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Irish AML Requirements Facing a Shake-Up

Introduction

Following a relatively settled period, the Irish anti-money laundering and counter terrorist-financing (“AML/CFT”) regime will shortly undergo significant reform in the shape of new domestic legislation with a heavy emphasis on risk, revised industry guidance and the establishment of central beneficial ownership registers.

A significant aspect of these reforms is that certain industry sectors will find themselves within the scope of AML/CFT legislation for the first time and will be subject to direct supervision for AML/CFT purposes by competent authorities. Affected firms should start preparing for these changes now to ensure they do not find themselves hurriedly introducing new systems, policies and procedures without properly thinking through their overall approach.

Implementation of the Fourth Anti-Money Laundering Directive (“4MLD”)

4MLD was due to be transposed across Europe by June 2017. While Ireland implemented certain elements of 4MLD in November 2016 by introducing an obligation on incorporated entities to maintain details of beneficial ownership, the bulk of 4MLD has still not been implemented, and Ireland (along with Greece and Romania) has been referred to the European Court of Justice as a result of its inaction.

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 (the “AML Bill”) which will amend existing AML/CFT legislation and ultimately give effect to 4MLD was introduced to the Dail in April 2018. The AML Bill passed all stages in the Dail prior to its summer recess and it is expected that it will be enacted in October / November 2018.

Key Features of the Bill

[Certain “unregulated” financial institutions will be required to register with Central Bank of Ireland](#)

Under existing AML/CFT legislation, certain financial institutions are deemed to be designated as within scope of the legislation (i.e. a “designated person”) by virtue of the activities they engage in and regardless of their authorisation status. Such entities have been colloquially known as “Annex 1” or “Schedule 2” financial institutions, and examples include SPV’s involved in lending or financial leasing. In the UK, equivalent entities have for a number of years been subject to a registration and supervision regime administered by the Financial Conduct Authority.

To date, Annex 1 / Schedule 2 financial institutions in Ireland have not been required to register with the Central Bank of Ireland (“CBI”), but the Bill imposes a registration requirement and provides that the CBI will establish and maintain a register of such entities. Failure to register will be a criminal offence. In registering, an Annex 1 / Schedule 2 financial institution will be required to specify the activities that make it a designated person. The Bill envisages that the CBI may provide further detail on the registration process in procedures.

Prior to registration, an Annex 1 / Schedule 2 financial institution will need to develop and implement policies and procedures in order to demonstrate an ability to comply with the various AML/CFT obligations imposed on designated persons, including risk assessment, upfront and ongoing customer due diligence (“CDD”), training and reporting of suspicious activity.



Increased focus on risk assessment

The Bill requires designated persons to conduct a documented risk assessment of their business activities (a “business risk assessment”) taking into account certain specified risk factors, the National Risk Assessment, any guidance on risk issued by the relevant competent authority and any guidelines issued by the European Supervisory Authorities. The business risk assessment must be approved by senior management within the business and kept up to date.

The Bill also prescribes certain factors to be taken into account by designated persons when assessing the money laundering and terrorist financing risks presented by customers and transactions in order to determine the extent of CDD to be applied. Notable higher risk factors include non-resident customers, companies with nominee shareholders, non-face-to-face business relationships, new products and new business practices, and the use of new technologies for products.

Changes to CDD requirements

Designated persons will only be permitted to apply simplified CDD in circumstances where the customer or transaction is considered to be low risk. Having decided to apply simplified CDD, the designated person must keep a record of its determinations in relation to risk and the customer and / or transactions will have to be monitored to detect unusual or suspicious activity.

Under existing AML/CFT legislation, it is permissible for banks to open accounts for customers before verifying their identity provided no transactions are carried out on the account pre-verification. In a welcome development, this facility will be extended to financial institutions.

The obligation to apply enhanced CDD to politically exposed persons (“PEPs”) will be extended to PEPs resident in Ireland.

Policies and procedures

The Bill provides a detailed list of policies, procedures and controls which must be adopted by a designated person. The Bill also contains more prescriptive requirements in relation to group-wide policies and procedures than those set out in existing AML/CFT legislation.

Reporting obligations

The Bill requires designated persons to report any service or transaction provided by the designated person that is connected with a high-risk third country to the Financial Intelligence Unit (“FIU”) of An Garda Síochána (the Irish police force) and the Revenue Commissioners.

Powers of competent authorities

The Bill provides additional powers to competent authorities, including powers to issue directions to a designated person or a class of designated persons to:

- » document its / their risk assessments of customers and / or transactions;
- » appoint a member of senior management with primary responsibility for the implementation and management of AML measures;
- » appoint an individual at management level to act as a compliance manager; and
- » undertake an independent, external audit to test the effectiveness of its / their internal policies, controls and procedures.

Beneficial Ownership Registers

One of the key elements of 4MLD is that Member States are required to establish and maintain a central register of beneficial ownership information of corporate and other legal entities. The first step in this process was addressed with the introduction of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations in November 2016 (S.I. 560/2016) requiring incorporated entities to maintain an internal register of beneficial owners. Further statutory instruments are expected imminently to:

- » impose equivalent obligations on trusts and Irish Collective Asset-Management Vehicles (“ICAV’s”) to maintain an internal register of beneficial owners;
- » assign legal responsibility to the relevant agencies for the establishment and maintenance of the central registers of beneficial ownership; and
- » impose a reporting obligation on incorporated entities, trusts and ICAV’s to file returns to the central registers. It is expected that there will be a reasonable window of opportunity for obliged entities to commence reporting.



5MLD

In response to terrorist attacks in Europe and the leak of the Panama Papers, the European Commission published a proposal in July 2016 to amend 4MLD to include additional measures to tackle money laundering and terrorist financing. The proposed measures included the application of enhanced checks towards high risk third countries, bringing virtual currency exchange platforms within scope of the AML/CFT regime, lowering due diligence thresholds for prepaid instruments, enhancing the powers of FIUs and giving FIUs swift access to information on the holders of bank and payment accounts, through centralised registers or electronic data retrieval systems.

On 19 June 2018, the final text of 5MLD was published in the Official Journal of the European Union and Member States will therefore have until 10 January 2020 to fully implement the directive.

From a corporate transparency perspective, the key feature of 5MLD is that it requires Member States to make central registers of beneficial ownership accessible to the general public with the exception of the register in respect of trusts, which will still require demonstration of a legitimate interest.

CBI Consultation on Guidance

The industry guidelines (the "Guidelines") which were published by the Department of Finance in February 2012 and which the CBI has had regard to when assessing designated persons' compliance with AML/CFT obligations are due to be revised later this year. The CBI has informally indicated that it intends to update the Guidelines in line with the AML Bill once enacted, and it is likely that the CBI will also seek to incorporate elements of the guidance provided in its ongoing series of AML/CFT bulletins. The CBI may also incorporate references to the Risk Factor Guidelines published by the European Supervisory Authorities which came into effect on 26 June 2018.

Gambling Sector

4MLD brought all providers of gambling services within its remit whereas under the previous directive, only casinos were covered. However, 4MLD contained a provision allowing Member States to exempt all or parts of their gambling industry from the scope of the implementing legislation if they could be proven to be low risk.

In March 2018, the Department of Finance published a risk assessment of the Irish gambling sector which concluded that the overall risk in the betting and online gambling sectors is medium-low whereas the risk in respect of lotteries, bingo, poker and gaming, and amusement arcades is considered to be low. The report concluded that providers of gambling services in the bookmaking and online sub-sectors should be classified as designated persons for AML/CFT purposes. The likelihood is that this will be achieved via a separate statutory instrument as opposed to specific provisions being contained in the AML Bill.

FATF Assessment of Ireland's AML/CFT System

The Financial Action Task Force ("FATF") published its report on Ireland's AML/CFT system in September 2017. The report was generally positively received as FATF concluded that Ireland has a sound and substantially effective regime to tackle money laundering and terrorist financing. However, FATF did point to a number of areas where improvements could be made and set out over 70 recommendations in this regard. Ireland is due to report back to FATF this month outlining how it intends to address each of the issues raised by FATF and, if accepted by FATF, this will likely serve as the blueprint for the development of Ireland's AML/CFT regime in the coming years.

New Anti-Corruption Legislation

The Criminal Justice (Corruption Offences) Act 2018 (the "Anti-Corruption Act") came into effect on 30 July 2018. The Anti-Corruption Act modernises and consolidates the law on corruption and bribery in Ireland, and is one of the key measures in the Government's strategy to tackle white collar crime.

The Anti-Corruption Act is broad in nature in that it criminalises direct and indirect corruption in the public sector and the private sector. Given its breadth, companies will need to assess their exposure to the risk of corruption and determine how best to address this risk. As a starting point, companies should implement and / or update their anti-bribery policies and ensure that compliance with the policies is monitored in practice, with training to be provided to relevant people in the business.

For further information on the Anti-Corruption Act, please see our [recent client advisory](#).



How we can Help

Walkers has one of the largest and most experienced dedicated financial services regulatory groups in Ireland. We have extensive experience in assisting clients to design and implement AML/CFT systems, policies and procedures, including Annex 1 / Schedule 2 financial institutions and providers of gambling services.

Key Contacts

If you have any queries on AML/CFT matters, please speak to your usual contact in Walkers or contact:



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