

ADVISORY  
Industry Information

# Ireland FinTech Update: AML Registration for Virtual Asset Service Providers

April 2021

## Overview

The [Criminal Justice \(Money Laundering and Terrorist Financing\) \(Amendment\) Act 2021](#) (the “CJA 2021”) amends the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “CJA 2010”) to transpose elements of the Fifth Anti-Money Laundering Directive (“5AMLD”) into Irish law.

The amended CJA 2010 obliges “virtual asset service providers” (“VASPs”) to:

- » register with the Central Bank of Ireland (the “Central Bank”) for anti-money laundering and counter-financing of terrorism (“AML / CFT”) purposes; and
- » adhere to AML / CFT obligations under the CJA 2010 as they will be classified as a ‘designated person’.

For an overview of the CJA 2021 more generally, please see our April 2021 briefing [here](#).

## Scope

1. **Virtual Assets:** The CJA 2021 adopts the FATF Recommendations definition of virtual assets:

*“a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include digital representations of fiat currencies, securities or other financial assets”*

2. **Virtual Asset Service Providers:** The VASP definition follows that set out in the FATF Recommendations closely, meaning persons who by way of business carry out the following activities for, or on behalf of, another person:

- a. exchange between virtual assets and fiat currencies;
- b. exchange between one or more forms of virtual assets;
- c. transfers of virtual assets, that is to say, conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- d. custodian wallet provider; and
- e. participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset or both.

Firms not established in Ireland must be registered with the Central Bank prior to the commencement of any services relating to virtual assets from Ireland. The Central Bank [Instruction Manual and Guidance Note](#) for entities seeking to register as a VASP confirms that an applicant seeking registration as a VASP must be acting in Ireland.



## Registration requirement

Chapter 9A of the amended CJA 2010 sets out a detailed registration regime for VASPs for AML/ CFT compliance purposes.

1. **Registration:** Persons carrying on a business as a VASP are required to register with the Central Bank. It will be a criminal offence to carry on business as a VASP or to claim or represent oneself as such without being the holder of a registration.

Applicants are required to submit a registration form, beneficial owner application forms and fitness and probity individual questionnaires for persons performing Pre-Approval Controlled Functions. Required supporting documentation includes an applicant's AML / CFT policies and procedures and its money laundering / terrorist financing ("ML / TF") business risk assessment.

2. **Transitional provisions / existing authorisations:** There are transitional provisions for persons already carrying on a VASP business, who are obliged to apply for registration within three months. Firms already authorised by the Central Bank for prudential and/or conduct of business services are obliged to register in relation to VASP activities.

3. **Refusal - Fitness and probity:** The Central Bank may refuse registration where it has reasonable grounds to be satisfied that: (i) the applicant; (ii) any 'principal officer'; or (iii) any beneficial owner of the applicant, is not a fit and proper person.

Separately, persons holding Pre-Approval Controlled Functions within the firm will need to be approved under the Central Bank's [fitness and probity regime](#) which also applies to persons performing Controlled Functions in Regulated Financial Service Providers.

4. **Refusal - AML / CFT:** The Central Bank may refuse registration on other grounds, which include where the Central Bank is not satisfied: (i) that the applicant would comply with its AML / CFT obligations; (ii) that the applicant's business risk assessment, policies and procedures are adequate or fit for purpose; or (iii) that it has the resources, procedures and arrangements for the provision of the business of a VASP and the performance of activities taking into account the complexity of its business and its AML / CFT obligations.

## Ongoing obligations under the CJA 2010

These include:

1. **Designated person obligations:** VASPs are now 'designated persons' under the CJA 2010 for the first time and this is the case whether they are registered or not. Amongst other things, this means that VASPs are obliged to:

- » carry out a ML / FT risk assessment of their business;
- » maintain and implement AML / CFT policies, procedures and controls;
- » undertake customer due diligence;
- » carry out ongoing monitoring of customers and customer transactions;
- » file suspicious transaction reports with the relevant authorities in instances where ML / TF is known or suspected;
- » provide AML / CFT training to staff on an ongoing basis; and
- » retain appropriate records.

2. **Fitness and probity:** Holders of a registration will be required to take reasonable steps to ascertain that beneficial owners of the VASP are fit and proper and will have a duty to report to the Central Bank where they suspect on reasonable grounds that a beneficial owner is not a fit and proper person.

This is in addition and separate to the Central Bank's fitness and probity regime which applies to persons performing Controlled Functions and Pre-Approval Controlled Functions in Regulated Financial Service Providers.



3. **Acquisition of beneficial interest:** A direct or indirect acquisition in the holder of a VASP registration will require the prior approval of the Central Bank.
4. **Beneficial ownership – prejudicial influence:** The Central Bank can direct a beneficial owner to bring to an end influence that is prejudicial to the registered VASP’s AML / CFT compliance.
5. **Conditions:** The Central Bank may impose conditions that it considers necessary for the proper and orderly regulation of the holder of a VASP registration’s business and to prevent the business being used for ML / TF.
6. **Regulatory disclosure statement:** Once registered, VASPs are required to include a prescribed form statement in all advertisements stating that the holder is registered and supervised by the Central Bank for AML / CFT purposes only.
7. **Record-keeping:** Registered VASPs will be required to hold records specified by the Central Bank for a period of not less than six years after: (i) in the case of a record made in relation to a customer, the last dealing with the customer; or (ii) in any other case, the date the record is made.

## Next steps

Firms should assess whether they are within scope of this new regime and, if so, prepare for the registration process, availing of the transitional arrangements if they are existing VASPs or otherwise seeking registration before commencing VASP business. VASPs should be reviewing and/or preparing their AML / CFT frameworks in preparation for registration and to meet the ongoing AML / CFT compliance obligations that now apply.

## How can Walkers help?

We advise crypto firms in relation to the application of existing and forthcoming rules and we advise a wide range of financial institutions with their AML / CFT obligations in Ireland. We are ready to assist newly in-scope designated persons with the VASP registration process and the design of bespoke AML / CFT frameworks.

## Key Contacts

If you have any queries on the content of this advisory please speak to your usual contact in Walkers or connect with:



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