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Ireland to Move to an Objectivity Test for Reporting of Suspicions

Posted on **05 October 2009** by **Naomi Cohen**

As readers may know, Ireland is finally progressing towards transposing the 3rd EU Anti-Money Laundering Directive. The Criminal Justice (Money Laundering & Terrorist Financing) Bill 2009 ("Bill") is likely to pass into law before the end of 2009.

One aspect of the Bill which is yet to cause any considered debate relates to the mental element required to oblige a person to report a suspicious transaction or activity. This is very surprising given it represents a significant change to the mental element required to oblige a designated person to file a suspicious transaction report with the Garda (as the Financial Intelligence Unit) and the Revenue Commissioners. Perhaps this lack of debate is because the issue has gone unnoticed by industry as its struggles with, although a relatively short document, a rather technical and cumbersome Bill.

Under section 42 of the Bill, which replaces section 57 of existing law, the new law will require that:

A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another 10 person has been or is engaged in an offence of money laundering or terrorist financing shall report to the Garda Síochána and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds.

The wording in **bold** is new language which imports a test of objectivity.

Under the current requirement to report suspicious transactions, one only needs either (1) knowledge or (2) suspicion (see section 57 Criminal Justice Act 1994). The new Bill brings in a third test, that of having reasonable grounds to suspect.

Readers in the United Kingdom and other jurisdictions where the objectivity test is already enshrined in law might be surprised that Ireland is only now moving to a similar test. Presently, under Irish law, if you did not have knowledge the alternative requirement is whether you are subjectively suspicious. Therefore if you are blissfully ignorant where a reasonable person performing your function will be suspicious, this may not be sufficient to oblige you to report. Although in practice most Money Laundering Reporting Officers (MLRO) and suitably trained staff would probably ask themselves the question "Would my colleague be suspicious if the information were known to them?". If the answer was 'Yes', this would generally lead the MLRO to report.

Money Laundering Reporting Officers and others involved in the reporting of suspicious transactions would be advised to acquaint themselves with the UK Proceeds of Crime Act (s 330 (2)(b) and s331 (2) (b)), Terrorism Act (s 21A) and paragraph 6.13 onwards in the JMLSG Guidance Notes on this area to get a fuller understanding on the proposed new obligation.

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