



**ADVISORY**  
Industry Information

## AML Update: Central Bank of Ireland Consultation Paper on Draft Guidelines and Trusts Beneficial Ownership Requirements

February 2019

Irish anti-money laundering and counter-terrorist financing (“AML/CFT”) requirements continue to evolve at a rapid pace. This advisory considers the key aspects of the following recent developments:

- » publication by Central Bank of Ireland (“CBI”) of a [Consultation Paper](#) on AML/CFT Guidelines for the financial sector;
- » new [obligations](#) imposed on trusts to maintain a register of beneficial ownership;
- » publication by the Department of Justice and Equality of a [General Scheme of a Bill](#) which will give effect to the Fifth Anti-Money Laundering Directive (“5MLD”); and
- » introduction of a requirement for “Schedule 2 Firms” to [register](#) with CBI for AML/CFT supervision purposes.

### CBI Consultation on AML/CFT Guidelines for the Financial Sector

Following enactment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2018 (the “AML Act 2018”) (see our previous advisory [here](#)), the CBI published a consultation paper (CP128) seeking feedback from interested stakeholders on draft AML/CFT guidelines (the “CBI Guidelines”) which it has prepared to assist regulated firms in understanding their AML/CFT obligations. When finalised later this year, the CBI Guidelines will replace the “Core Guidelines” which were published by Department of Finance in 2012.

The CBI Guidelines set out the CBI’s expectations with regard to the new obligations imposed by the AML Act 2018, consolidate the content of previous CBI AML/CFT publications and extensively reference the European Supervisory Authority AML/CFT guidelines. As such, there are few surprises in the CBI Guidelines albeit that they are much less detailed than the “Core Guidelines”, particularly in respect of customer due diligence measures.

There is a notable focus in the CBI Guidelines on risk management, both in terms of preparation of business-wide risk assessments and in the application of such risk assessments in determining the level of due diligence to be applied to customers and transactions. A recurring theme throughout the CBI Guidelines is the expectation that firms will document the rationale for any key risk-based decisions and be in a position to evidence compliance with their obligations.

### Beneficial Ownership of Trusts

As part of the transposition of 5MLD, the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (the “Regulations”) came into force on 29 January 2019 requiring trustees of Irish trusts to establish and maintain registers of beneficial ownership. Irish trusts are now effectively subject to the same beneficial ownership regime which has applied to Irish corporates since November 2016 (see our previous advisory [here](#)).

The Regulations apply to express trusts whose trustees are resident in the State or which are otherwise administered in the State. The term “express trust” is not defined in the Regulations or in 5MLD, but it is likely to include any trust which is deliberately created and documented. Constructive and resulting trusts are outside the scope of the new regime.



The Regulations provide that the trustee(s) of a trust must take all reasonable steps to obtain and hold adequate, accurate and current information in respect of the trust's beneficial owners and must maintain an internal beneficial ownership register for the trust. The information which must be contained in the register and kept up to date includes:

- » name, date of birth, nationality and residential addresses of each beneficial owner;
- » the date on which each person was entered into the register as a beneficial owner of the trust;
- » the date on which each person who has ceased to be a beneficial owner of the trust ceased to be such an owner.

For the purposes of the Regulations, a "beneficial owner" of a trust includes:

- » the settlor of the trust;
- » the trustee(s);
- » the protector, if any;
- » the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- » any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

The Regulations provide that in the case of a trust which is a collective investment undertaking, a reference to the trustee of a trust includes a reference to a collective investment undertaking trustee which includes the manager or operator of the collective investment undertaking.

The Regulations also impose an obligation on trustees to disclose their trustee status and provide beneficial ownership information to "designated persons" (e.g. banks, auditors, legal and tax advisers) in circumstances where such designated persons are obliged to perform AML due diligence on the trust.

It is notable that unlike the equivalent requirements which apply to corporates (see our previous advisory [here](#)), no minimum percentage threshold of ownership applies when determining beneficial ownership of trusts. The trustee of a trust will need to maintain records of steps taken in the identification of the trust's beneficial owners and to retain those records for a period of not less than 5 years after the date on which the final distribution is made under the trust. The Regulations do not prescribe any particular steps to be taken by trustees to determine the beneficial owner(s) of the trust, or impose any obligation on any beneficial owner(s) of the trust to provide information to the trustees.

It is expected that further regulations will be published in the coming months, assigning legal responsibility to the Revenue Commissioners to establish and maintain a central register of beneficial ownership for trusts and imposing a reporting obligation on trusts to file returns to the central register. It is expected that there will be a reasonable window of opportunity for trusts to commence reporting and the register is unlikely to be fully operational before Q1 2020. Once established, the register will be fully accessible by State competent authorities and designated persons with members of the general public also being permitted access if they can demonstrate that they have a legitimate interest in accessing the information.

Trustees of affected trusts who fail to comply with their duties under the Regulations commit an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000.

## Transposition of 5MLD

The Department of Justice and Equality has published a General Scheme of the [Criminal Justice \(Money Laundering and Terrorist Financing\) \(Amendment\) Bill 2019](#) (the "General Scheme") which will give effect to many of the provisions of 5MLD.

The General Scheme is quite high level in nature but its key features are as follows:

- » broadens the scope of "designated persons" to include letting agents, custodian wallet providers, traders in works of art and providers engaged in exchange services between virtual currencies and fiat currencies;
- » obliges designated persons to obtain proof from corporate and trust customers that their beneficial ownership information has been registered;
- » imposes additional customer due diligence requirements on designated persons when dealing with customers established or residing in high risk third countries;



- » provides the Minister for Finance with powers to issue regulations in respect of screening requirements for International Financial Sanctions.

We expect the finalised draft of the Bill to be published later in 2019 in light of the January 2020 deadline for transposition of 5MLD.

## Registration of “Schedule 2 Firms”

As detailed in our [previous advisory](#), the AML Act 2018 imposed an obligation on certain unlicensed financial institutions (e.g. SPVs involved in lending or financial leasing) to register with the CBI for AML/CFT supervision purposes. Impacted institutions will need to review and / or update their existing AML/CFT policies and procedures to ensure that they are in a position to register with the CBI and make the necessary declarations in relation to the appropriateness of their control frameworks. Once registered, such institutions should operate on the assumption that they will face a CBI inspection in the near future.

## Conclusion

Between transposition of EU AML/CFT Directives and dealing with follow-up from the [2017 Mutual Evaluation Report on Ireland](#), regulated firms are currently grappling with a significant amount of change in their obligations. “Schedule 2 Firms” are particularly impacted given that many will be implementing AML/CFT control frameworks for the first time in anticipation of registering with the CBI. However, given that AML/CFT continues to be an enforcement priority for CBI, impacted firms will need to continue to prioritise AML/CFT as a regulatory issue and be proactive in responding to recent developments.

## How we can help

Walkers has one of the largest and most experienced dedicated financial services regulatory groups in Ireland, and has extensive experience in:

- » conducting gap analysis to assess existing compliance frameworks;
- » designing and implementing AML/CFT systems, policies and procedures;
- » conducting mock regulatory inspections;
- » providing bespoke AML/CFT training to directors, senior management and staff; and
- » advising on AML/CFT regulatory inspections and enforcements.

## Key Contacts

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