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Industry Information

Ireland Update – Publication of draft legislation implementing Fifth Anti-Money Laundering Directive

Sept 2020

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020 (the “Bill”) has been published (see [here](#)). The Bill proposes to transpose the Fifth Anti Money Laundering Directive (Directive EU 2018/843) (“5AMLD”) into Irish law, by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended (the “CJA 2010”). The publication of the Bill has been long anticipated as 5AMLD was required to be implemented by 10 January 2020.

It is expected that the Department of Finance will bring forward additional legislative amendments to establish a central register of beneficial ownership for express trusts, to establish centralised national bank and payment account registers and to provide for a registration and fitness and probity regime for virtual currency exchange providers.

The Bill proposes to effect the following key changes to Irish anti-money laundering and counter-financing of terrorism (“AML/CFT”) law.

New designated persons

The Bill extends the scope of ‘designated persons’ under AML/CFT legislation to include additional categories of businesses. Designated persons are required to apply various AML/CFT controls in the course of their business.

The expanded scope of designated persons will capture:

- » [Virtual currency exchange providers](#) – the scope is to be expanded to capture fiat-to-crypto service providers. Purely crypto-to-crypto exchange providers will remain out of scope;
- » [Property service providers](#) – the scope is to be expanded to capture letting agents in respect of transactions for which the monthly rent amounts to a total of at least €10,000;
- » [Tax advisors](#) – the scope of businesses providing tax advice and/or assistance will be expanded; and
- » [Art dealers](#) – in respect of transactions of a total value of at least €10,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other).

The Bill also designates the Central Bank of Ireland as the designated competent authority, for the purposes of the CJA 2010, for virtual currency exchange providers.

Beneficial ownership checks

The Bill proposes to impose obligations on designated persons regarding the verification of the beneficial ownership of customers who are subject to beneficial ownership disclosure requirements.

Prior to the establishment of a business relationship with a customer to which beneficial ownership disclosure requirements apply, a designated person will be required to ascertain that information concerning the beneficial ownership of the customer is entered in the relevant beneficial ownership register i.e. the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies, the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts or, in the case of an express trust, its internal beneficial ownership register.



Where the designated person is a financial institution, it may open an account for the customer before conducting these checks, but it cannot carry out any transactions for the customer.

Verification of identity of senior managing officials

The Bill proposes to require that, where a beneficial owner is a senior managing official (as defined under 4AMLD), a designated person shall take the necessary measures to verify the identity of that person and shall keep records of the actions taken to verify the person's identity including any difficulties encountered in the verification process.

Amendments to e-money instrument customer due diligence value thresholds

Under the CJA 2010, designated persons are not required to undertake customer due diligence ("CDD") on the use of electronic money instruments (such as prepaid cards) below a certain value. The Bill proposes to lower the value thresholds from €250 to €150.

The Bill also proposes to introduce restrictions on credit and financial institutions providing merchant acquiring services from accepting payments carried out with anonymous prepaid cards issued outside of an EU Member State.

Prescribed actions for enhanced CDD for customers in high-risk third countries

The Bill provides elaboration on designated persons' enhanced CDD obligations in respect of customers in high risk non-EEA jurisdictions. Designated persons must obtain additional information on the customer and beneficial owner (including source of funds and source of wealth), the intended nature of the business relationship and reasons for the intended or performed transactions. Designated persons must also obtain senior management approval for establishing or continuing the business relationship and must conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.

Relaxation of requirement to examine the background to certain transactions

The Bill introduces a degree of comfort for designated persons in respect of their existing obligations under the CJA 2010 to examine the background and purpose of all complex or unusually large transactions. Under the Bill, designated persons will discharge their obligations in this respect whereby they undertake these obligations 'as far as possible.'

Amendments to Politically Exposed Person requirements

Designated persons will be required to monitor any politically exposed person ("PEP") for *"for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons."*

The Bill expands the definition of a PEP to include *"any individual performing a prescribed function"*. The Bill also allows for the Government to issue guidelines to the competent authorities, to which competent authorities must have regard, in respect of functions in the State that may be considered to be prominent public functions.

Correspondent banking relationships

The restrictions on financial institutions from entering into correspondent relationships with non-EEA financial institutions subject to certain requirements being met has been modified to apply to correspondent relationships *"involving the execution of payments."*

Feedback on suspicious transaction reports

The Bill proposes to require the Financial Intelligence Unit to, where practicable, provide timely feedback to designated persons who have submitted a suspicious transaction report.

Intra-Group tipping off defence

The Bill proposes to amend the defence to tipping off under the CJA 2010 to make provision for the sharing of information relating to suspicious transactions in group situations.



Anonymous safe deposit boxes

The existing prohibition on financial institutions providing anonymous accounts and/or passbooks is to be extended to include anonymous safe-deposit boxes.

Enhanced EU competent authority cooperation

The Bill proposes to amend the CJA 2010 to provide that cooperation by a competent authority with other Member State competent authorities shall not be refused on the basis that:

- a. the information involves tax matters;
- b. the competent authority is subject to legal or confidentiality requirements (save for legal privilege);
- c. an inquiry or investigation is underway (unless such cooperation could impede same); or
- d. the nature or status of the requesting competent authority is different from that to whom the request is made.

Breach reporting mechanisms to competent authorities

The Bill proposes to add a new provision to the CJA 2010 to require competent authorities to establish effective and reliable mechanisms to encourage reporting of potential and actual breaches of the CJA 2010, including one or more secure communication channels. These communication channels must also be available for persons to report any threats or retaliatory or hostile actions they are subjected to for reporting suspected breaches of the CJA 2010.

Amendments to risk factors

The Bill proposes to make certain amendments to the low and high risk factors scheduled to the CJA 2010.

Next steps for impacted firms

Impacted firms should assess the potential impact of the Bill on their business and commence preparations now to meet the new requirements when they come into effect. Given the delay in transposing 5AMLD, firms should be prepared for the possibility of a short lead-in prior to commencement of the amended CJA 2010.

How can Walkers help?

Walkers is ready to assist newly in-scope designated persons with the design of bespoke AML/CFT frameworks and to assist currently in-scope designated persons with updating of AML/CFT policies and procedures.

If you would like to discuss any of the above, please contact the below or your usual Walkers contact.

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