

MONEY LAUNDERING: YOUR SOLICITOR AND YOU

THE RELEVANT LAW

The *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013*, impose certain obligations on solicitors when they deal with a client and, in particular, where they know or suspect that the result of a legal transaction (a house sale, a sale of shares etc) is to transfer assets that derive from the proceeds of criminal conduct. This legislation creates a number of criminal offences and solicitors are subject to severe criminal sanctions, both fines and imprisonment, if they breach their obligations under the Acts.

THE OBLIGATION TO IDENTIFY THE CLIENT

The solicitor is obliged to obtain identification from the client and also to verify that identification with other documentation, such as a utility bill. The solicitor must copy and keep this documentation on file for a period of five years after the transaction has ended.

THE OBLIGATION TO REPORT A SUSPICIOUS TRANSACTION

In most dealings with your solicitor, particularly if it involves court proceedings, the information given to your solicitor carries a very high level of

confidentiality, known as 'privilege'. In other cases, not involving court proceedings, your solicitor will strictly observe your confidentiality even though it is not a privileged occasion. However, in certain limited circumstances, where the solicitor suspects that the transaction involves the transfer of assets that are 'tainted' and represent the proceeds of criminal conduct, the solicitor has a legal obligation to report the matter to the Revenue Commissioners and the Garda Síochána. For this reason, clients should ensure to clarify the source of their assets with their solicitor at an early opportunity, to allay any fears that the assets may be 'tainted'.

WHAT ARE THE PROCEEDS OF CRIME?

For the purposes of the legislation, the proceeds of criminal conduct includes not only the proceeds of drug dealing, racketeering and terrorism, but also tax evasion, social welfare fraud and other criminality. For example, a house, boat, shares or any other property purchased partially with untaxed income or social welfare or other benefits obtained unlawfully would be a 'tainted' asset and any transfer would amount to an offence of money-laundering, as would the transfer of a property previously-purchased with an 'under-the-counter' payment to avoid stamp duty, capital gains tax or any other tax liability.

THE OBLIGATION NOT TO CONCEAL OR DISGUISE THE TRUE NATURE OF ASSETS

Your solicitor has an obligation not to engage in any transaction that would amount to concealing or disguising the true nature of the assets. To do so would amount to a criminal offence, attracting a penalty of a fine and/or imprisonment. If a solicitor becomes aware that the legal transaction involves the transfer of any asset that has been funded by the proceeds of criminal conduct, including untaxed income, unlawfully-obtained benefits or stamp duty fraud, his/her obligation is to cease to act until you have regularised the matter with the Revenue authorities. In certain circumstances, your solicitor may also be obliged to report the matter to the Revenue or Garda authorities.

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