in case of failure to report a transaction that does not match the indicators established in the Guidance. However, in actual fact, in order to benefit from section 57 (6) as a defence, compliance with the Guidance has to be proved, which can be arguably held to be tantamount to granting mandatory status to Guidance.

Recommendation 25 (feedback and guidance related to STRs)

467. There is no regulatory provision obliging competent authorities to provide specific feedback to designated bodies. Nonetheless, in practice designated bodies receive different types of feedback and guidelines. The guidance notes for different sectors have been issued with the approval of the MLSC.

468. All guidance notes contain a section establishing general indicators for the detection of suspicious transactions, with additional indicators addressed to the different categories of financial entities. The guidance notes also set out examples of suspicious transactions together with instances of uncovered ML schemes.

469. The guidance notes also set up a framework for the provision of case-by-case feedback by the FIU (paragraphs 112 and 113), which is given on a six-month basis, or should new developments emerge that may affect reporting emerge. Specific feedback consists of a standardised form indicating the current status of each STR whether the case is being pursued, whether the commission of an offence has been detected, or a criminal proceeding has been initiated or, conversely, the case has been closed.

470. On receiving each STR, the FIU transmits an acknowledgement to the reporting institution or business. The evaluators were informed that feedback on ML typologies is mainly provided within the framework of training seminars organised by various designated bodies. Within these sanitised cases and trends are presented. The FIU itself is committed to hosting annual meetings with compliance officers to discuss matters of mutual interest in combating ML, although such gatherings do not appear to be taking place on a regular basis.

471. Feedback to each designated body is also provided by the Revenue Commissioners. However, due to confidentiality constraints, the Revenue are not able to give case-by-case feedback, and the outcome of the STRs filed by a designated body are outlined only in general terms:

a) cases are classified on the basis of the tax evasion risk; the list of the criteria used to appraise the risk is also included;
b) the share of STRs that are going to be used to each different end (prosecution, audit, ongoing enquiry, intelligence purposes, no further action);

c) a list of indicators is provided for the detection of suspicious transactions which may underlie tax-related offences;
d) remarks are made with respect to the informational content of the STRs filed, outlining what additional information and comments should be added.

472. The highly structured fashion whereby Revenue Commissioners is able to provide feedback to designated bodies raises awareness towards the detection of tax-related offences. The same awareness raising effect does not appear to occur for ML offences.

473. Designated bodies expressed the view to the evaluation team that more timely feedback concerning the STRs they have filed could help them refine their AML system and also enable them to normalise their relationship with those customers that have been reported to the FIU, by either monitoring them more attentively, should they actually be connected to unlawful activities, or restoring normal business relations should their suspicion turn out to be groundless.

Recommendation 19

474. The Irish authorities provided material to the evaluation team that indicated that on different occasions, Ireland has considered the feasibility and utility of implementing a system whereby designated institutions would report all domestic and international transactions over a certain threshold to a national central agency with a computerised database. However, Ireland has concluded that, so far, it has not found sufficient feasibility and utility to introducing such a system. Customs has nevertheless established a confidential reporting procedure under the Drugs Watch programme whereby those involved in the transportation and logistics business report suspicious movements. The reporting of suspicious cash consignments is included in this arrangement.

475. The Irish customs service has instigated bilateral action to co-operate on unusual shipments of precious metals that have been detected entering the country.

Additional Elements

476. Information on cash seizures at borders is recorded by Customs. All cash seizures are subject to a formal investigation in order to seek forfeiture of the cash through the courts under s. 38, CJA 1994. As part of the investigative process, formal written enquiries are made with the MLIU/FIU in respect of each individual seizure and consideration is given as to whether a ML investigation should be commenced. In fact, some of the cash seizures by Customs have resulted in successful ML convictions.

3.7.2 Recommendations and Comments

477. The high degree of concentration in STR reporting should be addressed to ensure that STRs are received from a more representative sample of the financial sector.

478. The second round mutual evaluation noted the excessively long time lag elapsing between the execution of a transaction and the moment it was reported to the FIU. Although evaluators were advised that an improvement in this respect has been achieved, it would seem advisable that the issue could be addressed explicitly in a relevant regulation that requires that STRs be transmitted to the FIU in timely fashion.

479. The procedure adopted by regulation is sufficiently wide to encompass any transaction, irrespective of whether it has been finalised or not. A more explicit obligation to report also attempted transactions should be introduced so as to extend such obligation also to transactions that may not be finalised for

reasons other than those that are already explicitly indicated in guidance notes. The scope of these transactions is limited.

480. The wording of the provision establishing protection of reporting entities and the employees making disclosures could be tightened to avoid the name of a reporting entity or officer being disclosed. It would be advisable that the safeguards granting the confidentiality of the source of STRs be established explicitly within the relevant regulation.

481. The provisions concerning tipping off are susceptible to misinterpretation, and the risk that a "tipping off" offence would not be established if disclosure is unlikely to prejudice the investigation.

482. It would be desirable that feedback is provided on ML and TF trends and techniques, in the manner already provided by the Revenue Commissioners in relation to tax-related offences. The feedback and awareness-raising function in Ireland should be targeted to assist in the detection of all ML cases.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	C	This Recommendation is fully met.
R.14	C	This Recommendation is fully met.
R.19	C	This Recommendation is fully met.
R.25	LC	• General feedback could be improved by co-operation between the FIU and the Revenue Commissioners so as to enhance the provision of information on current methods, trends and techniques.
SR.IV	C	This Recommendation is fully met.

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

483. Section 32 (9A) of the CJA (1994) requires designated bodies to adopt measures to prevent and detect ML. Section 32 of the Criminal Justice (Terrorist Offences) Act (2005) extends this provision to include TF. According to s.32 (9B) of the CJA (1994) these measures must include:

a) Establishment of procedures to be followed by directors or other officers, and employees in the conduct of business;
b) Giving of instructions to directors or other officers, and employees on the application of the EU Directive on ML and;
c) Training of employees for the purpose of enabling them to identify transactions which may be related to ML (and financing of terrorism) and the procedures to be followed in such cases.

484. The sectoral guidance notes set out the appropriate measures to be taken by designated bodies to fulfil education and training requirements under the CJA (1994) as amended.

485. The guidance notes also require designated bodies to appoint an MLRO (paragraphs 100 to 104 of the credit institutions guidance notes). The type of person appointed as MLRO will depend on the size of the institution and the nature of its business, but they should be sufficiently senior and have the necessary authority to fill their role. In the case of a credit institution this would usually be a senior member in the fraud, compliance, internal audit area or in the case of a smaller credit institution may be at senior management level such as the Chief Executive. Similar arrangements apply to other designated bodies; the position of the MLRO will depend on the size of the institution.

486. Paragraph 26 of the guidance notes deals with the requirements to develop appropriate compliance management arrangements. The evaluation team were informed in the meetings with representatives of the private sector that Irish financial institutions had appropriate management arrangements for compliance officers and that compliance officers and MLROs were appointed at a senior management level.

487. The MLRO has responsibility for deciding whether the information contained in reports received from staff should be reported to the Garda and the Revenue Commissioners. In making this judgement the MLRO considers all other relevant information concerning the person or business to which the report relates. This may include a review of other transaction patterns and volumes through the account, length of account relationship and referral to identification records held (see paragraph 103 credit institutions guidance notes).

488. Paragraph 26 (3) of the guidance notes deals with the requirements of the compliance officer having access to systems and records to fulfil their responsibility. Compliance officers and private sector representatives in Ireland indicated that the AML/CFT compliance officers have timely access to customer identification data and other CDD information, transaction records, and other relevant information. The issue of timely access to customer identification data and other CDD information, transaction records, and other relevant information is adequate.

489. Section III of the credit institutions guidance notes includes a section on internal controls, policies and procedures. This requires that institutions have adequate arrangements and procedures in place to and to provide for the testing of arrangements and procedures in place by way of audit. The independent audit function is also detailed in section 3 Internal Controls of the Licensing and Supervision Requirements and Standards for Credit Institutions issued by the Financial Regulator. This requires that the Financial Regulator must be satisfied that:

a) directors and senior management exercise adequate control over the credit institution;
b) comprehensive risk management systems commensurate with the scope, size and complexity of all the credit institutions activities, including derivatives and associated risks, are in place, incorporating continuous measuring, monitoring and controlling of risk, accurate and reliable management information systems, timely management reporting and thorough audit and control procedures; and
c) where the size or nature of the operations of the credit institution warrant it, a properly staffed internal audit function exists which has direct access to the board of directors or an appropriate sub-committee of the board.

490. The EU Directive 2000/12/EC (the Directive which codified other EU Directives including the Second Banking Coordination Directive and the Consolidated Supervision Directive) states that member states competent authorities should require that credit institutions have sound administrative and accounting procedures and adequate control mechanism. This is a legal requirement in Ireland implemented by SI 395 (1992).

491. EU Directive 95/26 on reinforcing supervision (the BCCI Directive) was implemented in Ireland by means of SI 267 (1996). This covers supervision of Credit Institutions, Stock Exchange Member Firms, and Investment firms. Under the provisions of this SI a supervisory authority shall not grant an authorisation to a firm where: (a) the existence of close links between that firm and other persons or (b) the laws, regulations or administrative provisions of a state which is not an EU member governing one or more persons with whom the firm has close links or difficulties involved in their enforcement, would prevent the effective exercise of its supervisory functions. A supervisory authority is required to revoke an authorisation of such a firm in such instances as outlined above which would prevent the effective exercise of its supervisory functions. There are also provisions to require firms to provide information to the supervisory authority in relation to the above matters and for auditors to communicate relevant information to the supervisory authority.

492. Statutory obligations exist regarding staff training in s.32 (9B) of the CJA (1994) as amended. The guidance notes set out the details and appropriate measures to be taken by designated bodies to fulfil the education and training requirements of the legislation. The guidance also includes a section on internal controls, policies and procedures (section III - credit institutions guidance notes). This requires that institutions have adequate arrangements and procedures in place to provide continuing training programmes for employees.

493. Directors and mangers have to go through the fit and proper screening of the Financial Regulator. This is based on the following legislation for the different institutions:

a) ***Banks*** - Regulation 16(2) of the EC (Licensing and Supervision of Credit Institutions) Regulations, 1992. A licence may be subject to conditions imposed by the Financial Regulator under s.10 of the Central Bank Act (1971).
b) ***Building Societies*** – Financial Regulator may grant an authorisation subject to conditions, such as the removal of a Director or other officer – s.17(6) of the Building Societies Act, 1989.
c) ***Investment Business Firms*** - Section 10(5)(d) and 36 of the Investment Intermediaries Act 1995.
d) ***Stock Exchange Member Firms*** – Section 18 (5) (d) of the Stock Exchange Act (1995).
e) ***Insurance Undertakings*** - Sections 20 and 20A of the Insurance Act (1989); Regulation 7(2)(e) of the EC (Non-Life Insurance) Framework Regulations (1994); Regulations 7(2)(e) and 14 of the EC (Life Assurance) Framework Regulations (1994).
f) ***Mortgage Intermediaries*** - Section 116(3)(e), (9)(e) and (11)(g) of the Consumer Credit Act (1995).
g) ***Moneylenders*** - Sections 93(5) (i), (10) (f) and (11) of the Consumer Credit Act, (1995).
h) ***Money brokers*** - Section 111 of the Central Bank Act (1989).
i) ***Funds*** - Section 4 of the Unit Trusts Act, 1990; UCITS Notices (November 2004): UCITS 1.1 Paragraphs 5 and 7; UCITS 2.1, Paragraph 5; UCITS 3.1: Para 5; Sections 256(4), 257 and 258 of the Companies Act (1990). The Companies Act (1990) also confers a broad power to determine what information is required for an authorization and to impose conditions appropriate and prudent for the orderly and proper regulation of the business of investment companies).
j) ***Bureaux de Change and Money Transmission Service Providers*** – Section 30 of the Central Bank Act (1997) allows the Financial Regulator to demand information on application for a licence and to impose conditions on a licence).

494. The guidance notes include a section on internal controls, policies and procedures (section III - credit institutions guidance notes. This requires that institutions have adequate arrangements and procedures in place to provide for screening of potential employees when recruiting. Financial institutions informed the evaluation team that they would interview and check references before hiring of all personnel. For positions where integrity and security is important, for example within the compliance department, a higher level scrutiny is usually applied.

Recommendation 22

495. Within Ireland a number of credit institutions are licensed by the Financial Regulator to operate. Fifty credit institutions are authorised to conduct banking business within Ireland.[68] Thirty one institutions authorised in another European Economic Area (EEA) operate within Ireland; 170 credit institutions from the EEA have notified the Financial Regulator of their intention to provide services on a cross-border basis as have 72 EEA credit institutions who offer services other than deposit taking. The Financial Regulator requires that management of financial institutions pay particular attention to higher risk foreign operations.

496. Guidance notes for credit institutions (paragraph 24) state that where a credit institution has overseas branches, subsidiaries or representative offices, it is recommended that a group policy be established to ensure that where possible such overseas operations comply, at a minimum, with the standards set out in the guidance notes. The explanatory foreword to the guidance notes indicates that the measures to counteract ML should be taken in line with the FATF Recommendations. The guidance notes for financial institutions (paragraphs 42 and 43) require that FATF standards in relation to customer identification should be applied to customers in foreign branches and subsidiaries.

497. No mention is specifically made in the guidance notes that particular attention should be paid to branches and subsidiaries that do not, or insufficiently apply FATF Recommendations. Paragraph 24 of the guidance notes does however require that an overseas branch or subsidiary of an Irish credit institution is required to 'comply, at a minimum, with the standards set out in these guidance notes'. The evaluation team were informed that in practice financial institutions ensure that their foreign branches and subsidiaries observe consistent AML/CFT measures with Irish requirements and the FATF Recommendations through global or group policies.

498. The European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992 (SI 396 (1992)) requires financial regulators to supervise a credit institution and its associated enterprises on a consolidated basis in accordance with the requirements of the EU Directive on the Supervision of Credit Institutions on a Consolidated Basis (92/30/EEC). On this basis, institutions would be expected to inform the relevant financial regulator when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures when it is prohibited by local laws.

Additional Elements

499. Irish financial institutions are regulated in compliance with the Basel Core Principles, the IOSCO objectives and principles of securities regulation and the IAIS supervisory principles.[69] The team noted that in May 2003 insurance supervision had been moved from the Department of Enterprise Trade and Employment (DETE) to the Financial Regulator in line with recommendations made in the second round mutual evaluation report (see paragraph 96 (g)). Additionally, Ireland has also transposed, through the

[68] Pursuant to Section 9 of the Central Bank Act (1971)

[69] Ireland was assessed by the IMF on the Basle, IOSCO and IAIS core principles in 2000: http://www.imf.org/external/np/rosc/rosc.asp#I

European Communities (Financial Conglomerates) Regulations 2004 (SI 77 of 2004) the EU Financial Conglomerates Directive on the supplementary supervision of credit institutions, insurance undertakings and investment firms that are within a financial conglomerate.

3.8.2 Recommendations and Comments

500. Recommendations 15 and 22 are partially dealt with in the guidance notes and partially in law. Ireland should ensure that the current requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation. Currently minimal obligations are required through the CJA (1994) as amended and through the Financial Regulator's Licensing and Supervision Requirements. Those obligations currently in guidance should be subject to sanction.

501. The guidance notes require that financial institutions should apply the standards required of the Forty Recommendations, but provides little on how this should be conducted beyond suggesting the development of inter group policies in relation to customer identification requirements.

502. There are no obligations for financial institutions to pay particular attention to jurisdictions which insufficiently apply the FATF Recommendations (or to apply the higher standard of AML/CFT requirements where this is permitted). It is recommended that Ireland include this obligation in its legislation.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	• There are no legislative or other enforceable obligations to ensure that compliance staff have timely access to CDD and transaction information and that require screening procedures for hiring employees.
R.22	LC	• Some of the requirements of this Recommendation legislation and some are in guidance. The requirement for financial institutions to ensure that foreign branches and subsidiaries comply with FATF standards is in guidance. • There are no legislative or other enforceable obligations to ensure that financial institutions should be required to pay particular attention to branches and subsidiaries in countries that insufficiently do not apply FATF Recommendations, nor that the higher standard of AML/CFT obligations should apply – although in practice this may be applied through group policies.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

503. There is a detailed authorisation process in place for establishment of credit institutions in Ireland. Specific requirements on authorisation and ownership are set out in the licensing and supervision requirements and standards for credit institutions which set out details on required legal form, corporate structure, proposed objectives and proposed operations. All applications must be submitted to the Board (Authority) of the Financial Regulator for approval. In addition the Central Bank has a role in consideration of such applications in the context of its responsibilities in relation to maintenance of overall

financial stability. The authorisation process in place for establishment of credit institutions in practice prevents the establishment or operation of shell banks.

504. Institutions have been advised of the FATF Recommendations regarding correspondent relationships by a letter from the Financial Regulator issued after the issuance of the revised FATF Recommendations (2003). Questions regarding the recommendations in relation to correspondent banking and shell banks are included in the inspection manual of the Financial Regulator and may be used for on site inspections.

505. No shell banks operate in Ireland. At the time of the on-site visit, shell banks and correspondent banking relationships with shell banks were not prohibited by legislation. Representatives of the financial sector informed the team that in practice they do screen their correspondent banking relationships thoroughly and would stay clear of relationships with shell banks as a matter of good banking practice. In the case of banking groups often the parent company will have collective approach to scrutinise correspondent relationships.

506. The Irish authorities informed the evaluation team that legislative provisions are expected to be introduced requiring the prohibition of correspondent banking relationships with shell banks following the review of requirements for the implementation of the 3rd EU ML Directive.

3.9.2 Recommendations and Comments

507. The establishment or operation of shell banks and the issue of correspondent banking relationship with shell banks should be included in any future Irish legislation. Ireland should prohibit financial institutions from entering into, or continuing, correspondent banking relationships with shell banks and require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	• Correspondent banking relationships with shell banks are not forbidden by law or regulation. There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks. • Financial Institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs; Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

Authorities/SROs roles and duties & Structure and Resources (R23, 30)

3.10.1 Description and Analysis

Recommendation 23

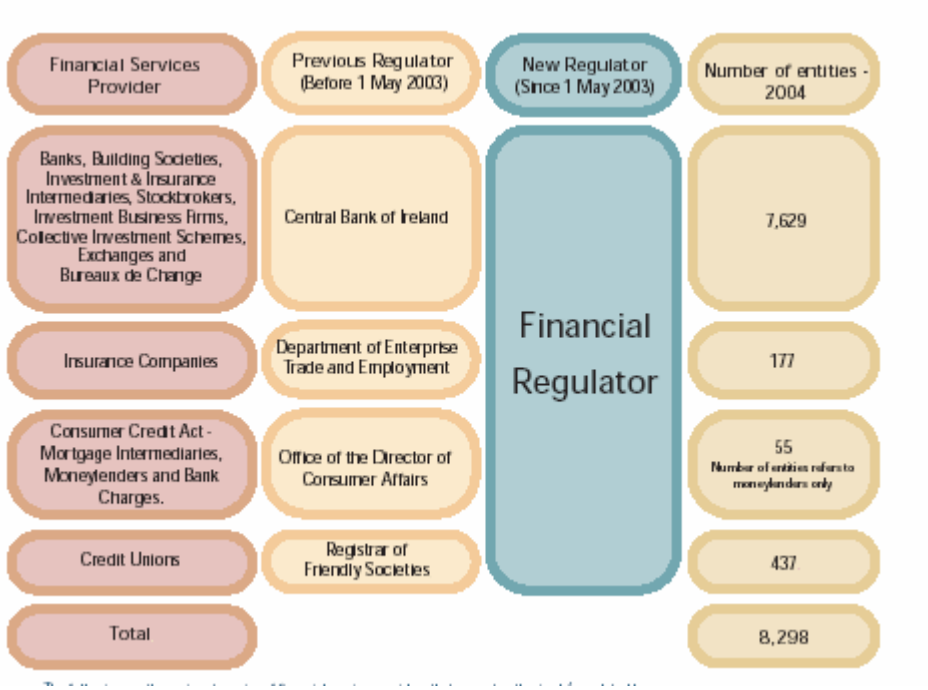
508. The Irish Financial Services Regulatory Authority (the Financial Regulator)[70] was established on 1 May 2003 as the single regulator of financial services firms in Ireland. The Financial Regulator is also responsible for regulation of all of the main categories of financial institutions. The range of firms covered includes banks, building societies, insurance companies, credit unions, investment and insurance intermediaries, mortgage intermediaries, funds, investment business firms, stockbrokers, exchanges, money lenders. Bureaux de change and money transmission services are also regulated by the Financial Regulator. The legislative basis for the Financial Regulator supervisory functions and financial institutions supervised by the Financial Regulator is included in annex 5 of the report.

509. Non-deposit taking mortgage lenders; and credit providers, who do not take deposits from the public, lend their own money and charge an annual percentage rate under 23% are not required to be authorised/regulated by the Financial Regulator since this arrangement has been provided for in Irish legislation because of their low risk and the almost insignificance of their size in the Irish economy (they are perceived as low risk and their numbers relatively low compared to other sectors of the Irish economy).

510. Financial institutions, prior to May 2003, were regulated and supervised by four different authorities:

a) Central Bank of Ireland
b) Dept of Enterprise Trade and Employment
c) Office of the Director of Consumer Affairs
d) Registrar of friendly Societies

511. The Financial Regulator now regulates the following institutions:



[70] http://www.ifsra.ie/index.asp.

Source: The Financial Regulator Annual Report May 2003, December 2004

512. The Financial Regulator is a distinct component of the Central Bank and Financial Services Authority of Ireland (CBFSAI) which took over certain functions previously carried out by the Central Bank of Ireland and other government departments/agencies from 1 May 2003, with clearly defined regulatory responsibilities. The Financial Regulator has linked, through the over-arching structure of the Central Bank and Financial Services Authority of Ireland, solvency regulation by the Financial Regulator with the wider need for systemic stability which is the function of the Central Bank and the European Central Bank. In total the Financial Regulator currently regulates about 7,000 separate entities.

513. The Financial Regulator operates primarily as a principles-based regulator placing high responsibilities on the boards and management of financial service providers. The Irish authorities reported to the mutual evaluation team that they saw this as the most effective and efficient use of regulatory resources.

514. Particular emphasis is placed on the fitness and probity of those who carry the responsibility for financial institutions. Placing good regulatory practice responsibilities on the boards and managements of financial service providers the Financial Regulator, requires that directors and senior managers are responsible for the implementation of appropriate risk management systems, effective internal controls, and properly resorting compliance and internal audit functions that can operate with a high degree of independence. The Financial Regulator defines the broad principles and checks to determine if an institution is operating appropriately.

515. The staff of the Financial Regulator made a good and professional impression on the evaluation team. It was clear that the Financial Regulator does keep up to date with international regulatory developments and it always implements new regulations in consultation with the private sector and other relevant parties. The Financial Regulator is a respected institution in Ireland and from the meetings with financial institutions it was clear that the Financial Regulator has a close relationship with the institutions under its supervision. The organisational structure of the Financial Regulator is contained in the annex 6 of the report.

516. The Financial Regulator requires the designated bodies which it authorises and supervises to ensure to take all necessary measures to effectively counteract ML and TF in accordance with the relevant legislation, the CJA (1994) and Criminal Justice (Terrorist Offences) Act (2005) and the relevant sectoral guidance notes. As part of its ongoing supervision process the Financial Regulator assesses the adequacy of procedures adopted by regulated entities to counter ML and TF and the degree of compliance with such procedures. The relevant sectoral guidance notes are used as the standard against which the Financial Regulator assesses the adequacy of institutions internal controls, polices and procedures to counter ML and TF.

517. The Financial Regulator has an obligation under Section 57(2) of the CJA (1994) to report STRs for any suspected breaches of s.31 (ML offence) or s.32 (identification, record-keeping, AML/CFT systems and training) by designated bodies which it supervises to the Garda and Revenue. Twenty STRs have been submitted since 2001 to the Garda.

Recommendation 30

518. The Financial Regulator is adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. They have sufficient operational independence and autonomy to ensure freedom from undue influence or interference.

519. Supervised institutions finance 50% of the budget of the Financial Regulator. The Financial Regulator staff are well-qualified, committed and made a very professional impression on the evaluation team. Feedback from the financial institutions was also excellent and they have a good relationship with their supervisor and show respect for this institution.

520. In July 2005, the Financial Regulator had 316 staff members. The staff are well qualified and of a high integrity.

the Financial Regulator Staff Numbers July 2005	
Banking Supervision	45.5
Consumer Information	30.5
Consumer Protection and Codes	54
Executive Board/Senior Management -	3.5
Securities and Exchanges	45.5
Legal and Finance	26
Insurance Supervision	25
Financial Institutions and Funds Auth.	63
Registrar of Credit Unions	19
Planning and Project Coordination	4

The organisational chart of the Financial Regulator can be found in annex 6

521. At the time of the on-site visit the number of staff was 316, the approved complement for 2005 was 345 staff. For 2006 the proposed total approved staff complement is 350 staff.

522. The Financial Regulator's staff are appropriately trained and maintain high professional standards, have high integrity and are appropriately skilled. They attend training courses and workshops on ML and TF, as well as on the job training. The industry guidance notes are used in their internal training sessions to raise awareness of AML/CFT issues.

Authorities' Powers and Sanctions – Recommendations 29 & 17

Recommendation 29

523. Irish law provides the Financial Regulator with extensive powers to require regulated financial service providers to comply with directions to establish procedures, maintain records and supply information with respect to their business, including in respect of policies and practices which such providers implement within their corporate group(s). The Central Bank Act (1997) also gives to authorised officers of the Financial Regulator the power to enter premises and seize and review documents.

524. In addition, Part IV of the Central Bank Act (1997) empowers the Financial Regulator to require a regulated financial service provider to submit a compliance certificate certifying that it has complied with all relevant obligations. The Financial Regulator may require such statement to be accompanied by an auditor's report as to whether the statement is fair and reasonable.

525. The insurance supervision department informed the evaluation team that they require all insurance institutions that the Financial Regulator supervises to submit a compliance certificate certifying that it has complied with all relevant obligations on a yearly basis.

526. the Financial Regulator has extensive powers to conduct inspections of the business and records of regulated financial service providers (e.g. under s.17A of the Central Bank Act (1971) in respect of banks, under s.41 of the Building Societies Act (1989) in respect of building societies, under s.65 of the Investment Intermediaries Act (1995) in respect of investment business firms, under s.8K of the Consumer Credit Act (1995) in respect of providers of consumer credit and s.36H of the Central Bank Act (1997) in respect of providers of money transmission services and bureaux de change). Such inspections may include sample testing. Similar powers are also available under s. 56 of the Stock Exchange Act (1995), for stockbrokers and under s. 90 of the Credit Union Act (1997) (as amended) in relation to credit unions.

527. In the period May 2003 - 31 December 2004 there were a total of 497 inspections and review meetings with banks, insurance companies, investment/stock broking firms, funds service providers and credit unions.

Number of on-site inspections and review meetings 1 May 2003 to 31 December 2004	
Banks and Building Societies On-site reviews / Inspections Review Meetings	 59 35
Insurance Inspections Review Meetings	 10 62
Credit Unions	102
Securities Inspections of: • Investments/ Stockbroking Firms • Fund Service Providers Review Meetings with • Investment / Stockbroking Firms	 40 16 139

• Fund Service Providers • Exchanges	33 1
Total	497

528. The Financial Regulator is obliged to report to the FIU and the Revenue Commissioners suspicions of ML or TF offences, or a breach of Irish AML/CFT requirements, by a regulated financial service provider. This obligation overrides any legal restriction on disclosure of the information concerned.

529. While court orders (and Garda assistance) are available to the Financial Regulator (for example in order to enter a premises forcibly), the exercise of the powers described under paragraph 536 is not predicated on the need to require a court order. In addition to its own enforcement powers the Financial Regulator has the facility to obtain court orders and Garda assistance in certain cases where necessary to enforce its powers.

530. Failure by a regulated financial service provider, or a person concerned in the management of a regulated financial service provider, to comply with a statutory demand of the Financial Regulator for information or to inspect records etc, or the provision of false or misleading information to the Financial Regulator, is a criminal offence liable to criminal sanctions. In addition to the criminal sanctions in sectoral legislation the Central Bank and Financial Services Authority of Ireland Act (2004) conferred new powers on the Financial Regulator to impose stiff administrative penalties, to be applied where there is a breach. A breach could apply to: Any financial services legislation; codes of conduct issued by the regulator under such legislation or any condition, requirement or direction imposed under the legislation or codes. Administrative sanctions may take any or all of the following forms:

a) caution or reprimand
b) direction to refund or withhold all or part of any money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider
c) financial penalties (not exceeding €5,000,000 in the case of a corporate or unincorporated body, €500,000 in the case of a natural person or such other amount as may be prescribed by regulation)
d) direction disqualifying a natural person from being concerned in the management of a regulated financial service provider
e) direction to cease the contravention; and
f) direction to pay all or part of the costs of the Financial Regulator.

531. The Financial Regulator has issued a Consultation Paper on 30 November 2004 on New Enforcement Powers and Proposed Sanctions Regime. Views on the approach being considered have been sought in order to facilitate development of an appropriate policy to implement the Financial Regulator's sanctioning powers in a fair and effective way. These submissions were undergoing review at the time of the on-site visit.[71] Since the date of the evaluation two new documents on Administrative Sanctions have been published and are available on the financial regulator website[72] under the

[71] Details on the consultation paper can be found on the website (www.financialregulator.ie) under Consultation Papers – archive section.

[72] www.financialregulator.ie

Publications section. These are Administrative Sanctions Guidelines and an Outline of Administrative Sanctions Procedure (general summary of the processes and procedure involved in the Administrative Sanctions procedure). In addition the Feedback received to the Consultation Paper on Administrative Sanctions is available under Consultation papers-Feedback section of the website.

532. Importantly however, the Financial Regulator cannot apply the administrative sanctions for ML or TF matters, and is unable to use its sanctions powers for breaches of the CJA (1994) unless the matter otherwise constitutes a contravention subject to sanction or affects the fitness of a firm to remain authorised. If the Financial Regulator suspects a breach of Irish AML/CFT law its only possible course of action would be to submit an STR to the FIU.

533. While the Financial Regulator cannot impose such sanctions for a breach of the CJA (1994) or the related guidance notes, it is possible that in certain cases the facts giving rise to breach of the Act and/or guidance notes may also constitute a breach of requirements which are the subject of administrative sanctions (indirect enforcement), for example in the case of a licensed bank a failure to have adequate systems and controls (a breach of Regulation 16 SI 395 of 1992) or a breach of a relevant condition of a licence imposed under Section 10 of the Central Bank a Act, 1971 (similar conditions and requirements apply for other financial institutions regulated by the Financial Regulator e.g. investment business firms and insurance undertakings).

534. Record-Keeping requirements are imposed on investment business firms and stock exchange firms in the Handbook for Investment and Stockbroking firms. These requirements are imposed pursuant to Section 19 of the Investment Intermediaries Act (1995) and Section 27 of the Stock Exchange Act, 1995. Consequently a contravention of the Handbook is liable to be the subject of an administrative sanction. It is possible that the facts constituting a failure to comply with the requirements of the CJA, 1994 and/or guidance notes with respect to record- keeping could also constitute a contravention of the Handbook. However, before embarking on the imposition of sanctions in such instances the Financial Regulator would be careful not to prejudice any possible criminal investigation or prosecution under the CJA (1994) in respect of the same facts.

535. In this respect, it is also worth noticing that Requirement 11 of the Licensing and Supervision Requirements and Standards applicable to Credit Institutions requires compliance with the relevant legislation and guidance notes and sets out the requirements for procedures in relation to systems, training and audit of these requirements deals with ML (Requirement 11) and. While the Requirements and Standards are non-statutory they are applied to supplement the statutory provisions contained in Central Bank Acts and various provisions implementing EU Banking Directives.

Recommendation 17

536. There are a limited range of sanctions available to the Irish authorities for AML/CFT matters: criminal prosecution, revocation of licence and letters issued by the Financial Regulator requiring action is taken for identified breaches of the AML/CFT regulations. The relevant criminal sanctions are set out under s.31, 32(12), 57 (5) and 59 (1) and (2) of the CJA (1994).

537. Administrative sanctions in the context of AML/CFT will be reviewed in the context of the implementation of the 3rd EU ML Directive. At the time of the mutual evaluation visit the Financial Regulator was consulting with the financial sector on the scope of administrative sanctions at the time of the mutual evaluation visit. The evaluation team were however informed that the administrative sanctions would not apply for a single breach of the AML/CFT legislation as these are not designated enactments for the purposes of the Administrative Sanctions regime, but may apply when there is a serious systematic breach of AML/CFT regulations for example when the internal control system of a bank is not up to

standard. The ultimate sanction in cases of breaches in ML/TF legislation would remain the revocation of a license/authorisation in accordance with relevant legislative provisions. (See annex 7 for relevant legislative provisions in relation to the revocation of licences/authorisation).

538. The Financial Regulator is the body responsible for authorisation and supervision of most financial service providers in Ireland. Under s.57(2) of the CJA (1994) as a body charged by law with supervision of designated bodies, the Financial Regulator is obliged to report an STR to the Garda and the Revenue where it suspects that an offence under s.31 (ML) or s.32 (identification, record-keeping, internal procedures) has been or is being committed by a body that it supervises. Based on the STRs reported by the Financial Regulator two prosecutions have occurred; one relating to a bureau de change operator convicted of ML offences and sentenced to five years imprisonment. A second prosecution was completed against three individuals for company law offences

539. In addition as part of its supervisory process the Financial Regulator may issue letters with recommendations for action or improvements, conditions and directions on supervised institutions in accordance with relevant supervisory legislation. The Financial Regulator gives the institution orders to comply with specific instructions, ordering regular reports from the institution on the measures it is taking.

540. The Financial Regulator has, on the basis of the Central Bank and Financial Services Authority of Ireland Act (2004), administrative sanctions at its disposal. This Act contains provisions for administrative sanctions. Under this legislation administrative sanctions can be imposed in respect of prescribed contravention(s) of designated enactments or statutory instruments where there are reasonable grounds to suspect that a regulated financial service provider is committing has committed a proscribed contravention. The CJA (1994) is not a designated enactment.

541. There is however, is a range of sanctions available which are available to the Courts under the relevant provisions of the CJA (1994) as appropriate depending upon the severity of the particular matter. Section 59 of the CJA (1994) provides that where offences under the Act have been committed by a body corporate, persons acting as director, manager, secretary or other officer of a body corporate, as well as the body corporate, shall be guilty of offences.

542. After an AML/CFT review or inspection the Financial Regulator is able to issue written warnings to the financial institutions if they are found to lack AML/CFT measures. The Financial Regulator gives the institution orders to comply with specific instructions, ordering regular reports from the institution on the measures it is taking. The institutions then reply formally on the actions that it has taken. This will be followed up with a review meeting and if necessary an inspection.

543. The Financial Regulator has written to financial institutions specifically to instruct them to take measures to correct AML issue in relation to:

a) AML Procedures to contain details of what constitutes the offence of ML
b) The need to include the following issues “tipping-off” offence in policy documents
c) A clear reporting chain where there is a suspicion that a ML offence has occurred
d) In-depth ongoing training on ML legislation and identification of suspicions for MLRO
e) Reliance on designated bodies for ML checks (lack of written confirmation by the introducing body)
f) Incorporation on ML session in employee manual.
g) Partial evidence of identity or address held on file
h) Documentation held at branch level - not on the mortgage file
i) Customers known to management but no note retained on file.

544. The ultimate sanction open to the Financial Regulator in the course of its supervision is revocation of an authorisation in accordance with relevant legislative provisions.

Recommendation 23 (Market entry)

545. The Financial Regulator applies strict licensing and supervision requirements before authorising financial institutions to become active in Ireland. Applications for authorisation must include detailed information on ownership including legal form and structure and this information is checked as part of fit and proper review.

546. The principal legislative provisions governing the authorisation and ownership of credit institutions are contained in the Central Bank Acts, 1971 to 1997, and in the Regulations implementing the EU Second Banking Co-ordination Directive (SI 395 (1992)). Specific legislative provisions governing the authorisation and ownership of building societies are contained in the Building Societies Act (1989).

547. An applicant for a banking licence must satisfy the Financial Regulator that:

a) it has an acceptable legal form
b) the corporate structure of the group of which the applicant is part, or its relationship with other undertakings under common control, is clear and transparent and is not such as may result in the bank being unable to exercise effectively its supervisory responsibilities
c) it has clearly defined and adequately researched objectives and proposed operations which are consistent with the principles enshrined in banking legislation and in the licensing and supervision requirements and standards
d) it is independent of dominant personal interests
e) there will be cohesion, continuity and consistency in the manner in which the business of the credit institution is directed by its owners
f) the beneficial ownership of the credit institution is such as will ensure a capacity to provide such new capital for the credit institution as may be required in the future; and
g) there is willingness and a capacity on the part of the credit institution to comply with the licensing and supervision requirements and standards on a continuous basis.

548. Applications for authorisation must include detailed information on proposed directors and senior management. Detailed questionnaires must be completed which contain information on qualifications, previous employment, details of any convictions etc. Independent checks are then carried out on the information provided. Such as contacting other relevant supervisory authorities, checking details with the Gardai and seeking confirmation from other authorities in third countries.

549. The Financial Regulator issued a Consultation Paper in February 2005 on a *Comprehensive Framework of Standards for Testing the Probity and Competence of Directors and Managers of Financial Services Firms*. Submissions have been requested on the proposals outlined by 30 April 2005.[73] Further information on relevant provisions in relation to fitness and probity see annex 8.

550. Natural and legal persons providing a money or value transfer service, or a money or currency changing service have to be licensed by the Financial Regulator. The system for authorisation of bureaux

[73] Details are available on the Financial Regulator's website: www.ifsra.ie under Consultation papers – current section.

de change is the same as for money transmission. The bureaux de change provisions were enacted in the Central Bank Act (1997).

551. Part V of the Central Bank Act (1997) as inserted by s.27 of the Central Bank and Financial Services Authority of Ireland Act (2004) requires money transmission businesses to be authorised by the Financial Regulator. A list of authorised businesses must be published at least once every 12 months. Authorisation and ongoing supervision focuses on ensuring compliance with AML and CFT. This section came into operation on 1 January 2005 and the provisions on offences to carry out such business without authorisation will have effect from 1 July 2005.

552. Money remitters at the time of the mutual evaluation visit had up until June 30, 2005 to apply for a license. The Financial Regulator was in the process of examining these applications at the moment of the visit of the team to Ireland.

Recommendation 23 (Ongoing supervision and monitoring)

553. The Financial Regulator supervises and monitors financial institutions for compliance with the Core Principles (in the banking, insurance and securities sectors), as well as compliance with AML/CFT legislation, particularly with a view to implementing the EU's First and Second Anti-Money Laundering Directives. The regulatory and supervisory measures that apply for prudential supervision and monitoring are also relevant to ML. The Financial Regulator's general supervisory approach includes the ongoing supervision of licensing and structure; risk management processes to identify, measure, monitor and control and material risks. Reviews of AML/CFT systems are included in regular supervisory inspections and reviews.

554. On-site inspection is a significant component of an active monitoring process which seeks to confirm that all authorised financial service providers operate within the terms of their authorisation and that they do not create unacceptable risk to the safety of deposits, investments and other contractual obligations to consumers dealing with such institutions or give rise to a threat to the stability of the financial system. In general terms, there are four different types of inspections conducted:

a) Those that are of a general nature and take an overview of all areas of the financial service provider
b) Inspections of a specific nature to look at a particular area in one financial service provider
c) Themed inspections which focus on a specific topic, e.g. mortgage credit, client money, solvency, ML, across a sector or sample of financial service providers; and
d) Unscheduled inspections which are conducted when an issue of concern has arisen in relation to a particular financial service provider.

555. Conducting an on-site inspection can, depending on the size of the financial service provider take from two days to two weeks and will include checking, through the examination of a sample of client files, the financial service provider's compliance with the Financial Regulator's regulatory requirements and or its own formally approved internal policies. The Financial Regulator has noted that inadequate compliance with AML obligations has arisen from time to time as an outcome of inspections.

556. The system for supervision of bureaux de change is the same as that intended for money transmission. Provisions for bureaux de change were enacted in the Central Bank Act (1997).

Number of Inspections and Reviews conducted by the Financial Regulator (see table for relevant time period)		
	2003	2004
Credit Unions	2 Inspections related to ML	33 Inspections related to ML
Investment Firms	14 Inspections related to or including ML 45 Reviews related to ML	16 inspections 75 reviews
Life Insurance		29 Inspections/review meetings including ML.
Money lenders		1 specific ML related inspection
Moneybrokers		1 report made to Garda/Revenue.
Credit Institutions (1 May 2003 - 31 December 2004)	59 Inspections and On-Site Reviews 35 Review meetings conducted. Review of AML procedures would be covered during the course of a number of these inspections/on-site reviews and review meetings. 4 reports to Garda/Revenue. ML issues raised in two post on-site review letters.	

557. ***Follow-up/Reports:*** the Financial Regulator can issue post inspection letters to financial institutions after an inspection or review providing the institution orders to comply with specific instructions and ordering regular reports from the institution updating the Financial Regulator on appropriate remedial measures taken. If, during the course of an inspection or review the Financial Regulator staff have reasonable grounds to suspect that the AML/CFT obligations under CJA (1994) have been breached they will submit an STR to the FIU/Revenue.

STRs made to the Garda/Revenue where there were suspected breaches of s. 31 or 32 of the CJA (1994)		
	2003	2004
Investment Firms	No reports to FIU/Revenue or post inspection letters with recommendations for improvements in this area.	3 reports to FIU/Revenue, 2 post-inspection letters with recommendations for improvements.
Credit Unions	1 report made to FIU/Revenue. 28 post-inspection letters sent to credit unions following on-site inspections.	8 reports made to FIU/Revenue.
Moneybrokers		1 report made to FIU/Revenue.
Credit Institutions	2 reports to FIU/Revenue.	2 reports to FIU/Revenue. ML issues raised in two post on-site review letters.

558. It is apparent that the Financial Regulator is conducting a number of inspections and reviews of all financial institutions under its supervision and is feeding back information to financial institutions where issues are uncovered and reporting on to the Garda and Revenue if appropriate. The number of visits generally reflects the size of each sector. The evaluation team did note that the frequency of inspections did differ between the different sectors, and were informed that this was expected to balance in the future as the Financial Regulator more fully integrated the inspection functions that prior to the Financial Regulator's creation in 2003 had been conducted by different supervisors.

Recommendation 25 (Guidance for financial institutions other than on STRs)

559. As previously indicated the guidance notes are issued with the approval of the MLSC, including guidance given on the financing of terrorism. All the guidance notes are modelled on the guidance provided for credit institutions, and their content tailored accordingly. The structure of the guidance notes for all sectors follows a similar format:

a) a background to AML/CFT regulation is provided, explaining the effects ML may produce on financial institutions' credibility an profitability and the rationale whereby certain obligations are posed on financial intermediaries
b) the applicable regulation is illustrated, thus sketching out the obligations intermediaries are required to comply with in general terms
c) specific sections are devoted to describe how to implement AML/CFT requirements in terms of the internal control procedures to be introduced, the customer identification process to be undertaken, the task of documentation and record keeping, the detection and reporting of suspicious transactions, staff education and training requirements to be met
d) appendices that contain extracts of the relevant regulation, ML typological material, forms to be used for reporting of suspicious transactions, list of countries to which simplified CDD measures may be applied; if that is not done within the section on customer identification, a detailed account of the documentation required for a list of different groups of customers is provided.

560. The Revenue Commissioners has been actively involved in the approval of guidelines to be issued by designated bodies by their participating at MLSC meeting and bi-lateral meetings with designated bodies.

561. There is a clear process for the drafting, consultation and approval of guidance for financial institutions in Ireland. The MLSC provides the forum for inter agency co-operation and the production of sectoral notes that provide a good description of AML/CFT obligations under the current legislation.

3.10.2 Recommendations and Comments

562. Ireland should adapt its legislation to enable the Financial Regulator to apply administrative sanctions on the institutions under its supervision for not complying with AML/CFT requirements. This will supplement the sanctions available and will make them more proportionate, gradual and effective. Consideration could also be made to extend the requirement to submit an annual compliance certificate, which is imposed on insurance institutions to all other categories of financial institutions that the Financial Regulator supervises. This extra requirement would enhance the monitoring of compliance by financial institutions with AML/CFT requirements.

563. The Financial Regulator should ensure that inspections and reviews, including those into AML/CFT occur regularly, particularly in high risk institutions and should collect and maintain statistics concerning the number and type of sanctions applied.

564. Consideration should be given to updating the guidance to include the amendments made to the FATF Recommendations with respect to CDD, higher risk customers and relationships and other FATF Best Practice Guidelines.

3.10.3. Compliance with Recommendations 23, 30, 29, 17, 32, and 25

	Rating	Summary of factors underlying overall rating

R.17	PC	• This recommendation is overall not effectively implemented as there is no range of sanctions available proportionate to the severity of a situation. • Administrative sanctions are not yet available for AML/CFT purposes.
R.23	LC	• The Financial Regulator has a full range of supervisory powers to adequately regulate and supervise for AML/CFT matters. A fully implemented compliance regime for money transmission services is not yet in effect, the initial steps are being taken through licensing of these entities.
R.25	LC	• Sectoral guidance notes are provided to financial institutions providing direction in the application of the AML/CFT legislation. While this is generally quite comprehensive these should be enhanced to include requirements to conduct ongoing CDD and pay particular attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21.
R.29	LC	• The Financial Regulator is unable to apply a range of administrative sanctions for AML/CFT breaches (although it may be possible to apply such sanctions indirectly).
R.30	LC	The resources available for this part of the Recommendation are fully met.
R.32	PC	The statistics available for this part of the Recommendation are fully met.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

Special Recommendation VI

565. Money transmission businesses[74] or services[75] that operate will be supervised and monitored by the Financial Regulator in the same way as the bureaux de change already under its supervision. All AML/CFT obligations that are applicable to the other institutions are also applicable to money remitters. The implementation of a supervisory regime was partially implemented at the time of the on-site visit.

566. Part V of the Central Bank Act (1997) as amended by s.27 of the Central Bank and Financial Services Authority of Ireland Act (2004) requires money transmission businesses to be authorised by the Financial Regulator. Money transmission will be subject to the same CDD and record keeping requirements, obligations to establish internal procedures and controls to prevent ML and TF (including the requirement to report STRs in good faith) and apply AML / CFT procedures to their international business and transactions as other financial institutions.

567. Initially the Financial Regulator intends to focus on the authorisation regime with checks conducted on the directors, managers, MLRO and shareholders as well as the business address. Subsequently AML/CFT compliance with these requirements will be monitored by an ongoing supervision program performed on a risk sensitive basis through inspection and review meetings.

[74] 'Money transmission business' means a business that comprises or includes providing a money transmission service to members of the public.

[75] 'money transmission service' means a service that involves transmitting money by any means, (*a*) by a person or body referred to in section 32(1)(*a*) to (*k*) of the Criminal Justice Act 1994, or (*b*) by a person or body prescribed as a designated body under section 32(10)(*a*) of that Act (but only if the person or body is regulated by the Bank under a designated enactment or designated statutory instrument), or (*c*) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body.

568. The Financial Regulator will keep a current list of money transmission businesses licensed in Ireland which will be published every 12 months. The Financial Regulator will require a list of all branches and agents of a money transmitter to be submitted prior to authorising the entity concerned. An authorised entity will be required to maintain a list of all branches and agents and must ensure that adequate supervision and controls are conducted over all branches and agents. Shortly after the on-site visit the Financial Regulator had received 15 applications to operate money transmission businesses.

569. Section 6.1 of the Authorisation Requirements and Standards for bureaux de change and money transmitters issued by the Financial Regulator requires that notification must be given to the Financial Regulator in respect of the operation or establishment by a bureau de change and money transmitter of a new branch or agent. A section within the Financial Regulator, the "Unauthorised Service Providers Unit", will follow-up on anyone offering services without the proper authorisation. They will check on the person and entities that did not seek authorisation to act as a money transmission services provider. The evaluation team were also informed that the Financial Regulator will liaise with the Garda to discuss with them the applications and ensure that only fit and proper firms receive authorisation and to exchange any relevant information on money remitters who have not sought authorisation..

570. The letter of authorisation for money transmitters makes authorisation conditional upon ongoing compliance with the Authorised Requirements using the broad powers conferred on the Financial Regulator by s.33 of the Central Bank and Financial Services Authority of Ireland Act (2004). All issues relating to sanctions as described above under Recommendation 17 are also applicable for money transmission services.

Additional elements

571. Ireland's implementation of a licensing regime for money transmission services has gone some way towards implementing the FATF Best Practices to prevent abuse of Alternative Remittance Systems. The Financial Regulator have taken proactive steps to research the remittance corridors operating in and out of the country and have conducted outreach programs with the embassies from their main money remittance corridors. In addition the Financial Regulator have produced a fact sheet "sending your money abroad: what you need to know" to inform on how to send money abroad safely, have a website that provides further information and have advertised in the national press to inform the public of the impending supervision and supervisory requirements for money transmission businesses.

3.11.1 Comments and Recommendations

572. Ireland should fully implement the FATF Recommendations, as noted elsewhere in section 3 of this report. It should continue to review the effectiveness of its AML/CFT regime for money transmission services post-authorisation with a view to ensure that the other relevant FATF Recommendations are applied effectively.

	Rating	Summary of factors underlying rating
SR.VI	PC	• As with other financial institutions, overall implementation of Recommendations 5-10, 15, 17, 21, 22 and Special Recommendation VII is inadequate, this negatively impacts on the effectiveness of AML/CFT measures for money transmission services.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12) *(applying R.5, 6, 8-11, and 17)*

4.1.1 Description and Analysis

573. Most of the FATF designated Non-Financial Businesses and Professions (DNFBPs) currently operate in Ireland: Real estate agents/auctioneers, dealers in precious metals and stones, solicitors and barristers, accountants and trust and company service providers. The combined provisions laid down by SI 242 (2003), in effect from 15 September 2003 and 3 (2004), in effect from 1 February 2004 designated following bodies under AML/CFT legislation to include the following DNFBPs in the following situations:

574. **An accountant:** operating on his or her own account, auctioneer, auditor, estate agent, tax advisor. A **solicitor**: when providing assistance in the planning of or executing transactions for clients concerning the buying or selling of land or business entities; managing of client money, security or other assets; opening or management of bank, savings or securities accounts; organisation of contributions necessary for the creation, operation or management of companies; creation, operation or management of trusts, companies or similar structures; or when acting on behalf of and for a client in any financial transaction or transaction relating to land.

575. Also designated are: **Dealers in high value goods**, including precious stones, precious metals and works of art, where payment is made in cash for a sum of €15,000 or more. **Auctioneers/Estate Agents**; anyone providing, among others, a service to a person in connection with the purchase or sale of land where payment for the land concerned is in cash and is not less than €13,000.

576. The following DNFBPs are not covered by the AML/CFT obligations: **Casinos:** Although explicitly mentioned in SI 242 (2003), casinos, including internet casinos, are illegal under Irish law and it was contended by the Irish authorities that no such entities operate in Ireland. However, during the on-site visit, it was apparent that there are a number of private clubs in Ireland offering casino and gaming services on a membership basis. Although it was indicated that these were private clubs it was noted that membership can be obtained on entry.

577. About 8 such private gaming clubs operate in Ireland, of which half are well-established, with some operating for over 30 years. The representative of a club interviewed has about 15000 members, of which about half were said to attend the club on a regular basis. Each table is banked by a member/customer in rotation, having won the right to do so. A member of the club acts as the house for each table and bears the risk accordingly. Tables are operated by professional dealers who act on behalf of the member banking each particular table. Members operating tables are required to pay a deposit to back up any possible loss. Deposits are paid on the clubs' own bank account. Members banking a table also pay a fee to the club against the provision of the facility, which includes security, a camera monitoring system and access to internet gaming. Games are paid by use of a chip, which are purchased against payment of cash, cheques (under a given threshold) or by debiting accounts the club holds in the name of customers. Overall, this system does create the potential for real AML/CFT risks.

578. **Trust and company service providers (TCSPs)**: Irish AML/CFT regulations make no mention of TCSPs. However, several businesses operate as TCSPs in Ireland, providing a range of company formation and advice services (see paragraph 48).

579. **Barristers:** Irish law does not establish barristers as a designated body for AML/CFT purposes. However barristers only provide legal advice or appear in court for a client. They would always act through a solicitor except when they provide legal services to other professionals, including other designated professions, such as solicitors or accountants.

580. Since the extension of the AML/CFT obligations, guidance notes provide DNFBPs with advice on how to apply the AML/CFT guidelines have been issued and approved by the MLSC or by a relevant representative body. Guidance notes have been published for solicitors, estate agents and auctioneers (March 2005), the latter of which also apply when auctioneers deal in high value goods. The Consultative Committee of Accountancy Bodies – Ireland (CCABI) in March 2004. An updated version of such guidance, split into two separate documents, Guidance and Procedures, was issued in September 2005.[76] The guidance notes addressed to DNFBPs are essentially modelled on those for financial institutions, with specific features relevant for each particular profession.

Applying Recommendations 5, 6, 8 and 9

581. The legal obligations of the CJA (1994) apply shortcomings for financial institutions. As with financial institutions there is also an explanation of good practice set out in various sets of guidance notes. The guidance notes for DNFBPs contain similar shortcomings to those for financial institutions with regards to Recommendation 5.

582. As with financial institutions, the guidance notes state that the notes, "*are recommendations as to good practice but do not constitute a legal interpretation of the* [Criminal Justice] *Act.*" Therefore, all provisions contained in the guidance notes are not directly enforceable and are not subject to an adequate range of administrative sanctions.

583. A general, extremely broad statement of the *KYC* principle is laid down in the guidance notes for solicitors (paragraph 3.1), establishing that solicitors "*need to be aware of the identity*" of their clients, but only to the end of carrying out their AML/CFT obligations effectively. It is acknowledged that solicitors should be "*satisfied that transactions for all clients remain reasonable and are not significantly unusual in the context of their relationship with that person, regardless of when the relationship commenced*".

584. The guidance notes for estate agents and auctioneers define *KYC*, as "*to know who your clients are and the source of their funds*". The guidance notes also endeavour to indicate that the customer needs to be identified. Estate agents provide a wide range of services to their customers, ranging from the management of property to the provision of property insurance and financing, which may amount to long-term relationships. They also have a range of customers, from developers to small private clients. The guidance notes fail to acknowledge this feature by focussing exclusively on transactions and the procedures that agents should undertake in connection to them. In the guidance for solicitors and accountants, details of the identification requirements that should be met in connection with each different class of customers are provided. No information regarding verification requirements is contained in the guidance notes for estate agents and auctioneers. Apart from the address verification, little is said about verification in guidance notes for estate agents and auctioneers. Representatives of the association of estate agents and auctioneers indicated that their staff did not have the required qualifications to ascertain, for instance, the ownership structure of a company. Moreover, the evaluators were informed that no direct verification of the real ownership of a real estate is reportedly undertaken by agents. In the guidance notes for solicitors require not only that (paragraph 3.6) "*the name and address of the client should be obtained and should be independently verified*", but also that (paragraph 3.10) a solicitor "*should obtain satisfactory evidence*" concerning the authenticity of individual clients' identity, name and address and the

[76] http://www.icai.ie/documents/M42%20Anti-Money%20Laundering%20Guidance%20ROI1.pdf

corporate clients' owners and representatives. However, solicitors do not require identification of a customer, if "*a client is personally known to the solicitor*" (paragraph 3.8).

585. Verification procedures are established for non-resident and non face-to-face customers, not unlike those provided for by financial institutions. The guidance notes for solicitors do not require documentation other than a passport or a national identity card, whilst other guidance notes indicate that verification material should be sought from a reliable source. Non face-to-face customers are explicitly dealt with only in guidance notes for solicitors; the evaluators were informed a negligible amount of business was undertaken through non face-to-face means. However, when conducted, non face-to-face business is performed in accordance with the principles broadly established in guidance notes for financial institutions.

586. Overall, although the guidance for DNFBPs is undoubtedly useful, it fails to amount to provide full CDD requirements, since no reference is made to the overall objective(s) that such policies pursue: to establish the purpose and intended nature of the business relationship with clients. In the guidance notes for accountants it is explicitly indicated (paragraph 4.1) that "*a firm should be satisfied it has a good understanding of*", among other things, "*the source and intended use of* [a client's] *funds*" and "*the appropriateness and reasonableness of* [a client's] *business activity and pattern of transactions in the context of the client's business or financial affairs*." However, this falls short of illustrating how this should be done.

587. No risk-based approach is defined with reference to any kind of customer acceptance policy, except with reference to low-risk customers for simplified identification procedures to be applied to relations with other designated bodies as indicated for financial institutions in paragraph 373. Business practice, as assessors were informed, requires that reduced identification procedures are applied only to financial entities from a more limited scope of countries than the regulations allow.

Timing of verification

588. The notes make no reference to when identification need be undertaken, or to the consequences of an unsatisfactory outcome to identification. Guidance for estate agents and auctioneers indicate (page 10) that unsatisfactory identification may constitute a reasonable ground for suspicion, leading to the filing of a STR, whilst the guidance notes for accountants state (paragraph 4.1) that "[a] *firm should consider whether it is appropriate to accept as a client a person or body for whom it has not been possible to successfully carry out identification procedures*", envisaging the possibility that a business relationship could also be established that circumstance. The guidance notes make no explicit requirement that records should be kept up-to-date and subject to systematic review.

589. No risk based CDD mechanism for higher-risk customers especially PEPs, have been put in place in line with FATF Recommendation 5 & 6. Recommendation 8 is applied to a more limited extent by DNFBPs than for financial institutions. All guidance notes for DNFBPs indicate that it is preferable that customers are approached face-to-face. Nonetheless the guidance notes provide for an identification procedure to be implemented for non face-to-face clients.

590. Guidance on introduced businesses for DNFBPs (Recommendation 9) is set out in paragraphs 3.32 to 3.37 in guidance for solicitors and paragraphs 4.18 to 4.23 for accountants. This guidance duplicates the principles set out in guidance notes for financial institutions.

<u>Applying Recommendation 10</u>

591. Record keeping requirements for DNFBPs (Recommendation 10) are also the same as for financial institutions, including obligations requiring that companies comply with explicit record and book keeping requirements. The guidance notes for solicitors (section 4) are particularly detailed on the form in which records must be retained: extracts from the CJA (1994) and the Criminal Evidence Act (1992) are provided for clarifying the purpose for which records must be retained (so that the paper trail can be traceable) and the juridical status they are required to feature. The guidance notes for solicitors and accountants encompass either records concerning customers' identification and those related to the transactions they perform. Conversely guidance notes for estate agents and auctioneers seem to focus exclusively on the customer identification records.

Applying Recommendation 11

592. All DNFBP sectoral guidance notes ignore the requirement for DNFBPs to have systems in place for monitoring all transactions in order to detect those that are unusual. Only indirect reference is made when defining internal control procedures or the procedure to be followed for filing an STR. All guidance notes require that the different steps in the STR procedure be documented in some written form and that the MLRO acquire further insight of any case submitted by investigating its background regardless of whether a STR is ultimately filed. Guidance notes for accountants are particularly careful (paragraph 7.3 of the Procedures) in stressing that "*if a report is not made,* [the MLRO] *should document the reasons for not reporting*" since *being able to demonstrate a reasonable process, diligently undertaken in good faith and in accordance with relevant guidance, may assist the firm in being able to defend itself against allegations of failing to disclose.*"

593. Guidance for DNFBPs to identify suspicious transactions is contained in the guidance notes for solicitors and estate agents. Guidance for auctioneers focuses on the definition of suspicion, failing to define what should give rise to it adequately and guidance notes for accountants focus on providing indicators and examples of unusual transactions, which are also described in the guidance notes for solicitors.

Applying Recommendation 17

594. All sanctions applicable under the CJA (1994) to designated financial institutions for breaches of the AML/CFT requirements also apply to DNFBPs. Those supervisors and Self Regulatory Organisations (SROs) empowered to provide regulatory or supervisory oversight are required to report any such breaches to the FIU through the STR procedure. They do not administer sanctions for specific infringements of AML/CFT obligations. However, if infringements occur systematically then some SROs with disciplinary powers may be able to sanction them autonomously, although this would not be direct the application of AML/CFT sanctions, rather sanctions imposed for professional misconduct. The powers of sanctions appears limited.

4.1.2 Recommendations and Comments (this section should be read in conjunction with the corresponding one concerning financial designated bodies)

595. The application of AML/CFT regulation to DNFBPs is relatively recent and there is an urgent need to build up an effective AML culture in this area, through a combination of legal requirements and issuance of comprehensive, detailed and focused guidelines. The guidance for DNFBPs should avoid replicating those for financial institutions and clarify the extent AML/CFT obligations and more notably, the rational underlying them to entities which have just been designated under the AML/CFT regulations.

596. The required obligations under Recommendation 12 should be introduced to DNFBPs currently covered by the AML/CFT obligations, particularly trust and company service providers and clubs or other

legal entities that offer casino gambling services. The risks for the gaming clubs are potentially significant. Consideration should also be given as to the role of barristers, and whether; given the limited interaction that barristers have with private clients; to what extent AML/CFT requirements should be imposed.

597. The guidance for DNFBPs should strive to establish the principles of a CDD policy. Many crucial issues (such as beneficial ownership, timing of verification, the consequences of an unsatisfactory outcome of the identification procedure, records updating and transaction monitoring procedures) should be addressed and made subject to legal obligations.

598. Regulatory bodies and Self Regulating Organisations (SRO) should be empowered to apply and enforce adequate disciplinary and other sanctions of an administrative nature for breaches of AML/CFT regulations.

4.1.3 Compliance with Recommendation 12 (this section should be read in conjunction with the corresponding one concerning financial designated bodies)

	Rating	Summary of factors underlying overall rating
R.12	PC	• Not all DNFBPs are obliged to undertake CDD and record keeping for AML/CFT purposes as covered by the Recommendation 12. • The same deficiencies apply for DNFBPs as for financial institutions in the implementation of Recommendation 5 regarding CDD, including the consequences of failure to complete CDD, timing of verification requirements and provisions addressing identification of existing customers. • Under the present regime there are no, or limited requirements to apply higher risk measures as required under Recommendations 6, 8 and 9. • Guidance is limited in relation to the DNFBPs obligations to pay attention to complex and unusual transactions (applying Recommendation 11). • A proportionate range of sanctions are not available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO) to impose AML/CFT sanctions (applying Recommendation 17).

4.2 Suspicious transaction reporting (R.16) (applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

Applying Recommendations 13, 14, 15 & 17

599. The basic requirements for the reporting of suspicious transactions by DNFBPs are established in s.32 (9A) of the CJA (1994), which requires designated bodies to adopt measures to prevent and detect ML. Section 32 of the Criminal Justice (Terrorist Offences) Act (2005) extends this provision to include TF.

Applying Recommendation 13

600. The STR reporting requirement which includes accountants, auctioneers, auditors, estate agent, tax advisors and solicitors was introduced 2003[77] and DNFBPs have been required to disclose to the FIU since

[77] Under SI 242 (2003)

this date. STRs received from DNFBPs accounted for less than 1% of all STRs received in 2004 and are limited to the accountancy, auditing and solicitors professions:

Breakdown of STRs submitted by DNFBP type				
Institution Type	2001	2002	2003	2004
Accountants	N/A	N/A	0	21
Auctioneers	N/A	N/A	0	0
Auditors	N/A	N/A	0	19
Dealers – High Value Goods	N/A	N/A	0	0
Solicitors	N/A	N/A	0	6

601. Although there would be an expected time lag between the implementation of the reporting obligations and the publishing of guidance there is a low rate of STR reporting from DNFBPs given the broad scope of Ireland's ML offence.

602. In addition, accountant's STR obligations are also affected by s.59 of the (Theft and Fraud Offences) Act (2001). This requires that where a person who audits or otherwise assists or advises a firm in the preparation of an audit of accounts acquires any information indicates that an offence may have been committed to, that person must report that fact to a member of the Garda notwithstanding any professional obligations of privilege or confidentiality.

603. The guidance notes for accountants define STRs as *detailed reports*, and *summary reports* (paragraph 5.15 of the Procedures) that concern what is indicated as "*low intelligence value suspicions*", that is to say cases "*unlikely to be of material significance to the Garda Siochána or the Revenue Commissioners*". On the face of these definitions, the filing of *summary reports* appears to arise from a formalistic compliance with the reporting obligation. Moreover, although reporting entities are required to collect as much information as it is available in order to support their suspicion, it falls outside the scope of their obligation to scrutinise the relevance of each case with reference to the possible developments it may produce at the investigative stage.

604. Guidance notes, including those addressed to other DNFBPs, do not contain any provision concerning the timeliness of STRs; only requiring that they may be filed to the FIU, when possible, before a transaction is finalised. There is no explicit reference to incomplete or attempted transactions. Guidance for accountants only indicates (paragraph 5.13 of the Procedures) that STRs be filed "*as soon as reasonably practicable after the suspicion has been formed*". More specific guidance on timing could be introduced.

605. As indicated under Recommendation 15, s.32 (9B) of the CJA (1994) includes the requirements to establishment of procedures to be followed by employees in the conduct of business; instructions to employees on the application of the EU Directive on ML and training of employees for the purpose of enabling them to identify transactions which may be related to ML (and TF) and the procedures to be followed in such cases.

606. Guidance notes exist for solicitors, estate agents and auctioneers. The guidance notes for the solicitors set out some suggestions for the sector in relation to staff training and awareness although there is no guidance with regard to internal procedures, policies and controls to prevent ML and TF. The categories of DNFBPs to which AML/CFT regulation has been extended widening the scope of the same

AML/CFT obligations required of financial institutions to DNFBPs. Guidance for DNFBPs contains some specific features for DNFBPs in relation to the provision of legal privilege.

607. Guidance for solicitors (paragraph 6.2) attempts to clarify what would amount to a legal practitioners' activity of ascertaining a client's legal position, concluding that "*legal advice remains subject to the obligation of professional secrecy unless the legal counsellor is taking part in ML activities, the legal advice is provided for ML purposes, or the lawyer knows that the client is seeking legal advice for ML purposes*." Legal privilege is thus extended to all forms of legal advice that a solicitor produces.

608. Guidance notes for accountants (paragraph 4.14 of the Guidance) focus on what ascertains a client's legal position involves, which is said to include those cases in which a practitioner acts as an expert witness in a client's legal case.

609. All guidance notes mention tax evasion as one of the predicate crimes for ML, thus recognising that the reporting obligation arises also with respect to those transactions that may be held to be connected to tax related offences.

610. The relationship between a legal professional and his client is affected where the legal professional has made an STR to the FIU (paragraph 6.16) due to the tipping off rule. It is stated that, once that has happened, "*the fundamental element of trust upon which the solicitor/client relationship is based is fatally affected*". Accordingly guidance recommends that a solicitor "*should immediately cease to act for that client and should not maintain the solicitor/client relationship for any purpose, including any purpose that might be proposed by the authorities to whom the report is made.*" Such conduct is, therefore indicated as not amounting to tipping off.

611. The guidance notes for estate agents and auctioneers also address this issue (section 1), and indicate that an agent may rightfully cease to operate on behalf of a customer if the required identification data is not provided, so that the agent himself would be breaching AML/CFT regulations, should he provide his services to the customer.

Applying Recommendation 14

612. The guidance notes for DNFBPs replicate provisions contained in the guidance notes addressed to financial institutions for STR reporting, the designation of a MLRO and staff training. Exceptions are contained in guidance for accountants that contain an extensive section on training procedures, and guidance for estate agents and auctioneers, which conversely feature significant deficiencies, since in relation to the establishment of reporting procedures and of staff training programs, the guidance notes do not go beyond the provision of the internal reporting form. Moreover, only a brief account of the opportunity to raise staff awareness of their responsibilities is given in general terms (section 7), without actually establishing the need that training and educational programs be introduced.

613. Section 57 (7) provides the same protection to DNFBPs as to financial institutions where they disclose and STR in good faith. The disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not involve the person or body making the disclosure (including their directors, employees and officers) in liability of any kind.

614. The terms of confidentiality that are required when filing a STR are addressed in the guidance for accountants when the reporting firm's employees, other than the MLRO, are involved in the reporting process which are not to be associated to the STR (paragraph 5.11 in the Procedures). For the provision of additional information concerning an STR the competent authorities are to take place only if adequately

justified, for example pursuant to a court order or in compliance with other legal powers requiring disclosure.

Applying Recommendation 17

615. Criminal sanctions applicable to DNFBPs for breaches of the AML/CFT requirements are the same as for financial institutions. Otherwise regulatory bodies or SROs or other body able to enforce sanctions, are required to report breaches to the FIU through the STR procedure and do not administer sanctions for specific infringements of AML/CFT obligations. Both the guidance notes for solicitors and accountants' stress that the reporting obligation applies to detected breaches of the AML/CFT regulations.

616. There is some doubt as to whether all SROs in Ireland have the authority to monitor and enforce sanctions for AML/CFT breaches. Accountants, estate agents and auctioneers currently do not have a single recognised oversight body. The Law Society of Ireland could be considered an SRO for its sector. But their powers to monitor and issue sanctions are not adequate, nor do the SROs have sufficient resources to perform these functions. Although not all these existing associations see themselves as regulatory bodies, they have filed STRs with respect of detected breaches of AML/CFT obligations.

Applying Recommendation 21

617. There is no mention in the guidance notes that DNFBPs are required to give particular attention to business relationships or transactions from countries that do not apply or insufficiently apply the FATF Recommendations.

Additional Elements

618. The reporting obligation is extended to include accountant and auditors and designated bodies that are required to report suspected proceeds of crime to the Garda. As for accountants, in addition to their suspicious transaction reporting obligation, Section 59 of the (Theft and Fraud Offences) Act (2001) requires that where any information or document indicates that an offence may have been committed to a person who audits or otherwise assists or advises a firm in the preparation of an audit of accounts, the latter must report that fact to a member of the Garda notwithstanding any professional obligations of privilege or confidentiality.

4.2.2 Recommendations and Comments

619. It is recommended that Ireland extend its AML/CFT laws and regulations to include all relevant DNFBPs as required under the FATF Recommendations and that breaches of the AML/CFT regulations are sanctionable by an appropriate authority. A regime of administrative sanctions could also be considered for DNFBPs for non-compliance with reporting obligations.

620. All DNFBPs should establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. These procedures, policies and controls should cover CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function to test compliance with the AML/CFT procedures, policies and controls. DNFBPs should be required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

621. DNFBPs should be required to pay special attention to transaction involving certain countries, make their findings available in writing, and apply appropriate counter-measures.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors overall rating
R.16	PC	• Not all DNFBPs are subject to the STR obligations. • DNFBPs are not required to develop internal policies procedures, internal controls, ongoing employee training and compliance in respect of AML/CFT. • There are not adequate measures for DNFBPs to pay special attention to transactions involving certain countries and to make their findings available in writing, or apply appropriate counter-measures. • The STR regime is not yet effective with low numbers of STRs being made by DNFBPs. • A proportionate range of sanctions are not available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO) to impose AML/CFT sanctions (applying Recommendation 17).

4.3 Regulation, Supervision, and Monitoring (R 24-25)

4.3.1 Description and Analysis

Applying Recommendation 24

622. There are no designated competent authorities or SRO's responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements for most categories of the DNFBPs, though bodies such as the Law Society have taken certain limited actions. There are no public, licensed casinos in Ireland and there is no legal provision for the licensing of a casino (including internet casinos). However, there exist a number of private clubs offering casino gaming services. These clubs are not subject to a regulatory and supervisory regime ensuring that they implement any AML/CFT measures.

623. Other categories of DNFBP are not subject to effective systems for monitoring to ensure compliance with AML/CFT requirements. The Law Society of Ireland has a regulation department within its structure, and practicing certificates are issued annually by the Regulatory Department. The Department ensures that accountants' reports are received from each of the 2,000 solicitor's practices each year within six months of each practice's accounting date. Investigations of solicitors' practices are carried out by the Department's ten investigating accountants. They aim to do these checks every 5 years, but the proper focus here is on accounting. There is no obligation for regular reporting to the Law Society, there are no regular onsite visits to check compliance with AML/CFT requirements.

624. Certain accounting bodies, including the Institute of Chartered Accountants in Ireland, the Institute of Certified Public Accountants in Ireland, and the Association of Chartered Certified Accountants (all CCAB-I members), have formal recognition under the Companies Act (1990) as regulators of those of its members who carry out statutory audit work. These bodies also regulate the investment business activities of their members under the Investment Intermediaries Act (1995). As far as accountants and auditors are concerned, the requirements of most of the professional bodies require of each firm some form of annual internal assessment and evaluation of compliance with audit and investment business requirements. In addition, as far as the Institute of Chartered Accountants is concerned, its practising members are required to declare annually to the Institute that appropriate AML procedures are in place. The recognised accountancy bodies also operate rigorous practice inspection regimes with visits taking place on a risk

basis, ranging from a frequency of between 2 and 6 years. Similarly, practicing certificates are issued annually. All of the bodies devote significant resources to this function. Formal reports of this function are filed annually by all of the recognised accountancy bodies with the Department of Enterprise, Trade and Employment.

Applying Recommendation 25

625. The relatively recent introduction of AML/CFT requirement to the DNFBP sector has resulted in a process of drafting and approval of guidance notes. These guidance notes have all been approved by the MLSC In March 2005 guidance notes were issued for Estate Agents and Auctioneers in respect of land and/or buildings and high value goods, the Law Society of Ireland and for Solicitors. Limited guidance has been issued for the trust and company service activity in the guidance notes for solicitors, but only in relation to identification requirements. There are no guidance notes for private gaming clubs. The guidance on AML/CFT matters provided is not always wide and deep enough. The guidance notes that were issued for the DNFBP's are not legally binding and sanctions cannot be directly imposed on the DNFBP's for failure to complying with the guidance notes.

4.3.2 Recommendations and Comments

626. Currently Ireland can only apply criminal sanctions to deal directly with non-compliance of AML/CFT requirements. Ireland should ensure that effective, proportionate and dissuasive civil or administrative sanctions applicable to DNFBPs are available to deal with natural or legal persons, directors and senior managers of DNFBPs that fail to comply with national AML/CFT requirements. It is recommended that the Irish Authorities consider whether the current regulatory arrangements mitigate against the risk of ML for private clubs operating as casinos and offering casino services.

627. The creation of a statutory body, "*the Irish Auditing and Accounting Supervisory Body*" will supervise the accounting professionals Ireland. The team welcomes the creation of this body and recommends that this process be realised soon to assist with the consolidation of AML/CFT guidance for accountants.

628. The Law Society of Ireland operates as an SRO for its sector, but its powers to regulate and monitor their sector for AML/CFT issues, their ability to issue sanctions, and their resources are insufficient. It is recommended that either the Law Society be empowered to perform these tasks effectively or that another body be created to do this. The team also recommends that the Irish Authorities designate competent authorities or SRO's responsible for monitoring and ensuring compliance of all DNFBP's with AML/CFT requirements. Such authorities or SRO should:

a) have adequate powers to perform its functions, including powers to monitor and sanction;
b) have sufficient technical and other resources to perform its functions.

629. The overall implementation of Recommendation 25 is not completely effective as guidance is given only to some of the DNFBP's while others are not covered. The guidance to the DNFBP's covered is not always sufficiently detailed. Competent authorities should establish guidelines that will assist all the DNFBP's active in Ireland, including trust and company service activities, to implement and comply with their respective AML/CFT requirements. At a minimum, the guidelines should give assistance on issues covered under the relevant FATF Recommendations, including: (i) a description of ML and FT techniques and methods; and (ii) any additional measures that these institutions and DNFBP could take to ensure that their AML/CFT measures are effective.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors underlying overall rating
R.24	NC	• Almost all DNFBPs are not subject to oversight for AML/CFT purposes. • Where an oversight role exists the SROs do not have sufficient resources to perform these functions.
R.25	LC	• Guidance is given to some DNFBP's, but others are not covered. • The guidance provided to DNFBP's covered is not always sufficiently detailed.

4.4 Other non-financial businesses and professions: Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

630. A comprehensive number of financial and non financial bodies are subject to some AML/CFT requirements. This includes professionals such as tax advisors that are not DNFBPs. The Irish authorities informed the team that where a question arises in relation to a body that is not designated for the purpose of ML or TF legislation, and which might be considered to be at risk of being used for ML or TF then consideration would be given to designating that body for the purposes of the AML/CFT legislation.

631. Ireland has introduced a number of measures to reduce the risk of ML by introducing modern payment techniques and other measures, including:

a) Electronic payment methods (direct debit, electronic funds transfer,) are used for a large number of payment types.
b) Chip and PIN credit cards are being introduced by banks during 2005 to reduce credit card fraud.
c) Large bank notes (in particular €500 and €200 notes) are not widely circulated.

632. The public service is adopting technical innovations aimed at the wider use of electronic payment mechanisms in many areas, including the adoption of e-payment methods in respect of its own transactions. Government Departments and Offices already use electronic funds transfer extensively to make salary payments and it is intended that by end-2005 they should, to the greatest possible extent, use it for other payments, including payments to suppliers, and as far as possible payments made under their schemes and programmes.

Recommendations and comments

633. Ireland has extended AML/CFT to other businesses and professions in accordance with EU ML Directives. Ireland has also encouraged the development and use of modern and secure techniques for conducing financial transactions that are less vulnerable to ML.

	Rating	Summary of factors underlying overall rating
R.20	C	The Recommendation is fully met.

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1.1 Description and Analysis

Recommendation 33

634. A number of types of legal persons exist in Ireland; private companies, public companies, public companies limited by shares, credit unions, and friendly societies. Legal persons are established by Acts of the Oireachtas or pursuant to legislation dealing with specific corporation type (see paragraph 49). There are 153,793 companies registered in Ireland. Approximately 90% of all companies in Ireland are private companies, requiring very low capital or shareholders.

Company Type	Number
Private company limited by shares	136,963
Guarantee company without a share capital (public)	11,594
Private unlimited company with share capital	2,424
Public limited company	790
Private unlimited company	536
Public Limited company with variable capital	463
Guarantee licence company without share capital (public)	394
UCIT	207
Guarantee company with licence to not use the word 'limited 'in the name	136
Other	286
Total	153,793

635. There are three key documents required in forming a company: a Memorandum of Association outlining the objects of the company, which is signed by the subscribers; Articles of Association which set out the internal rules of the company and a form A1 that contains the name and address of the first directors and secretary, the names of the subscribers, the registered office, share capital details and a sworn declaration that all the information contained in the document is correct.

636. The ownership and registration requirements for Irish registered companies vary depending on the type of company established. Every company is required by law to have a minimum of two directors and a secretary. If one of the directors is not resident in the state, the company must hold a bond to the value of €25,395. For an Investment Limited Partnership (ILP) there needs to be one or more general partners,

one of whom must be an Irish incorporated company with its head office in Ireland; and at least two directors must be Irish.

637. All companies and societies operating a business in Ireland are required to register with the Registrar of Companies[78] or the Registrar of Friendly Societies. A list for the information requirements for a company or society registering can be found in annex 10.

638. A list of shareholders is required to be registered annually with the Company Registration Office (CRO). The CRO retains responsibility for enforcing the filing requirements of company law and is the repository for all registered companies and business names in Ireland. The register provides easy access to information on companies and other legal persons, which can be accessed via the CRO website. The CRO's core functions include:

a) The incorporation of new companies and registration of business names and making the information available to the public.
b) The maintaining of a public register of all companies (including directors' names and addresses, shareholders names and addresses and other information).
c) The making of information available to the public on a timely basis through its public office and website.
d) The enforcement of the Companies Acts 1963 to 2005 to ensure accurate, timely and up to date information is available on the public register.

639. The CRO has a staff of about 140 and receives about 350,000 submissions a year; including annual returns, changes of directors and address. The annual return requires key information on the company to be submitted including information on past and present shareholders, directors (including shadow or alternate directors) whether the directors are resident in Ireland and their other directorships.

640. The CRO retains a light control level in respect of documents filed and generally takes documents at face value. It has no investigatory powers. Although in 1997 only 13% of annual returns were filed on time there has been a marked improvement in compliance culture in recent times, with now about 80% of returns filed on time. If a company does not file an annual return it will now be struck off the register.

641. The Office of the Director of Corporate Enforcement (ODCE) is responsible for enforcing compliance by companies and company officers with the requirements of the Companies Acts in Ireland. The ODCE was established by the enactment of the Company Law Enforcement Act (2001) and has a mandate to encourage the general compliance and criminal enforcement of company law. It retains a multi-disciplinary team of 35-40 persons including accountants, lawyers and members of the Garda on secondment. Auditors are required to report suspected indictable offences under the Companies Acts to the ODCE, and other parties are also encouraged to report suspected misconduct under the Act. The Director and his staff are under a legal obligation to keep confidential information obtained by them unless disclosure is required in the opinion of the Director for the performance of his functions or the functions of other competent authorities. This permits information exchange with other government agencies where necessary, such as the Companies Office and the Garda. Members of the Garda seconded to the ODCE to facilitate its investigatory work retain all their normal powers to gather evidence and to take statements.

642. The Financial Regulator has statutory obligations in relation to registration of building societies (as set out under the Building Societies Act (1989). The Financial Regulator maintains various registers of financial service firms authorised by it under the various enactments. Similarly, the Financial Regulator

[78] http://www.cro.ie/

has similar powers and obligations in relation to Credit Unions and the Director of Consumer Affairs maintains a register of Credit Intermediaries.

643. The Registrar of Friendly Societies is the repository for all registered societies under the Industrial & Provident Societies Acts 1893-1978 and the Friendly Societies Act 1896-1977. The Registrar maintains a public registrar of all societies registered under the above named Acts and makes the information available to the public through a register that is accessible on request through a public office.

Access to Information on Beneficial Control and Ownership

644. For a small fee, individuals can obtain all of a company's registered information from the CRO. This information will include the names and addresses of the directors and shareholders of the company. New directors, or changes in director's details, are required to be notified to CRO within 14 days; shareholders details are included in the annual return of the company. Corporate directors are not permitted but nominee directors are. The Company Law Review Group (CLRG) are currently examining whether there is a need to introduce a formal verification of identity of directors and secretaries. Shareholders may comprise natural persons or companies. The Companies Act legislation does not recognise trusts. If the registered member is a trustee then the CRO will not look behind these arrangements (the trustee is the member and in order to lift the veil of a trust on the register a court order is necessary). The law does not require disclosure to the CRO of beneficial ownership where the beneficial owner is a person other than the registered shareholder, or a member who may be a nominee shareholder.

645. Under the Companies Act (1990) an Inspector can be appointed to investigate on oath the beneficial ownership of a company. This function was devolved to the Director of Corporate Enforcement under the Company Law Enforcement Act (2001). The Director can also require any person whom he believes to be in possession of the requisite information to disclose inter alia the names and addresses of those interested in the company's shares or debentures and of the persons who act or have acted on their behalf. The grounds available to the Director for doing so in either case are:

a) the effective administration of the law relating to companies;
b) the effective discharge by the Director of his functions, or
c) if it is in the public interest.

646. The Companies Act also makes provisions to permit the Director to freeze the transfers of shares during an investigation. These powers (including the powers to obtain access to beneficial ownership information) have only been used three times since 1991, and the evaluation team was informed that there had been no request to the ODCE to use these powers since the Office's establishment in late 2001. The Companies Acts also permit the Director to investigate suspected corporate misconduct in general (including by way of the application for the appointment of an Inspector to examine persons on oath), and these provisions have been used on a more regular basis to gain access to information**.**

647. All companies are required to file tax returns and Irish non-resident companies (IRNR) which previously did not have a tax liability in Ireland have been abolished (see paragraph 95). Directors and other persons are required to notify acquisition of shares in companies in the following circumstances:

a) Directors acquiring or disposing shares in a company;
b) Persons (including directors) acquiring or disclosing voting shares in a Public Limited Company (PLC) to buy shareholding through 5%;

c) Persons (including directors) acquiring or disposing quoted shares in a PLC to buy shareholdings through 10%, 25%, 50% or 75%.

648. The evaluation team was informed that bearer share companies were allowed in Ireland. Section 88 of the Companies Act (1963) permits the issue of share warrants to bearer. A company, if so authorised under its Articles in relation to any fully paid up shares, may issue a warrant stating that the bearer of the warrant is entitled to the shares specified therein. Such a warrant is known as a share warrant and entitles the bearer to the shares and the shares may be transferred by delivery of the warrant. The Irish authorities had no evidence concerning their use or misuse and believed them to be practically unknown in the market. The authorities advised that one possible reason for this is that as they are capable of renouncement in favour of third parties their use might be construed as an offer to the public which would require compliance with national and /or EU Law in relation to prospectuses**.**

649. The Garda and other competent authorities such as the ODCE have the usual law enforcement powers to make inquiry and obtain if necessary compulsory production of records (e.g. by search warrant) to establish beneficial control of companies and other legal entities. However, if there are a chain of companies on the register with nominee directors or corporate/trustee shareholders, the information will not be readily available and may prove difficult to trace. If the entities are owned or controlled by entities registered offshore then the information will be all the more difficult to obtain, if it is available at all. While the beneficial ownership inquiry powers in the Companies Acts have been used on only a small number of occasions to date, they have succeeded in each case in obtaining the required information, including in cases involving companies registered outside Ireland.

Additional elements

650. There is no readily identifiable mechanism to facilitate access by financial institutions to beneficial ownership and control information. The evaluation team was informed by financial institutions and DNFBP that they generally rely on their own resources to carry out customer identification checks and to establish beneficial ownership or control of their clients.

5.1.2 Recommendations and Comments

651. Ireland maintains a system of central registration of all companies by the CRO, including details of the directors and members of the company. The information is publicly available on payment of a fee. Changes of control and ownership are required to be kept up to date.

652. However, the information on the register is taken at face value by the CRO and no verification is carried out. In addition, nominee directors and corporate/trustee members are permitted so that the register will not necessarily disclose true beneficial ownership and control of the company. Companies are only required to file a return once a year, the information that can be obtained from the CRO may therefore not be accurate and current. Company Act provisions allow for the appointment of an inspector with special powers, including powers ordering directors to disclose beneficial ownership of shares, but these powers are not available on a routine basis. The Garda and the ODCE have certain investigatory powers at their disposal but the task of identification of the ultimate beneficiary may be difficult if there are layers of companies/trustees involved and if some are registered abroad.

653. Ireland should take measures to improve the transparency concerning beneficial ownership or control of legal persons and entities. Examples of ways to increase transparency include (a) requiring directors to provide the information to the CRO upon registration. (b) The CRO could make the information publicly available on record, or at least have it available to competent authorities such as the Garda upon request; or (c) the company could be obligated to record such information in the shareholder

register of the company, and should retain and keep current all such information and make it available to the competent authorities upon request.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Recommendation 34

654. Ireland is a common law jurisdiction that has a system of trust law. A trust is defined in Ireland as an equitable obligation binding a person (the *trustee*) to deal with property over which he has control (the *trust property*) for the benefit of persons (*beneficiaries*) of whom he or she may himself or herself be one, and anyone of whom may enforce the obligation.

Trusts

655. A trust can be either *private*, for the benefit of an individual or class but not for the benefit of the public at large; or *public* or *charitable* trust for the benefit of the public at large, although it may confer a benefit on an individual or class. A trust may be an express, an implied, a resulting, or a constructive trust. In a will, an executed trust is one which is finally declared by the instrument creating it, where the executor may be said to be his or her own conveyancer. No special kind of words is necessary to create a trust, but the words must be imperative, the subject matter of the trust must be certain, and the objects or persons to benefit under the trust must be certain.

656. Under Section 890 and 950 of Taxes Consolidation Act (1997) resident trustees who are in receipt of money, value, profits or gains belonging to others are required to deliver to the Irish Revenue (Tax and Customs Authority) statements of all such money, value, profits or gains. If required they are also obliged to give details of the name and address of every person to whom all such money, value, profits or gains belong. Under s.1052, 1053 and 1054 of the Act there are monetary penalties for failure to deliver statements, or fraudulently or negligently making incorrect statements.

657. The Proceeds of Crime (Amendment) Act of (2005) provides for application to the court for disclosure of the identity of persons for whom property is held in trust. This enables the Chief Bureau Officer of the Criminal Assets Bureau or an authorised officer of the Revenue Commissioners to apply to the High Court in order to establish the identity of trustees or persons for whom property is held in trust where there is an investigation in relation to whether a person is in receipt of, controls or has benefited from, the proceeds of crime. Ireland does not keep a register of trusts, there is no legal obligation placed on trust service providers to obtain, verify and retain records of the details of the trust.

658. The Garda have their usual investigatory powers in the context of a criminal investigation to obtain information concerning the identity of trustees and beneficiaries of trusts, including by compulsion if necessary (search warrants or production orders). However, often it will be difficult to identify trustees and beneficial owners, or even determine that the property is held in trust as with companies, if the

beneficial ownership or control structure is complicated or extends off-shore then the details may be particularly difficult to obtain and verify.

5.2.2 Recommendations and Comments

659. Investigative authorities should be given greater powers to obtain the information, for example by requiring the trustee to provide information and answer questions in the context of a general criminal investigation. At present, such compulsory powers are only available to the CAB and the Revenue Commissioners upon application to the High Court. Consideration should be given as to whether other measures should be introduced that would enable adequate, accurate and current information to be obtained in a timely manner regarding trusts.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	PC	▪ Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

660. The charities sector in Ireland is unregulated and has been so since the foundation of the State. There is no body that has the specific aim of supervising the sector and the statutory powers to either maintain a register of charities or to subject the sector to regulatory scrutiny. The Irish authorities however are in the process of a reviewing to ensure accountability of the NPO sector and to protect against abuse of charitable status.

661. The Revenue Commissioners currently issue a charity reference number to bodies that are granted a charitable tax exemption. They maintain and publish a list of those bodies; this is sometimes mistaken for a register of charities. There is no statutory body to which a complaint about a charity can be made. The lack of regulation to date has meant, too, that there is no reliable information on the number of active charities, what their financial worth is and how they spend their funds. There is no legal requirement to show from where donations are received, how much money was received, or the destination of funds.

662. There is a commitment under the *Agreed Programme for Government 2002*[79] to take action by the introduction of legislation to protect against misuse of charitable status and fraud. This commitment is designed to respond to the imperative for an effective regulatory framework capable of delivering the degree of accountability and transparency by charities that are necessary to maintain public trust and confidence in the sector.

663. A Consultation Paper on the legislative proposals, issued by the Department of Community, Rural and Gaeltacht Affairs in 2004, proposed the introduction of an integrated system of oversight. Under such a system, it was envisaged that:

a) a central register of charities would be created
b) all charities would be obliged to register
c) registered charities would be required to file annual returns.

[79] http://www.taoiseach.gov.ie/index.asp?docID=794

664. It was further proposed that one of the core regulatory functions to be brought in under the new legislation would be "protecting the public interest by monitoring and investigating possible abuses". An enforcement regime was proposed involving statutory powers where evidence of fraud was found to: prosecute summarily, or forward a file to the Director of Public Prosecutions in the case of an indictable offence.

665. A four-month public consultation was launched in 2004, with the Consultation Paper as the reference document, with a view to maximising public participation in the preparation of the legislation. There was a huge cross-sectoral response, totalling 85 submissions (including a number of joint submissions), which gave an overall broad endorsement to the proposals and accordingly confirmed how the Ireland would oversee its non-profit sector. The external report which was prepared on the public consultation was issued in September 2004.

666. Following the wide public endorsement of the Consultation Paper, the next step will be the preparation of the draft legislation within the Department of Community, Rural and Gaeltacht Affairs. In March 2004, the Law Reform Commission was engaged to assist the Department with the specialised area of the legislative reforms relating to charitable trust law. A public consultation on the recommendations by the Commission took place, in early 2005. The Department's consultation paper, a list of the names of those individuals and bodies that made submissions, the external report on the public consultation can be accessed on the Charities Regulation webpage of the Department's website at http://www.pobail.ie/en/CharitiesRegulation.

667. There is an important EU dimension to regulation of the charities sector, in the light of specific initiatives targeting prevention of the misuse of charities for TF or organised crime. The most recent of these initiatives is the establishment of an expert group in April 2005 by the European Commission (Directorate General Justice, Freedom and Security) to assist in the elaboration of an Action Plan, with a view to EU-level implementation of international standards, for FATF Special Recommendation VIII. The Department of Community, Rural and Gaeltacht Affairs is represented on this expert group.

668. Within the island of Ireland, there is also a North/South dimension to the Department's work to regulating the charities sector, with meetings and mutual information-sharing. The Third Report of the Independent Monitoring Commission was presented to the UK and Irish Governments in November 2004, welcomed the fact that the two jurisdictions, North and South, were in communication about their respective proposals; and requested that the two Governments keep the Commission advised on progress in this area.

669. The funds of non profit organisations are subject to the anti- TF provisions in the Criminal Justice (Terrorist Offences) Act (2005). The Garda authorities indicated that there was no evidence that any charity based in Ireland was being used to facilitate the activities of terrorist organisations. Following the events of September 11 2001, there was an examination of the activities of charities. Charities with potentially a high risk for TF were identified and 25 Charities subject of on site visits by the Revenue Commissioners. No indication of abuse was found.

5.3.2 Recommendations and Comments

670. Ireland should continue to monitor the current situation in relation to ML and TF risks in the NPO sector and should follow through on the Department of Community, Rural and Gaeltacht Affairs consultation exercise to review the adequacy of laws and regulations in place to ensure that the NPO sector is less vulnerable to abuse by money launderers and terrorist financiers. Further consideration

implementing specific measures from the Best Practices Paper to Special Recommendation VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	• Ireland is in the process of completing a review of its NPO sector, but has not yet implemented measures to ensure accountability and transparency in the sector so that terrorist organisations cannot pose as legitimate non profit organisations, or to ensure that funds/assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

Recommendation 31

671. Procedures exist in Ireland to ensure that there is co-operation at both an operational and policy level. Nationally at an operational and policy level, the evaluation team noted that co-operation occurred when necessary, but was usually only available on an informal basis. There were few formal structures to facilitate formal multi-agency co-operation outside of the MLSC and the CAB. The responsibilities of the MLSC Plenary sessions lie primarily in assisting the production of guidance for financial institutions and DNFBPs. The MLSC official side meetings provide a forum for national coordination and cooperation in relation to the development and implementation of policy and operational initiatives.

672. The Garda as the national police force is able to utilise its organisational structure to co-ordinate ML and TF investigations and has the potential to disseminate STR's quickly through the FIU and the MLIU as the central point of co-ordination.

673. The FIU is in an unusual position of having a shared responsibility for the receipt, analysis and investigation of STRs with the Revenue Commissioners. Officers from the Irish Revenue meet with officers from the FIU, at least monthly in order to ensure there is no duplication of effort or compromising of investigations between the two agencies responsible for STRs. This manual process is necessary as there is no common sharing of databases or a shared management information system between the FIU and the STRO.

674. The Financial Regulator briefs the MLIU on FATF issues and circulates copies of FATF documents and reports to the MLIU. A coordinated approach to training/briefing of industry is undertaken with the Financial Regulator sending representatives to participate and attend such seminars arranged by the MLIU. In addition the MLIU provide speakers to assist in the training arranged by the Financial Regulator for its own staff in order to provide practical examples of cases, feedback on quality of reports made by financial institutions supervised. There are regular official side meetings of the MLSC which the both the Financial Regulator and MLIU attend and which are used to discuss issues of common interest including AML/CFT such as unauthorised business including money transmission business.

675. Internationally Ireland is pursuing increased channels of co-operation. The FIU has signed a number of MOU's with FIUs in other jurisdictions relating to the exchange of information relating to ML and TF and the implementation of the Criminal Justice (Mutual Assistance) Bill (2005) and the European Arrest Warrant provisions (outlined in Recommendation 36) will provide a more extensive number of gateways through which information can be exchanged internationally.

676. At a policy level Ireland is well represented within the EU structure and has been diligent in ensuring that EU directives are enforced. At an operational level Ireland participates within the EU framework and in a number of other recognised international fora including Europol, Interpol and the WCO.

677. Analysis of ML investigations by the Irish authorities has shown that money launderers in Ireland will seek out those entities which are not regulated and have a low compliance culture. These conclusions are passed to the MLSC and circulated to law enforcement and the financial industry. But, it is unclear as to whether or not there is a mechanism in place between the MLIU, policy makers, regulators and other competent bodies, to ensure that analysis of ML and TF trends are effectively used at both operational level and in the direction of future ML and TF policy. The STR reporting from DNFBPs is limited.

678. There is no specific documented AML/CFT strategy; ML and TF are incorporated in the overall anti-crime initiatives. As noted above the MLSC Official Side is the principal forum for coordinating Ireland's AML strategy. The Official Side, representing the Government Departments and State Agencies, meets regularly both as a formal group (i.e. with an agenda and minutes) and in smaller configurations. In the formal group, issues include the development of legislative proposals, representation at international fora and Ireland's negotiating positions thereat. In the more restricted gatherings, topics have included development of training material between the FIU and the Regulator and the production of guidance notes on TF. This may be enhanced if further legislative measures are put in place to take account of, among other things, the risk based approach to ML and TF contained in the 3rd EU ML Directive recently adopted.

679. The MLSC also provides a mechanism for co-operation with the financial sector. Sub groups of the MLSC meet to collaborate on the drafting of guidance notes for most of the sectors currently designated to comply with AML/CFT requirements.

680. The system of recruitment to all levels of the judiciary is based on the concept of bringing in experienced and trained legal practitioners. Consequently, judges, on appointment, have a wide knowledge of the law and its application. In 1996, a Judicial Studies Institute introduced training and has been very active in organising professional training seminars and conferences for the judiciary and also exchange visits with other jurisdictions. As the Courts are independent in their function, neither the Department of Justice, Equality and Law Reform nor any other Government Department has a function in prescribing the content and nature of training provided to the judiciary. The Department has, however, always assisted with initiatives which the judiciary have brought forward in the area of training. Under the Courts and Court Officers Act (1995) funds are available to judges at all levels to enable them to attend training seminars and conferences both at home and abroad. Recently, members of the judiciary have partaken in the Commonwealth Law Conference 2003 (which included the topic 'Meeting the challenge of Terrorism' and the Academy of European Law Seminar on ML in 2005.

Recommendation 32

681. There have been no reviews of implementation of AML/CFT systems.

6.1.2 Recommendations and Comments

682. The current co-ordination, whilst not deficient could be more effective and would benefit from a more formal organisation. Nationally, increased co-ordination between the FIU and the Financial Regulator would certainly ensure that there is a direct communication between the operational and the policy aspects of Ireland's AML/CFT efforts. Proactive cooperation between the FIU and the Revenue Commissioners in ensuring the STR systems is run effectively and co-ordinated feedback can be provided to reporting entities. This could help ensure effective co-operation on issues with the financial and DNFBP sectors that have been recognised as vulnerable to emerging ML trends providing information that can be utilised as Ireland seeks to review its AML/CFT systems when implementing the 3rd EU ML Directive.

683. Better strategic analysis derived from the increasing number of STRs submitted by the financial institutions and DNFBPs will require more analytical resources to be dedicated within the FIU. A greater prominence within the Garda and the MLSC to the work of the FIU would ensure that, as a law enforcement FIU-style, the Irish FIU can perform the dual tasks for information analysis and investigation of ML and TF cases to ensure that operational information can be strategically analysed and used to inform policy decisions.

684. The CAB effectively demonstrates how a well resourced multi-agency organisation is able to have an impact. This model should be considered for application in other areas of Ireland's AML/CFT system.

685. At an international level Ireland should continue to seek arrangements that assist international co-operation. Given the large amount of financial business that Ireland's financial institutions generate from abroad it is important that Ireland has open gateways to make and respond to international inquiries.

686. Ireland should proactively review the effectiveness of its AML/CFT system on a regular basis. This will help ensure that the system is kept up to date and effective.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	• A lack of formal AML/CFT framework outside the issuance of guidance notes limits the targeting of the resources that Ireland has directed at AML/CFT systems. There is room for more formal increased interagency co-operation particularly between the MLIU and the Financial Regulator.
R 32	PC	• There is no regular and/or proactive review of AML/CFT systems.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35 and Special Recommendation I

687. Ireland signed the Vienna Convention in 1989 and ratified it in 1996. The Convention has been implemented with regards to these aspects that are relevant to the FATF Recommendations, to a large extent by the provisions of the CJA (1994).

688. Ireland signed the Palermo Convention in 2001 but has not yet become a party to it. It is compliant with various elements of the Palermo Convention, including Article 6.1 on the criminalisation of ML, and is currently working on provisions for inclusion in Criminal Justice Bills which will enable ratification. These provisions will provide for jurisdiction over ML offences committed outside the State in certain

circumstances set out in Article 15 of the Convention, and will provide a specific definition for "organised criminal group".

689. The 1999 UN International Convention for the Suppression of the Financing of Terrorism was signed by Ireland in 2001 and ratified in 2005 and has been implemented, in a large part by the provisions of the Criminal Justice (Terrorist Offences) Act 2005. The Extradition Act 1965 (Application of Part II) (Amendment) Order (2005) (SI No. 374 of 2005) provides for the extradition of persons to other states which are parties to the Convention for offences related to TF. The Order came into effect on 14 July 2005.

690. Ireland has basically implemented the legal provisions of S/RES/1267 (1999) and its successor resolutions that relate to the FATF Recommendations. There is a reliance on the EU Regulations rather than the UN list. A clear legal basis to freeze any identified funds does not exist until the EU Regulations are made and there may be a short delay (a few days) before this is done. There is also a necessity to make statutory orders to provide for enforcement of penalties for non-compliance with the EU Regulations, a procedure which takes between 2 to 4 weeks. Financial Institutions are obliged to freeze on the basis of EU listings.

691. However, financial institutions do follow the UN lists and are able to make STRs to the Garda immediately upon identification of accounts. The Garda can give initial directions in respect of the account under the STR provisions contained in the CJA (1994).

692. Ireland has not adequately implemented S/RES/1373 (2001). It relies exclusively on an EU listing system without subsidiary mechanisms to deal with terrorists on the list who are European citizens (the EU Regulations do not apply for freezing purposes to such persons) or with persons designated as terrorists by other jurisdictions who are not on the EU list. It is unclear whether the mechanism for interim court orders in s.14 of the Criminal Justice (Terrorist Offences) Act 2005 is applicable to requests from foreign jurisdictions to freeze funds of designated terrorists, and s.14 imposes evidential requirements concerning intended use of the funds that are contrary to the obligation in S/RES/1373 (2001) to freeze all funds and assets of persons who commit terrorist acts whether or not there is evidence those particular funds are intended for use in terrorist acts.

693. There are insufficient measures in place to monitor compliance of designated non-financial business and professions with S/RES/1267 (1999) and S/RES/1373 (2001), and to communicate to them actions taken under freezing mechanisms.

Additional elements

694. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime has been ratified and implemented by the CJA (1994).

Recommendations and comments

695. Ireland has adequately implemented the Vienna Convention and TF Convention. It has not yet ratified the Palermo Convention but is working on legislation to enable ratification, including creating a definition of an "organised criminal group". Ireland has basically implemented the legal provisions of S/RES/1267(1999) but has not adequately implemented S/RES/1373(2001). It should create a legal basis for the freezing of assets of designated terrorists who fall outside the EU listing mechanism for freezing. It should also monitor DNFBPs for compliance with both Resolutions, and establish a system of communicating with them concerning action taken under the freezing mechanisms

696. Ireland should work towards early ratification of the Palermo Convention. It should also adequately implement S/RES/1373(2001) by creating a legal basis for the freezing of assets of designated terrorists who fall outside the EU listing mechanism for freezing. It should also monitor designated non-financial business and professions for compliance with both S/RES/1267(1999) and S/RES/1373 (2001), and establish a system of communicating with them concerning action taken under the freezing mechanisms.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	• The Vienna Convention and TF Convention have been signed, ratified and implemented. The Palermo Convention has been signed but not yet ratified, although almost all of the provisions are already implemented for ML purposes.
SR.I	PC	• S/RES/1267 has been implemented but S/RES/1373 (2001) has not been adequately implemented. In particular, no mechanisms exist for the immediate freezing of funds of designated terrorists outside the EU listing mechanism. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to designated non-financial business and professions. • Designated non-financial businesses and professions are not adequately monitored for compliance with measures taken under the Resolutions.

6.3 Mutual Legal Assistance (R.32, 36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and Special Recommendation V

697. Ireland's capacity to provide MLA is governed by the provisions of the Part VII (sections 46 to 56) of the CJA (1994) as amended. The provisions apply equally to ML and TF cases. The following sections of Part VII of the 1994 Act are relevant in the context of the provision of MLA by Ireland:

a) Section 46 – concerning confiscation of property (which includes money, real and personal property etc.) on foot of the making of a confiscation order by a foreign court;
b) Section 47 – concerning forfeiture of instrumentalities;
c) Section 49 – permitting service of foreign proceedings within the State;
d) Section 51 – providing for the taking of evidence in Ireland for use in proceedings abroad;
e) Section 53 – permitting the transfer abroad of a prisoner to give evidence;
f) Section 55 – providing that a court in Ireland may grant a search warrant for material which is relevant to an investigation outside Ireland.

698. The provisions of Part VII of the CJA (1994) are currently being amended and updated to take into account the EU Convention on Mutual Assistance in Criminal Matters (2000) and Protocols. These amendments are contained in the Criminal Justice (Mutual Assistance) Bill (2005). The principal new issues being provided for in the Bill are as follows :

a) Provisions in relation to transactions on bank accounts and for monitoring accounts;
b) Interception of telecommunications;

c) Restitution of property;
d) Taking of samples in Ireland and abroad for the purposes of criminal proceedings or a criminal investigation;
e) Taking evidence through TV link for use in and outside the State;
f) Taking evidence by telephone link for use in and outside the State.

699. The 2005 Bill will become a separate and stand alone piece of legislation regulating all MLA matters, and it will incorporate the existing provisions on mutual assistance presently contained in the CJA (1994).

700. Ireland has concluded bilateral MLA agreements with United Kingdom (in force since 2004), Hong Kong and the United States of America (these two to become effective following the enactment of the Criminal Justice (Mutual Assistance) Bill (2005)). Contacts have also been initiated with a view to opening discussions with Argentina, the Isle of Man and the Bailiwick of Guernsey.

701. Ireland is also party to a number of multilateral conventions containing provisions for mutual legal assistance, including the Council of Europe Convention on Mutual Assistance in Criminal Matters, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the UN TF Convention.

702. Ireland's capacity to give MLA is not necessarily limited to countries which are parties to the bilateral agreements or multilateral conventions, and requests falling outside these will be considered on an individual basis. MLA is usually provided on the basis of reciprocity.

703. The Minister for Justice, Equality and Law Reform is the Central Authority in the State for MLA in criminal matters. The Mutual Assistance and Extradition Division of the Department carry out the functions of the Central Authority.

Types of assistance which can be provided by Ireland

Confiscation and Forfeiture:

704. In accordance with s.46 (1) of the 1994 Act, the Government may designate countries in respect of which a court in Ireland may make orders (known as confiscation cooperation orders) to give effect to confiscation orders made in those countries. Confiscation may arise where the property was obtained as a result of criminal offences.

705. To enforce a foreign confiscation order, an application must be made to the High Court by or on behalf of the Government of a designated country. The High Court, before making a confiscation co-operation order, must be satisfied as to the following:

- that the order made in the relevant country is in force and not subject to appeal and
- that the person against whom the order was made, if he or she did not appear in the proceedings, received notice of the proceedings in sufficient time to enable him or her to defend them.

706. In addition, the court must be of the opinion that the making of a confiscation co-operation order would not be contrary to the interests of justice.

707. For the purpose of enforcing foreign confiscation orders, the provisions of the 1994 Act, as they apply to domestic confiscation orders, have been adapted by way of Regulations made under s.46 (6) of

the 1994 Act (CJA (1994) (s.46 (6)) Regulations 1996) (SI No. 343/1996). Therefore, when a court in Ireland makes a confiscation co-operation order the order may be enforced by the DPP as if it was a domestic confiscation order.

708. The 1994 Act (as modified under the above-mentioned s.46 (6) Regulations) also provides that the court may make a restraint order, which freezes the property to which it relates, in anticipation of the making of a confiscation co-operation order. The effect of a restraint order is to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

709. Section 47 provides for the designation of countries in whose case forfeiture co-operation orders may be made to give effect to their forfeiture orders. This relates essentially to forfeiture of the instrumentalities of crime.

710. The High Court may make the forfeiture co-operation order where it is satisfied that the order made in the relevant country is in force and not subject to appeal and that the person against whom the order was made, if he or she did not appear in the proceedings, received notice of the proceedings in sufficient time to enable him or her to defend them (again, the court must be of the opinion that the making of a forfeiture co-operation order would not be contrary to the interests of justice.

Service of Documents:

711. Section 49 provides that a summons issued abroad requiring the attendance of a person as a defendant or witness in criminal proceedings may be served on the person in Ireland. Before service here can be affected there must be guarantees that if the person complies with summons he/she will not face proceedings for another offence committed before leaving the State. The person will be informed at the time of service of the summons that there is no obligation to comply with it and will be advised that he/she may wish to obtain legal advice on the matter.

Taking of evidence:

712. Section 51 provides for the taking of evidence by a nominated Judge of the District Court in Ireland for use in criminal investigations or proceedings abroad. This applies where the Minister for Justice, Equality and Law Reform is satisfied concerning the following matters:

a) The requesting authority is a court exercising criminal jurisdiction or a prosecutor or another authority with the function of making requests for mutual assistance;
b) An offence under the law of the requesting State has been committed, or that there are reasonable grounds for suspecting that such an offence has been committed; and
c) Proceedings in respect of that offence have been instituted in the requesting country or that an investigation is being carried on there.

713. The Second Schedule to the 1994 Act governs the procedure for the taking of evidence for use outside Ireland. It covers such matters as summoning witnesses, privilege and the transmission of the evidence. Any evidence that may be furnished in response to such a request cannot, without the consent of the Minister, be used for any purpose other than that specified in the request.

Transfer of Persons to Assist in Proceedings:

714. Section 53 provides for the temporary transfer abroad of a prisoner, with his/her consent, to give evidence or assistance in foreign criminal proceedings.

Search Warrants:

715. Under s.55 an Irish court may issue a search warrant (authorising entry, search and seizure) to obtain evidence for use in criminal investigations abroad. The section permits the Government to designate countries for this purpose.

716. The conditions for granting a search warrant in connection with proceedings abroad include the following. The foreign request must be made:

a) On behalf of a court exercising criminal jurisdiction in the requesting country or a prosecuting authority in that country, or
b) On behalf of any other authority in that country which appears to the Minister to be an appropriate authority for the purpose of making requests for mutual assistance.

717. In addition, the court must be satisfied that there are reasonable grounds for believing that an offence under the law of the requesting country has been committed, and that the conduct constituting that offence would, if it occurred in Ireland, constitute an offence under Irish law in respect of which the court could issue a search warrant in relation to any place.

718. Any evidence provided following such a search cannot, without the consent of the Minister for Justice, Equality and Law Reform, be used for any other purpose than that specified in the request. The evidence must be returned to the Minister when it is no longer required for the requested purpose. Similar provisions exist in relation to production orders (e.g. to access relevant documentary evidence).

Other Assistance:

719. Some requests for assistance in investigations can be executed exclusively on the basis of police to police co-operation, including:

a) interviewing witnesses or suspects in criminal investigations where the person to be interviewed is willing to co-operate and provide an unsworn statement;
b) sharing information concerning investigations into offences which have been committed in Ireland, where circumstances permit;
c) providing details of previous convictions;
d) providing details of motor vehicles registered in Ireland;
e) providing details of driving licences issued in Ireland; and
f) obtaining medical or dental statements or records where the patient has given written consent.

720. Unreasonable or unduly restrictive conditions for the provisions of MLA do not appear to exist. For certain kinds of compulsory procedures such as search warrants and confiscation cooperation orders, the requesting jurisdiction must satisfy dual criminality requirements and also be designated by the Minister. In practice these requirements do not appear to cause difficulties, and the Minister has designated a wide range of countries including all those with which Ireland has bilateral or multilateral arrangements under its treaties and conventions.

721. Requests for MLA may be sent direct to the Central Authority, although they may also be sent via the diplomatic channel. In the latter case the request will be forwarded to the Central Authority by the Department of Foreign Affairs.

722. If the request is in the correct form, the Central Authority makes the appropriate arrangements to have it executed. Any evidence provided on foot of the request is forwarded to the requesting authority by the Central Authority.

723. In general terms, the procedure for making requests is as follows :

a) Requests should be made by a court, tribunal or any other authority abroad which has the function of making MLA requests.
b) In order to be considered, an MLA request should be in writing and consist of original documents. Fax copies of a request may be accepted on the understanding that the original documents will be forwarded without delay.
c) The request should contain sufficient information to enable the relevant Irish authorities to decide whether it conforms to its statutory and other requirements.

724. The information to be contained in the request includes details of the authority making the request and the purpose of the request, the identity of the person/body who/which is the subject of the proceedings giving rise to the request, the offences charged or under investigation (including a summary of the facts). It should also specify the evidence which is being sought (e.g. details of bank accounts, account numbers etc) and details in relation to the freezing, confiscation or forfeiture of criminal assets.

725. By virtue of s.15 of the Criminal Justice (Miscellaneous Provisions) Act (1997) revenue offences (i.e. offences in connection with taxes, duties or exchange control) are included among the offences covered by Part VII of the 1994 Act.

726. Assistance will not be refused on the grounds of secrecy or confidentiality requirements for financial institutions or designated non-financial businesses and professions, except to the extent that legal professional privilege may apply (s.63 (8) of the CJA (1994)).

727. The powers available for obtaining evidence for use outside the State are similar to that for obtaining evidence for use in the State. For example, s.55(2) of the CJA (1994) (in relation to search warrants on foreign requests) applies the same powers under s.63 of the Act as for domestic search warrants.

728. Ireland does not have a procedure for the transfer of proceedings to or from Ireland. Cases in which the defendant may be prosecuted in more than one jurisdiction are handled on a case by case basis to determine the best venue for prosecution.

Additional Elements

729. Foreign judicial or law enforcement authorities cannot make direct requests to law enforcement bodies for MLA involving the use of coercive measures. Such requests must be made through the Central Authority.

730. Ireland currently has no provision to enforce foreign civil (*in rem*) forfeiture orders (as opposed to foreign orders based on a criminal conviction), beyond the provision in S.47 relating to forfeiture of instrumentalities of crime. Neither does the POCA (1996) contain provision for enforcement of foreign forfeiture orders, although the Proceeds of Crime (Amendment) Act (2005) has recently extended the proceeds of crime legislation to criminal conduct and property outside of Ireland in a number of situations, and has given CAB greater reach in its own investigations to freeze and forfeit property in relation to criminal conduct occurring abroad.

Recommendation 37 and Special Recommendation V

731. The majority of mutual assistance provisions require the establishment of dual criminality. However, the provisions in relation to (i) service of summons within the State and (ii) taking of evidence in the State for use outside the State do not require dual criminality. In addition, the types of assistance that can be granted on a police to police basis do not require dual criminality to be made out.

732. With regard to extradition (see below), dual criminality is a fundamental requirement. However, the Framework Decision on the European Arrest Warrant (EAW) provides for a relaxation of the dual criminality requirement for offences listed on the so called positive list as contained in Article 2.2 of the EU Framework Decision.

733. Technical differences in the way in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual assistance. Ireland relies on an examination of the underlying conduct to apply the double criminality test.

Recommendation 38 and Special Recommendation V

734. Ireland has available procedures to freeze and confiscate proceeds of crime based on foreign requests under the provisions of s.46 and 47 of the CJA. The procedures apply equally to ML and TF cases.

735. Section 46(1) (ii) of the CJA (1994) does allow for recovery of property or payments or their value. Arrangements for coordinating seizure and confiscation action with other countries are dealt with on a case by case basis. Ireland has considered the establishment of an asset forfeiture fund into which all or a portion of confiscated property might be deposited and used for law enforcement, health, education or other appropriate purposes; however it was decided not to proceed with such a fund. Ireland has considered authorising the sharing of confiscated assets with other countries. At the moment, the practice is not to share and the funds are applied to the Exchequer. However, this may need to change to meet EU requirements. For example, the Criminal Justice (Mutual Assistance) Bill will allow for restitution of property to give effect to Article 8 of the 2000 European Union MLA Convention and Article 12 of the Second Additional Protocol.

Recommendation 32 (Statistics relating to mutual legal assistance)

736. The Irish authorities indicated they would be reviewing the effectiveness of the systems to combat ML and TF in the context of the issues arising in implementing the 3rd EU ML Directive. In relation to international cooperation, the provisions of Part VII of the 1994 Act are being amended and updated to take into account the EU Convention on Mutual Assistance in Criminal Matters (2000) and Protocols. These amendments are contained in the Criminal Justice (Mutual Assistance) Bill (2005).

737. Ireland keeps statistics on the number of requests for MLA received and the nature of the underlying offences. It does not keep statistics on the outcomes, or the number granted or refused, but the Irish authorities report that by and large all requests are executed. The majority of requests are for bank documents and the taking of evidence. The number and nature of request received for 2001 to 2004 are:

MLA Requests Received	2001	2002	2003	2004
ML	n/a	15	11	15
Drug Trafficking	n/a	14	12	21
Terrorist Offences	n/a	0	0	0

Fraud	n/a	45	53	61
Other Drug Offences	n/a	1	2	9

738. Overall, the implementation of the Recommendations concerning MLA appears to be working adequately in practice. Ireland has the basic legal mechanisms in place to facilitate requests, and has established a Central Authority to process requests. It does not receive a huge number of requests from other countries and most of the requests it does receive relate to obtaining bank records and testimony from banking officials. The statistics show that the majority of requests concern fraud cases, followed by drug trafficking and ML.

739. In the case of requests for bank records, a judge is usually nominated to take the evidence of the bank officer and receive the documents produced. The witness attends court and gives his evidence under oath. A transcript of the evidence is prepared and passed to the Central Authority for onward transmission to the requesting jurisdiction. Delay may sometimes arise on the part of the bank in retrieving the records, but overall the speed at which the banks and courts move with the Central Authority to obtain the records appears reasonable.

740. Some requests are received for the use of restraint and confiscation procedures, and for search warrants. Countries need to be designated by the Minister in order to make of use of such procedures, but there has been a broad designation of countries totalling about 180, including all countries party to multilateral conventions with Ireland containing provisions on mutual legal assistance.

741. Ireland has measures in hand under the Criminal Justice (Mutual Assistance) Bill (2005) to improve the range of assistance it can offer to other countries and to consolidate its law on mutual legal assistance. New provisions included in the Bill, such as monitoring orders and the taking of live television link evidence, will enhance delivery of assistance to foreign jurisdictions.

6.3.2 Recommendations and Comments

742. Ireland has the basic ability to provide the range of MLA required by the Recommendations. Unduly restrictive conditions for assistance do not apply, a Central Authority with clearly established gateways exists, assistance is provided for revenue offences, and secrecy or confidentiality laws do not impede cooperation.

743. The number of bilateral MLA treaties is low (one in force with the UK, and two pending with Hong Kong and the United States). Ireland has not adopted an active approach to the negotiation of such treaties, and appears to have responded to proposals to negotiate only when approached by other parties. Ireland does have treaty coverage through a number of multilateral conventions but it is recommended that the authorities adopt a more proactive approach to the negotiation of bilateral agreements. This would enhance mutual cooperation directly between partners on a more effective basis, particularly with those jurisdictions with which Ireland has an active operational need for cooperation.

744. Ireland does have the ability to enforce foreign confiscation orders based on criminal convictions abroad, but it does not have the ability to enforce foreign civil (*in rem*) forfeiture orders. Consideration should be given to amending legislation to enable this kind of assistance to be provided as well. Ireland should also move towards active sharing of confiscated assets with other countries on a case by case basis.

745. Statistics are kept on the number of requests received and the types of underlying crimes. However no statistics are kept on whether the request is granted or refused, or the time taken to respond. The collection of statistics should be improved to cover the aspects not currently covered.

746. Ireland is actively moving towards enhancing its MLA regime in line with EU requirements through the new provisions contained in the Criminal Justice (Mutual Assistance) Bill (2005). This consolidation of the existing law under Part VII of the 1994 Act with the new provisions such as account monitoring and television link evidence is a welcome development.

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors underlying overall rating
R.36	C	The Recommendation is fully met
R.37	C	The Recommendation is fully met
R.38	C	The Recommendation is fully met
SR.V	C	This part of the Recommendation is fully met
R.32	PC	Ireland does not keep statistics on whether requests for assistance are granted or denied, nor the time taken to effectively respond to requests.

6.4 Extradition (R.32, 37 & 39, & SR.V)

6.4.1 Description and Analysis

Recommendation 37, 39 and Special Recommendation V

747. Irish extradition procedures are governed by the Extradition Act 1965 to 2001. These comprise the Extradition Act (1965), the Extradition (European Convention on the Suppression of Terrorism) Act (1987), the Extradition (Amendment) Act (1987) the Extradition (Amendment) Act (1994) and the Extradition (European Union Conventions) Act (2001).

748. Prior to 1 January 2004 Ireland operated two extradition codes. One with the United Kingdom was set out in Part III of the 1965 Act – known as the backing of warrants. The other, based on Part II of the 1965 Act, operated between Ireland and states other than the UK.

749. Since 1 January 2004 arrangements for the surrender of fugitives between Ireland and the other Member States of the EU who have implemented the EU Framework Decision on the European Arrest Warrant (EAW) have been governed by the terms of the Framework Decision (European Arrest Warrant Act) 2003. Part III of the 1965 Act has been repealed by the 2003 Act. Arrangements with the Isle of Man and the Channel Islands are now governed by Part II of the 1965 Act which applies to states outside the EU.

750. Ireland has concluded bilateral extradition treaties with Australia and the United States of America which have also been applied under Part II of the 1965 Act. Negotiations for an agreement with Hong Kong are on-going.

751. In addition, a range of multilateral conventions containing provisions for extradition have been applied under Part II of the 1965 Act, enabling extradition between Ireland and other countries party to the convention in respect of offences covered by the convention. These conventions include the Paris Convention (European Convention on Extradition (1957)), the Hague Convention (Unlawful Seizure of Aircraft (1970)), the Montreal Convention and Protocol (Acts against Safety of Civil Aviation (1971)), the Nuclear Materials Convention, the Vienna Convention, the European Convention for the Suppression of Terrorism, the Convention Against Torture, the Convention on the Safety of UN Personnel, the

Convention on Combating Bribery, the Convention Against Corruption, the Maritime Safety Convention, and the Fixed Platforms Protocol. The Extradition Act 1965 (Application of Part II) (Amendment) Order 2005 (SI No. 374 of 2005) provides for the extradition of persons to other states which are parties to the Convention for offences related to TF. This order giving effect to the extradition provisions of the TF Convention became effective on 14 July 2005.

752. A request for the extradition of a person (outside the EAW) must be communicated through diplomatic channels to the Irish Department of Foreign Affairs. However, it may be transmitted by other means which may be provided for in any relevant extradition treaty or arrangement. An extradition request must be accompanied by the following documents:

a) the request (including, for example, details of the conviction/ sentence order or of the warrant of arrest and state where the suspect can be located),
b) the original or an authenticated copy of the conviction and sentence order or, as the case may be, of the warrant of arrest,
c) a statement of the facts of each offence (e.g. background and circumstances relating to each offence),
d) a statement of the law (made by a legal expert, referring to the relevant legislation and to the punishment which may be imposed for each offence),
e) copies of the relevant legislation,
f) identification material (e.g. photograph, fingerprints, physical description etc.),
g) a true translation into English of the material in the dossier.

753. All the documents required by Article 12 of the European Convention on Extradition 1957 or the relevant treaty are required to be submitted in support of a request for extradition. The Department of Foreign Affairs forwards the request to the Department of Justice, Equality and Law Reform which will inform the Garda in order to enable enquiries to be made by them to establish the whereabouts of the person whose extradition is being sought.

754. The Office of the Attorney General advises the Department of Foreign Affairs and the Department of Justice, Equality and Law Reform if a request complies with the requirements of the Extradition Acts or the relevant treaty. Any defects in the request will be brought to the attention of the requesting country via diplomatic channels.

755. The Minister for Justice, Equality and Law Reform is empowered under the Acts to seek further information from the requesting country in certain circumstances. The Minister may also refuse extradition if of the opinion that the case is one where extradition is prohibited. If satisfied that a request complies with the Act, the Minister makes an order which signifies to the High Court that the request has been made. The High Court may then issue a warrant for the arrest of the person whose extradition has been sought. The Warrant of Arrest is transmitted to the Garda to arrest the person**.**

756. Requests for provisional arrest may be made on grounds of urgency. On arrest, the person concerned is brought before the High Court. If the High Court is satisfied that:

a) the Extradition Acts apply to the country which has sought extradition,
b) the extradition of the person has been duly requested,
c) extradition is not prohibited by the Acts,
d) the documents required to support the request for extradition have been produced, it will order the person's extradition.

757. An order of the High Court may be appealed to the Supreme Court only on a point of law. The person is then surrendered to the requesting country on the foot of an order of the Minister for Justice, Equality and Law Reform.

European Arrest Warrant (EAW)

758. Ireland's implementing legislation; the European Arrest Warrant Act (2003) came into operation in 1 January 2004. With effect from that date Ireland will operate the surrender procedures contained in the Framework Decision on the EAW with those other Member States which have also implemented the EU Framework Decision. Among the offences specified in the EU Framework Decision which do not require dual criminality are: terrorism, drug trafficking, fraud, ML and swindling.

759. The Central Authority in Ireland for the purpose of the EAW is the Minister for Justice, Equality and Law Reform and an EAW may only be transmitted to the Central Authority. The High Court is the executing judicial authority in the State for the purposes of the European Arrest Warrant Act.

760. The EAW should be in the form set out in the Framework Decision. It must contain the following particulars:

a) the name and nationality of the person sought
b) details of the issuing judicial authority
c) details of the offences, the date, time and circumstances in which committed and the degree of involvement of the person sought
d) whether the person has been convicted, sentenced or is liable to detention or whether a warrant for the person's arrest has been issued; the penalty to which the person would be liable if convicted or to which he or she is liable, having already been convicted, or the penalty actually imposed

761. The Central Authority may, having examined the Warrant, request further details or documentation from the issuing authority in order to enable it or the High Court to properly perform its functions under the Act. The request will specify the additional information sought and the time within which it must be provided.

762. Following administrative verification of the EAW an application is made to the High Court to have the warrant endorsed for execution. If the High Court is satisfied that the Warrant is in order it may endorse the Warrant for execution. Once endorsed, the Warrant is sent to the Garda to be executed.

763. On his or her first appearance in the High Court the person may be remanded in custody or granted bail (at the Court's discretion) and a date will be set for the hearing of the surrender proceedings. If satisfied that all formalities have been complied with and that there is no impediment to the person's surrender, the High Court will order the surrender of the person to the requesting state.

ML and TF as extraditable offences

764. ML and TF are extraditable offences under Irish law. Section 10 of the Extradition Act (1965) permits extradition for any offence which is punishable by more than 12 months imprisonment in both the requested and requesting State. Dual criminality is required based on the acts or omissions underlying such offences.

765. Prohibitions on surrender under the 1965 Act include if there exist substantial grounds for believing that a request has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that the person's position may be prejudiced for any of those reasons. Surrender will also be refused for purely military offences, and for revenue offences. Revenue offences mean an offence in connection with taxes, duties or exchange controls but do not include an offence within the scope of the Vienna Convention. Extradition may be also granted for revenue offences if the relevant extradition provisions provide otherwise. Extradition will be refused in cases of double jeopardy, and where the offence is punishable by death unless an undertaking is provided that the death penalty will not be carried out.

766. The 1965 Act originally contained a blanket prohibition on extradition for political offences. This has been modified over the years, and now excludes the taking or attempted taking of the life of a Head of State or a member of his family; or an offence within the scope of Article 3 of the Vienna Convention. Exceptions have also been made for requests involving terrorist type offences in relation to parties to the European Convention on the Suppression of Terrorism.

767. ML and TF are also extraditable offences under the European Arrest Warrants Act (2003). Dual criminality is not required for these offences under the EAW scheme. Certain prohibitions on surrender apply, including cases in which the person has been granted a pardon or amnesty under Irish law, cases of double jeopardy and persons convicted in absentia, and cases in which the authorities in Ireland are proceeding against the person in relation to the same matter or have considered but decided not to proceed against the person in relation to the same matter.

768. Ireland extradites its own nationals on a reciprocal basis. It extradites nationals under the EAW system, but will only extradite Irish nationals under Part II of the Extradition Act 1965 if the relevant extradition provisions provide for this. If reciprocal facilities are not available Ireland can at the request of the other country submit the case to its competent authority for the purpose of prosecution. This provision is contained in s.38 of the Extradition Act (1965). The DPP will make an independent decision in each case whether or not to prosecute, in accordance with the same standards as for a domestic prosecution. MLA procedures are available to cooperate in such cases.

769. In general, there is no difference of approach taken to extradition requests based on the type of offence contained in an extradition request. Some simplified measures to speed extradition are in place. Although requests under the 1965 Act must go through diplomatic channels, requests under the EAW are transmitted directly between Central Authorities. All extradition requests must go through a court procedure in Ireland. However, the procedures do allow for consent surrenders and again the procedure under the EAW is a simplified and expedited procedure for extradition.

770. As noted above, TF is an extraditable offence under Irish law. Extradition may be granted for TF offences under the EAW procedures, or under Part II of the Extradition Act (1965) if relevant treaty arrangements exist. An order applying the TF Convention to the provisions of Part II of the 1965 Act for the purposes of extradition with other parties to the Convention became effective on 15 July 2005 The political offence exception does not apply in relation to TF requests for extradition.

Recommendation 32 (Statistics relating to extradition):

771. Ireland does not receive a large number of requests for extradition and implementation of the FATF requirements in this regard is therefore a little difficult to gauge. Figures for the number and types of requests received for period 2001 to 2004 are as follows :

Extradition(s) by Offence 2001 - 2004

	2001	2002	2003	2004
ML	0	1	1	0
Drug Trafficking	0	0	0	2
TF	0	0	0	0
Fraud	4	6	4	13
Total	4	7	5	15

772. The majority of requests relate to fraud cases, and of these the numbers in 2004 have shown a marked increase. Traditionally, most requests have come from the UK but with the coming into operation of the European Arrest Warrant Act (2003) Ireland can now expect the number of requests to up in relation to EU States.

773. For non-EU States, Ireland only has two bilateral agreements, one with Australia and the other with the United States. Ireland has applied the provisions of a number of multilateral conventions for extradition purposes, but to date requests under these conventions appear few. It is too early to assess the effectiveness of the implementation of the UN TF Convention for extradition purposes.

774. Whilst Ireland does keep figures on the number of requests received and the types of offences, it does not keep statistics concerning the basis on which the extradition requests are made, whether requests are refused or granted, and how much time was required to respond or comply with requests. Until very recently, the number of requests has been low so that this kind of information was ascertainable from an examination of the case files themselves.

6.4.2 Recommendations and Comments

775. Ireland does not receive a large number of requests for extradition although this can be expected to change with the recent introduction of the EAW system. ML and TF are extraditable offences under both Part II of the Extradition Act (1965) Act and under the European Arrest Warrant Act (2003).

776. Ireland should look to strengthen its bilateral treaty network with non EU States to give greater facility to extradite for ML and TF offences. Although Ireland has the capacity to extradite for such offences under some of the multilateral conventions which have been applied under Part II of the 1965 Act, in particular the Vienna Convention (when the predicate offence relates to drugs) and the TF Convention, the establishment of bilateral treaties would enhance effective cooperation on a one to one basis. This is particularly in relation to those jurisdictions outside the EU with which Ireland has or may have frequent need for cooperation. Early ratification of the Palermo Convention will also facilitate a broader capacity to extradite for ML offences.

777. Ireland extradites its own nationals on the basis of reciprocity, and if it does not extradite on the grounds of nationality the DPP may assert jurisdiction to prosecute in Ireland. Some simplified procedures are in effect, including direct transmission of requests between Central Authorities and consent surrender mechanisms. The EAW scheme is itself a simplified form of extradition and its introduction in Ireland will make for a much closer and more effective extradition regime at least in the context of EU arrangements.

778. Ireland does not keep statistics on whether requests for extradition are granted or refused, or the time taken to dispose of such requests. Whilst historically the number of requests to Ireland has been low

and such information was fairly readily ascertainable from the actual case files, the situation will change under the EAW scheme and Ireland is encouraged to keep fuller statistics on requests for the future.

6.4.3 Compliance with Recommendations 32, 37 & 39, and Special Recommendation V

	Rating	Summary of factors underlying overall rating
R.37	C	This Recommendation is fully met
R.39	C	The Recommendation is fully met
SR.V	C	This part of the Recommendation is fully met
R.32	PC	• Ireland does not keep statistics on whether requests are granted or refused and the time taken to dispose of requests.

6.5 Other Forms of International Co-operation (R.32 & 40, & SR.V)

6.5.1 Description and Analysis

Recommendation 40 and Special Recommendation V

779. Ireland has sought to increase its ability to co-operate internationally and has engaged in negotiating a number of information gateways through which co-operation can be conducted. These are set out below:

780. ***Law Enforcement Authorities***: The Garda are able to co-operate through normal police to police information exchange channels. The National Crime Intelligence Unit within the Garda is the central point of contact with external law enforcement agencies. Inquiries can be made through Europol and Interpol. The Garda have the authority to conduct investigations on behalf of foreign counterparts and joint investigations are possible.

781. ***Financial Intelligence Unit***: The FIU have signed a number of MOUs with other FIUs; Australia, Bulgaria, Cyprus, Czech Republic, Guernsey, Monaco, the Netherlands Antilles, South Korea, Poland and Portugal. In addition as a law enforcement FIU information is also exchanged through law enforcement channels spontaneously and on request.

Breakdown of non STR related enquiries dealt with by FIU	2001	2002	2003	2004
Interpol & External Enquiries	85	231	360	274
Other Enquiries from External non police units	96	63	38	56
Total	181	294	398	330
Spontaneous Referrals to Foreign Authorities	Nil	79	99	209
Totals	181	373	497	539

782. In practice the FIU is able to exchange information with any other FIU or unit engaged in financial investigation, 202 requests were received from foreign FIUs in 2004. Caveats are placed on any information disseminated to ensure that the information is to only be used for intelligence purposes. There

appear to be no impediments or unduly restrictive conditions for on the exchange of information and controls and safeguards are consistent with privacy and data protection provisions.

783. The Revenue (Tax & Customs Administration) has a number of gateways of exchange of information, in relation to Revenue matters s. 826(7) Taxes Consolidation Act (1997) (TCA) permits the disclosure of information to another tax administration where there is a double taxation agreement in force. There is provision for the exchange of information with other EU states in relation to inter-EU VAT transactions under Council Regulation (EC) No. 1798/2003. Council Regulation 515/97 and the Customs & Excise (Mutual Assistance) Act (2001) provide for mutual assistance and the exchange of information between competent authorities in Customs matters.

784. ***Supervisory Authorities***: In addition to Irish law requirements providing for cooperation between competent authorities generally for the purposes of EU supervisory directives, s.33AK(5) of the Central Bank Act (1942) confirms that the Financial Regulator may disclose confidential information to an authority in another jurisdiction duly authorised to exercise functions similar to any one or more of the statutory functions of the Financial Regulator and which has obligations with respect to the treatment of confidential information similar to those to which the Financial Regulator is subject. The Irish stock exchange has the ability to co-operate with foreign regulators through a series of MOUs.

The Financial Regulator's MOUs		
	Country	Authority
1, 2	Ireland	Office of the Director of Corporate Enforcement, Irish Stock Exchange
3	UK	Financial Service Authority
4	Isle of Man	Financial Supervision Committee
5	US	Commodity Futures Trading Commission
6	South Africa	South African Reserve Bank
7	Hong Kong, China	Securities and Futures Commission
8	Czech Republic	Czech Securities Commission
9	Belgium	Banking and Finance Commission
10	Denmark	Finanstilsynet
11	France	The Commission Bancaire and the Comite des Établissements de Crédit
12	Germany	Bunderesaufsichtsamt fur Das Kreditwesen
13	Italy	Banca d'Ítalia
14	Luxembourg	Institute Monetaire Luxembourgeois

15	The Netherlands	De Nederlandsche Bank NV
16	Multilateral	European Central bank, Co-operation between Payment Systems Overseers and Banking Supervisors
17	Multilateral	Banking Supervisors and Central Banks of the European Union, High Level Principles of Co-operation in Crisis Management Situations
18	Multilateral	Boca Raton Declaration, International futures Regulators Declaration on Co-operation and Supervision of International Futures Markets and Clearing Organisations
19	Multilateral	Committee of European Securities Regulators (formerly FESCO), MOU on the Exchange of Information and Surveillance of Securities Markets

Source: the Financial Regulator Annual Report 2004.

785. No restriction or procedural impediment is placed in the way of the performance by the Financial Regulator of the cooperation provisions described above and the Financial Regulator can provide assistance in a rapid and constructive manner. Requests are dealt with on a case to case basis, with initial feedback provided to the requesting authority in the days following the request; the time taken to respond will depend on the amount and type of information to be exchanged.

786. The Financial Regulator meets on a regular basis with the UK Regulator, the Contact Group of the EU and others. With respect to domestic Irish counterparts, s.57 (2) and 57A (3) of the CJA (1994) requires the Financial Regulator to report suspicions of ML, or breach of Irish anti-ML/TF requirements, by a regulated financial service provider to the Garda and the Revenue Commissioners. Failure to do so is an offence. The Financial Regulator interprets these provisions to require prompt and full disclosure of relevant information to these bodies.

787. The Financial Regulator is able exchange information spontaneously or upon request. It can do this for ML and underlying predicate offences and is authorised to conduct inquiries on behalf of their counterparts.

788. There are no unduly restrictive conditions to exchange of information. The Financial Regulator uses a template for information exchanges with other regulators. There are no disproportionate and unduly restrictive conditions in these MOU's. The Financial Regulator will not refuse requests for cooperation on the sole ground that the request is also considered to involve fiscal matters, or on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions. The Financial Regulator checks the legal basis and all relevant legal aspects of the information that it receives before acting.

Additional Elements

789. Competent authorities Ireland has been engaging in an increasing number of arrangements to ensure that they are able to co-operate with their international counterparts. The number of inquiries made by law enforcement within the FIU has increased significantly between 2001 and 2004 with notably more spontaneous requests being initiated. The FIU can exchange information received domestically with the confidentiality and limitations of any use of the information emphasised.

Recommendation 32 (Statistics related to other forms of international co-operation):

790. The FIU submitted 202 requests through Egmont channels in 2004 (254 in 2003 and 163 in 2002). Other requests were also made by the FIU through police and other law enforcement channels (72 in total in 2004).

6.5.2 Recommendations and Comments

791. Ireland has a number of measures to facilitate a wide range of international co-operation with foreign counterpart FIUs and law enforcement agencies and is seeking to increase its bi-lateral ability for FIU to FIU exchange by increasing its number of MOUs. Similarly Ireland's statutory framework gives the competent authorities the ability to engage in generally effective international co-operation.

6.5.3 Compliance with Recommendations 32 & 40, and Special Recommendation V

	Rating	Summary of factors overall rating
R.32	PC	Statistics are available for international co-operation.
R.40	C	This Recommendation is fully met
SR.V	C	This Recommendation is fully met

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures or issues

792. ***AML measures implemented by the Tax authorities:*** The Central Bank and Financial Services Authority Act (2003) introduced legislation obliging financial institutions and DNFBPs to submit STRs to the Irish Revenue in addition to the Garda. This was effective from 1 May 2003 The Revenue investigates the STRS that appear to relate to tax evasion, smuggling or other revenue offences. General revenue offences are listed in s.1078, Taxes Consolidation Act (1997). More specific offences are included in various Finance and Customs Acts. When STRs are received they are analysed for risk of tax evasion or revenue fraud and referred to the appropriate operational area for further intelligence development, investigation or other appropriate intervention. The more serious cases are considered by senior personnel within the Investigations and Prosecutions Division with a view to preparing a criminal prosecution.

793. Other cases may not be considered suitable for prosecution. In these cases the STR is treated as additional intelligence and it may, together with what is already known about the case, result in an audit, compliance or other type of investigative intervention with a view to obtaining a monetary settlement or improving compliance with Revenue law.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Table 1. Ratings of Compliance with the FATF Recommendations

8. TABLES

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Forty Recommendations	Rating	Summary of factors underlying rating[80]
Legal systems		
1. ML offence	LC	• The number of prosecutions and convictions are low.

[80] These factors are only required to be set out when the rating is less than Compliant.

2. ML offence – mental element and corporate liability	LC	• The regime for sanctions appears comprehensive, dissuasive and proportional; however the number of prosecutions and convictions are low.
3. Confiscation and provisional measures	C	This Recommendation is fully met
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	The Recommendation is fully met.
5. Customer due diligence	PC	• Financial institutions are not currently required to undertake full CDD measures on establishing business relations, when carrying out occasional transactions over €13,000 or in circumstances in relation to SRVII and there is no requirement to identify in cases where TF is suspected. • A number of requirements which should be explicitly set out in law or regulation are now currently implicit or established only in guidance. For example: • ongoing due diligence; • identification of the beneficial ownership of legal persons; • Certain requirements such as obtaining information on the nature and purpose of the business relationship and timing of verification requirements are not required by "other enforceable means" (as defined) • There is no legally binding provision for enhanced CDD measures and guidance is weak on the requirements concerning consequences of failure to complete CDD. • In the context of a future risk-based approach there should be a review of the documents and data that is relied upon for customer identification and verification. • Provisions addressing identification of existing customers are limited to cases to where ML is suspected.
6. Politically exposed persons	NC	• There are no legislative or other enforceable obligations currently in force.
7. Correspondent banking	NC	• There are no legislative or other enforceable obligations currently in force.
8. New technologies & non face-to-face business	PC	• Limited measures have been taken in guidance for non -face-to-face business and new technologies.
9. Third parties and introducers	NC	• No legally binding obligations are currently in force governing identification carried out by third parties or introducers on behalf of designated bodies.
10. Record keeping	C	The Recommendation is fully met
11. Unusual transactions	PC	• There is no explicit requirement to pay attention to all unusual, complex large transactions and transactions with no visible economic purposes, nor to further examine these situations and to set out these findings in writing.

12. DNFBP – R.5, 6, 8-11	PC	• Not all DNFBPs are obliged to undertake CDD and record keeping for AML/CFT purposes as covered by the Recommendation 12. • The same deficiencies apply for DNFBPs as for financial institutions in the implementation of Recommendation 5 regarding CDD, including the consequences of failure to complete CDD, timing of verification requirements and provisions addressing identification of existing customers. • Under the present regime there are no, or limited requirements to apply higher risk measures as required under Recommendations 6, 8 and 9. • Guidance is limited in relation to the DNFBPs obligations to pay attention to complex and unusual transactions (applying Recommendation 11). • A proportionate range of sanctions are not directly available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO) to impose AML/CFT sanctions (applying Recommendation 17).
13. Suspicious transaction reporting	C	This Recommendation is fully met.
14. Protection & no tipping-off	C	This Recommendation is fully met.
15. Internal controls, compliance & audit	LC	• There are no legislative or other enforceable obligations to ensure that appropriate compliance management arrangements are in place, that compliance staffs have timely access to CDD and transaction information and that require screening procedures for hiring employees.
16. DNFBP – R.13-15 & 21	PC	• Not all DNFBPs are subject to the STR obligations. • DNFBPs are not required to develop internal policies procedures, internal controls, ongoing employee training and compliance in respect of AML/CFT. • There are not adequate measures for DNFBPs to pay special attention to transactions involving certain countries and to make their findings available in writing, or apply appropriate counter-measures. • The STR regime is not yet effective with low numbers of STRs being made by DNFBPs. • A proportionate range of sanctions are not available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO) to impose AML/CFT sanctions (applying Recommendation 17).
17. Sanctions	PC	• This recommendation is overall not effectively implemented as there is no range of sanctions available proportionate to the severity of a situation. • Administrative sanctions are not yet directly available for AML/CFT purposes.
18. Shell banks	PC	• Correspondent banking relationships with shell banks are not forbidden by law or regulation. • There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks.

		• Financial Institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit accounts to be used by shell banks.
19. Other forms of reporting	C	The Recommendation is fully met
20. Other NFBP & secure transaction techniques	C	The Recommendation is fully met
21. Special attention for higher risk countries	PC	• There is no mechanism in place to make designated bodies aware of weaknesses in other countries' AML/CFT systems. • There is no requirement to examine and monitor transactions from countries who insufficiently apply FATF Recommendations that have no apparent economic or lawful purpose, or to make these findings available to competent authorities.
22. Foreign branches & subsidiaries	LC	• Some of the requirements of this Recommendation are in guidance. The requirement for financial institutions to ensure that foreign branches and subsidiaries comply with FATF standards is mentioned very briefly in guidance. Legislation allows the exchanging of information when a supervisor may observe that a branch or subsidiary is unable to observe AML/CFT standards. • There are no legislative or other enforceable obligations to ensure that financial institutions should be required to pay particular attention to branches and subsidiaries in countries that insufficiently do not apply FATF Recommendations, nor that the higher standard of AML/CFT obligations should apply – although in practice this may be applied through group policies.
23. Regulation, supervision and monitoring	LC	• The Financial Regulator has a full range of supervisory powers to adequately regulate and supervise for AML/CFT matters. A fully implemented compliance regime for money transmission services is not yet in effect, the initial steps are being taken through licensing of these entities.
24. DNFBP - regulation, supervision and monitoring	NC	• Almost all DNFBPs are not subject to oversight for AML/CFT purposes. • Where an oversight role exists the SROs do not have sufficient resources to perform these functions.
25. Guidelines & Feedback	LC	• Sectoral guidance notes are provided to financial institutions providing direction in the application of the AML/CFT legislation. While this is generally quite comprehensive these should be enhanced to include requirements to conduct ongoing CDD and pay particular attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21 • General feedback could be improved by co-operation between the FIU and the Revenue Commissioners so as to enhance the provision of information on current

		methods, trends and techniques. • Guidance is given to some DNFBP's, but others are not covered. • The guidance provided to DNFBP's covered is not always sufficiently detailed.
Institutional and other measures		
26. The FIU	LC	• The FIU as a whole meets most of the individual requirements of the FATF methodology. However, its ability to operate effectively is limited by resources available to do a number of important tasks: to encourage quality STRs from designated bodies, research and develop intelligence for ML and TF investigations from STR information and provide management information to assist the overall AML/CFT effort. The role and effectiveness of the FIU is therefore limited. • The FIU does not release periodic reports or conduct strategic analysis.
27. Law enforcement authorities	C	Recommendation is fully met
28. Powers of competent authorities	C	Recommendation is fully met
29. Supervisors	LC	• The Financial Regulator is unable to directly apply a range of administrative sanctions for AML/CFT breaches.
30. Resources, integrity and training	LC	• Resources available to sanction, supervise and issue guidelines are good and those available to investigate ML and TF and to examine integrity of law enforcement agencies on the whole appear adequate. Resources for the MLIU to conduct a comprehensive role as the FIU, to develop STR information and conduct initial investigations are limited.
31. National co-operation	LC	• A lack of formal AML/CFT framework outside the issuance of guidance notes limits the targeting of the resources that Ireland has directed at AML/CFT systems. There is room for more formal increased interagency co-operation particularly between the MLIU and the Financial Regulator.
32. Statistics	PC	• Overall there are a limited number of statistics are available to assess the effectiveness of the AML/CFT regime. • The available statistics are not used for systematic review of the effectiveness and efficiency of AML/CFT systems. • There is no overall proactive review of the AML/CFT effectiveness.
33. Legal persons – beneficial owners	PC	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control.
34. Legal arrangements – beneficial owners	PC	• Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.

International Co-operation		
35. Conventions	LC	• The Vienna Convention and TF Convention have been signed, ratified and implemented. The Palermo Convention has been signed but not yet ratified, although almost all of the provisions are already implemented for ML purposes.
36. Mutual legal assistance (MLA)	C	The Recommendation is fully met
37. Dual criminality	C	The Recommendation is fully met
38. MLA on confiscation and freezing	C	The Recommendation is fully met
39. Extradition	C	The Recommendation is fully met
40. Other forms of co-operation	C	The Recommendation is fully met
Nine Special Recommendations		
SR.I Implement UN instruments	PC	• S/RES/ 1267 has been implemented but S/RES/1373 (2001) has not been adequately implemented. In particular, no mechanisms exist for the immediate freezing of funds of designated terrorists outside the EU listing mechanism. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to designated non-financial business and professions. • Designated non-financial businesses and professions are not adequately monitored for compliance with measures taken under the Resolutions.
SR.II Criminalise TF	LC	• The TF offence does not extend to the provision or collection of funds for the benefit of a group of less than three terrorists including a single terrorist (except where the funds are provided for use, in whole or in part, in order to carry out a terrorist act), due to the use and definition of the term "terrorist group" in the legislation. • It is too early to assess the effective implementation of the TF offence provisions, because they have only been operative since March 8 2005.
SR.III Freeze and confiscate terrorist assets	PC	• Ireland has limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system. • Ireland does not effectively communicate measures taken under freezing mechanisms to DNFBPs. • Ireland does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds, notwithstanding the existence of criminal penalties for non-compliance.
SR.IV Suspicious transaction reporting	C	The Recommendation is fully met
SR.V International co-operation	C	The Recommendation is fully met.

SR VI AML requirements for money/value transfer services	PC	• As with other financial institutions, overall implementation of Recommendations 5-10, 15, 17, 21, 22 and Special Recommendation VII is inadequate, this negatively impacts on the effectiveness of AML/CFT measures for money transmission services.
SR VII Wire transfer rules	NC	• The requirements for transfers to record include and maintain originator information is limited and currently only contained in guidance • There is no obligation to verify that the originator information is accurate and meaningful. • There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete.
SR.VIII Non-profit organisations	PC	• Ireland is in the process of completing a review of its NPO sector, but has not yet implemented measures to ensure accountability and transparency in the sector so that terrorist organisations cannot pose as legitimate non profit organisations, or to ensure that funds/assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations.
SR. IX Cash Couriers	PC	• There are no powers to obtain a truthful disclosure upon request by individuals suspected of physical cross-border transportation of cash or bearer negotiable instruments. • No sanctions are available for false declarations/disclosure. • Measures are not currently in place to fully comply with SR IX.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of ML (R.1 & 2)	• Criminalise the participation in an organised criminal group. • Improve the implementation of the ML offence, providing the necessary incentives to investigators and prosecutors to prosecute ML cases as separate and serious offences. • Ascertain why the number of ML cases remains low.
Criminalisation of TF (SR.II)	• Criminalise the collection or provision of funds for an individual terrorist.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Consider extending civil forfeiture for all instrumentalities of crime. • The Irish authorities should collect statistics on the number of cases and the amount assets seized in relation to criminal confiscation.
Freezing of funds used for TF (SR.III)	• Ireland should extend its current limited ability to freeze funds in accordance with S/RES/1373 and ensure that all freezing actions are communicated to relevant DNFBPs. There should be adequate monitoring of DNFBPs to ensure they comply with required freezing actions.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• It is recommended that Ireland allocate more resources (both staff and technical resources. Although the current staff are professional and highly trained the FIU would benefit from increased numbers to conduct the large number of tasks expected of the unit. A system of electronic reporting would assist manage the increasing number of STRs being received. • The FIU is encouraged to establish a team of financial analysts to ensure that STR information is thoroughly analysed. • The FIU should seek and encourage regular feedback from partner agencies on the quality of the information / intelligence provided and the overall level of service of the FIU; in addition the benefits and results derived from FIU information should be fed back to the FIU. • Ireland could improve the FIU statistics and case management statistics by improving technological resources. • In consultation with partner agencies, the FIU should consider how information / results can optimally be shared with reporting entities. • The FIU should continue to proactively negotiate MOUs with foreign FIUs

Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Investigative and prosecutorial authorities need to focus more on investigating and prosecuting ML offences. Irish authorities are encouraged to make this an objective. • There is a need for Irish authorities to keep clearer statistics on investigations and prosecutions of the ML offence. • Irish authorities should consider the utility of establishing and AML working group with relevant government and investigation agencies to regularly discuss issues of common interest such as statistic gathering and to develop approaches for dealing with emerging issues. • Ireland should collect statistics concerned the types of criminal sanctions imposed for ML under Sections 31 and 32 of the CJA (1994) (as amended).
3. Preventive Measures – Financial Institutions	
Risk of ML or TF	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk. • Ireland needs to require financial institutions to identify occasional customers as contemplated in SR VII for domestic transfers and in the cases where there is a suspicion of TF. • Financial institutions should be required to obtain information on the purpose and intended business nature of the business relationship, conduct ongoing due diligence of the business relationship, and keep CDD data up-to-date. • In the cases where adequate CDD data is not obtained, financial institutions should be required to consider filing an STR. • Adopt requirements for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationships and transactions. • Adopt requirements for PEPs as contemplated in Recommendation 6 and measures for correspondent relationships as contemplated in Recommendation 7. • Require financial institutions to have policies in place or take measures necessary to prevent the misuse of technological developments in ML and TF. • Adopt legally binding provision requiring financial institutions to make enquiries for the beneficial owner(s) of corporate customers.
Third parties and introduced business (R.9)	• Ensure that legally enforceable regulations or guidelines establishing obligations so that financial institutions can obtain relevant customer identification and verification information in a timely manner.
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer	• SR VII has not been implemented in most respects. Ireland

rules (R.10 & SR.VII)	should implement the provisions of SR VII as soon as possible.
Monitoring of transactions and relationships (R.11 & 21)	• Adopt regulations or guidelines that are subject to sanctions for persons that fail to comply with there obligations establishing an explicit obligation for all financial institutions to perform the requisites required by Recommendation 11. • Ensure that enforceable regulations or guidelines are clear on the obligations of Recommendation 21.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Expand the definition of the TF offence to include the provision/collection of funds for an individual terrorist so as to ensure that transactions related to these activities are reportable.
Cross-border declaration or disclosure (SR.IX)	• Ireland should implement SR IX without restriction.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Introduce enforceable obligations to ensure that compliance staff has timely access to CDD and transaction information and that require screening procedures for hiring employees. • Require financial institutions to pay particular attention that the principle is observed to branches and subsidiaries in countries that insufficiently apply FATF Recommendations.
Shell banks (R.18)	• Prohibit financial institutions from entering into, or continuing, correspondent banking relationships with shell banks and require financial institutions to satisfy themselves that respondent institutions in a foreign country do no permit their account to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25).	• Consider introducing an administrative penalties regime that can be imposed on regulated entities and persons who are non-compliant under section 32 and 57 of the CJA (1994) (as amended) Act. • Ireland should maintain statistics concerning the number and type of sanctions applied. • Enhanced existing sectoral AML guidance to include requirements to conduct ongoing CDD and pay particular attention to high risk business relationships as indicated in Recommendations 5 – 9, 11 and 21.
Money value transfer services (SR.VI)	• Ireland should continue its intended supervision of money value transfer systems, implementing an effective licensing regime.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Ireland should implement Recommendation 5 and 6 fully. • Ireland should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record keeping obligations in situations required by Recommendation 12. • Ireland should be aware of the ML issues relating to the illicit operation of casinos and should be prepared to address

	these problems. • DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employers. These procedures, policies and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training.
Monitoring of transactions and relationships (R.12 & 16)	• Ireland should compel DNFBPs to pay special attention to transactions involving certain countries make their findings available in writing, and apply appropriate countermeasures.
Suspicious transaction reporting (R.16)	• Ensure that all DNFBPs are covered by the reporting obligation.
Internal controls, compliance & audit (R.16)	• Ensure that DNFBPs are required to develop internal policies, procedures, controls and ongoing employee training with regard to AML/CFT and that sanctions can be applied in the event of and AML/CFT breach.
Regulation, supervision and monitoring (R.17, 24-25)	• The scope of the CJA (1994) (as amended) Act needs to be extended so as to bring all types of DBFBP under the AML/CFT regime. • Ireland should be aware of the ML issues relating to the illicit operation of casinos and should be prepared to address these problems. • DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employers. These procedures, policies and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation.. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training. • Ireland should introduce administrative sanctions for breaches of AML/CFT requirements by DNFBPs. • The scope and coverage of reporting entities should be enhanced to include all DNFBPs. The Irish Authorities should designate Supervisors or enabling the financial regulator or SROs to regulate and supervise all categories for AML/CFT. • Competent authorities should establish guidelines that would cover the full range of DNFBPs a assist them to implement and comply with their respective AML/CFT requirements • Appropriate sanctions should be adopted for non-compliance, including a regime of administrative sanctions.
Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	

Legal Persons – Access to beneficial ownership and control information (R.33)	• Ireland should take additional measures to ensure that information concerning beneficial ownership is available on a timelier basis.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Ireland should take additional measures to ensure that competent authorities have timelier access to beneficial ownership and control of trusts.
Non-profit organisations (SR.VIII)	• Ireland should continue to review the adequacy of laws and regulations in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations. • Ireland should give consideration to implementing specific measures from the BPP for SR VIII to other measures to ensure that funds or other assets collected or transferred through non-profit organisations are not diverted to support terrorist organisations.
6. National and International Co-operation	
National co-operation and coordination (R.31)	• Ireland should ensure that all existing co-operation mechanisms are functioning effectively. • Improve the level of co-operation and co-ordination between the FIU and the financial regulator, and also to enhance co-ordination at the policy level, possibly through the establishment of a formal national co-ordination mechanism
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Ratify the Palermo convention and ensure that S/RES/1373 (2001) is fully implemented. • Ensure that DNFBP's are advised of their obligations under S/RES/1267 (1999) and S/RES/1373 (2001).
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Specifically criminalise the provision / collection of funds involving a single terrorist, to ensure that the discretionary grounds of dual criminality are not used in the future to refuse legal assistance requests.
Extradition (R.32, 37 & 39, & SR.V)	• Specifically criminalise the provision / collection of funds involving a single terrorist, to ensure that the discretionary grounds of dual criminality are not used in the future to prevent the extradition of individual terrorists.
Other Forms of Co-operation (R.32 & 40, & SR.V)	
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	• Ireland should consider a review of its current and future requirements of its AML/CFT system; greater collection of relevant statistics is encouraged and more formal multi-agency co-operation where appropriate.

Table 3 Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country comments
Overall Report	The Irish Authorities welcome the Report, and undertake to examine the Report's recommendations thoroughly and commit to further strengthening Ireland's anti-money laundering and counter terrorist financing mechanisms. The process of reviewing and updating the Irish legal and administrative framework to meet both domestic needs and international obligations is already under way. Ireland opted to be evaluated early in the 3rd Round of FATF Mutual Evaluations because this would be of considerable assistance in planning both the transposition of the 3rd EU Money Laundering Directive and implementation of revised FATF Recommendations. Many of the recommendations on which Ireland is currently assessed as either partially compliant or non-compliant will be addressed in the transposition into Irish Law of the 3rd EU Money Laundering Directive. The special recommendation on regulation of wire transfers (to counter terrorist financing) is being addressed by an EU Regulation (which will be directly applicable in Ireland).

ANNEXES

Annex 1:	List of abbreviations
Annex 2:	Details of all bodies met during the on-site mission - ministries, other government authorities or bodies, private sector representatives and others.
Annex 3:	Informal Consolidation of the Anti-Money Laundering Legislation
Annex 4:	Overview of Financial Institutions Regulated by the Financial Regulator
Annex 5	Legislative Basis for Financial Regulator's Supervisory Functions as at 31 December 2004
Annex 6	The Financial Regulator Organisational Chart
Annex 7	Relevant Legislative Provisions Relating to the Revocation of a Licence
Annex 8	Relevant Provisions Relating to Fitness and Probity
Annex 9	Summary of the Legislation under which the Financial Regulator performs the functions of the Central Bank
Annex 10	Overview of the types of Legal Persons and Arrangements
Annex 11	Terms of reference for the Money Laundering Steering Committee

Annex 1

LIST OF ABBREVIATIONS

Agency Fund Managers	AFM
Authorised Advisors	AA
Central Authority	CA
Central Bank and Financial Services Authority of Ireland	CBFSAI
Criminal Assets Bureau	CAB
European Arrest Warrant	EAW
European Central Bank	ECB
European Commission	EC
European Union	EU
Futures and Options Exchange	FINEX
Financial Intelligence Unit	FIU
Garda Bureau of Fraud Investigation	GBFI
International Criminal Tribunal for the former Yugoslavia	ICTY
International Financial Services Centre	IFSC
Irish Auditing and Accounting Supervisory Authority	IAASA
Irish Financial Services Regulatory Authority	IFSRA
Irish Futures and Options Exchange	IFOX
Management Companies	MC
Money Laundering Investigation Unit	MLIU
Money Laundering Reporting Officer	MLRO
Money Laundering Steering Committee	MLSC
Multi Agency Intermediaries	MAI
Organisation for Economic Co-operation and Development	OECD
Self Regulating Organisation	SRO
Suspicious Transaction Report	STR
Suspicious Transactions Reports Office	STRO
Trustee Companies	TC

Annex 2

DETAILS OF ALL BODIES MET DURING THE ON-SITE MISSION

I. MINISTRIES/DEPARTMENTS OF GOVERNMENT

1. Department of Finance
2. Department of Justice
3. Money Laundering Steering Committee
4. Company Registration Office

II. OPERATIONAL AND LAW ENFORCEMENT AGENCIES

1. An Garda Siochana
2. Revenue Commissioners

III. PROSECUTORIAL AUTHORITIES

1. Office of Director of Corporate Enforcement

IV. FINANCIAL INSTITUTIONS

1. Supervisory bodies
   - Irish Financial Services Regulatory Authority
2. Professional associations
   - Irish Bankers Forum (IBF)
3. Other
   - Irish League of Credit Unions

V. REPRESENTATIVES FROM THE FINANCIAL INSTITUTIONS SECTOR

1. Banks
2. Insurance companies
3. Bureaux de change and money/value transfer service providers
4. Securities sector participants
5. An Post
6. Financial Services Industry Association

VI. DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

1. Professional associations
   - The Consultative Committee of Accountancy Bodies -Ireland (CCAB-I)
   - Society of Trust and Estate Practitioners (STEP)
   - The Law Society

VII. REPRESENTATIVES FROM THE DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS SECTOR

- Estate Agents
- Private Gaming Club representative

Informal Consolidation of Anti-Money Laundering Primary Legislation
(Criminal Justice Act 1994)

Section 31 of the Criminal Justice Act 1994 – Money laundering etc.
(as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001)

"31.—(1) A person is guilty of money laundering if, knowing or believing that property is or represents the proceeds of criminal conduct or being reckless as to whether it is or represents such proceeds, the person, without lawful authority or excuse (the proof of which shall lie on him or her)—
(a) converts, transfers or handles the property, or removes it from the State, with the intention of—
(i) concealing or disguising its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or
(ii) assisting another person to avoid prosecution for the criminal conduct concerned, or
(iii) avoiding the making of a confiscation order or a confiscation co-operation order (within the meaning of section 46 of this Act) or frustrating its enforcement against that person or another person,
(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or
(c) acquires, possesses or uses the property.
(2) A person guilty of money laundering is liable—
(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 14 years or to both.
(3) Where a person—
(a) converts, transfers, handles or removes from the State any property which is or represents the proceeds of criminal conduct,
(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or
(c) acquires, possesses or uses it,
in such circumstances that it is reasonable to conclude that the person—
(i) knew or believed that the property was or represented the proceeds of criminal conduct, or
(ii) was reckless as to whether it was or represented such proceeds,
the person shall be taken to have so known or believed or to have been so reckless, unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless.
(4) Where a person first referred to in subsection (1) of this section does an act referred to in paragraph (a) of that subsection in such circumstances that it is reasonable to conclude that the act was done with an intention specified in that paragraph, the person shall be taken to have done the act with that intention unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person did it with that intention.
(5) This section does not apply to a person in respect of anything done by the person in connection with the enforcement of any law.
(6) This Part shall apply whether the criminal conduct in question occurred before or after the commencement of this section and whether it was or is attributable to the person first mentioned in subsection (1) or another.
(7) (a) In this section—
(i) 'criminal conduct' means conduct which—
(I) constitutes an indictable offence, or
(II) where the conduct occurs outside the State, would constitute such an offence if it occurred within the State and also constitutes an offence under the law of the country or territorial unit in which it occurs,
and includes participation in such conduct;
(ii) 'reckless' shall be construed in accordance with section 16(2) of the Criminal Justice (Theft and Fraud Offences) Act, 2001;

(iii) references to converting, transferring, handling or removing any property include references to the provision of any advice or assistance in relation to converting, transferring, handling or removing it;
(iv) references to believing that any property is or represents the proceeds of criminal conduct include references to thinking that the property was probably, or probably represented, such proceeds;
(v) references to any property representing the proceeds of criminal conduct include references to the property representing those proceeds in whole or in part directly or indirectly, and cognate references shall be construed accordingly.
(b) For the purposes of this section a person handles property if he or she, without a claim of right made in good faith—
(i) receives it, or
(ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or
(iii) arranges to do any of the things specified in subparagraph (i) or (ii).
(c) For the purposes of paragraph (a)(i)(II)—
(i) a document purporting to be signed by a lawyer practising in the state or territorial unit in which the criminal conduct concerned is alleged to have occurred and stating that such conduct is an offence under the law of that state or territorial unit, and
(ii) a document purporting to be a translation of a document mentioned in subparagraph (i) and to be certified as correct by a person appearing to be competent to so certify,
shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents, unless the contrary is shown.
(8) Where—
(a) a report is made by a person or body to the Garda Síochána under section 57 of this Act in relation to property referred to in this section, or
(b) a person or body (other than a person or body suspected of committing an offence under this section) is informed by the Garda Síochána that property in the possession of the person or body is property referred to in this section,
the person or body shall not commit an offence under this section or section 58 of this Act if and for as long as the person or body complies with the directions of the Garda Síochána in relation to the property."

Section 32 of the Criminal Justice Act 1994 - Measures to be taken to prevent money laundering (as amended by section 2 of the Disclosure of Certain Information for Taxation and Other Purposes Act 1996, Part 17 Item 1 of the Central Bank and Financial Services Authority of Ireland Act 2003, section 14 of the Criminal Justice (Miscellaneous Provisions) Act, 1997 and sections 21 and 32 of the Criminal Justice (Terrorist Offences) Act 2005)

“32. -(1) This section shall apply to the following persons or bodies (referred to in this section as "designated bodies") namely-

(a) a body licensed to carry on banking business under the Central Bank Act, 1971 or authorised to carry on such business under regulations made under the European Communities Act, 1972 ,

(b) a building society incorporated or deemed to be incorporated under section 10 of the Building Societies Act, 1989 ,

(c) a person authorised to carry on a money broking business under section 110 of the Central Bank Act, 1989 ,

(d) a society licensed to carry on the business of a trustee savings bank under section 10 of the Trustee Savings Banks Act, 1989,

(e) a life assurance undertaking which is the holder of an authorisation under the Insurance Acts, 1909 to 1990, or under regulations made under the European Communities Act, 1972 ,

(f) a person providing a service in financial futures and options exchanges within the meaning of section 97 of the Central Bank Act,
1989 ,

(g) An Post,

(h) ACC Bank p.l.c.,

(i) ICC Bank p.l.c.,

(j) a society registered as a credit union under the Credit Union Act, 1997,

(k) a person providing a service in relation to buying and selling stocks, shares and other securities,

(l) a person providing foreign currency exchange services, and

(m) any other person or body prescribed in regulations made under subsection (10) (a) of this section."

(2) This section shall apply in respect of the carrying out of one or more of the operations which are included in numbers 2 to 12 and 14 of the list annexed to Council Directive 89/646/EEC, activities to which Council Directive 79/267/EEC as amended applies or any other activity which may be prescribed in regulations made under subsection (10) (b) of this section.

(3) A designated body shall take reasonable measures to establish the identity of any person for whom it proposes to provide a service of a kind mentioned in subsection (2) of this section

(a) on a continuing basis, or

(b) in respect of transactions that, either as an individual transaction or a series of transactions which are or appear to be linked, amount in the aggregate to at least £10,000 or the amount for the time being prescribed by regulations made under subsection (10) (c) of this section, or

(c) otherwise where it suspects that a service is connected with the commission of an offence under section 31 of this Act.

(4) For the purposes of paragraph (b) of subsection (3) of this section, where the sum involved is not known at the time of the transaction, the obligations arising under this section shall apply as soon as it is established that the sums involved amount to at least the sum mentioned in the said paragraph of subsection (3) of this section.

(5) Where a designated body proposes to provide a service of a kind mentioned in subsection (2) of this section for a person whom it knows or has reason to believe to be acting for a third party, the designated body shall take reasonable measures to establish the identity of the third party."

(6) This section shall not apply where a designated body provides a service for another designated body or a body corresponding to a designated body in a member state of the European Union or a state or country which stands prescribed for the time being for the purposes of this subsection."(see Subsection 32(10) below)

(7) Subsections (3), (4) and (5) of this section shall not apply to a life assurance undertaking referred to in subsection (1) (e) of this section in a case where-

(a) the amount or amounts of the periodic premiums to be paid in respect of the life assurance policy in any twelve month period does not or do not exceed £700 or the amount for the time being prescribed for the purpose of this paragraph by regulations made under subsection (10) (e) of this section unless the amount or amounts of the periodic premiums is or are increased so as to exceed in any twelve month period £700 or the amount so prescribed as the case may be, or

(b) a single premium to be paid in respect of the life assurance policy does not exceed £1,750 or the amount for the time being prescribed for the purpose of this paragraph by regulations made under subsection (10) (e) of this section,

and the said subsections (3), (4) and (5) shall not apply in the case where the life assurance policy is in respect of a pension scheme taken out by virtue of a contract of employment or the occupation of the person to be insured under the policy, provided that the policy in question does not contain a surrender clause and may not be used as collateral for a loan.

(8) Subsections (3), (4) and (5) of this section shall not apply to a life assurance undertaking referred to in subsection (1) (e) of this section in a case where there is a transaction or a series of transactions taking place in the course of its business in respect of which payment is made from an account held in the name of the other party with a designated body or a body corresponding to a designated body as referred to in subsection (6) of this section.

(9) Where a designated body identifies a person for the purposes of this section, it shall retain the following for use as evidence in any investigation into money laundering or any other offence -

(a) in the case of the identification of a customer or proposed customer, a copy of all materials used to identify the person concerned for a period of at least 5 years after the relationship with the person has ended,

(b) in the case of transactions, the original documents or copies admissible in legal proceedings relating to the relevant transaction for a period of at least 5 years following the execution of the transaction."

(9A) A designated body shall, in relation to the carrying on of its business, adopt measures to prevent and detect the commission of the following
offences:

(a) an offence under section 31 of this Act;

(b) an offence of financing terrorism.

(9B) Measures adopted under subsection (9A) of this section shall include-

(a) the establishment of procedures to be followed by directors or other officers, and employees in the conduct of the business of the designated body,

(b) the giving of instructions to directors or other officers, and employees on the application of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering , and on the effect of Part IV of this Act and sections 57 and 58 of this Act, and

(c) the training of directors, other officers and employees for the purpose of enabling them to identify transactions which may relate to the commission of an offence under section 31 of this Act or an offence of financing terrorism, and the giving of instructions to them on how a director, other officer or employee should proceed once he or she has identified such a transaction.

(9C) In subsection (9B) of this section references to 'directors', 'officers' or 'employees' shall be construed as references to directors, officers or employees, as the case may be, of a designated body."

(10) The Minister may by regulations-

(a) following consultation with the Minister for Finance, prescribe other persons or bodies to be designated bodies for the purposes of this section, being persons or bodies whose business consists of or includes the provision of services involving the acceptance or holding of money or other property for or on behalf of other persons or whose business appears to the Minister to be otherwise liable to be used for the purpose of committing or facilitating the commission of offences under section 31 of this Act or any corresponding or similar offences under the law of any other country or territory,

(b) following consultation with the Minister for Finance, prescribe activities for the purposes of subsection (2) of this section which appear to the Minister to be liable to be used for the purpose of committing or facilitating the commission of offences under section 31 of this Act or any corresponding or similar offences under the law of any other country or territory,

(c) following consultation with the Minister for Finance, prescribe an amount for the purposes of subsections (3) (b) and (4) of this section,

(d) following consultation with the Minister for Finance, prescribe states or countries for the purposes of subsection (6) of this section,

(e) following consultation with the Minister for Enterprise and Employment, prescribe amounts for the purposes of paragraphs (a) and (b) of subsection 7 of this section"

(10A) In any regulations made under subsection 10(a) prescribing a person or body to be a designated body, the Minister may, notwithstanding any other provisions of this Act, apply to that person or body such exceptions in relation to the obligations of designated bodies under this Act as the Minister considers appropriate.

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

(12) A person who contravenes a provision of this section or who provides false or misleading information for the purposes of subsection (3), (4) or (5) of this section when required to do so under this section shall be guilty of an offence and shall be liable-

> *(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or*
>
> *(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both."*

Section 57 of the Criminal Justice Act 1994 -disclosure of information
(as amended by Part 17 of the Central Bank and Financial Services Authority of Ireland Act 2003, section 3 of the Disclosure of Certain Information for Taxation and Other Purposes Act 1996 and section 36 of the Criminal Justice Act 2005)

(1) Any person or body to whom section 32 of this Act applies (including a director, officer or employee of that person or body) and who suspects that-

(a) an offence of financing terrorism, or

(b) an offence under section 31 or 32 of this Act,

in relation to the business of that person or body has been or is being committed shall report that suspicion to the Garda Síochána and to the Revenue Commissioners.";

(1A) Information reported to the Garda Síochána under this section may be used in an investigation into an offence under section 31 or 32 of this Act or any other offence.

(2) A person who-

(a) is charged by law with the supervision of a person or body to whom section 32 of this Act applies, and

(b) suspects that an offence of financing terrorism or an offence under section 31 or 32 of this Act has been or is being committed by that person or body,

shall report that suspicion to the Garda Síochána and to the Revenue Commissioners.";

(3) A report may be made to the Garda Síochána and to the Revenue Commissioners under this section in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of this section. **(the underlined text was inserted by Part 17, Item 2(c), of the Central Bank and Financial Services Authority of Ireland Act 2003).**

(4) In the case of a person who was in employment at the relevant time, it shall be a defence to a charge of committing an offence under this section that the person charged made a report of the type referred to in subsection (1) or (2) of this section, as the case may be, to another person in accordance with an internal reporting procedure established for the purpose specified in subsection (3) of this section.

(5) A person who fails to comply with subsection (1) or (2) of this section shall be guilty of an offence and shall be liable-

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

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

(6) In determining whether a person has complied with any of the requirements of this section, a court may take account of any relevant supervisory or regulatory guidance which applies to that person or any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(7) Where a person or body-

(a) discloses in good faith information in the course of making a report under subsection (1) or (2) of this section, or

(b) discloses in good faith to a member of the Garda Síochána or any person concerned in the investigation or prosecution of a drug trafficking offence, an offence of financing terrorism or an offence in respect of which a confiscation order might be made under

section 9 of this Act a suspicion, or any matter on which such a suspicion is based, that any property-

(i) has been obtained as a result of or in connection with the commission of any such offence, or

(ii) derives from property so obtained,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not involve the person or body making the disclosure (including their directors, employees and officers) in liability of any kind."

Text underlined was by way of amendment by Section 36(c) of the Criminal Justice (Terrorist Offences) Act 2005.

Section 57A of the Criminal Justice Act 1994 - designation of certain states or territorial units (as inserted by section 23 of the Criminal Justice (Theft and Fraud Offences) Act 2001)

57A.-(1) The Minister may by order, after consultation with the Minister for Finance, designate any state, or territorial unit within a state, that in his or her opinion has not in place adequate procedures for the detection of money laundering.

(2) Any person or body to whom or which section 32 of this Act applies (including any director, employee or officer thereof) shall report to the Garda Síochána any transaction connected with a state or territorial unit that stands designated under subsection (1).

(3) A person charged by law with the supervision of a person or body to whom or which section 32 of this Act applies shall report to the Garda Síochána if the person suspects that a transaction referred to in subsection (2) has taken place and that that subsection has not been complied with by the person or body with whose supervision the first-mentioned person is so charged.

(4) A report may be made to the Garda Síochána under this section in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of this section.

(5) In the case of a person who was in employment at the relevant time, it shall be a defence to a charge of committing an offence under this section that the person charged made a report of the type referred to in subsection (2) or (3) of this section, as the case may be, to another person in accordance with an internal reporting procedure established for the purpose specified in subsection (4) of this section.

(6) A person who fails to comply with subsection (2) or (3) of this section is guilty of an offence and liable-

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both, or

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

(7) In determining whether a person has complied with any of the requirements of this section, a court may take account of any relevant supervisory or regulatory guidance which applies to that person or any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(8) Where a person or body discloses in good faith information in the course of making a report under subsection (2) or (3) of this section, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by statute or otherwise or involve the person or body making the disclosure (or any director, employee or officer of the body) in liability of any kind."

(9) The Minister may by order, after consultation with the Minister for Finance, amend or revoke an order under this section, including an order under this subsection."

Section 58 of the Criminal Justice Act - offences of prejudicing investigation
(as amended by Section 37 of the Criminal Justice (Terrorist Offences) Act 2005)

"58. -(1) Where, in relation to an investigation into drug trafficking, into whether a person holds funds subject to confiscation or into whether a person has benefited from an offence in respect of which a confiscation order might be made, an order under section 63 of this Act has been made, or has been applied for and has not been refused, or a warrant under section 55 or 64 of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation shall be guilty of an offence.

(2) Where a report has been made under subsection (1) or (2) of section 57 of this Act, a person who, knowing or suspecting that such a report has been made, makes any disclosure which is likely to prejudice an investigation arising from a report into whether an offence of financing terrorism or an offence under section 31 or 32 of this Act has been committed shall be guilty of an offence.

(3) In proceedings against a person for an offence under this section, it is a defence for that person to prove-

> *(a) that he did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the investigation, or*
>
> *(b) that he had lawful authority or reasonable excuse for making the disclosure.*

(4) A person guilty of an offence under this section shall be liable-

> *(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or*
>
> *(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both."*

Section 59 of the Criminal Justice Act 1994 - Offences by bodies corporate.

"59. -(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body corporate."

Section 63 of the Criminal Justice Act 1994 – an order to make material available
(as amended by section 39 of the Criminal Justice (Terrorist Offences) Act 2005)

"63. -(1) A member of the Garda Síochána may apply to a judge of the District Court for an order under subsection (2) of this section in relation to any particular material, or material of a particular description, for the purpose of an investigation into any of the following matters:

(a) drug trafficking;

(b) the commission of an offence of financing terrorism;

(c) the commission of an offence under section 31 of this Act;

(d) whether a person has benefited from drug trafficking;

(e) whether a person holds funds subject to confiscation;

(f) whether a person has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act.

(2) If on such an application being made the judge is satisfied that the conditions in subsection (4) of this section are fulfilled, he may order that the person who appears to him to be in possession of the material to which the application relates shall-

(a) produce it to a member of the Garda Síochána for him to take away, or

(b) give the member access to it, within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) of this section shall be 7 days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) of this section are-

(a) that there are reasonable grounds for suspecting that a specified person-

(i) has carried on drug trafficking,

(ii) has committed an offence of financing terrorism,

(iii) has committed an offence under section 31 of this Act,

(iv) has benefited from drug trafficking,

(v) holds funds subject to confiscation, or

(vi) has benefited from an offence in respect of which a confiscation order might be made under section 9 of this Act,".

(b) that there are reasonable grounds for suspecting that the material to which the application relates-

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of or include items subject to legal privilege,

and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard-

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where a judge makes an order under subsection (2) (b) of this section in relation to material on any premises, he may, on the application of a member of the Garda Síochána, order any person who appears to him to be entitled to grant entry to the premises to allow a member of the Garda Síochána to enter the premises to obtain access to the material.

(6) A judge of the District Court may vary or discharge an order made under this section.

(7) Where the material to which an application under this section relates consists of information contained in a computer-

(a) an order under subsection (2) (a) of this section shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an order under subsection (2) (b) of this section shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) Subject to subsection (9) of this section, an order under subsection (2) of this section-

(a) shall not confer any right to production of, or access to, items subject to legal privilege, and

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(9) In the case of material which has been supplied to a Government department or other authority by or on behalf of the government of another state in accordance with an undertaking (express or implied) on the part of the department or authority that the material will be used only for a particular purpose or purposes no order under this section shall have the effect of requiring or permitting the production of, or the giving of access to, the material as mentioned in subsection (2) of this section for a purpose other than one permitted in accordance with the undertaking and the material shall not, without the consent of the other state, be further disclosed or used otherwise than in accordance with the undertaking.

(10) Any person who without reasonable excuse fails or refuses to comply with an order made under this section shall be guilty of an offence and shall be liable-

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

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

Section 63A of the Criminal Justice Act 1994 – Furnishing of certain information by Revenue Commissioners
(as inserted by Section 1 of the Disclosure of Certain Information for Taxation and Other Purposes Act 1996)

"63A.-(1) In this section-

'relevant investigation' means an investigation of a kind referred to in subsection (1) of section 63 of this Act;

'relevant person' means-

(a) a member of the Garda Síochána not below the rank of Chief Superintendent, or

(b) the head of any body, or any member of that body nominated by the head of the body, being a body established by or under statute or by the Government, the purpose, or one of the principal purposes of which is-

(i) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(ii) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(iii) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in subparagraphs (i) and (ii).

(2) If, having regard to information obtained from a relevant person or otherwise, the Revenue Commissioners have reasonable grounds-

(a) for suspecting that a person may have derived profits or gains from an unlawful source or activity, and

(b) for forming the opinion that-

(i) information in their possession is likely to be of value to a relevant investigation which may be, or may have been, initiated, and

(ii) it is in the public interest that the information should be produced or that access to it should be given,

then, the Revenue Commissioners shall, subject to subsection (4) of this section and notwithstanding any obligation as to secrecy or other restriction upon disclosure of information imposed by or under any statute or otherwise, produce, or provide access to, such information to a relevant person.

(3) (a) The Revenue Commissioners may authorise any officer of the Revenue Commissioners serving in a grade not lower than that of Principal Officer or its equivalent to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners and references in this section, other than in this subsection, to the Revenue Commissioners shall, with any necessary modifications, be construed as including references to an officer so authorised.

(b) The Revenue Commissioners may by notice in writing revoke an authorisation given by them under this section, without prejudice to the validity of anything previously done there under.

(c) In any proceedings arising out of a relevant investigation, a certificate signed by a Revenue Commissioner or an officer authorised under paragraph (a) of this subsection, as the case may be, certifying that information specified in the certificate has been produced to or access to such information has been provided to a relevant person shall, unless the contrary is proved, be evidence without further proof of the matters stated therein or of the signature thereon.

(4) Where information has been supplied to the Revenue Commissioners by or on behalf of the government of another state in accordance with an undertaking (express or implied) on the part of the Revenue Commissioners that the material will be used only for a particular purpose or purposes, no action under this section shall have the effect of requiring or permitting the production of, or the provision of access to, the information for a purpose other than one permitted in accordance with the undertaking and the information shall not, without the consent of the other state, be further disclosed or used otherwise than in accordance with the undertaking.".

Annex 4

Financial Institutions Regulated by the Financial Regulator

1. Credit Institutions (Banks, Building Societies)

Number authorized: 81 (of which 31 are EU Branches)

Size of sector: €790,197,715,000 (Assets 31 Dec 2004)

Activities: Provision of Banking Services and financial services

2. Insurance Companies (Life, Non-Life)

Number authorized 51 Life 131 Non –Life (March 2005)

Size of sector Gross Life Assurance premiums written year ended 31 Dec 2003 €10,358,038,000
Net Non-Life Premiums written year ended 31 Dec 2003 €4,481,853,000

Activities –Life 7 classes of business that can be written in Ireland

I Life assurance on annuities
II Provide a sum on marriage or birth of child
III Life Assurances linked to investment funds
IV Permanent Health Insurances
V Tontines
VI Capital Redemption Operations
VII Management of group pensions

Activities: Non- Life

18 classes of business that can be written in Ireland (It should be noted that non-life insurance companies are not listed as designated bodies pursuant to Section 32 of the Criminal Justice Act, 1994)

3. Investment &Insurance Intermediaries

Number authorized: 2,460 retail intermediaries (10 March 2005) of which 1,995 are Multi Agency Intermediaries (MAI) and 465 are Authorised Advisors (AA). In addition there are 703 entities (583 certified persons (e.g. accountants) and 120 solicitors providing services as investment or insurance intermediaries on an incidental basis and whose activities are regulated by a professional body which is approved in respect of that purpose by the Financial Regulator (i.e. certified persons) or exempt from requiring authorisations (i.e. solicitors).

Authorised Advisors: MAI – may receive and transmit orders and provide advice on investment instruments available only from the product producer from whom the intermediary holds a written letter of appointment.

AA provides advice on investment instruments but without the necessity to hold a letter of appointment. An AA is obliged to recommend the most suitable investment product available on the

market, regardless of whether or not the firm holds an appointment from the relevant product producer.

4. Funds (Collective Investment Schemes & Service Providers)

Service Providers Number authorized: Agency Fund Managers (AFM) 141, Management Companies (MC) 22, Administrators (A) 39, Trustee Companies (TC) 24

Size of sector: Irish Collective Investment Schemes under Administration €434,600,459,797 – 31 Dec 2004. Non-Irish Collective Investment Schemes under Administration €382,277,413,268 – 31 Dec 2004.

Activities: AFM – Delegates fund administration, investment management and distribution (no activities as such). MC- Fund administration, Investment Management and distribution. Some of the activities may be delegated.

A – Provides fund administration services to Irish and non-Irish Collective Investment Schemes (CIS)
TC- Trustee /Custody services to CIS

5. Investment Business Firms

Number authorized: 127 (10 March 2005)

Size of sector: Turnover for year ended 31 December 2003 €1.3billion. Total assets under management as at 30 June 2004 by those that are authorised to engage in discretionary portfolio management activities was €301.4 billion.

Activities: Primary legislation governing regulation is Investment Intermediaries Act, 1995. These firms provide a range of investment business services as defined under that Act to institutions and/or retail clients. Services provided include the provision of investment advice, reception and transmission of orders, execution of orders, discretionary portfolio management, dealing on own account, underwriting, money broking and venture capital fund management.

6. Stockbrokers

Number authorized: 11 (as at 10 March 2005)

Size of sector: Turnover €186.4 million (year ended 31 December 2003)

Activities: Primary legislation on regulation is the Stock Exchange Act, 1995 These firms provide a range of investment services as defined under that Act to institutional and/or retail clients. Services provided include the provision of investment advice, brokerage services, provision of safe custody services, underwriting and discretionary portfolio management. Such firms may also engage in proprietary trading activities.

7. Exchanges

Number authorized: 3 (Irish Stock Exchange and 2 futures and options exchanges)

Size of sector: Irish Stock Exchange market capitalisation 31 December 2004 Equity €82,049m, Government Bonds €33,031m.

Activities: Irish Stock Exchange – activities associated with stock exchanges – listings etc.
Futures & Options Exchanges. One exchange which is a branch of a New York exchange is an open outcry exchange which specialises in trading of currency futures contracts. The other also a branch of a New York exchange and is an open outcry exchange for Brent crude oil futures. Both exchanges are regulated by the US Commodity Futures Trading Commission (CFTC).

8. Bureaux de Change

Number authorized: 14

Size of sector: Based on actual turnover information for certain bureaux de change (2002) it is estimated that the level of turnover for this sector is in the region of somewhat in excess of €50million.

Activities: Providing members of the public with services that involve buying or selling of foreign currency.

9. Money Transmission Businesses

Number authorized:

Size of sector:

Activities: Providing a money transmission service to members of the public. Transmitting include transmitting by means of (a) a message to other form of communication or (b) a transfer instrument or (c) a clearing network.

10. Moneylenders

Number authorized: 53 (in 2005)

Size of sector: Cash Loans advanced in 2004 €122,418,316. Loans for goods advanced in 2004 €85,953,057 (These figures are based on accounts submitted by money lenders 2005 licensing round).

Activities: From a study that was carried out in 1998 typically clients of moneylenders typically are those who cannot obtain credit from the main commercial lenders. The main activities include provision of money (cash loans), money and goods, money for goods (electrical/furniture) vouchers (similar to cheques that can be redeemed for goods in certain shops) and catalogue sales, goods only (no interest charged and those that carry out this business only do not consider themselves to be money lenders).

11. Mortgage Intermediaries

Number authorized: 1,079 (3 March 2005)

Size of sector: No specific details.

Activities: Definition has recently been widened under CBFSAI Act, 2004 to include those who introduce business to an intermediary. Activities include meeting with client, completing application form, collection of supporting documentation, liaising with lenders, lodging application, dealing with queries arising on application, arranging valuations and medicals, issue of loan approval, consultation

with client, liaising with clients solicitors, finalising security requirements and administering top-up loans.

12. Credit Unions

Number authorized: 437 (425 active) 30 Sept 2003

Size of sector: €9.8 billion assets

Activities: Credit unions are mutual bodies whose philosophy is to encourage saving and providing access to loans for their members. The Registrar of Credit Unions is part of the Financial Regulator since 1 May 2003 and reports to the Chief Executive. (Prior to 1 May 2003 the Registrar of Friendly Societies, which included Credit Unions, reported directly to the Minister for Enterprise, Trade and Employment.) Principal activities are lending. Other services provided include provision on an agency basis of Euro drafts, bureaux de changes services, money transfer services, and insurance services. Other services may be provided to members which must be approved by the Registrar of Credit Unions.

Annex 5

Legislative Basis for Financial Regulator's Supervisory Functions as at 31 December 2004

- No. 49 of 1909
- No. 45 of 1936
- No. 22 of 1942
- No 7 of 1953
- No 33 of 1963
- No 18 of 1964
- No 24 of 1971
- No 30 of 1978
- No 24 of 1983
- No 29 of 1983
- No 3 of 1989
- No 16 of 1989
- No 17 of 1989
- No 21 of 1989
- No 27 of 1990
- No 33 of 1990
- No 37 of 1990
- No 18 of 1992
- No 15 of 1994
- No 24 of 1994
- No 27 of 1994
- No 9 of 1995
- No 11 of 1995
- No 24 of 1995
- No 25 of 1995
- No 8 of 1997
- No 15 of 1997
- No 37 of 1998
- No 28 of 2001
- No 32 of 2001
- No 47 of 2001
- No 2 of 2003
- No 12 of 2003
- No 21 of 2004
- No 12 of 2005
- SI No 75 of 1940
- SI No 76 of 1940
- SI No 78 of 1940
- SI No 80 of 1940
- SI No 81 of 1940
- SI No 64 of 1971
- SI No 115 of 1976
- SI No 178 of 1978
- SI No of 382 of 1978
- SI No of 65 of 1983

Principal enactments by or under which function conferred:

- Assurance Companies Act 1909
- Insurance Act 1936
- Central Bank Act 1942
- Insurance Act 1953
- Companies Act 1963
- Insurance Act 1964
- Central Bank Act 1971
- Insurance (Amendment) Act 1978
- Postal and Telecommunications Services Act 1983
- Insurance (No 2) Act 1983
- Insurance Act 1989
- Central Bank Act 1989
- Building Societies Act 1989
- Trustee Savings Bank Act 1989
- Companies (Amendment) Act 1990
- Companies Act 1990
- Units Trusts Act 1990
- Housing (Miscellaneous Provisions) Act 1992
- Criminal Justice Act 1994
- Investment Limited Partnership Act 1994
- Solicitors (Amendment) Act 1994
- Stock Exchange Act 1995
- Investment Intermediaries Act 1995
- Consumer Credit Act 1995
- Netting of Financial Contracts Act 1995
- Central Bank Act 1997
- Credit Union Act 1997
- Investor Compensation Act 1998
- Company Law Enforcement Act 2001
- Dormant Accounts Act 2001
- Asset Covered Securities Act 2001
- Unclaimed Life Assurance Policies Act 2003
- Central Bank and Financial Services Authority of Ireland Act 2003
- Central Bank and Financial Services Authority of Ireland Act 2004
- Investment Funds, Companies and Miscellaneous Provisions Act 2005
- Actuary (Qualification) Regulations 1940
- Industrial Assurance (Contents of Policies) Order 1940
- Insurance (Deposits) Rules 1940
- Insurance Regulations 1940
- Industrial Assurance (Fees for Determination of Disputes) Regulations 1971
- Decimal Currency (Friendly Society and Industrial Assurance Contracts) Regulations 1971
- European Communities (Non-Life Insurance) Regulations 1978.
- European Communities (Insurance Agents and Brokers) Regulations 1976
- European Communities (Insurance) (Non-Life) Regulations 1978
- European Communities (Co-Insurance) Regulations 1983

Appendix 10a: Legislative Basis for Financial Regulator's Supervisory Functions as at 31 December 2004

- SI No 57 of 1984

- SI No 27 of 1987
- SI No 191 of 1990
- SI No 142 of 1991
- SI No 197 of 1991
- SI No 244 of 1992
- SI No 294 of 1992
- SI No 395 of 1992
- SI No 396 of 1992
- SI No 359 of 1994
- SI No 360 of 1994
- SI No 128 of 1995
- SI No 168 of 1995
- SI No 202 of 1995
- SI No 23 of 1996
- SI No 25 of 1996
- SI No 267 of 1996
- SI No 380 of 1997
- SI No 381 of 1997
- SI No 399 of 1999
- SI No 473 of 2000
- SI No 15 of 2001
- SI No 221 of 2002
- SI No 335 of 2002
- SI No 168 of 2003
- SI Nos. 211, 212 and 497 of 2003
- SI No 198 of 2004
- SI No 727 of 2004
- SI No 853 of 2004
- SI No 13 of 2005
- SI No 324 of 2005
- SI No 342 of 2005

Principal enactments by or under which function conferred

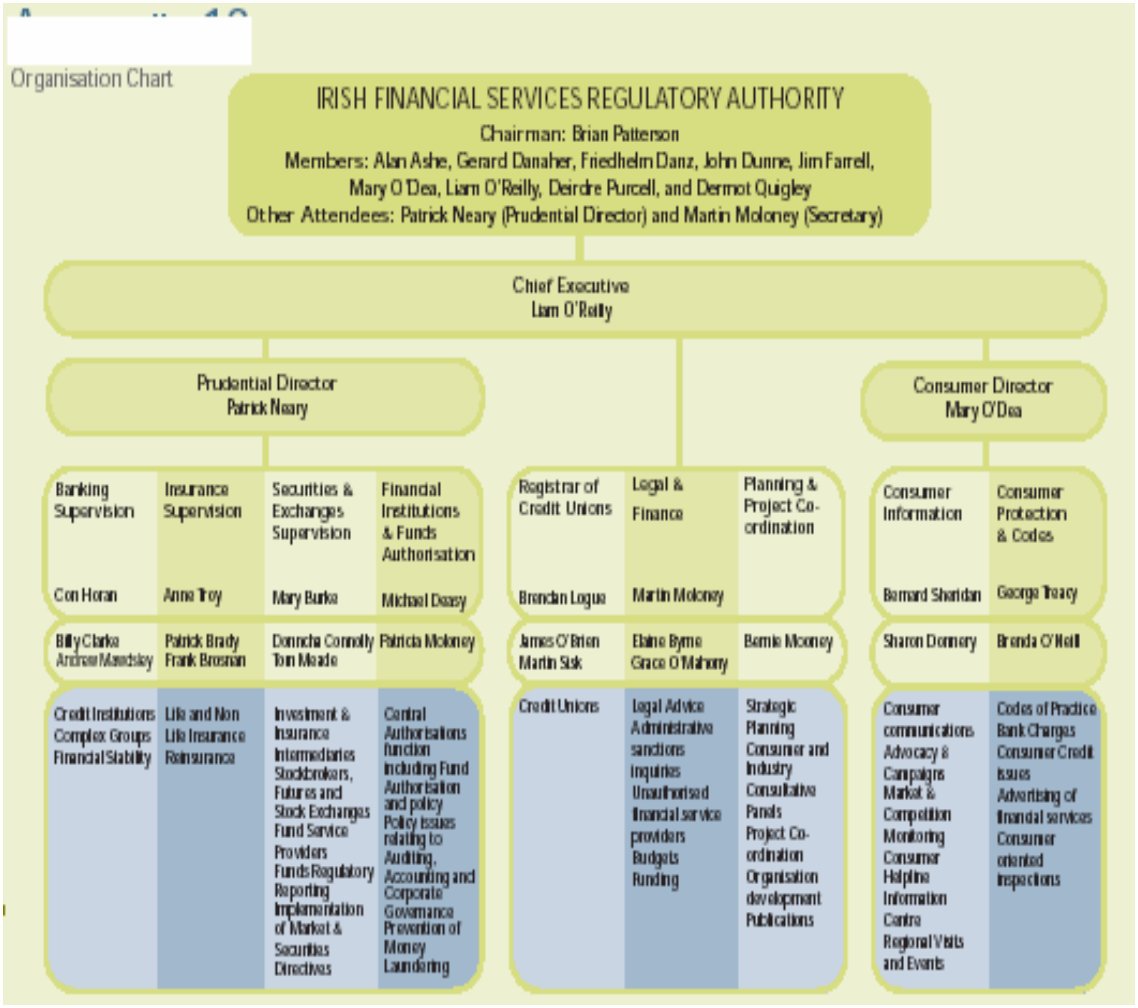
- European Communities (Life Assurance) Regulations 1984
- Building Societies Regulations 1987
- Insurance (Bonding of Intermediaries) Regulations 1990
- European Communities (Non-Life Insurance)(Amendment)(No.2) Regulations 1991
- Regulations 1991
- European Communities (Non-Life Insurance) (Legal Expenses) Regulations 1991
- European Communities (Credit Institutions: Accounts) Regulations 1992
- European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992
- European Communities (Consolidated Supervision of Credit Institutions) Regulations 1992
- European Communities (Non-Life Insurance) Framework Regulations 1994
- European Communities (Life Assurance) Framework Regulations 1994
- Insurance (Fees) Order 1995
- European Communities (Deposit Guarantee Schemes) Regulations 1995
- European Communities (Non-Life Insurance Accounts) Regulations 1995
- European Communities (Insurance Undertakings: Accounts) Regulations 1996
- European Communities (Swiss Confederation Agreement) Regulations 1996
- Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firm
- Regulations 1996

- Rules entitled Stock Exchange Act 1995 (Determination Committees Rules and Procedures)
- Regulations 1997
- Rules entitled Investment Intermediaries Act (Determination Committee) Rules of Procedure 1997
- European Communities (Supplementary Supervision of Insurance Undertakings in an
- Insurance Group) Regulations 1999
- Insurance Act 1989 (Reinsurance)(Form of Notice) Regulations 2000
- Life Assurance (Provision of Information) Regulations 2001
- European Communities (Electronic Money) Regulations 2002
- European Communities (Cross Border Payments in Euro) Regulations 2002
- European Communities (Reorganisation and Winding-Up of Insurance Undertakings)
- Regulations 2003
- European Communities (Undertaking for Collective Investment in Transferable Securities)
- Regulations 2003
- European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations
- 2004
- European Communities (Financial Conglomerates) Regulations 2004
- European Communities (Distance Marketing of Consumer Financial Services)
- Regulations 2004
- European Communities (Insurance Mediation) Regulations 2005
- Prospectus (Directive 2003/71/EC) Regulations 2005
- Market Abuse (Directive 2003/6/EC) Regulations 2005

Source: http://www.ifsra.ie/frame_main.asp?pg=%2Fpublications%2Fpu%5Frecs%2Easp&nv=%2Fpublications%2Fpu_nav.asp

Annex 6

The Financial Regulator Organisational Chart



Source: http://www.ifsra.ie/frame_main.asp?pg=%2Fpublications%2Fpu%5Frecs%2Easp&nv=%2Fpublications%2Fpu_nav.asp

Annex 7

Relevant Legislative Provisions in Relation to the Revocation of Licences/Authorisation

Banks – Section 11 of the Central Bank Act, 1971 (as amended).
Moneybrokers – Section 114 of Central Bank Act, 1989 provides for the revocation of the license.
Building Societies – Section 40 of the Building Societies Act, 1989 provides for the revocation of a building society's licence by the Bank.
Investment Business Firms – Section 16 of the Investment Intermediaries Act, 1995 provides for the revocation of authorisation.
Stock Exchange – Section 14 of the Stock Exchange Act, 1995 provides for the revocation of approval under the Act.
Member Firms of the Stock Exchange – Section 24 of the Stock Exchange Act, 1995.
Insurance Undertakings – Section 20 of the Insurance Act, 1936 provides for the revocation of a license.
Mortgage Intermediaries – Section 116(11) of the Consumer Credit Act, 1995 provides for the revocation of a license.
Moneylenders – Section 93(11) of the Consumer Credit Act, 1995 provides for the revocation of the license.
Credit Unions – Section 97 of Credit Union Act, 1997 – cancellation of registration.
Funds – Section 102 of the UCITS Regulations, 2003 provides for the revocation of authorisations.
Money Transmission Service Providers/Bureaux de Change – Section 36A of the Central Bank Act, 1997 – revocation of authorisation.

Annex 8

Relevant Provisions in Relation to Fitness and Probity

Banks - Regulation 16(2)A of the EC (Licensing and Supervision of Credit Institutions) Regulations, 1992. A licence may be subject to conditions imposed by the Financial Regulator under section 10 of the Central Bank Act, 1971.
Building Societies – Financial Regulator may grant an authorisation subject to conditions, such as the removal of a Director or other officer – Section 17(6) of the Building Societies Act, 1989.
Investment Business Firms - Sections 10(5)(d) and 36 of the Investment Intermediaries Act 1995.
Stock Exchange Member Firms - Section 29(1) of the Stock Exchange Act 1995.
Insurance Undertakings - Sections 20 and 20A of the Insurance Act 1989; Regulation 7(2)(e) of the EC (Non-Life Insurance) Framework Regulations, 1994; Regulations 7(2)(e) and 14 of the EC (Life Assurance) Framework Regulations 1994.
Mortgage Intermediaries - Section 116(3)(e), (9)(e) and (11)(g) of the Consumer Credit Act 1995.
Moneylenders - Sections 93(5)(i), (10)(f) and (11) of the Consumer Credit Act, 1995.
Moneybrokers - Section 111 of the Central Bank Act, 1989.
Funds - Section 4 of the Unit Trusts Act, 1990; UCITS Notices (November 2004): UCITS 1.1 Paras 5 and 7; UCITS 2.1, Para 5; UCITS 3.1: Para 5; Sections 256(4), 257 and 258 of the Companies Act 1990.
Bureaux de Change and Money Transmission Service Providers - Section 30 of the Central Bank Act, 1997; Section 33 of Central Bank Act, 1997.

Annex 9

Summary of the Legislation for which IFSRA Performs the Functions of the Central Bank

Part 1 ***Enactments***

- Assurance Companies Act 1909
- Unit Trusts Act 1990
- Insurance Act 1936
- Housing (Miscellaneous Provisions) Act 1992 Section 13
- Insurance Act 1953
- Investment Limited Partnership Act 1994
- Companies Act 1963 Section 213
- Solicitors (Amendment) Act 1994 Section 78
- Insurance Act 1964
- Stock Exchange Act 1995
- Central Bank Act 1971 other than sections 7(1) and (4), 18, 23, 44-46, 48-50 and 55
- Investment intermediaries Act 1995
- Insurance (Amendment) Act 1978
- Consumer Credit Act 1995
- Postal and Telecommunications Services Act 1983 Section 104
- Netting of Financial Contracts Act 1995 Sections 2 and 3
- Insurance (No. 2) Act 1983
- Central Bank Act 1997 other than Parts II and III and Section 77
- Insurance Act 1989
- Credit Union Act 1997
- Central Bank Act 1989 other than sections 22-25 and 118-126
- Investor Compensation Act 1998
- Building Societies Act 1989
- Dormant Accounts Act 2001 Part 3 and section 17
- Trustee Savings Banks Act 1989
- Asset Covered Securities Act 2001
- Companies (Amendment) Act 1990 Sections 3, 3C, 18, 23, 24 and 27
- Companies Act 1990 Part XIII

Part 2 - ***Statutory Instruments***

There are also a number of statutory instruments, details of which can be provided. The following are due to be added to the functions of the Financial Regulator by a forthcoming statutory instrument (currently, they are functions of the CBFSAI, although we perform many of these functions in practice):

- Unclaimed Life Assurance Policies Act 2003
- Postal and Telecommunications Services Act 1983
- Dormant Accounts Act 2001
- European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003
- European Communities (Financial Conglomerates) Regulations 2004
- European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004
- European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004
- European Communities (Insurance Mediation) Regulations 2005

Annex 10

Overview of Legal Persons and Legal Arrangements

Information Requirements for Company Registration

Company

a) the name of the company or society
b) the shareholders or members of a company
c) the number of shares held by each shareholders and their value
d) the registered office address of a company
e) the objective clause of the company
f) the purpose for which the entity was established
g) the name and address of directors/secretary of a company
h) the capital clause – sets out the company's authorised share capital
i) the association clause – contains a statement by the persons forming the company of their intent form a company.
j) All companies and societies operating a business in the state are required to register with the Registrar of Companies or the Registrar of Friendly Societies.

Society

a) the members of a society
b) the registered office address of a society
c) the name and address of the board of management of a society
d) the rules of the society
e) All of the above documents are public documents and available for inspection by the public on the payment of a small fee to the Registrar.
f) A Register of Members
g) A Register of Directors & Secretary
h) A Register of Debenture Holders
i) A Minute Book that records all proceedings of general meetings and board meetings.
j) Directors' Service Contracts
k) Instruments Creating Charges over Companies' Property
l) Contract for the Purchase of Own Shares
m) Register of Interest of Persons in its Shares
n) Ordinary resolutions

Money Laundering - Terms of Reference of Steering Committee and Sub-Committees

(Amended as agreed at a meeting of the Money Laundering Steering Committee on 26th May 2003)

Steering Committee

The terms of reference of the Steering Committee will be as follows:

1. To define the broad scope of the guidance notes required to facilitate the effective implementation of the money laundering and terrorist funding provisions of the Criminal Justice Acts, EU Directives on Money Laundering and the Financial Action Task Force recommendations.
2. To co-ordinate and ensure consistency between the guidance notes prepared by the Sub-Committees.
3. To ratify the guidance notes, etc, drawn up by the sub-committees before issue.
4. To review the implementation of the guidance notes at regular intervals.
5. To approve guidance notes for non financial sectors designated under the Criminal Justice Act, 1994, as may be appropriate.
6. To facilitate communication and discussion between the relevant authorities and financial services industry bodies with regard to developments and issues, including proposed legislation, arising at national, EU and international levels.
7. To recommend what measures, if any, should be taken to ensure that the public are aware of, and understand the need for anti-money laundering procedures.
8. The Steering Committee shall be chaired by the Department of Finance and shall include such representatives of State and industry bodies as may be appropriate to its work from time to time.
9. The Committee shall meet as may be required but at least twice a year.

Sub-committees

The terms of reference of each sub-committee will be as follows:

1. To prepare and keep under review guidance notes for their sector.
2. To recommend broad procedures etc for their sector and for companies/bodies operating within it which will ensure the implementation of the relevant guidance notes.
3. To identify possible education and training measures for each sector which will ensure that relevant staff are aware of and able to implement the guidance notes agreed for their sector/institutions.
4. To review the implementation of the guidance notes at regular intervals and to bring any relevant issues to the attention of the Steering Committee.