

The General Scheme of the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2019

Introduction

On 3rd January 2019 the Irish Government approved the General Scheme (the “Scheme”) of the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2019 (the “Bill”). The Scheme sets out the Heads of Bill which will give effect to most of the provisions of the Fifth Money Laundering Directive (“MLD5”) and will strengthen current anti money laundering legislation.

This note provides an overview of some of the key changes as set out in the Scheme.

Designated Persons

The Scheme broadens the definition of designated person to include additional categories however this does not impact designated persons working in the funds industry.

Timing of Conducting Customer Due Diligence (“CDD”)

In addition to the CDD measures that designated persons are currently required to perform, they will also be required to carry out CDD measures at any time where they are obliged to contact the customer to review any relevant information relating to the beneficial owner.

Senior Managing Officials

Under the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 designated persons are required to identify and verify the identity of the beneficial owner(s) of a customer. Where no natural person can be identified, senior managing officials (including directors and chief executive officer) will be identified as the beneficial owners. The Scheme broadens the measures that must be taken where senior managing officials are identified as beneficial owners. Measures must be carried out:

- To verify the identity of any such senior managing official.
- To keep records of the steps taken to verify that person’s identity.
- To track any difficulties encountered in the process of verifying the person’s identity.

Additional CDD Measures

The Bill introduces an additional CDD requirement that must be carried out prior to the establishment of a business relationship with an investor. Where an investor is a body corporate or trust, proof that the beneficial ownership has been duly registered must be obtained. This proof may be in the form of an excerpt of the register.

Transaction Monitoring

Under current legislation all designated persons are required to examine all transactions that are complex, unusually large, conducted in an unusual pattern or do not appear to have an economic or lawful purpose. This requirement is somewhat lessened in that a designated person will be required to carry out such an examination ‘as far as reasonably possible’.

Enhanced Due Diligence

The EU Commission has published a list of high risk third countries that are deemed to have strategic deficiencies in their AML/CFT regimes. Designated persons are currently required to apply enhanced due diligence (“EDD”) measures to investors established or residing in a high risk third country. In addition to the current measures applied, designated persons will be required to apply further EDD measures to such investors. These measures include obtaining additional information on:

- The investor and the beneficial owner.
- The intended nature of the business relationship.
- The source of funds and source of wealth for both the investor and the beneficial owner.

In addition, information on the reasons for intended or performed transactions and senior management approval must be obtained for such relationships. Enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions for further examination will also be required.

The Scheme also contains provisions for the Irish Government to introduce additional secondary legislation. This secondary legislation may specify additional EDD measures and reporting requirements, or require designated persons not to enter into or cease business relationships with persons from high risk third countries.

Tipping Off

The defences around tipping off have been amended slightly. Group policies should contain details on the sharing of information in relation to suspicious activity or transactions within credit or financial institutions of the same group.

Financial Sanctions Screening

The Scheme gives the Irish Minister for Finance the power to introduce regulations in respect of screening requirements for credit and financial institutions. Any such regulation may include the following:

- Assessment and management of risks of breaches of sanctions.
- Internal policies.
- Controls and procedures in respect of sanctions (including internal reporting procedures).
- Any other measures necessary to ensure persons dealing with credit/financial institutions are subject to screening.

Higher Risk Factors

Additional categories of high risk investors will be added to schedule 4, an appendix to the current legislation which specifies factors which may indicate a higher money laundering or terrorist financing risk. An investor from a third country who applies for residency or citizenship in the Irish State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the Irish State will be added to the non-exhaustive list of factors suggesting potentially higher risk.

Non face-to-face business relationships where certain safeguards are not in place will also be added to this list along with transactions related to high risk industries such as oil, arms, precious metals, tobacco products and items of archaeological, historical, cultural or religious importance, or of rare or scientific value as well as ivory or protected species.

Additional Measures

Although not contained in MLD5 the Scheme provides for the Criminal Assets Bureau and the Irish police to have improved access to bank account records.

KB Associates' Services

KB Associates offers a range of services to investment funds including:

- The provision of Money Laundering Reporting Officer ("MLRO") services.
- The provision of UCITS/AIF management company services.
- The provision of designated persons to perform UCITS business plan and AIFMD programme of activity managerial functions.

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