

## **Transposition of the Fifth EU Money Laundering Directive – April 2021 Update**

On 18<sup>th</sup> March 2021, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (the “Amendment Act”) was enacted, further amending the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 (the “Act”). The Amendment Act transposes the Fifth EU Money Laundering Directive (the “Directive”) into Irish law. This will bring the country in line with the current European anti-money laundering and countering the financing of terrorism (“AML/CFT”) framework.

### **Key Changes**

#### **Designated Persons**

The Amendment Act introduces new categories of Designated Persons. These new categories are subject to AML/CFT obligations under the Act. The new categories include the following:

- Persons whose professional activity is to provide assistance or advice on tax matters
- Property service providers (estate agents) who deal with the letting of property for which the monthly rent amounts to at least €10,000
- Virtual asset service providers
- Persons involved in the trade of works of art but only in respect of transactions with a total value of at least €10,000

#### **Politically Exposed Persons (“PEP”)**

There is no change to the definition of PEP. However, there is now a requirement for a list of ‘prominent public functions’ to be drawn up and maintained by the Minister for Finance. This list is expected soon after the commencement of the Amendment Act. Any individual executing one of these functions will be considered a PEP.

There is also a provision for the Minister for Finance to issue guidelines to competent authorities for the purpose of facilitating the consistent, effective and risk-based application of section 37 of the Act, which sets out the requirements applicable to relationships with PEPs. It is envisaged that such guidelines will only be issued if deemed necessary in the medium to long term.

#### **High Risk Third Country**

The Amendment Act introduces more specific requirements for customers established or residing in high risk third countries. The specific enhanced due diligence (“EDD”) measures that must be applied to such customers are as follows:

- Obtaining additional information on the customer and the beneficial owners
- Obtaining additional information on the nature and intended purpose of the business relationship
- Obtaining information on the source of funds and source of wealth of the customer and the beneficial owner
- Obtaining information on the reasons for the intended or performed transactions
- Obtaining senior management approval for establishing or continuing the business relationship
- Enhanced ongoing monitoring which should include an increase in the frequency and number of controls applied and selection of patterns of transactions that require further examination

## Beneficial Ownership CDD Requirements

When carrying out CDD on a customer subject to beneficial ownership registration requirements in Ireland, a designated person must ensure that the beneficial ownership information concerning the customer is held on a central register. Where a designated person is a financial or credit institution, no transaction may be undertaken for that customer until the beneficial ownership information has been confirmed. The aim of this is to ensure that any discrepancies between ownership information provided for CDD purposes and ownership details as contained on a central register are reported.

Additionally, where the beneficial owner of a customer is a senior managing official, the designated person must take necessary measures to verify the identity of that person. Records of any actions taken to verify their identity must be kept, including any difficulties encountered in the verification process.

## Other Changes

- The Amendment Act reduces from €250 to €150 the threshold at which prepaid cards come into scope for the application of AML/CFT requirements
- Identification and verification of customers must be based on documents or information from a reliable source. This has now been expanded to include electronic identification, where applicable
- The keeping of anonymous safety deposit boxes is no longer permitted
- Schedule 4 (non-exhaustive list of factors suggesting potentially higher risk) has been amended to include a customer who applies for residence rights or citizenship in the State in exchange for capital transfers or purchase of property
- Schedule 4 now also lists transactions related to sectors that should be considered potentially higher risk such as oil, arms, precious metals and tobacco

While the Amendment Act transposes some elements of the Directive, the Department of Finance is also engaged in giving effect to other provisions of the Directive, including those relating to facilitating increased transparency on ultimate owners of corporate entities, financial vehicles and trusts, and the creation of, and access to, centralised national bank and payment account registers.

## KB Associates Services

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

- The provision of MLRO services
- The provision of beneficial owner register services
- The provision of UCITS management company/AIFM services
- The provision of designated persons to perform UCITS business plan/AIFMD programme of activity functions.

If you would like to discuss this note or KB Associates' services in general, please contact:

- Frank Connolly (+353 1 667 1987, [frank.connolly@kbassociates.ie](mailto:frank.connolly@kbassociates.ie))
- Angela Godfrey (+353 1 908 1510, [angela.godfrey@kbassociates.ie](mailto:angela.godfrey@kbassociates.ie))