Matheson

April 2021

AML Toolkit

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1 Introduction

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 ("**2018 Act**") transposed the Fourth Anti-Money Laundering Directive ((Directive (EU) 2015/849) ("**4MLD**") into Irish Law by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("**2010 Act**") and represented a significant change to the Anti-Money Laundering ("**AML**") and Counter Terrorist Financing ("**CTF**") landscape in Irish law for some years.

The European Union's Fifth Anti-Money Laundering Directive (Directive (EU) 2018/843 ("**5MLD**")) is a technical piece of legislation which amended 4MLD in EU law. The changes made by 5MLD to 4MLD have now, some 14 months after the original transposition deadline, been transposed into Irish law through the enactment of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 ("**2021 Act**") (which amends the 2010 Act).

As of April 2021, the amended 2010 Act represents the most up to date position in respect of AML and CTF in Ireland.

Matheson recognises the significance of these changes for both our existing and newly impacted clients and have updated **The Matheson AML Toolkit** to assist you in navigating through these changes and what they mean for your firm.

We have taken the following approach to **The Matheson AML Toolkit:**

(1) we have prepared a consolidated version of the 2010 Act reflecting the changes to same brought about by the 2021 Act[1]. This can be viewed as a clean document. We have also included a marked up version which enables you to see, at a glance, the changes to the impacted sections since the 2018 Act;

(2) we have included a "Highlights" document which details some of the key changes brought about by the 2018 Act and the 2021 Act, which Matheson believes our clients should be aware of;

(3) we take a more in depth look into Section 108A and Schedule 2 Firms and what it means for our heretofore unregulated clients - the registration process, the obligations which must be met along with an analysis on same; we have also included the CBI Schedule 2 Registration Guidance for Anti-Money Laundering;

(4) we provide an analysis of the finalised Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector as released on 6 September 2019;

(5) we provide an overview of the recent European and International developments in ML / TF;

(6) finally, we include Matheson's AML Timeline which highlights the key developments in the recent past as well as anticipated developments on the horizon in the AML space.

1 We have used the Law Reform Commission ("**LRC**") revised version of the 2010 Act as the starting point. It should be noted that it was up to date as at 28 December 2020. The link to same can be viewed here.

We hope you find The Matheson AML Toolkit useful and that it becomes your go to resource for AML going forward.

Should you have any queries in respect of the materials included in The Matheson AML Toolkit, please do not hesitate to contact any of the AML team.

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CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010 CONSOLIDATION

Clean Version

Number 6 *of* 2010

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010

Updated to 18 March 2021

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Number 6 of 2010

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010

REVISED

Updated to 18 March 2021

AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING; TO PROVIDE FOR THE REGISTRATION OF PERSONS DIRECTING PRIVATE MEMBERS' CLUBS; TO PROVIDE FOR THE AMENDMENT OF THE CENTRAL BANK ACT 1942 AND THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961; TO PROVIDE FOR THE CONSEQUENTIAL REPEAL OF CERTAIN PROVISIONS OF THE CRIMINAL JUSTICE ACT 1994; THE CONSEQUENTIAL AMENDMENT OF CERTAIN ENACTMENTS AND THE REVOCATION OF CERTAIN STATUTORY INSTRUMENTS; AND TO PROVIDE FOR RELATED MATTERS.

[5th May, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

(2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

(3) An order under *subsection (2)* may, in respect of the repeal of the provisions of the Criminal Justice Act 1994 specified in *section 4*, and the revocation of the statutory instruments specified in *Schedule 1* effected by *section 4(2)*, appoint different days for the repeal of different provisions of the Criminal Justice Act 1994 and the revocation of different statutory instruments or different provisions of them.

Interpretation.

2. (1) In this Act—

'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

'Fourth Money Laundering Directive' means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015[2] on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

"Fifth Money Laundering Directive" means Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 20181 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU;

"Minister" means the Minister for Justice, Equality and Law Reform;

"money laundering" means an offence under *Part 2* ;

"personal data" means personal data within the meaning of—

(i) the Data Protection Act 1988,

(ii) the Data Protection Regulation, or

(iii) Part 5 of the Data Protection Act 2018;

"prescribed" means prescribed by the Minister by regulations made under this Act;

"property" means all real or personal property, whether or not heritable or moveable, and includes money and choses in action and any other intangible or incorporeal property;

"terrorist financing" means an offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005;

"Third Money Laundering Directive" means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2], as amended by the following:

(a) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC 3;

(b) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC [4].

(2) A word or expression used in this Act and also used in the Fourth Money Laundering Directive has, unless the contrary intention appears, the same meaning in this Act as in that Directive.

(3) In this Act a reference to an Appeal Tribunal shall be construed as a reference to the Appeal Tribunal established under section 101A (inserted by section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020).

Regulations.

3. (1) The Minister may, after consulting with the Minister for Finance, by regulations provide for any matter referred to in this Act (other than section 106ZC (inserted by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020)) as prescribed or to be prescribed.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister (or, in the case of regulations under section 106ZC, the Minister for Finance) to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Repeals and revocations.

4. (1) Sections 31, 32, 32A, 57(1) to (6) and (7)(*a*), 57A and 58(2) of the Criminal Justice Act 1994 are repealed.

(2) The statutory instruments specified in *column (1)* of *Schedule 1* are revoked to the extent specified in *column (3)* of that Schedule.

Expenses.

5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas and the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

PART 2

MONEY LAUNDERING OFFENCES

Interpretation (*Part 2*).

6.— In this Part—

'criminal conduct' means—

(a) conduct that constitutes an offence,

(b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State, or

(c) conduct occurring in a place outside the State that would constitute an offence under section 5(1) or 6(1) of the Criminal Justice (Corruption Offences) Act 2018 if it were to occur in the State and the person or official, as the case may be, concerned doing the act, or making the omission, concerned in relation to his or her office, employment, position or business is a foreign official within the meaning of that Act;

"proceeds of criminal conduct" means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of this Part."

Money laundering occurring in State.

7.— (1) A person commits an offence if—

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

(ii) converting, transferring, handling, acquiring, possessing or using the property;

(iii) removing the property from, or bringing the property into, the State, and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

(2) A person who attempts to commit an offence under *subsection (1)* commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(4) A reference in this section to knowing or believing that property is the proceeds of criminal conduct includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct.

(5) For the purposes of subsections (1) and (2), a person is reckless as to whether or not property is the proceeds of criminal conduct if the person disregards, in relation to property, a risk of such a nature and degree that, considering the circumstances in which the person carries out any act referred to in subsection (1) or (2), the disregard of that risk involves culpability of a high degree.

(6) For the purposes of subsections (1) and (2), a person handles property if the person—

(a) receives, or arranges to receive, the property, or

(b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person.

(7) A person does not commit an offence under this section in relation to the doing of any thing in relation to property that is the proceeds of criminal conduct so long as—

(a) the person does the thing in accordance with a direction, order or authorisation given under Part 3, or

(b) without prejudice to the generality of paragraph (a), the person is a designated person, within the meaning of Part 4, who makes a report in relation to the property, and does the thing, in accordance with section 42.

Money laundering outside State in certain circumstances

8.— (1) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *section 7* commits an offence if any of the following circumstances apply:

(a) the conduct takes place on board an Irish ship, within the meaning of section 9 of the Mercantile Marine Act 1955,

(b) the conduct takes place on an aircraft registered in the State,

(c) the conduct constitutes an offence under the law of that place and the person is—

(i) an individual who is a citizen of Ireland or ordinarily resident in the State, or

(ii) a body corporate established under the law of the State or a company registered under the Companies Acts,

(d) a request for the person's surrender, for the purpose of trying him or her for an offence in respect of the conduct, has been made under Part II of the Extradition Act 1965 by any country and the request has been finally refused (whether or not as a result of a decision of a court), or

(e) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct, and a final determination has been made that—

(i) the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003, or

(ii) the person should not be surrendered to the issuing state.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under this section is, in a case where *subsection (1)(c)* applies, taken to be ordinarily resident in the State on the date of the commission of the offence.

(4) In this section, "European arrest warrant" and "issuing state" have the same meanings as they have in the European Arrest Warrant Act 2003.

Attempts, outside State, to commit offence in State

9. (1) A person who attempts, in a place outside the State, to commit an offence under *section 7(1)* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

Aiding, abetting, counselling or procuring outside State commission of offence in State.

10. (1) A person who, in a place outside the State, aids, abets, counsels or procures the commission of an offence under *section 7* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) This section is without prejudice to section 7(1) of the Criminal Law Act 1997.

Presumptions and other matters.

11.— (1) In this section "specified conduct" means any of the following acts referred to in *section 7(1)* (including *section 7(1)* as applied by *section 8* or *9*):

(a) concealing or disguising the true nature, source, location, disposition, movement or ownership of property, or any rights relating to property;

(b) converting, transferring, handling, acquiring, possessing or using property;

(c) removing property from, or bringing property into, the State or a place outside the State.

(2) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged, or attempted to engage, in specified conduct in relation to property that is the proceeds of criminal conduct, in circumstances in which it is reasonable to conclude that the accused—

(a) knew or believed the property was the proceeds of criminal conduct, or

(b) was reckless as to whether or not the property was the proceeds of criminal conduct,

the accused is presumed to have so known or believed, or been so reckless, unless the court or jury, as the case may be, is satisfied, having regard to the whole of the evidence, that there is a reasonable doubt that the accused so knew or believed or was so reckless.

(3) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances are evidence that the property is the proceeds of criminal conduct.

(4) For the purposes of *subsection (3)*, circumstances in which it is reasonable to conclude that property is the proceeds of criminal conduct include any of the following:

(a) the value of the property concerned is, it is reasonable to conclude, out of proportion to the income and expenditure of the accused or another person in a case where the accused engaged in the specified conduct concerned on behalf of, or at the request of, the other person;

(b) the specified conduct concerned involves the actual or purported purchase or sale of goods or services for an amount that is, it is reasonable to conclude, out of proportion to the market value of the goods or services (whether the amount represents an overvaluation or an undervaluation);

(c) the specified conduct concerned involves one or more transactions using false names;

(d) the accused has stated that he or she engaged in the specified conduct concerned on behalf of, or at the request of, another person and has not provided information to the Garda Síochána enabling the other person to be identified and located;

(e) where an accused has concealed or disguised the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property, the accused has no reasonable explanation for that concealment or disguise.

(5) Nothing in *subsection (4)* limits the circumstances in which it is reasonable to conclude, for the purposes of *subsection (3)*, that property is the proceeds of criminal conduct.

(6) Nothing in this section prevents *subsections (2)* and *(3)* being applied in the same proceedings.

(7) *Subsections (2)* to *(6)* extend to proceedings for an offence under—

(a) *section 10*, or

(b) section 7(1) of the Criminal Law Act 1997 of aiding, abetting, counselling or procuring the commission of an offence under *section 7*, *8* or *9*,

and for that purpose any reference to an accused in *subsections (2)* to *(6)* is to be construed as a reference to a person who committed, or is alleged to have committed, the offence concerned.

(8) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not necessary, in order to prove that property is the proceeds of criminal conduct, to establish that—

(a) a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property, or

(b) a particular person committed an offence comprising criminal conduct in relation to the property.

(9) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not a defence for the accused to show that the accused believed the property concerned to be the proceeds of a particular offence comprising criminal conduct when in fact the property was the proceeds of another offence.

Location of proceedings relating to offences committed outside State.

12.— Proceedings for an offence under *section 8, 9* or *10* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Consent of DPP required for proceedings for offences committed outside State.

13.— If a person is charged with an offence under *section 8, 9* or *10*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

Certificate may be evidence in proceedings under this Part.

14 (1) In any proceedings for an offence under this Part in which it is alleged that property the subject of the offence is the proceeds of criminal conduct occurring in a place outside the State, a certificate—

(a) purporting to be signed by a lawyer practising in the place, and

(b) stating that such conduct is an offence in that place,

is evidence of the matters referred to in that certificate, unless the contrary is shown.

(2) A certificate referred to in *subsection (1)* is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(3) In a case where a certificate referred to in *subsection (1)* is written in a language other than the Irish language or the English language, unless the contrary is shown—

(*a*) a document purporting to be a translation of that certificate into the Irish language or the English language, as the case may be, and that is certified as correct by a person appearing to be competent to so certify, is taken—

(i) to be a correct translation of the certificate, and

(ii) to have been certified by the person purporting to have certified it, and

(*b*) the person is taken to be competent to so certify.

(4) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(c),* a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

(*a*) a passport was issued by that Department to a person on a specified date, and

(*b*) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(5) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8 (1) (d)* or *(e)*, a certificate purporting to be signed by the Minister and stating any of the matters referred to in that paragraph is evidence of those matters, and is taken to have been signed by the Minister, unless the contrary is shown.

Double jeopardy

15.— A person who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under *section 8, 9* or *10* consisting of the conduct, or substantially the same conduct, that constituted the offence of which the person has been acquitted or convicted.

Revenue offence committed outside State.

16.— For the avoidance of doubt, a reference in this Part to an offence under the law of a place outside the State includes a reference to an offence in connection with taxes, duties, customs or exchange regulation.

PART 3

DIRECTIONS, ORDERS AND AUTHORISATIONS RELATING TO INVESTIGATIONS

Direction or order not to carry out service or transaction.

17.— (1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, direct a person not to carry out any specified service or transaction during the period specified in the direction, not exceeding 7 days, if the member is satisfied that, on the basis of information that the Garda Síochána has obtained or received (whether or not in a report made under Chapter 4 of Part 4), such a direction is reasonably necessary to enable the Garda Síochána to carry out preliminary investigations into whether or not there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

(2) A judge of the District Court may order a person not to carry out any specified service or transaction during the period specified in the order, not exceeding 28 days, if satisfied by information on oath of a member of the Garda Síochána, that—

(a) there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing, and

(b) an investigation of a person for that money laundering or terrorist financing is taking place.

(3) An order may be made, under subsection (2), in relation to a particular service or transaction, on more than one occasion.

(4) An application for an order under subsection (2)—

(a) shall be made ex parte and shall be heard otherwise than in public, and

(b) shall be made to a judge of the District Court assigned to the district in which the order is proposed to be served.

(5) A person who fails to comply with a direction or order under this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(6) Any act or omission by a person in compliance with a direction or order under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

Notice of direction or order.

18.— (1) As soon as practicable after a direction is given or order is made under section 17, the member of the Garda Síochána who gave the direction or applied for the order shall ensure that any person who the member is aware is affected by the direction or order is given notice, in writing, of the direction or order unless—

(a) it is not reasonably practicable to ascertain the whereabouts of the person, or

(b) there are reasonable grounds for believing that disclosure to the person would prejudice the investigation in respect of which the direction or order is given.

(2) Notwithstanding subsection (1)(b), a member of the Garda Síochána shall give notice, in writing, of a direction or order under this section to any person who is, or appears to be, affected by it as soon as practicable after the Garda Síochána becomes aware that the person is aware that the direction has been given or order has been made.

(3) Nothing in subsection (1) or (2) requires notice to be given to a person to whom a direction is given or order is addressed under this section.

(4) A notice given under this section shall include the reasons for the direction or order concerned and advise the person to whom the notice is given of the person's right to make an application under section 19 or 20 .

(5) The reasons given in the notice need not include details the disclosure of which there are reasonable grounds for believing would prejudice the investigation in respect of which the direction is given or order is made.

Revocation of direction or order on application.

19.— (1) At any time while a direction or order is in force under section 17, a judge of the District Court may revoke the direction or order if the judge is satisfied, on the application of a

person affected by the direction or order, as the case may be, that the matters referred to in section 17(1) or (2) do not, or no longer, apply.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

Order in relation to property subject of direction or order

20.— (1) At any time while a direction or order is in force under section 17, in relation to property, a judge of the District Court may, on application by any person affected by the direction or order concerned, as the case may be, make any order that the judge considers appropriate in relation to any of the property concerned if satisfied that it is necessary to do so for the purpose of enabling the person—

(a) to discharge the reasonable living and other necessary expenses, including legal expenses in or in relation to legal proceedings, incurred or to be incurred in respect of the person or the person's dependants, or

(b) to carry on a business, trade, profession or other occupation to which any of the property relates.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

Cessation of direction or order on cessation of investigation

21.— (1) A direction or order under section 17 ceases to have effect on the cessation of an investigation into whether the service or transaction the subject of the direction or order would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

(2) As soon as practicable after a direction or order under section 17 ceases, as a result of subsection (1), to have effect, a member of the Garda Síochána shall give notice in writing of the fact that the direction or order has ceased to have effect to—

(a) the person to whom the direction or order has been given, and

(b) any other person who the member is aware is affected by the direction or order.

Suspicious transaction report not to be disclosed.

22.— A report made under Chapter 4 of Part 4 shall not be disclosed, in the course of proceedings under section 17 or 19, to any person other than the judge of the District Court concerned.

Authorisation to proceed with act that would otherwise comprise money laundering.

23.— (1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, authorise a person to do a thing referred to in section 7(1) if the member is satisfied that the thing is necessary for the purposes of an investigation into an offence.

(2) The doing of any thing in accordance with an authorisation under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

(3) Subsection (2) is without prejudice to section 7 (7).

PART 4

PROVISIONS RELATING TO FINANCE SERVICES INDUSTRY, PROFESSIONAL SERVICE PROVIDERS AND OTHERS

CHAPTER 1

Interpretation (Part 4)

Definitions.

24.— (1) In this Part—

"barrister" means a practising barrister;

"beneficial owner" has the meaning assigned to it by sections 26 to 30 ;

"business relationship", in relation to a designated person and a customer of the person, means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing;

'business risk assessment' has the meaning given to it by section 30A;

'Capital Requirements Regulation' means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 as amended by—

(a) Commission Delegated Regulation (EU) 2015/62 of 10 October 2014[54] amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio,

(b) Regulation (EU) 2016/1014 of the European Parliament and of the Council of 8 June 2016[55] amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers,

(c) Commission Delegated Regulation (EU) 2017/2188 of 11 August 2017[56] amending Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards the waiver on own funds requirements for certain covered bonds,

(d) Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017[57] amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State,

(e) Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017[58] amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms,

(f) Commission Delegated Regulation (EU) 2018/405 of 21 November 2017[59] correcting certain language versions of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012,

(g) Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019[60] amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures,

(h) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019[61] amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012,

(i) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019[62] on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, and

(j) Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020[63] amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic;

'collective investment undertaking' means—

(a) an undertaking for collective investment in transferable securities authorised in accordance with the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) or otherwise in accordance with the Directive of 2009,

(b) an alternative investment fund within the meaning of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013),

(c) a management company authorised in accordance with the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 or otherwise in accordance with the Directive of 2009, or

(d) an alternative investment fund manager within the meaning of the European Union (Alternative Investment Fund Managers) Regulations 2013;

"competent authority" has the meaning assigned to it by *sections 60* and *61*;

"correspondent relationship" means—

(a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services, or

(b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;

“credit institution” means—

(a) a credit institution within the meaning of point (1) of Article 4(1) of the Capital Requirements Regulation, or

(b) An Post in respect of any activity that it carries out, whether as principal or agent, that would render it, or a principal for whom it is an agent, a credit institution as a result of the application of *paragraph (a)*;

‘‘custodian wallet provider’’ means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies;

“customer”—

(a) in relation to an auditor, means—

(i) a body corporate to which the auditor has been appointed as an auditor, or

(ii) in the case of an auditor appointed to audit the accounts of an unincorporated body of persons or of an individual, the unincorporated body or the individual,

(b) in relation to a relevant independent legal professional, includes, in the case of the provision of services by a barrister, a person who is a client of a solicitor seeking advice from the barrister for or on behalf of the client and does not, in that case, include the solicitor, or

(c) in relation to a trust or company service provider, means a person with whom the trust or company service provider has an arrangement to provide services as such a service provider;

“Department” means the Department of Justice, Equality and Law Reform;

“designated accountancy body” means a prescribed accountancy body, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003;

“designated person” has the meaning assigned to it by *section 25*;

“Directive of 2009” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

“EEA State” means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

‘Electronic Identification Regulation’ means Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

“electronic money” means electronic money within the meaning of the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011);

"external accountant" means a person who by way of business provides accountancy services (other than when providing such services to the employer of the person) whether or not the person holds accountancy qualifications or is a member of a designated accountancy body;

"financial institution" means—

(a) an undertaking that carries out one or more of the activities set out at reference numbers 2 to 12, 14 and 15 of the Schedule to the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) or foreign exchange services, but does not include an undertaking—

(i) that does not carry out any of the activities set out at those reference numbers other than one or more of the activities set out at reference number 7, and

(ii) whose only customers (if any) are members of the same group as the undertaking,

(b) an insurance undertaking within the meaning of Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), in so far as it carries out life assurance activities,

(c) a person, other than a person falling within Regulation 4(1) of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), whose regular occupation or business is—

(i) the provision to other persons, or the performance, of investment services and activities within the meaning of those Regulations, or

(ii) bidding directly in auctions in accordance with Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community on behalf of its clients,

(*d*) an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act),

(*e*) a collective investment undertaking that markets or otherwise offers its units or shares,

(*f*) an insurance intermediary within the meaning of the Insurance Mediation Directive (other than a tied insurance intermediary within the meaning of that Directive) that provides life assurance or other investment-related services, or

(*g*) An Post, in respect of any activity it carries out, whether as principal or agent—

(i) that would render it, or a principal for whom it is an agent, a financial institution as a result of the application of any of the foregoing paragraphs,

(ii) that is set out at reference number 1 in the Schedule to the European Union (Capital Requirements) Regulations 2014, or

(iii) that would render it, or a principal for whom it is an agent, an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act) if section 2(6) of that Act did not apply;

(h) a virtual asset service provider.

“group” means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013[6] on the annual financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

“high-risk third country” means a jurisdiction identified by the European Commission in accordance with Article 9 of the Fourth Money Laundering Directive;

“Insurance Mediation Directive” means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation 7;

“Markets in Financial Instruments Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC 9;

“member”, in relation to a designated accountancy body, means a member, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003, of a designated accountancy body;

“member”, in relation to the Irish Taxation Institute, means a person who is subject to the professional and ethical standards of the Institute, including its investigation and disciplinary procedures, but does not include a person who is admitted to its membership as a student;

‘monitoring’, in relation to a business relationship between a designated person and a customer, means the designated person, on an ongoing basis—

(*a*) scrutinising transactions, and the source of wealth or of funds for those transactions, undertaken during the relationship in order to determine if the transactions are consistent with the designated person’s knowledge of—

(i) the customer,

(ii) the customer’s business and pattern of transactions, and

(iii) the customer’s risk profile (as determined under section 30B), and

(*b*) ensuring that documents, data and information on customers are kept up to date in accordance with its internal policies, controls and procedures adopted in accordance with section 54;

“national risk assessment” means the assessment carried out by the State in accordance with paragraph 1 of Article 7 of the Fourth Money Laundering Directive;

“occasional transaction’ means, in relation to a customer of a designated person where the designated person does not have a business relationship with the customer, a single transaction, or a series of transactions that are or appear to be linked to each other, and—

(*a*) in a case where the designated person concerned is a person referred to in section 25(1)(h), that the amount of money or the monetary value concerned—

(i) paid to the designated person by the customer, or

(ii) paid to the customer by the designated person, is in aggregate not less than €2,000,

(*b*) in a case where the transaction concerned consists of a transfer of funds (within the meaning of Regulation (EU) No. 2015/847 of the European Parliament and of the Council of 20 May 2015[7]) that the amount of money to be transferred is in aggregate not less than €1,000,

(*bb*) in a case where the designated person concerned is a person referred to in *section 25(1)(i)*, that the amount concerned—

(i) paid to the designated person by the customer, or

(ii) paid to the customer by the designated person, is in aggregate not less than €10,000, and

(*c*) in a case other than one referred to in *paragraphs (a)*, *(b)* or *(bb)*, that the amount or aggregate of amounts concerned is not less than €15,000;

"payment service" has the same meaning as in the Payment Services Directive;

"Payment Services Directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC 10;

"professional service provider" means an auditor, external accountant, tax adviser, relevant independent legal professional or trust or company service provider;

"property service provider" means a person who provides a property service within the meaning of the Property Services (Regulation) Act 2011:

(a) the auction of property other than land;

(b) the purchase or sale, by whatever means, of land;

but does not include a service provided by a local authority in the course of the performance of its statutory functions under any statutory provision;

"public body" means an FOI body within the meaning of the Freedom of Information Act 2014;

"regulated market" means—

(a) a regulated market with the meaning of point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014[8] on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, located within the EEA, or

(b) a regulated market that subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the following:

(i) disclosure obligations set out in Articles 17 and 19 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014[9] on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC,

(ii) disclosure obligations consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003[10] on the prospectuses to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC,

(iii) disclosure obligations consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004[11] on the harmonisation of transparency requirements in relation to information about issuers whose securities

are admitted to trading on a regulated market and amending Directive 2001/34/EC, and

(iv) disclosure requirements consistent with EU legislation made under the provisions mentioned in *subparagraphs (i)* to *(iii)*;

"relevant independent legal professional" means a barrister, solicitor or notary who carries out any of the following services:

(*a*) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

(i) buying or selling land or business entities;

(ii) managing the money, securities or other assets of clients;

(iii) opening or managing bank, savings or securities accounts;

(iv) organising contributions necessary for the creation, operation or management of companies;

(v) creating, operating or managing trusts, companies or similar structures or arrangements;

(*b*) acting for or on behalf of clients in financial transactions or transactions relating to land;

"relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Taxation Institute;

"senior management" means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;

"solicitor" means a practising solicitor;

"State competent authority" has the meaning assigned to it by *section 62*;

"tax adviser" means a person who by way of business provides advice about the tax affairs of other persons;

"transaction" means—

(*a*) in relation to a professional service provider, any transaction that is carried out in connection with a customer of the provider and that is—

(i) in the case of a provider acting as an auditor, the subject of an audit carried out by the provider in respect of the accounts of the customer,

(ii) in the case of a provider acting as an external accountant or tax adviser, or as a trust or company service provider, the subject of a service carried out by the provider for the customer, or

(iii) in the case of a provider acting as a relevant independent legal professional, the subject of a service carried out by the professional for the customer of a kind referred to in *paragraph (a)* or *(b)* of the definition of "relevant independent legal professional" in this subsection;

and

(*b*) in relation to a casino or private members' club, a transaction, such as the purchase or exchange of tokens or chips, or the placing of a bet, carried out in connection with gambling activities carried out on the premises of the casino or club by a customer of the casino or club;

"transferable securities" means transferable securities within the meaning of the European Union (Markets in Financial Instruments) Regulations 2017;

"trust or company service provider" means any person whose business it is to provide any of the following services:

(a) forming companies or other bodies corporate;

(b) acting as a director or secretary of a company under an arrangement with a person other than the company;

(c) arranging for another person to act as a director or secretary of a company;

(d) acting, or arranging for a person to act, as a partner of a partnership;

(e) providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership;

(f) acting, or arranging for another person to act, as a trustee of a trust;

(g) acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

"virtual asset" means 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;

"virtual asset service provider" means a person who by way of business carries out one or more of 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) transfer 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;

(e) participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both;

but does not include a designated person that is not a financial or credit institution and that provides virtual asset services in an incidental manner and is subject to supervision by a national competent authority, other than the Bank;

(2) The Minister may prescribe a regulated financial market for the purposes of the definition of "regulated market" in *subsection (1)* only if the Minister is satisfied that the market is in a place other than an EEA State that imposes, on companies whose securities are admitted to trading on the market, disclosure requirements consistent with legislation of the European Communities.

Meaning of "designated person".

25. (1) In this Part, "designated person" means any person, acting in the State in the course of business carried on by the person in the State, who or that is—

(a) a credit institution, except as provided by *subsection (4)*,

(b) a financial institution, except as provided by *subsection (4)*,

(c) an auditor, external accountant or tax adviser or any other person whose principal business or professional activity is to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters,

(d) subject to *subsection (1A)*, a relevant independent legal professional,

(e) a trust or company service provider,

(f) a property service provider including a property service provider acting as an intermediary in the letting of immovable property, but only in respect of transactions for which the monthly rent amounts to a total of at least €10,000,

(g) a casino,

(h) a person who effectively directs a private members' club at which gambling activities are carried on, but only in respect of those gambling activities,

(i) any person trading in goods, but only in respect of transactions involving payments, to the person or by the person in cash, of a total 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),

(ia) a virtual asset service provider,

(ib) a person trading or acting as an intermediary in the trade of works of art (including when carried out by an art gallery or an auction house) but only 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),

(ic) a person storing, trading or acting as an intermediary in the trade of works of art when this is carried out in a free port but only in respect of transactions of a total value of at least €10,000 (whether in one transaction or as a series of transactions that are or appear to be linked to each other), or

(j) any other person of a prescribed class.

(1A) A relevant independent legal professional shall be a designated person only as respects the carrying out of the services specified in the definition of 'relevant independent legal professional' in *section 24(1)*.

(2) For the purposes of this Part, a person is to be treated as a designated person only in respect of those activities or services that render the person a designated person.

(3) A reference in this Part to a designated person does not include a reference to any of the following:

(a) the Minister for Finance;

(b) the Central Bank of Ireland;

(c) the National Treasury Management Agency.

(4) A person is not to be treated as a designated person for the purposes of this Part solely as a result of operating as a credit institution or financial institution, in the course of business, if—

(a) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution is €70,000 (or such other amount as may be prescribed) or less,

(b) the total of any single transaction, or a series of transactions that are or appear to be linked to each other, in respect of which the person operates as a credit institution or financial institution does not exceed €1,000 (or such other lesser amount as may be prescribed),

(c) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution does not exceed 5 per cent of the business's total annual turnover,

(d) the person's operation as a credit institution or financial institution is directly related and ancillary to the person's main business activity, and

(e) (e) the person provides services when operating as a credit institution or financial institution only to persons who are customers in respect of the person's main business activity, rather than to members of the public in general.

(5) *Subsection (4)* does not apply in relation to any prescribed class of person.

(6) For the avoidance of doubt and without prejudice to the generality of *subsection (1)(a)* or *(b)*, a credit or financial institution that acts in the State in the course of business carried on by the institution in the State, by means of a branch situated in the State, is a designated person whether or not the institution is incorporated, or the head office of the institution is situated, in a place other than in the State.

(7) The Minister may prescribe a class of persons for the purposes of *subsection (1)(j)* only if the Minister is satisfied that any of the business activities engaged in by the class—

(*a*) may be used for the purposes of—

(i) money laundering,

(ii) terrorist financing, or

(iii) an offence that corresponds or is similar to money laundering or terrorist financing under the law of a place outside the State,

or

(*b*) are of a kind likely to result in members of the class obtaining information on the basis of which they may become aware of, or suspect, the involvement of customers or others in money laundering or terrorist financing.

(8) The Minister may, in any regulations made under *subsection (7)* prescribing a class of persons, apply to the class such exemptions from, or modifications to, provisions of this Act as the Minister considers appropriate, having regard to any risk that the business activities engaged in by the class may be used for a purpose referred to in *paragraph (a)* of that subsection.

(9) The Minister may prescribe an amount for the purposes of *paragraph (a)* or *(b)* of *subsection (4)*, in relation to a person's business activities as a credit institution or financial institution, only if the Minister is satisfied that, in prescribing the amount, the purposes of that subsection will likely be fulfilled, including that—

(a) those activities are carried out by the person on a limited basis, and

(b) there is little risk that those activities may be used for a purpose referred to in *subsection (7)(a)*.

(10) The Minister may prescribe a class of persons for the purpose of *subsection (5)* only if the Minister is satisfied that the application of *subsection (4)* to the class involves an unacceptable risk that the business activities engaged in by the class may be used for a purpose referred to in *subsection (7)(a)*.

Beneficial owner in relation to bodies corporate.

26. In this Part, ‘beneficial owner’, in relation to a body corporate, has the meaning given to it by point (6)(a) of Article 3 of the Fourth Money Laundering Directive.

Beneficial owner in relation to partnerships.

27. In this Part, “beneficial owner”, in relation to a partnership, means any individual who—

(a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership, or

(b) otherwise **[**controls**]** the partnership.

Beneficial owner in relation to trusts.

28. (1) [deleted]

(2) In this Part, “beneficial owner”, in relation to a trust, means any of the following:

(a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the trust property;

(b) in the case of a trust other than one that is set up or operates entirely for the benefit of individuals referred to in *paragraph (a)*, the class of individuals in whose main interest the trust is set up or operates;

(c) any individual who has control over the trust;

(d) the settlor;

(e) the trustee;

(f) the protector.

(3) For the purposes of and without prejudice to the generality of *subsection (2)*, an individual who is the beneficial owner of a body corporate that—

(a) is entitled to a vested interest of the kind referred to in *subsection (2)(a)*, or

(b) has control over the trust, is taken to be entitled to the vested interest or to have control over the trust (as the case may be).

(4) Except as provided by *subsection (5)*, in this section “control”, in relation to a trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

(a) dispose of, advance, lend, invest, pay or apply trust property;

(b) vary the trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of any power referred to in *paragraphs (a)* to *(d)*.

(5) For the purposes of the definition of "control" in *subsection (4)*, an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

29. In this Part, "beneficial owner", in relation to an estate of a deceased person in the course of administration, means the executor or administrator of the estate concerned.

Other persons who are beneficial owners.

30. (1) In this Part, "beneficial owner", in relation to a legal entity or legal arrangement, other than where *section 26, 27* or *28*, applies, means—

(a) if the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from the property of the entity or arrangement,

(b) if the individuals who benefit from the entity or arrangement have yet to be determined, the class of such individuals in whose main interest the entity or arrangement is set up or operates, and

(c) any individual who exercises control over the property of the entity or arrangement,

(d) any person holding a position, in relation to the legal entity or legal arrangement that is similar or equivalent to the position specified in *paragraphs (d)* to *(f)* of *section 28(2)* in relation to a trust.

(2) For the purposes of and without prejudice to the generality of *subsection (1)*, any individual who is the beneficial owner of a body corporate that benefits from or exercises control over the property of the entity or arrangement is taken to benefit from or exercise control over the property of the entity or arrangement.

(3) In this Part, "beneficial owner", in relation to a case other than a case to which *section 26, 27, 28* or *29*, or *subsection (1)* of this section, applies, means any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.

(4) [deleted]

Chapter 1A

Risk assessment by designated persons

Business risk assessment by designated persons

30A. (1) A designated person shall carry out an assessment (in this Act referred to as a 'business risk assessment') to identify and assess the risks of money laundering and terrorist financing involved in carrying on the designated person's business activities taking into account at least the following risk factors:

(a) the type of customer that the designated person has;

(b) the products and services that the designated person provides;

(c) the countries or geographical areas in which the designated person operates;

(d) the type of transactions that the designated person carries out;

(e) the delivery channels that the designated person uses;

(f) other prescribed additional risk factors.

(2) A designated person carrying out a business risk assessment shall have regard to the following:

(a) any information in the national risk assessment which is of relevance to all designated persons or a particular class of designated persons of which the designated person is a member;

(b) any guidance on risk issued by the competent authority for the designated person;

(c) where the designated person is a credit institution or financial institution, any guidelines addressed to credit institutions and financial institutions issued by the European Banking Authority, the European Securities and Markets Authority or the European Insurance and Occupational Pensions Authority in accordance with the Fourth Money Laundering Directive.

(3) A business risk assessment shall be documented unless a competent authority for a designated person decides under Article 8 of the Fourth Money Laundering Directive that an individual documented risk assessment is not required and notifies the designated person.

(4) A designated person shall keep the business risk assessment, and any related documents, up to date in accordance with its internal policies, controls and procedures adopted in accordance with *section 54*.

(5) A business risk assessment shall be approved by senior management.

(6) A designated person shall make records of a business risk assessment available, on request, to the competent authority for that designated person.

(7) The Minister may prescribe additional risk factors to be taken into account in a risk assessment under *subsection (1)* only where he or she is satisfied that it is appropriate to consider such matters in order to accurately identify and assess the risks of money laundering or terrorist financing.

(8) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).

Application of risk assessment in applying customer due diligence

30B. (1) For the purposes of determining the extent of measures to be taken under *subsections (2)* and *(2A)* of *section 33* and *subsections (1)* and *(3)* of *section 35* a designated person shall identify and assess the risk of money laundering and terrorist financing in relation to the customer or transaction concerned, having regard to—

(a) the relevant business risk assessment,

(b) the matters specified in *section 30A(2)*,

(c) any relevant risk variables, including at least the following:

(i) the purpose of an account or relationship;

(ii) the level of assets to be deposited by a customer or the size of transactions undertaken;

(iii) the regularity of transactions or duration of the business relationship;

(iv) any additional prescribed risk variable,

(d) the presence of any factor specified in *Schedule 3* or prescribed under *section 34A* suggesting potentially lower risk,

(e) the presence of any factor specified in *Schedule 4*, and

(f) any additional prescribed factor suggesting potentially higher risk.

(2) A determination by a designated person under *subsection (1)* shall be documented where the competent authority for the designated person, having regard to the size and nature of the designated person and the need to accurately identify and assess the risks of money laundering or terrorist financing, so directs.

(3) For the purposes of *subsection (2)*, a State competent authority may direct a class of designated persons for whom it is the competent authority to document a determination in writing.

(4) The Minister may prescribe additional risk variables to which regard is to be had under *subsection (1)(c)(iv)* only where he or she is satisfied that it is appropriate to consider such matters in order to accurately identify and assess the risks of money laundering or terrorist financing.

(5) A designated person who fails to document a determination in accordance with a direction under *subsection (2)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).

Chapter 2

Designation of places other than Member States — procedures for detecting money laundering or terrorist financing

Designation of places imposing requirements equivalent to Third Money Laundering Directive.

31. [Repealed]

Designation of places having inadequate procedures for detection of money laundering or terrorist financing.

32. [Repealed]

CHAPTER 3

Customer Due Diligence

Identification and verification of customers and beneficial owners.

33.— (1) A designated person shall apply the measures specified in *subsection (2)*, in relation to a customer of the designated person –

(a) prior to establishing a business relationship with the customer,

(b) prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

(c) prior to carrying out any service for the customer, if, having regard to the circumstances, including—

(i) the customer, or the type of customer, concerned,

(ii) the type of any business relationship which the person has with the customer,

(iii) the type of service or of any transaction or product in respect of which the service is sought,

(iv) the purpose (or the customer's explanation of the purpose) of the service or of any transaction or product in respect of which the service is sought,

(v) the value of any transaction or product in respect of which the service is sought,

(vi) the source (or the customer's explanation of the source) of funds for any such transaction or product,

the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing, or

or

(d) prior to carrying out any service for the customer if—

(i) the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer, whether obtained under this section or section 32 of the Criminal Justice Act 1994 ("the 1994 Act") prior to its repeal by this Act or under any administrative arrangements that the person may have applied before section 32 of the 1994 Act operated in relation to the person, and

(ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, and

(e) at any time, including a situation where the relevant circumstances of a customer have changed, where the risk of money laundering and terrorist financing warrants their application, or

(f) at any time where the designated person is obliged by virtue of any enactment or rule of law, including the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. No. 549 of 2012), to contact a customer for the purposes of reviewing any relevant information relating to the beneficial owner connected with the customer.

(2) The measures that shall be applied, in accordance with *section 30B*, by a designated person under *subsection (1)* are as follows:

(a) identifying the customer, and verifying the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including—

(i) documents from a government source (whether or not a State government source),

(ia) information from relevant trust services as specified in the Electronic Identification Regulation, or

(ii) any prescribed class of documents, or any prescribed combination of classes of documents;

(b) identifying any beneficial owner connected with the customer or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—

(i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is,

(ii) in the case of a legal entity or legal arrangement of a kind referred to in *section 26, 27, 28* or *30*, to understand the ownership and control structure of the entity or arrangement concerned, and

(iii) where the beneficial owner is the senior managing official referred to in Article 3(6)(a)(ii) of the Fourth Money Laundering Directive, 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.

(2A) When applying the measures specified in *subsection (2)*, a designated person shall verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person in accordance with *subsection (2)*.

(3) Nothing in *subsection (2)(a)(i)* or *(ii)* limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

(4) [deleted]

(5) Notwithstanding *subsection (1)(a)*, a designated person may verify the identity of a customer or beneficial owner, in accordance with *subsection (2)*, during the establishment of a business relationship with the customer if the designated person has reasonable grounds to believe that—

(a) verifying the identity of the customer or beneficial owner (as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business, and

(b) there is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing,

but the designated person shall take reasonable steps to verify the identity of the customer or beneficial owner, in accordance with *subsection (2)*, as soon as practicable.

(6) Notwithstanding *subsection (1)(a)*, a credit institution or financial institution may allow an account, including an account that permits transactions in transferable securities, to be opened with it by a customer before verifying the identity of the customer or a beneficial owner, in accordance with *subsection (2)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before carrying out that verification.

(7) In addition to the measures required in relation to a customer and a beneficial owner under this section, credit institutions and financial institutions shall apply the measures specified in *subsections (7A)* to *(7C)* to the beneficiaries of life assurance and other investment-related assurance policies.

(7A) As soon as the beneficiaries of life assurance and other investment-related assurance policies are identified or designated, a credit institution or financial institution shall—

(a) take the names of beneficiaries that are identified as specifically named persons or legal arrangements, and

(b) in the case of beneficiaries designated by characteristics, class or other means, obtain sufficient information to satisfy the institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(7B) A credit institution or financial institution shall verify the identity of a beneficiary referred to in *paragraph (a)* or *(b)* of *subsection (7A)* at the time of the payout in accordance with *subsection (2)*.

(7C) In the case of assignment, in whole or in part, of a policy of life assurance or other investment-related assurance to a third party, a credit institution or financial institution that is aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person, or legal arrangement, receiving for his or her, or its, own benefit the value of the policy assigned.

(7D) In addition to the measures required in relation to a customer and a beneficial owner, in the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, a designated person shall obtain sufficient information concerning the beneficiary to satisfy the designated person that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.

(8) Subject to *subsection (8A)*, a designated person who is unable to apply the measures specified in subsection (2) or (4) in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information required under this section—

(a) shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified, and

(b) shall discontinue the business relationship (if any) with the customer.

(8A) Nothing in *subsection (8)* or *section 35(2)* shall operate to prevent a relevant independent legal professional or relevant professional adviser—

(a) ascertaining the legal position of a person, or

(b) performing the task of defending or representing a person in, or in relation to, civil or criminal proceedings, including providing advice on instituting or avoiding such proceedings.

(9) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) [deleted]

(11) The Minister may prescribe a class of documents, or a combination of classes of documents, for the purposes of *subsection (2)(a)(ii)*, only if the Minister is satisfied that the class or combination of documents would be adequate to verify the identity of customers of designated persons.

(12) For the purposes of *subsection (2)(a)(ii)*, the Minister may prescribe different classes of documents, or combinations of classes of documents, for different kinds of designated persons, customers, transactions, services or risks of money laundering or terrorist financing.

Electronic money derogation

33A. (1) Subject to *section 33(1)(c)* and *(d)* and *subsection (2)*, a designated person is not required to apply the measures specified in *subsection (2)* or *(2A)* of *section 33*, or *section 35*, with respect to electronic money if—

(a) the payment instrument concerned—

(i) is not reloadable, or

(ii) cannot be used outside of the State and has a maximum monthly payment transactions limit not exceeding €150,

(b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €150,

(c) the payment instrument concerned is used exclusively to purchase goods and services,

(d) the payment instrument concerned cannot be funded with anonymous electronic money,

(e) the issuer of the payment instrument concerned carries out sufficient monitoring of the transactions or business relationship concerned to enable the detection of unusual or suspicious transactions,

(f) the transaction concerned is not a redemption in cash or cash withdrawal of the monetary value of the electronic money of an amount exceeding €50 and

(g) the transaction concerned is not a remote payment transaction (within the meaning of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 20153 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC) of an amount exceeding €50.

(2) A designated person shall not apply the exemption provided for in *subsection (1)* if—

(a) (a)the customer concerned is established, or resident in, a high-risk third country, or

(b) (b)the designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned, under section 37.

(3) A credit institution or financial institution acting as an acquirer shall not accept a payment carried out with an anonymous prepaid card issued in a state other than a Member State unless the payment instrument concerned complies with the requirements of subsections (1) and (2).

(4) A person who fails to comply with subsection (3) commits an offence and is liable—

(i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Exemptions from section 33.

34.— [Repealed]

Simplified customer due diligence

34A. (1) Subject to *section 33(1)(c)* and *(d)*, a designated person may take the measures specified in *sections 33(2)* and *35* in such manner, to such extent and at such times as is reasonably warranted by the lower risk of money laundering or terrorist financing in relation to a business relationship or transaction where the designated person—

(a) identifies in the relevant business risk assessment, an area of lower risk into which the relationship or transaction falls, and

(b) considers that the relationship or transaction presents a lower degree of risk.

(2) For the purposes of identifying an area of lower risk a designated person shall have regard to—

(a) the matters specified in section 30A(2),

(b) the presence of any factor specified in Schedule 3, and

(c) any additional prescribed factor suggesting potentially lower risk.

(3) Where a designated person applies simplified due diligence measures in accordance with *subsection (1)* it shall—

(a) keep a record of the reasons for its determination and the evidence on which it was based, and

(b) carry out sufficient monitoring of the transactions and business relationships to enable the designated person to detect unusual or suspicious transactions.

(4) The Minister may prescribe other factors, additional to those specified in *Schedule 3*, to which a designated person is to have regard under *subsection (2)* only if he or she is satisfied that the presence of those factors suggests a potentially lower risk of money laundering or terrorist financing.

(5) For the purposes of *subsection (1)*, a business relationship or transaction may be considered to present a lower degree of risk if a reasonable person having regard to the matters specified in *paragraphs (a)* to *(f)* of *section 30B(1)* would determine that the relationship or transaction presents a lower degree of risk of money laundering or terrorist financing.

Special measures applying to business relationships.

35.— (1) A designated person shall obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of a business relationship with a customer prior to the establishment of the relationship.

(2) Subject to section 33(8A), a designated person who is unable to obtain such information, as a result of any failure on the part of the customer, shall not provide the service sought by the customer for so long as the failure continues.

(3) A designated person shall monitor any business relationship that it has with a customer to the extent reasonably warranted by the risk of money laundering or terrorist financing.

(3A) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations

2019 (S.I. No. 16 of 2019) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register.

(3B) Notwithstanding subsection (3A), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that the information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register in accordance with subsection (3A) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.

(3C) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019) (modified by the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles Regulations 2020) (S.I. No. 233 of 2020) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts.

(3D) Notwithstanding subsection (3C), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts in accordance with subsection (3C) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.

(4) Except as provided by section 36, a designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Exemption from section 35(1). Exemption from section 35(1).

36.— [Repealed]

Examination of background and purpose of certain transactions

36A. (1) A designated person shall, as far as possible, in accordance with policies and procedures adopted in accordance with section 54, examine the background and purpose of all transactions that—

(a) are complex,

(b) are unusually large,

(c) are conducted in an unusual pattern, or

(d) do not have an apparent economic or lawful purpose.

(2) A designated person shall increase the degree and nature of monitoring of a business relationship in order to determine whether transactions referred to in *subsection (1)* appear suspicious.

(3) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Enhanced customer due diligence — politically exposed persons.

37.— (1) A designated person shall take steps to determine whether or not—

(a) a customer, or a beneficial owner connected with the customer or service concerned, or

(b) a beneficiary of a life assurance policy or other investment-related assurance policy, or a beneficial owner of the beneficiary,

is a politically exposed person or an immediate family member, or a close associate, of a politically exposed person.

(2) The designated person shall take the steps referred to in *subsection (1)*—

(*a*) in relation to a person referred to *subsection (1)(a)*, prior to

(i) establishing a business relationship with the customer, or

(ii) carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

and

(b) in relation to a person mentioned in *subsection (1)(b)*—

(i) prior to the payout of the policy, or

(ii) at the time of the assignment, in whole or in part, of the policy.

(3) The steps to be taken are such steps as are reasonably warranted by the risk that the customer, or beneficiary**]** or beneficial owner (as the case may be) is involved in money laundering or terrorist financing.

(4) If a designated person knows or has reasonable grounds to believe that a customer is, or has become, a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall—

(a) ensure that approval is obtained from senior management of the designated person before a business relationship is established or continued with the customer,

(b) determine the source of wealth and of funds for the following transactions—

(i) transactions the subject of any business relationship with the customer that are carried out with the customer or in respect of which a service is sought, or

(ii) any occasional transaction that the designated person carries out with, for or on behalf of the customer or that the designated person assists the customer to carry out,

and

(c) in addition to measures to be applied in accordance with *section 35(3)*, apply enhanced monitoring of the business relationship with the customer.

(4A) A designated person shall continue to apply the measures referred to in subsection (4) to a politically exposed person 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.

(5) Notwithstanding subsections *(2)(a)* and *(4)(a),* a credit institution or financial institution may allow a bank account to be opened with it by a customer before taking the steps referred to in *subsection (1)* or seeking the approval referred to in *subsection (4)(a),* so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or any beneficial owner concerned before taking the steps or seeking the approval, as the case may be.

(6) If a designated person knows or has reasonable grounds to believe that a beneficial owner connected with a customer or with a service sought by a customer, is, or has become, a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall apply the measures specified in *subsection (4)(a)*, *(b)* and *(c)* in relation to the customer concerned.

(6A) If a designated person knows or has reasonable grounds to believe that a beneficiary of a life assurance or other investment-related assurance policy, or a beneficial owner of the beneficiary concerned, is a politically exposed person, or an immediate family member or a close associate of a politically exposed person, and that, having regard to section 39, there is a higher risk of money laundering or terrorist financing, it shall—

(a) inform senior management before payout of policy proceeds, and

(b) conduct enhanced scrutiny of the business relationship with the policy holder.

(7) For the purposes of *subsections (4)*, *(6)* and *(6A)*, a designated person is deemed to know that another person is a politically exposed person or an immediate family member or close associate of a politically exposed person if, on the basis of—

(a) information in the possession of the designated person (whether obtained under *subsections (1)* to *(3)* or otherwise),

(b) in a case where the designated person has contravened *subsection (1)* or *(2)*, information that would have been in the possession of the person if the person had complied with that provision, or

(c) public knowledge,

there are reasonable grounds for concluding that the designated person so knows.

(8) A designated person who is unable to apply the measures specified in *subsection (1)*, *(3)*, *(4)* or *(6)* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information—

(a) shall discontinue the business relationship (if any) with the customer for so long as the failure continues, and

(b) shall not provide the service or carry out the transaction sought by the customer for so long as the failure continues.

(9) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) In this section—

"close associate" of a politically exposed person includes any of the following persons:

(a) any individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the politically exposed person;

(b) any individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the politically exposed person;

"immediate family member" of a politically exposed person includes any of the following persons:

(a) any spouse of the politically exposed person;

(b) any person who is considered to be equivalent to a spouse of the politically exposed person under the national or other law of the place where the person or politically exposed person resides;

(c) any child of the politically exposed person;

(d) any spouse of a child of the politically exposed person;

(e) any person considered to be equivalent to a spouse of a child of the politically exposed person under the national or other law of the place where the person or child resides;

(f) any parent of the politically exposed person;

(g) any other family member of the politically exposed person who is of a prescribed class;

"politically exposed person" means an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including any of the following individuals (but not including any middle ranking or more junior official):

(a) a specified official;

(b) a member of the administrative, management or supervisory body of a state-owned enterprise;

(c) any individual performing a prescribed function;

"specified official" means any of the following officials (including any such officials in an institution of the European Communities or an international body):

(a) a head of state, head of government, government minister or deputy or assistant government minister;

(b) a member of a parliament or of a similar legislative body; (*bb*) a member of the governing body of a political party;

(c) a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;

(d) a member of a court of auditors or of the board of a central bank;

(e) an ambassador, chargé d'affairs or high-ranking officer in the armed forces;

(f) a director, deputy director or member of the board of, or person performing the equivalent function in relation to, an international organisation.

(11) The Minister may prescribe a class of family member of a politically exposed person, for the purposes of *paragraph (g)* of the definition of "immediate family member" of a politically exposed person in *subsection (10)*, only if the Minister is satisfied that it would be appropriate for the provisions of this section to be applied in relation to members of the class, having regard to any heightened risk, arising from their close family relationship with the politically exposed person, that such members may be involved in money laundering or terrorist financing.

(12) The Minister may, with the consent of the Minister for Finance, issue guidelines to the competent authorities in respect of functions in the State that may be considered to be prominent public functions and each competent authority shall have regard to any such guidelines.

(13) The Minister may, where he or she believes it is necessary to do so, and with the consent of the Minister for Finance, issue guidelines to the competent authorities for the purpose of facilitating the consistent, effective and risk-based application of this section.

Enhanced customer due diligence — correspondent banking relationships.

38. (1) A credit institution or financial institution ('the institution') shall not enter into a correspondent relationship with another credit institution or financial institution ('the respondent institution') situated in a place other than a Member State unless, prior to commencing the relationship involving the execution of payments, the institution—

(a) has gathered sufficient information about the respondent institution to understand fully the nature of the business of the respondent institution,

(b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the respondent institution, and the quality of supervision or monitoring of the operation of the respondent institution in the place, are sound,

(c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the respondent institution, that those controls are sound,

(d) has ensured that approval has been obtained from the senior management of the institution,

(e) has documented the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent relationship and, in particular—

(i) the responsibilities of the institution arising under this Part, and

(ii) any responsibilities of the respondent institution arising under requirements equivalent to those specified in the Fourth Money Laundering Directive,

and

(f) in the case of a proposal that customers of the respondent institution have direct access to a payable-through account held with the institution in the name of the respondent institution, is satisfied on reasonable grounds that the respondent institution—

(i) has identified and verified the identity of those customers, and is able to provide to the institution, upon request, the documents (whether or not in electronic form) or information used by the institution to identify and verify the identity of those customers,

(ii) has applied measures equivalent to the measure referred to in *section 35(1)* in relation to those customers, and

(iii) is applying measures equivalent to the measure referred to in *section 35(3)* in relation to those customers.

(2) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

38A (1) Subject to subsection (2), a designated person shall apply the following measures to manage and mitigate the risk of money laundering and terrorist financing additional to those specified in this chapter, when dealing with a customer established or residing in a high-risk third country:

(a) obtaining additional information on the customer and on the beneficial owner;

(b) obtaining additional information on the intended nature of the business relationship;

(c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;

(d) obtaining information on the reasons for the intended or performed transactions;

(e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.

(2) *Subsection (1)* shall not apply where—

(a) the customer is a branch or majority-owned subsidiary of a designated person and is located in a high-risk third country,

(b) the designated person referred to in paragraph (a) is established in a Member State, and

(c) the branch or majority-owned subsidiary referred to in paragraph (a) is in compliance with the group-wide policies and procedures of the group of which it is a member adopted in accordance with Article 45 of the Fourth Money Laundering Directive.

(3) In the circumstances specified in subsection (2), the designated person shall—

(a) identify and assess the risk of money laundering or terrorist financing in relation to the business relationship or transaction concerned, having regard to section 30B, and

(b) apply customer due diligence measures specified in this Chapter to the extent reasonably warranted by the risk of money laundering or terrorist financing.

(4) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Enhanced due diligence in cases of heightened risk

39 (1) Without prejudice to *sections 37*, *38* and *59*, a designated person shall apply measures to manage and mitigate the risk of money laundering or terrorist financing, additional to those specified in this Chapter, to a business relationship or transaction that presents a higher degree of risk.

(2) For the purposes of *subsection (1)* a business relationship or transaction shall be considered to present a higher degree of risk if a reasonable person having regard to the matters specified in *paragraphs (a)* to *(f)* of *section 30B(1)* would determine that the business relationship or transaction presents a higher risk of money laundering or terrorist financing.

(3) The Minister may prescribe other factors, additional to those specified in *Schedule 4*, suggesting potentially higher risk only if he or she is satisfied that the presence of those factors suggests a potentially higher risk of money laundering or terrorist financing.

(4) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Reliance on other persons to carry out customer due diligence.

40 (1) In this section, "relevant third party" means—

(a) a person, carrying on business as a designated person in the State—

(i) that is a credit institution,

(ii) that is a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both),

(iii) who is an external accountant or auditor and who is also a member of a designated accountancy body,

(iv) who is a tax adviser, and who is also a solicitor or a member of a designated accountancy body or of the Irish Taxation Institute,

(v) who is a relevant independent legal professional, or

(vi) who is a trust or company service provider, and who is also a member of a designated accountancy body, a solicitor or authorised to carry on business by the Central Bank of Ireland,

(b) a person carrying on business in another Member State who is supervised or monitored for compliance with the requirements specified in the Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI of that Directive and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the Member State,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) and authorised to operate as a financial institution under the laws of the Member State, or

(iii) (iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the other Member State,

(c) a person who carries on business in a place (other than a Member State) which is not a high-risk third country, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Fourth Money Laundering Directive, and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the place,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or

(iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place, or]

(d) a person who carries on business in a high-risk third country, is a branch or majority-owned subsidiary of an obliged entity established in the Union, and fully complies with group-wide policies and procedures in accordance with Article 45 of the Fourth Money Laundering Directive and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the place,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or

(iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

(1A) Without prejudice to the generality of *paragraphs (b)* and *(c)* of *subsection (1)*, for the purposes of those paragraphs, a person is supervised or monitored for compliance with the requirements specified in the Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI, or requirements equivalent to those requirements, where—

(a) the person and the designated person seeking to rely upon this section are part of the same group,

(b) the group applies customer due diligence and record keeping measures and policies and procedures to prevent and detect the commission of money laundering and terrorist financing in accordance with the Fourth Money Laundering Directive or requirements equivalent to those specified in the Fourth Money Laundering Directive, and

(c) the effective implementation of the requirements referred to in *paragraph (b)* is supervised at group level by a competent authority of the state where the parent company is incorporated.

(2) A reference in *subsection (1)(b)(iii)* and *(c)(iii)* to a legal professional is a reference to a person who, by way of business, provides legal or notarial service

(3) Subject to *subsections (4)* and *(5)*, a designated person may rely on a relevant third party to apply, in relation to a customer of the designated person, any of the measures that the designated person is required to apply, in relation to the customer, under *section 33* or *35 (1)*.

(4) A designated person may rely on a relevant third party to apply a measure under *section 33* or *35 (1)* only if—

(a) there is an arrangement between the designated person (or, in the case of a designated person who is an employee, the designated person's employer) and the relevant third party under which it has been agreed that the designated person may rely on the relevant third party to apply any such measure, and

(b) the designated person is satisfied that the circumstances specified in *paragraphs (a)* to *(c)* of *subsection (1A)* exist, or on the basis of the arrangement, that the relevant third party will forward to the designated person, as soon as practicable after a request from the designated person, any documents (whether or not in electronic form) or information relating to the customer (including any information from relevant trust services as set out in the Electronic Identification Regulation) that has been obtained by the relevant third party in applying the measure.

(5) A designated person who relies on a relevant third party to apply a measure under section 33 or 35(1) remains liable, under section 33 or 35(1), for any failure to apply the measure.

(6) A reference in this section to a relevant third party on whom a designated person may rely to apply a measure under section 33 or 35(1) does not include a reference to a person who applies the measure as an outsourcing service provider or an agent of the designated person.

(7) Nothing in this section prevents a designated person applying a measure under section 33 or 35(1) by means of an outsourcing service provider or agent provided that the designated person remains liable for any failure to apply the measure.

Financial Intelligence Unit

State Financial Intelligence Unit

40A. (1) FIU Ireland may carry out, on behalf of the State, all the functions of an EU Financial Intelligence Unit (FIU) under the Fourth Money Laundering Directive.

(2) In this Part 'FIU Ireland' means those members of the Garda Síochána, or members of the civilian staff of the Garda Síochána, appointed by the Commissioner of the Garda Síochána in that behalf.

Powers of FIU Ireland to receive and analyse information

40B (1) FIU Ireland shall be responsible for receiving and analysing suspicious transaction reports and other information relevant to money laundering or terrorist financing for the purpose of preventing, detecting and investigating possible money laundering or terrorist financing.

(2) FIU Ireland's analysis function shall consist of conducting—

(a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information depending on the type and volume of the disclosures received and the expected use of the information after dissemination, and

(b) a strategic analysis addressing money laundering and terrorist financing trends and patterns.

Powers of certain members of FIU Ireland to obtain information

40C (1) A member of the Garda Síochána who is a member of FIU Ireland shall have access to the central registers established by the State for the purposes of paragraph (3) of Article 30 and paragraph (4) of Article 31 of the Fourth Money Laundering Directive.

(2) A member of the Garda Síochána who is a member of FIU Ireland may, for the purposes of preventing, detecting, investigating or combating money laundering or terrorist financing request any person to provide FIU Ireland with information held by that person under any enactment giving effect to paragraph (1) of Article 30 or paragraph (1) of Article 31 of the Fourth Money Laundering Directive.

(3) A member of the Garda Síochána who is a member of FIU Ireland may make a request in writing for any financial, administrative or law enforcement information that FIU Ireland requires in order to carry out its functions from any of the following:

(a) a designated person;

(b) a competent authority;

(c) the Revenue Commissioners;

(d) the Minister for Employment Affairs and Social Protection.

(4) A designated person who, without reasonable excuse, fails to comply with a request for information under *subsection (2)* or *(3)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine not exceeding €500,000 or imprisonment not exceeding 3 years (or both).

Power of FIU Ireland to respond to requests for information from competent authorities

40D (1) FIU Ireland shall respond as soon as practicable to any request for information which is based on a concern relating to money laundering or terrorist financing that it receives from—

(a) a competent authority,

(b) the Revenue Commissioners, or

(c) the Minister for Employment Affairs and Social Protection.

(2) FIU Ireland may provide the results of its analyses and any additional relevant information to a person mentioned in *subsection (1)* where there are grounds to suspect money laundering or terrorist financing.

(3) FIU Ireland shall be under no obligation to comply with the request for information where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested.

Power of FIU Ireland to share information

40E (1) FIU Ireland may share information with other Financial Intelligence Units (FIUs), in accordance with subsection III of Section 3 of Chapter VI of the Fourth Money Laundering Directive.

(2) FIU Ireland may provide any information obtained by it—

(a) from a central register referred to in section 40C(1), or

(b) following a request under subsection (2) or (3) of section 40C,

to a competent authority or to another FIU.

CHAPTER 4

Reporting of suspicious transactions and of transactions involving certain places

Interpretation (Chapter 4).

41.— In this Chapter, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.

Requirement for designated persons and related persons to report suspicious transactions.

42.— (1) A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to FIU Ireland and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds.

(2) The designated person shall make the report as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.

(3) For the purposes of *subsections (1)* and *(2)*, a designated person is taken not to have reasonable grounds to know or suspect that another person commits an offence on the basis of having received information until the person has scrutinised the information in the course of reasonable business practice (including automated banking transactions).

(4) For the purposes of *subsections (1)* and *(2)*, a designated person may have reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing if the designated person is unable to apply any measures specified in *section 33(2)* or *(4)*, *35(1)* or *37(1)*, *(3)*, *(4)* or *(6),* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information.

(5) Nothing in *subsection (4)* limits the circumstances in which a designated person may have reasonable grounds, on the basis of information obtained in the course of carrying out business as a designated person, to suspect that another person has committed an offence of money laundering or terrorist financing.

(6) A designated person who is required to report under this section shall disclose the following information in the report:

(a) the information on which the designated person's knowledge, suspicion or reasonable grounds are based;

(b) the identity, if the designated person knows it, of the person who the designated person knows, suspects or has reasonable grounds to suspect has been or is engaged in an offence of money laundering or terrorist financing;

(c) the whereabouts, if the designated person knows them, of the property the subject of the money laundering, or the funds the subject of the terrorist financing, as the case may be;

(d) any other relevant information.

(6A) A designated person who is required to make a report under this section shall respond to any request for additional information by FIU Ireland or the Revenue Commissioners as soon as practicable after receiving the request and shall take all reasonable steps to provide any information specified in the request.

(7) A designated person who is required to make a report under this section shall not proceed with any suspicious transaction or service connected with the report, or with a transaction or service the subject of the report, prior to the sending of the report to FIU Ireland and the Revenue Commissioners unless—

(a) it is not practicable to delay or stop the transaction or service from proceeding, or

(b) the designated person is of the reasonable opinion that failure to proceed with the transaction or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or in the course of being conducted.

(8) Nothing in *subsection (7)* authorises a designated person to proceed with a service or transaction if the person has been directed or ordered not to proceed with the service or transaction under *section 17* and the direction or order is in force.

(9) Except as provided by *section 46*, a person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) A reference in *subsection (7)* to a suspicious transaction or service is a reference to a transaction or service that there are reasonable grounds for suspecting would, if it were to proceed—

(a) comprise money laundering or terrorist financing, or

(b) assist in money laundering or terrorist financing.

(11) FIU Ireland shall, where practicable, provide timely feedback to a designated person who is required to make a report under this section on the effectiveness of and follow-up to reports made to it under this section.

Requirement for designated persons to report transactions connected with places designated under section 32.

43.— [Repealed]

Defence — internal reporting procedures

44. (1) Without prejudice to the way in which a report may be made under *section 42,* such a report may be made in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of the section concerned.

(2) It is a defence for a person charged with an offence under *section 42* to prove that the person was, at the time of the purported offence, an employee who made a report under that section, in accordance with such an internal reporting procedure, to another person.

Use of reported and other information in investigations.

45. (1) Information included in a report under this Chapter may be used in an investigation into money laundering or terrorist financing or any other offence.

(2) Nothing in this section limits the information that may be used in an investigation into any offence.

Disclosure not required in certain circumstances.

46 (1) Nothing in this Chapter requires the disclosure of information that is subject to legal privilege.

(2) Nothing in this Chapter requires a relevant professional adviser to disclose information that he or she has received from or obtained in relation to a client in the course of ascertaining the legal position of the client.

(3) *Subsection (2)* does not apply to information received from or obtained in relation to a client with the intention of furthering a criminal purpose.

Disclosure not to be treated as breach.

47.— The disclosure of information by a person in accordance with this Chapter shall not be treated, for any purpose, as a breach of any restriction imposed by any other enactment or rule of law on disclosure by the person or any other person on whose behalf the disclosure is made.

CHAPTER 5

Tipping off by designated persons

Interpretation (Chapter 5).

48 In this Chapter, "legal adviser" means a barrister or solicitor.

Tipping off.

49.— (1) A designated person who knows or suspects, on the basis of information obtained in the course of carrying on business as a designated person, that a report has been, or is required to be, made under *Chapter 4* shall not make any disclosure that is likely to prejudice an investigation that may be conducted following the making of the report under that Chapter.

(2) A designated person who knows or suspects, on the basis of information obtained by the person in the course of carrying on business as a designated person, that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed, shall not make any disclosure that is likely to prejudice the investigation.

(3) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(4) In this section, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.

Defence — disclosure to customer in case of direction or order to suspend service or transaction.

50. It is a defence in any proceedings against a person ("the defendant") for an offence under *section 49*, in relation to a disclosure, for the defendant to prove that—

(a) the disclosure was to a person who, at the time of the disclosure, was a customer of the defendant or of a designated person on whose behalf the defendant made the disclosure,

(b) the defendant, or the designated person on whose behalf the defendant made the disclosure, was directed or ordered under section 17 not to carry out any specified service or transaction in respect of the customer, and

(c) the disclosure was solely to the effect that the defendant, or a designated person on whose behalf the defendant made the disclosure, had been directed by a member of the Garda Síochána, or ordered by a judge of the District Court, under section 17 not to carry out the service or transaction for the period specified in the direction or order.

Defences — disclosures within undertaking or group.

51.— (1) It is a defence in any proceedings against an individual for an offence under *section 49*, in relation to a disclosure, for the individual to prove that, at the time of the disclosure—

(a) he or she was an agent, employee, partner, director or other officer of, or was engaged under a contract for services by, an undertaking, and

(b) he or she made the disclosure to an agent, employee, partner, director or other officer of, or a person engaged under a contract for services by, the same undertaking.

(2) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

(a) the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, and

(b) the disclosure was to—

(i) a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or

(ii) a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures adopted in accordance with section 54, or, as the case may be, Article 45 of the Fourth Money Laundering Directive.

(3) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

(a) the person was a legal adviser or relevant professional adviser,

(b) both the person making the disclosure and the person to whom it was made carried on business in a Member State or in a country other than a high-risk third country], and

(c) those persons performed their professional activities within different undertakings that shared common ownership, management or control.

Defences — other disclosures between institutions or professionals.

52. (1) This section applies to a disclosure—

(a) by or on behalf of a credit institution to another credit institution,

(b) by or on behalf of a financial institution to another financial institution,

(c) by or on behalf of a legal adviser to another legal adviser, or

(d) by or on behalf of a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure to which this section applies, for the person to prove that, at the time of the disclosure—

(a) the disclosure related to—

(i) a customer or former customer of the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made, or

(ii) a transaction, or the provision of a service, involving both the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made,

(b) the disclosure was only for the purpose of preventing money laundering or terrorist financing,

(c) the institution or adviser to which or whom the disclosure was made was situated in a Member State or in a country other than a high-risk third country, and

(d) the institution or adviser making the disclosure, or on whose behalf the disclosure was made, and the institution or adviser to which or whom it was made were subject to equivalent duties of professional confidentiality and the protection of personal data.

(3) A reference in this section to a customer of an adviser includes, in the case of an adviser who is a barrister, a reference to a person who is a client of a solicitor who has sought advice from the barrister for or on behalf of the client.

Defences — other disclosures

53. (1) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

(a) the disclosure was to the authority that, at the time of the disclosure, was the competent authority responsible for monitoring that person, or for monitoring the person on whose behalf the disclosure was made, under this Part,

(b) the disclosure was for the purpose of the detection, investigation or prosecution of an offence (whether or not in the State), or

(c) the person did not know or suspect, at the time of the disclosure, that the disclosure was likely to have the effect of prejudicing an investigation into

whether an offence of money laundering or terrorist financing had been committed.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

(a) at the time of the disclosure, the person was a legal adviser or relevant professional adviser,

(b) the disclosure was to the person's client and solely to the effect that the person would no longer provide the particular service concerned to the client,

(c) the person no longer provided the particular service after so informing the client, and

(d) the person made any report required in relation to the client in accordance with Chapter 4.

CHAPTER 6

Internal policies and procedures, training and record keeping

Internal policies and procedures and training.

54. (1) A designated person shall adopt internal policies, controls and procedures in relation to the designated person's business to prevent and detect the commission of money laundering and terrorist financing.

(2) In particular, a designated person shall adopt internal policies, controls and procedures to be followed by any persons involved in carrying out the obligations of the designated person under this Part.

(3) The internal policies, controls and procedures referred to in *subsection (1)* shall include policies, controls and procedures dealing with—

(a) the identification, assessment, mitigation and management of risk factors relating to money laundering or terrorist financing,

(b) customer due diligence measures,

(c) monitoring transactions and business relationships,

(d) the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature to be related to money laundering or terrorist financing,

(e) measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,

(f) measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered,

(g) reporting (including the reporting of suspicious transactions),

(h) record keeping,

(i) measures to be taken to keep documents and information relating to the customers of that designated person up to date,

(j) measures to be taken to keep documents and information relating to risk assessments by that designated person up to date,

(k) internal systems and controls to identify emerging risks and keep business-wide risk assessments up to date, and

(l) monitoring and managing compliance with, and the internal communication of, these policies, controls and procedures.

(4) A designated person shall ensure that policies, controls and procedures adopted in accordance with this section are approved by senior management and shall keep such policies, controls and procedures under review, in particular when there are changes to the business profile or risk profile of the designated person.

(5) In preparing internal policies, controls and procedures under this section, the designated person shall have regard to any guidelines on preparing, implementing and reviewing such policies and procedures that are issued by the competent authority for that designated person.

(6) A designated person shall ensure that persons involved in the conduct of the designated person's business are—

(a) instructed on the law relating to money laundering and terrorist financing, and

(b) provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.

(6A) A designated person shall have in place appropriate procedures for their employees, or persons in a comparable position, to report a contravention of this Act internally through a specific, independent and anonymous channel, proportionate to the nature and size of the designated person concerned.

(7) A designated person shall appoint an individual at management level, (to be called a 'compliance officer') to monitor and manage compliance with, and the internal communication of, internal policies, controls and procedures adopted by the designated person under this section if directed in writing to do so by the competent authority for that designated person.

(8) A designated person shall appoint a member of senior management with primary responsibility for the implementation and management of anti-money laundering measures in accordance with this Part if directed in writing to do so by the competent authority for that designated person.

(9) A designated person shall undertake an independent, external audit to test the effectiveness of the internal policies, controls and procedures outlined in this section if directed in writing to do so by the competent authority for that designated person.

(10) A reference in this section to persons involved in carrying out the obligations of the designated person under this Part includes a reference to directors and other officers, and employees, of the designated person.

(11) The obligations imposed on a designated person under this section do not apply to a designated person who is an employee of another designated person.

(12) *Subsections (6)*, *(6A)*, *(7)*, *(8)*, and *(9)* do not apply to a designated person who is an individual and carries on business alone as a designated person.

(13) A competent authority shall not issue a direction for the purposes of *subsection (7)*, *(8)* or *(9)* unless it is satisfied that, having regard to the size and nature of the designated person, it is appropriate to do so.

(14) A competent authority may make a direction to a class of designated persons for whom it is the competent authority for the purposes of *subsection (7)*, *(8)* or *(9)*.

(15) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Keeping of records by designated persons.

55. (1) A designated person shall keep records evidencing the procedures applied, and information obtained, by the designated person under *Chapter 3* in relation to—

(a) each customer, and

(b) in the case of a designated person to whom section 38 applies, each correspondent relationship.

(2) Without prejudice to the generality of *subsection (1)*, a designated person shall take the original or a copy of all documents used by the designated person for the purposes of *Chapter 3*, including all documents used to verify the identity of customers (including information from relevant trust services as set out in the Electronic Identification Regulation) or beneficial owners in accordance with *section 33*.

(3) A designated person shall keep records evidencing the history of services and transactions carried out in relation to each customer of the designated person.

(4) Subject to *subsections (4A)*, *(4B)* and *(4C)*, the documents and other records referred to in *subsections (1)* to *(3)* shall be retained by the designated person for a period of not less than 5 years after—

(a) in the case of a record referred to in *subsection (1)(a)*, the date on which the designated person ceases to provide any service to the customer concerned or the date of the last transaction (if any) with the customer, whichever is the later,

(b) in the case of a record referred to in *subsection (1) (b)*, the date on which the correspondent relationship concerned ends,

(c) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular transaction by the designated person with, for or on behalf of the customer (other than a record to which *paragraph (d)* applies), the date on which the particular transaction is completed or discontinued,

(d) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular occasional transaction comprised of a series of transactions, with, for or on behalf of a customer, the date on which the series of transactions is completed or discontinued, or

(e) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular service for or on behalf of the customer (other than a record to which *paragraph (c)* or *(d)* applies), the date on which the particular service is completed or discontinued.

(4A) Where a member of the Garda Síochána not below the rank of Sergeant having carried out a thorough assessment of the necessity and proportionality of further retention is satisfied—

(a) that certain documents or records, or documents or records relating to a certain business relationship or occasional transaction, are required for the purposes of an investigation related to money laundering or terrorist financing, or

(b) notwithstanding the fact that a decision to institute proceedings against a person may not have been taken, that the documents or records are likely to be required for the prosecution of an offence of money laundering or terrorist financing,

the member may give a direction in writing to a designated person to retain the documents and other records for a period, up to a maximum of 5 years, additional to the period referred to in *subsection (4)*.

(4B) Where a direction has been given to a designated person in accordance with *subsection (4A)* and neither *paragraph (a)* nor *(b)* of that subsection continue to apply a member of the Garda Síochána shall, as soon as practicable, notify the designated person to whom the direction was given of that fact and the direction shall expire on the date of that notification.

(4C) A designated person who is given a direction under *subsection (4A)* shall retain the documents or records specified in the direction until the earlier of—

(a) the expiration of the additional period specified in the direction, and

(b) the expiration of the direction.

(5) *Subsection (4)(a)* extends to any record that was required to be retained under section 32(9)(*a*) of the Act of 1994 immediately before the repeal of that provision by this Act.

(6) *Subsection (4)(c)* to *(e)* extends to any record that was required to be retained under section 32(9)(*b*) of the Criminal Justice Act 1994 immediately before the repeal of that provision by this Act and for that purpose—

(a) a reference in *subsection (4)(c)* to *(e)* to a record referred to in *subsection (3)* includes a reference to such a record, and

(b) a reference in *subsection (4)(d)* to an occasional transaction comprised of a series of transactions includes a reference to a series of transactions referred to in section 32(3)(*b*) of the Criminal Justice Act 1994.

(7) A designated person may keep the records referred to in *subsections (1)* to *(6)* wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(7A) The records required to be kept by a designated person under this section may be kept outside the State provided that the designated person ensures that those records are produced in the State to—

(a) a member of the Garda Síochána,

(b) an authorised officer appointed under section 72,

(c) a relevant authorised officer within the meaning of section 103, or

(d) a person to whom the designated person is required to produce such records in relation to his or her business, trade or profession,

as soon as practicable after the records concerned are requested, or where the obligation to produce the records arises under an order of a court made under section 63 of the Criminal Justice Act 1994, within the period which applies to such production under the court order concerned.

(7B) Upon the expiry of the retention periods referred to in this section a designated person shall ensure that any personal data contained in any document or other record retained solely for the purposes of this section is deleted.

(8) The requirements imposed by this section are in addition to, and not in substitution for, any other requirements imposed by any other enactment or rule of law with respect to the keeping and retention of records by a designated person.

(9) The obligations that are imposed on a designated person under this section continue to apply to a person who has been a designated person, but has ceased to carry on business as a designated person.

(10) A requirement for a designated person that is a body corporate to retain any record under this section extends to any body corporate that is a successor to, or a continuation of, the body corporate.

(11) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(12) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

CHAPTER 7

Special provisions applying to credit and financial institutions

Measures for retrieval of information relating to business relationships.

56. (1) A designated person shall have systems in place to enable it to respond fully and promptly to enquiries from the Garda Síochána—

(a) as to whether or not it has, or has had, a business relationship, within the previous 5 years, with a person specified by the Garda Síochána, and

(b) the nature of any such relationship with that person.

(2) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Group-wide policies and procedures

57. (1) A designated person that is part of a group shall implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group, for the purposes of carrying out customer due diligence and preventing and detecting the commission of money laundering and terrorist financing.

(2) A designated person incorporated in the State that operates a branch, majority-owned subsidiary or establishment in a place other than the State shall ensure that the branch, majority-owned subsidiary or establishment adopts and applies group-wide policies and procedures referred to in *subsection (1)*.

(3) Where a place referred to in *subsection (2)*, other than a Member State, is a place that does not permit the implementation of the policies and procedures required under *subsection (1)* the designated person shall—

(a) ensure that each of its branches and majority-owned subsidiaries in that place applies additional measures to effectively handle the risk of money laundering or terrorist financing, and

(b) notify the competent authority for that designated person of the additional measures applied under *paragraph (a)*.

(4) A designated person incorporated in the State that operates a branch, majority-owned subsidiary or establishment in another Member State shall ensure that the branch, majority-owned subsidiary or establishment complies with the requirements of the Fourth Money Laundering Directive as they apply in that Member State.

(5) A designated person incorporated in the State that has a branch or majority-owned subsidiary located in a place, other than a Member State, in which the minimum requirements relating to the prevention and detection of money laundering and terrorist financing are less strict than those of the State shall ensure that the branch or majority-owned subsidiary implement the requirements of the State, including requirements relating to data protection, to the extent that the third country's law so allows.

(6) Subject to section 49, a designated person that is part of a group that makes a report under section 42 shall share that report within the group for the purposes of preventing and detecting the commission of money laundering and terrorist financing unless otherwise instructed by FIU Ireland.

(7) A designated person that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Additional measures where implementation of policies and procedures is not possible

57A. (1) Where a competent authority receives a notification under *section 57(3)(b)* and is not satisfied that the additional measures applied in accordance with that subsection are sufficient for the purposes of carrying out customer due diligence and preventing and detecting the commission of money laundering and terrorist financing it shall exercise additional supervisory actions, where necessary requesting a group to close down its operations in the third country and may, by notice in writing, direct the designated person to take such additional actions as the competent authority considers necessary to mitigate the risk of money laundering or terrorist financing.

(2) A notice under *subsection (1)*—

(a) may direct the group—

(i) not to establish a business relationship,

(ii) to terminate a business relationship, or

(iii) not to undertake a transaction,

and

(*b*) shall specify the matters which, in the opinion of the competent authority, give rise to the risk of money laundering or terrorist financing and in respect of which the additional measures taken are insufficient.

(3) A notice under *subsection (1)* shall take effect—

(a) where the notice so declares, immediately the notice is received by the person on whom it is served,

(b) in any other case—

(i) where no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or the day specified in the notice as the day on which it is to come into effect, whichever is the later, or

(ii) in case such an appeal is taken, on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or the day specified in the notice as that on which it is to come into effect, whichever is the later.

(4) A designated person that is aggrieved by a notice may, within the period of 30 days beginning on the day on which the notice is served, appeal against the notice to the High Court and in determining the appeal the court may—

(a) if the court is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice, with or without modification, or

(b) cancel the notice.

(5) The bringing of an appeal against a notice which is to take effect in accordance with *subsection (3)(a)* shall not have the effect of suspending the operation of the notice, but the appellant may apply to the court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(6) Where on the hearing of an appeal under this section a notice is confirmed the High Court may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the High Court considers appropriate.

(7) A person who appeals under *subsection (4)* against a notice or who applies for a direction suspending the application of the notice under *subsection (6)* shall at the same time notify the competent authority concerned of the appeal or the application and the grounds for the appeal or the application and the competent authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) A designated person that fails to comply with a direction made by the competent authority for that designated person under *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(9) A competent authority may, by notice in writing to the designated person concerned, vary or revoke a notice under subsection (1).

Anonymous accounts.

58. (1) A credit institution or financial institution shall not set up an anonymous account for, or provide an anonymous passbook or safe-deposit box to, any customer.

(2) A credit institution or financial institution shall not keep any anonymous account, or anonymous passbook, that was in existence immediately before the commencement of this section for any customer.

(3) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Relationships between credit institutions and shell banks.

59. (1) A credit institution or financial institution shall not enter into a correspondent relationship with a shell bank.

(2) A credit institution or financial institution that has entered into a correspondent relationship with a shell bank before the commencement of this section shall not continue that relationship.

(3) A credit institution or financial institution shall not engage in or continue a correspondent relationship with a bank that the institution knows permits its accounts to be used by a shell bank.

(4) A credit institution or financial institution shall apply appropriate measures to ensure that it does not enter into or continue a correspondent relationship that permits its accounts to be used by a shell bank.

(5) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(6) In this section, 'shell bank' means a credit institution or financial institution (or a body corporate that is engaged in activities equivalent to those of a credit institution or financial institution) that—

(a) does not have a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated,

(b) is not authorised to operate, and is not subject to supervision, as a credit institution, or as a financial institution, (or equivalent) in the jurisdiction in which it is incorporated, and

(c) is not affiliated with another body corporate that—

(i) has a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated, and

(ii) is authorised to operate, and is subject to supervision, as a credit institution, a financial institution or an insurance undertaking, in the jurisdiction in which it is incorporated.

CHAPTER 8

Monitoring of designated persons

Meaning of "competent authority".

60.— (1) Subject to *section 61*, a reference in this Part to the competent authority for a designated person is a reference to the competent authority prescribed for the class of designated persons to which the designated person belongs.

(2) If no such competent authority is prescribed, a reference in this Part to the competent authority is a reference to the following:

(a) in the case of a designated person that is a credit institution or a financial institution, the Central Bank of Ireland;

(b) in the case of a designated person who is an auditor, external accountant, tax adviser or trust or company service provider—

(i) if the person is a member of a designated accountancy body, the designated accountancy body, or

(ii) if the person is not a member of a designated accountancy body and is a body corporate, or a body of unincorporated persons, carrying out its functions under this Part through officers and members of it who are members of a designated accountancy body, the designated accountancy body;

(c) in the case of a designated person who is a solicitor, the Law Society of Ireland;

(d) in the case of a designated person who is a barrister, the Legal Services Regulatory Authority;

(da) [deleted]

(db) in the case of a designated person that is a property services provider, the Property Services Regulatory Authority;

(e) in the case of any designated person other than a designated person referred to in paragraph (a), (b), (c) or (d) or (db), the Minister.

(3) The Minister may prescribe a competent authority for a class of designated persons, for the purpose of *subsection (1)*, only if the Minister is satisfied that the competent authority is more appropriate than the competent authority specified in subsection (2) for the class of designated persons, having regard to the nature of the business activities engaged in by that class.

Agreements between competent authorities where more than one applicable.

61. (1) Where there is more than one competent authority for a designated person under *section 60*, those competent authorities may agree that one of them will act as the

competent authority for that person, and references in this Part to a competent authority are to be construed accordingly.

(2) An agreement under this section, in relation to a designated person, takes effect when the competent authority who has agreed to act as the competent authority for the designated person gives notice, in writing, to that person.

(3) An agreement under this section, in relation to a designated person, ceases to have effect when—

(a) any of the parties to the agreement gives notice, in writing, to the other parties of the termination of the agreement,

(b) the agreement expires, or

(c) as a result of the operation of *section 60(1)*, the competent authority who has agreed to act as the competent authority is no longer a competent authority of the person under *section 60*,

whichever is the earliest.

Meaning of "State competent authority".

62. (1) In this Part, a reference to a State competent authority is a reference to one of the following competent authorities:

(a) the Central Bank of Ireland;

(b) the Minister;

(c) such other competent authority as is prescribed.

(2) The Minister may prescribe a competent authority as a State competent authority for the purposes of *subsection (1) (c)* only if—

(a) the Minister is satisfied that the competent authority is appropriate, having regard to the functions of State competent authorities under this Part, and

(b) the competent authority is a Minister of the Government or an officer of a particular class or description of a Department of State or is a body (not being a company) by or under an enactment.

General functions of competent authorities.

63. (1) A competent authority shall effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements specified in this Part.

(2) The measures that are reasonably necessary include reporting to the Garda Síochána and Revenue Commissioners any knowledge or suspicion that the competent authority has that a designated person has been or is engaged in money laundering or terrorist financing.

(3) In determining, in any particular case, whether a designated person has complied with any of the requirements specified in this Part, a competent authority shall consider

whether the person is able to demonstrate to the competent authority that the requirements have been met.

(4) A competent authority that, in the course of monitoring a designated person under this section, acquires any knowledge or forms any suspicion that another person has been or is engaged in money laundering or terrorist financing shall report that knowledge or suspicion to the Garda Síochána and Revenue Commissioners.

Supervision

63A. (1) Competent authorities shall take the necessary measures to prevent persons convicted of a relevant offence from performing a management function in or being the beneficial owners of the designated persons referred to in *paragraphs (c)*, *(d)* and *(f)* of *section 25(1)*.

(2) Any person performing a management function in or being the beneficial owner of the designated persons referred to in *subsection (1)* and who is convicted of a relevant offence must inform the relevant competent authority within 30 days of the day on which that person was convicted of the relevant offence.

(3) Any designated person for which or in respect of which a person who is convicted of a relevant offence, performs a management function or is a beneficial owner, shall inform its competent authority of the conviction within 30 days of the date on which the designated person became aware of the conviction.

(4) In this section "a relevant offence" means—

(a) an offence under this Act,

(b) an offence specified in Schedule 1 to the Criminal Justice Act 2011, or

(c) an offence under the law of a place (other than the State), consisting of an act or omission that, if done or omitted to be done in the State, would, under the law of the State, constitute an offence under *subsections (a)* or *(b)*.

(5) A person who fails to comply with *subsection (2)* or *(3)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 2 years or both.

Co-operation with Member State competent authorities

63B. (1) This section applies to designated persons—

(a) which operate establishments in the State and which have their head offices in another Member State, or

(b) which operate establishments in another Member State and which have their head offices in the State.

(2) A competent authority for designated persons to which this section applies shall take the necessary steps—

(a) to co-operate with Member State competent authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing,

(b) to co-ordinate activities to counter money laundering and terrorist financing with Member State competent authorities, and

(c) to co-operate with Member State competent authorities to ensure the effective supervision of designated persons to which this section applies.

(2A) Co-operation with Member State competent authorities under this section by a competent authority may include the sharing of information which the competent authority is not prevented from disclosing by the law of the State and the provision of assistance shall not be refused on the basis that:

(a) the request for the sharing of information or the provision of assistance is also considered to involve tax matters;

(b) the law of the State requires the competent authority to maintain secrecy or confidentiality except in those cases where the relevant information that is sought is protected by legal privilege;

(c) there is an inquiry, investigation or proceeding underway in the State, unless the sharing of such information or the provision of assistance would impede the inquiry, investigation or proceeding; or

(d) the nature or status of the requesting competent authority is different from that of the competent authority of whom the request is made.

(3) In this section "Member State competent authority", in relation to a Member State (other than the State), means the authority designated by that Member State to be the competent authority in that Member State for the purposes of the Fourth Money Laundering Directive.

Supervision by competent authorities

63C. Each competent authority shall—

(a) adopt a risk-based approach to the exercise of its supervisory functions,

(b) ensure that its employees and officers have access both at its offices and elsewhere to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector,

(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of designated persons, and on the risks of money laundering and terrorist financing in the State,

(d) review, both periodically and when there are major events or developments in their management and operations, their assessment of the money laundering and terrorist financing risk profile of designated persons, including the risks of non-compliance with the provisions of this Act, and

(e) take into account the degree of discretion allowed to the designated person, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.

Duties of competent authorities

63D. (1) A competent authority, other than a State competent authority, shall make arrangements to ensure that—

(a) its supervisory functions are exercised independently of any of its other functions which do not relate to disciplinary matters,

(b) sensitive information relating to its supervisory functions is appropriately handled within the competent authority,

(c) it employs only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions and maintain high professional standards, including standards of confidentiality and data protection and standards addressing conflicts of interest, and

(d) a contravention of a requirement imposed by or under this Act by a designated person it is responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under its rules.

(2) A competent authority, other than a State competent authority, shall—

(a) provide adequate resources to carry out the supervisory functions, and

(b) appoint a person to monitor and manage the competent authority's compliance with its duties under this Act.

(3) The person appointed under *subsection (2)(b)* shall be responsible—

(*a*) for liaison with—

(i) another competent authority, and

(ii) any Member State competent authority (within the meaning of *section 63B*),

(b) for ensuring that the competent authority responds fully and as soon as possible to any request from an authority referred to in *subsection (a)(i)* or *(ii)* for information about any person it supervises.

Reporting breaches to competent authority

63E. (1) Each competent authority shall establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of this Act.

(2) Each competent authority shall provide one or more secure communication channels for persons reporting the matters referred to in subsection (1).

(3) Each competent authority shall ensure that the channels of communication referred to in subsection (2) can also be used by persons to report any threats or retaliatory or hostile actions they are subjected to for reporting suspected breaches of this Act."

Application of other enactments.

64. Nothing in this Part limits any functions that a competent authority (including a State competent authority) has under any other enactment or rule of law.

Annual Reporting

65. (1) A competent authority shall include, in each annual report published by the authority, an account of the activities that it has carried out in performing its functions under this Act during the year to which the annual report relates.

(2) Where a competent authority is not a State competent authority, each annual report published by the authority shall include information regarding the measures taken by the authority to monitor compliance by designated persons with the provisions of this Part.

Request to bodies to provide names, addresses and other information relating to designated persons.

66. (1) In this section, a reference to relevant information, in relation to a person, that is held by a body is a reference to any of the following information that is held by the body:

(a) the name, address or other contact details of the person;

(b) any other prescribed information relating to the person.

(2) A State competent authority may, by notice in writing, request any public body, or any body that represents, regulates or licenses, registers or otherwise authorises persons carrying on any trade, profession, business or employment, to provide the authority with any relevant information, in relation to—

(a) any designated persons for whom the authority is a competent authority, or

(b) any persons whom the body reasonably considers may be such designated persons.

(3) A State competent authority may make a request under this section only in relation to information that is reasonably required by the authority to assist the authority in carrying out its functions under this Part.

(4) Notwithstanding any other enactment or rule of law, a body that receives a request under this section shall disclose the relevant information concerned.

(5) The Minister may prescribe information, for the purposes of *subsection (1)(b)*, that a State competent authority may request under this section only if the Minister is satisfied that the information is appropriate, having regard to the functions of the State competent authority under this Part.

Direction to furnish information or documents

67. (1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to provide such information or documents (or both) relating to the designated person specified in the notice.

(2) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) In giving a direction under this section, a State competent authority shall specify the manner in which any document or information is required to be furnished and a reasonable time by which the document or information is required to be furnished.

(4) A person is required to furnish documents in accordance with this section only if the documents are in the person's possession or within the person's power to obtain lawfully.

(5) If a person knows the whereabouts of documents to which the direction applies, the person shall furnish to the State competent authority who gave the direction a statement, verified by a statutory declaration, identifying the whereabouts of the documents. The person shall furnish the statement no later than the time by which the direction specifies that the documents are required to be furnished.

(6) A person who, without reasonable excuse, fails to comply with *subsection (5)* commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(7) If any document required to be furnished under this section is in electronic, mechanical or other form, the document shall be furnished in written form, unless the direction specifies otherwise.

(8) A State competent authority may take copies of, or extracts from, any document furnished to the authority under this section.

Direction to provide explanation of documents.

68. (1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to furnish to the authority an explanation of any documents relating to the designated person that—

(a) the person has furnished to the authority in complying with a direction under *section 67*, or

(b) an authorised officer has lawfully removed from premises under *section 77* (including as applied by *section 78*).

(2) In giving a direction under this section, a State competent authority shall specify the manner in which any explanation of a document is required to be furnished and a reasonable time by which the explanation is required to be furnished.

(3) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

Purpose of direction under section 67 or 68.

69. A State competent authority may give a direction under *section 67* or *68* only in relation to information or documents reasonably required by the authority to assist the authority to perform its functions under this Part.

Self-incrimination (sections 67 and 68).

70. Nothing in *section 67* or *68* requires a person to comply with a direction under the section concerned to furnish any information if to do so might tend to incriminate the person.

Directions to comply with obligations under this Part.

71. (1) A State competent authority may, by notice in writing, direct a designated person or a class of designated persons in respect of whom the authority is the competent authority to—

(a) discontinue, or refrain from engaging in, specified conduct that in the opinion of the authority concerned constitutes, or, if engaged in, would constitute, a breach of any specified provision of this Part, or

(b) take specific actions or to establish specific processes or procedures that in the opinion of the authority are reasonably necessary for the purposes of complying with any specified provision of this Part.

(2) The State competent authority shall specify in any such direction a reasonable period of time within which the person to whom it is given is required to comply with the direction.

(3) If a designated person to whom a direction has been issued under subsection (1) fails to comply with the direction and is subsequently found guilty of an offence—

(a) which consists of the conduct specified in the direction given under subsection (1)(a), or

(b) which would not have been committed if the direction under subsection (1)(b) had been complied with,

the court may take the failure to comply with the direction into account as an aggravating factor in determining any sentence to be imposed on the person for the offence.

Appointment of authorised officers.

72. (1) A State competent authority may appoint employees of the authority or other persons who, in the opinion of the authority, are suitably qualified or experienced, to be authorised officers for the purpose of this Chapter.

(2) A State competent authority may revoke any appointment made by the authority under *subsection (1)*.

(3) An appointment or revocation under this section shall be in writing.

(4) A person's appointment by a State competent authority as an authorised officer ceases—

(a) on the revocation by the authority of the appointment,

(b) in a case where the appointment is for a specified period, on the expiration of the period,

(c) on the person's resignation from the appointment, or

(d) in a case where the person is an employee of the authority—

(i) on the resignation of the person as an employee of the authority, or

(ii) on the termination of the person's employment with the authority for any other reason.

Warrant of appointment.

73. (1) Every authorised officer appointed by a State competent authority shall be furnished with a warrant of appointment as an authorised officer by the State competent authority.

(2) In the course of performing the functions of an authorised officer under this Chapter, the officer shall, if requested to do so by any person affected, produce the officer's warrant of appointment for inspection.

Powers may only be exercised for assisting State competent authority.

74. An authorised officer may exercise powers as an authorised officer under this Chapter only for the purpose of assisting the State competent authority that appointed the authorised officer in the performance of the authority's functions under this Part.

General power of authorised officers to enter premises.

75. (1) An authorised officer may enter any premises at which the authorised officer reasonably believes that the business of a designated person has been or is carried on.

(2) An authorised officer may enter any premises at which the authorised officer reasonably believes records or other documents relating to the business of a designated person are located.

(3) An authorised officer may enter premises under *subsection (1)* or *(2)*—

(a) in a case where the authorised officer reasonably believes that the business of a designated person is carried on at the premises (as referred to in *subsection (1)*), at any time during which the authorised officer reasonably believes that the business is being carried on there, or

(b) in any other case, at any reasonable time.

Entry into residential premises only with permission or warrant.

76. Nothing in this Chapter shall be construed as empowering an authorised officer to enter any dwelling without the permission of the occupier or the authority of a warrant under *section 78.*

Power of authorised officers to do things at premises.

77. (1) An authorised officer may, at any premises lawfully entered by the officer, do any of the following:

(a) inspect the premises;

(b) request any person on the premises who apparently has control of, or access to, records or other documents that relate to the business of a designated

person (being a designated person whose competent authority is the State competent authority who appointed the authorised officer)—

(i) to produce the documents for inspection, and

(ii) if any of those documents are in an electronic, mechanical or other form, to reproduce the document in a written form;

(c) inspect documents produced or reproduced in accordance with such a request or found in the course of inspecting the premises;

(d) take copies of those documents or of any part of them (including, in the case of a document in an electronic, mechanical or other form, a copy of the document in a written form);

(e) request any person at the premises who appears to the authorised person to have information relating to the documents, or to the business of the designated person, to answer questions with respect to the documents or that business;

(f) remove and retain the documents (including in the case of a document in an electronic, mechanical or other form, a copy of the information in a written form) for the period reasonably required for further examination;

(g) request a person who has charge of, operates or is concerned in the operation of data equipment, including any person who has operated that equipment, to give the officer all reasonable assistance in relation to the operation of the equipment or access to the data stored within it;

(h) secure, for later inspection, the premises or part of the premises at which the authorised officer reasonably believes records or other documents relating to the business of the designated person are located.

(2) A person to whom a request is made in accordance with *subsection (1)* shall—

(a) comply with the request so far as it is possible to do so, and

(b) give such other assistance and information to the authorised officer with respect to the business of the designated person concerned as is reasonable in the circumstances.

(3) A reference in this section to data equipment includes a reference to any associated apparatus.

(4) A reference in this section to a person who operates or has operated data equipment includes a reference to a person on whose behalf data equipment is operated or has been operated.

Entry to premises and doing of things under warrant

78. (1) A judge of the District Court may issue a warrant under this section if satisfied, by information on oath of an authorised officer, that there are reasonable grounds for believing that—

(*a*) documents relating to the business of a designated person that are required for the purpose of assisting the State competent authority that appointed the

authorised officer under this Chapter in the performance of the authority's functions under this Part are contained on premises, and

(*b*) the premises comprise a dwelling or an authorised officer has been obstructed or otherwise prevented from entering the premises under *section 75*.

(2) A warrant under this section authorises an authorised officer, at any time or times within one month of the issue of the warrant—

(a) to enter the premises specified in the warrant, and

(b) to exercise the powers conferred on authorised officers by this Chapter or any of those powers that are specified in the warrant.

(3) Entry to premises the subject of a warrant may be effected with the use of reasonable force.

Authorised officer may be accompanied by others.

79. An authorised officer may be accompanied, and assisted in the exercise of the officer's powers (including under a warrant issued under *section 78*), by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

Offence to obstruct, interfere or fail to comply with request.

80. (1) A person commits an offence if the person, without reasonable excuse—

(a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under this Chapter, or

(b) fails to comply with a requirement, or request made by an authorised officer, under *section 77* (including as applied by *section 78*).

(2) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) A reference in this section to an authorised officer includes a member of the Garda Síochána or other person who is accompanying and assisting the officer in accordance with *section 79*.

Self-incrimination — questions of authorised officers.

81. Nothing in this Chapter requires a person to answer questions if to do so might tend to incriminate the person.

Production of documents or information not required in certain circumstances.

82. Nothing in this Chapter requires the production of any document or information subject to legal privilege.

Disclosure or production not to be treated as breach or to affect lien

83. (1) The disclosure or production of any information or document by a person in accordance with this Chapter shall not be treated as a breach of any restriction under any enactment

or rule of law on disclosure or production by the person or any other person on whose behalf the information or document is disclosed or produced.

(2) The production referred to in *subsection (1)* of any item forming part of the documents relating to the business of a designated person shall not prejudice any lien that the designated person or any other person claims over that item.

CHAPTER 9

Authorisation of Trust or Company Service Providers

Interpretation (Chapter 9).

84. (1) In this Chapter—

"Authorisation" means an authorisation to carry on business as a trust or company service provider granted under this Chapter and, if such an authorisation is renewed or amended under this Chapter, means, unless the context otherwise requires, the authorisation as renewed or amended (as the case may be);

"principal officer" means—

(a) in relation to a body corporate, any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or

(b) in relation to a partnership—

(i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and

(ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

'subsidiary' has the meaning assigned to it by section 155 of the Companies Act 1963

"trust or company service provider" does not include any of the following:

(a) a member of a designated accountancy body;

(b) a barrister or solicitor;

(c) a credit institution or financial institution.

(2) (a) Subject to paragraph (b), in this Chapter a reference to the Minister shall, in a case where the applicant for or the holder of an authorisation is a subsidiary of a credit or financial institution, be construed as a reference to the Central Bank of Ireland.

(b) Paragraph (a) does not apply to—

(i) section 88(5),

(ii) sections 89(5)(b)(ii), 90(3)(b)(ii), 93(6)(b)(ii), 97(6)(b)(ii), 98(2)(b)(ii) and 100(2) in so far as those provisions relate to the specifying of a form by the Minister,

(iii) section 94(3),

(iv) section 101,

(v) section 104(8),

(vi) section 106(7).

Meaning of “fit and proper person”.

85. For the purposes of this Chapter and *sections 108B* to *108I*, a person is not a fit and proper person if any of the following apply:

(a) the person has been convicted of any of the following offences:

(i) money laundering;

(ii) terrorist financing;

(iii) an offence involving fraud, dishonesty or breach of trust;

(iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in *subparagraph (i)*, *(ii)* or *(iii)* if the conduct occurred in the State;

(b) in a case where the person is an individual, the person is under 18 years of age;

(c) the person—

(i) has suspended payments due to the person’s creditors,

(ii) is unable to meet other obligations to the person’s creditors, or

(iii) is an individual who is an undischarged bankrupt;

(d) the person is otherwise not a fit and proper person.

Authorisations held by partnerships.

86. (1) A reference in a relevant document to the holder or proposed holder of an authorisation includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified.

(2) A reference in *subsection (1)* to a relevant document is a reference to any of the following:

(a) this Chapter;

(b) a regulation made for the purposes of this Chapter;

(c) an authorisation or condition of an authorisation;

(d) any notice or direction given under this Chapter;

(e) any determination under this Chapter.

(3) Without prejudice to the generality of *subsection (1)* or *section 111*, where any requirement is imposed by or under this Chapter on the holder of an authorisation and

failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of an authorisation) who contravenes the requirement is liable for the offence.

Prohibition on carrying on business of trust or company service provider without authorisation.

87. (1) A person commits an offence if the person carries on business as a trust or company service provider without being the holder of an authorisation issued by the Minister under this Chapter.

(2) A person who commits an offence under *subsection (1)* is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment not exceeding 5 years (or both).

Application for authorisation.

88. (1) An individual, body corporate or partnership may apply to the Minister for an authorisation to carry on business as a trust or company service provider.

(2) The application shall—

(a) be in a form provided or specified by the Minister,

(b) specify the name of—

(i) the proposed holder of the authorisation,

(ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carryon business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be), and

(iii) any person who is, or is proposed to be, a beneficial owner of the business,

(c) be accompanied by any consent, in the form provided or specified by the Minister, that is required to enable access to personal data held by other persons or bodies and that is required to assist the Minister in determining, for the purposes of section 89 (including as applied by section 92) whether or not the proposed holder and other persons referred to in paragraph (b) are fit and proper persons,

(d) contain such other information, and be accompanied by such documents, as the Minister requests,

(e) be accompanied by the prescribed fee (if any).

(3) The Minister may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional

information and documents as are reasonably necessary to enable the Minister to determine the application.

(4) As soon as practicable after an applicant becomes aware that any information or document provided to the Minister under this section contains a material inaccuracy or has changed in any material particular, including information or a document provided in relation to an application that has been granted, but not including information or a document provided in relation to an application that has been refused, the applicant shall give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(5) For the purposes of *subsection (2)(e)* (including as applied by *section 92*), the Minister may prescribe different fees, to accompany applications for authorisations under this Chapter, for different classes of proposed holders of those authorisations and in prescribing such fees may differentiate between the fee to accompany such an application for an authorisation (not being an application for the renewal of such an authorisation) and the fee to accompany an application for the renewal of such an authorisation.

Grant and refusal of applications for authorisation.

89. (1) The Minister may refuse an application under *section 88* only if—

(a) the application does not comply with the requirements of *section 88*,

(b) the applicant does not provide any additional documents or information in accordance with a notice given under *section 88 (3)*,

(c) the Minister has reasonable grounds to be satisfied that information given to the Minister by the applicant in connection with the application is false or misleading in any material particular,

(d) the Minister has reasonable grounds to be satisfied that any of the following persons is not a fit and proper person:

(i) the proposed holder of the authorisation;

(ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carryon business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) (iii) any person who is, or is proposed to be, a beneficial owner of the business concerned,

(e) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with the obligations imposed on trust or company service providers, as designated persons, under this Part,

(f) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with each of the following:

(i) any conditions that the Minister would have imposed on the authorisation concerned if the Minister had granted the application;

(ii) any prescribed requirements referred to in *section 94*;

(iii) *section 95*;

(iv) *section 98*;

(v) *section 106*,

(g) the proposed holder of the authorisation is so structured, or the business of the proposed holder is so organised, that the proposed holder is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Minister,

(h) in a case where the proposed holder of the authorisation is a body corporate, the body corporate is being wound up,

(i) in a case where the proposed holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State, or

(k) in a case where the proposed holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.

(2) If the Minister proposes to refuse an application, the Minister shall serve on the applicant a notice in writing—

(a) specifying the grounds on which the Minister proposes to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the serving of the notice, make written representations to the Minister showing why the Minister should grant the application.

(3) Not later than 21 days after a notice is served on an applicant under *subsection (2)*, the applicant may make written representations to the Minister showing why the Minister should grant the application.

(4) The Minister may refuse an application only after having considered any representations made by the applicant in accordance with *subsection (3)*.

(5) As soon as practicable after refusing an application, the Minister shall serve a written notice of the refusal on the applicant. The notice shall include a statement—

(a) setting out the grounds on which the Minister has refused the application, and

(b) informing the applicant that—

(i) the applicant may appeal to an Appeal Tribunal against the refusal, and

(ii) if the applicant proposes to appeal to an Appeal Tribunal against the refusal, the applicant may, within one month after being served with the notice of refusal, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(6) If the Minister does not refuse the application, he or she shall grant it and, on granting the application, the Minister shall—

(a) record the appropriate particulars of the holder of the authorisation in the register of persons authorised to carry on business as a trust or company service provider, and

(b) issue the applicant with an authorisation that authorises the holder of the authorisation to carry on business as a trust or company service provider.

Minister may impose conditions when granting an application for an authorisation.

90. (1) In granting an application for an authorisation under this Chapter, the Minister may impose on the holder of the authorisation any conditions that the Minister considers necessary for the proper and orderly regulation of the holder's business as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) The Minister shall specify any such conditions in the authorisation granted to the holder or in one or more documents annexed to that authorisation.

(3) If, under this section, the Minister imposes any conditions on an authorisation, the Minister shall serve on the holder of the authorisation, together with the authorisation, a written notice of the imposition of the conditions that includes a statement—

(a) setting out the grounds on which the Minister has imposed the conditions, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the imposition of any of the conditions, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the imposition of any of the conditions, the holder may, within one month after being served with the notice of the imposition of conditions, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

Terms of authorisation.

91. (1) An authorisation comes into force on the day on which the authorisation is granted, or, if a later date is specified in the authorisation, on that later date, whether or not an appeal against any conditions of the authorisation is made under *section 100*.

(2) An authorisation remains in force, unless sooner revoked under this Chapter, for a period of 3 years from the date on which it comes into force.

(3) A reference in this section to an authorisation does not include a reference to an authorisation that is renewed under *section 92*.

Renewal of authorisation.

92. (1) The Minister may renew an authorisation on the application of the holder of the authorisation unless the authorisation has been revoked under this Chapter.

(2) *Sections 88* to *90* apply, with any necessary modifications, in relation to an application for the renewal of an authorisation.

(3) An application for the renewal of an authorisation shall be made not less than 10 weeks before the end of the period for which it was granted.

(4) In addition to the grounds specified in *section 89* (as applied by *subsection (2)*), the Minister may refuse to grant a renewed authorisation on the grounds that the application for renewal has been made less than 10 weeks before the end of the period for which the authorisation was granted.

(5) If an application for the renewal of an authorisation is made within the time provided for in *subsection (3)* and is not determined by the Minister before the end of the period for which the authorisation was granted, the authorisation remains in force until the date on which the application is determined.

(6) A renewed authorisation comes into force on—

(a) in a case where *subsection (5)* applies, the date on which the application is determined, or

(b) in any other case, the day immediately following the end of the period for which the authorisation that it renews was granted or last renewed, as the case may be.

(7) A renewed authorisation, unless sooner revoked under this Chapter, remains in force for a period of 3 years from the date on which it comes into force under subsection (6).

(8) Subsections (6) and (7) have effect whether or not an appeal against any conditions of the authorisation is made under section 100.

Minister may amend authorisation.

93. (1) The Minister may amend an authorisation granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Minister considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the authorisation as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If the Minister proposes to amend an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to amend the authorisation.

(3) The notice shall—

(a) specify the proposed amendment, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not make that amendment.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of an authorisation, the holder may make written representations to the Minister showing why the Minister should not amend the authorisation.

(5) The Minister may amend an authorisation only after having considered any representations to the Minister made in accordance with subsection (4) showing why the Minister should not amend the authorisation.

(6) The Minister shall serve written notice of any amendment of an authorisation on the holder of the authorisation. The notice shall include a statement—

(a) setting out the grounds on which the Minister has amended the authorisation, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the amendment, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the amendment, the holder may, within one month after being served with the notice of amendment, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(7) The amendment of an authorisation under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under section 100.

Offence to fail to comply with conditions or prescribed requirements.

94. (1) The holder of an authorisation commits an offence if the holder fails to comply with—

(a) any condition of the authorisation, or

(b) any prescribed requirements.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €2,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Minister may prescribe requirements for the purposes of *subsection (1)(b)* only if the Minister is satisfied that it is necessary to do so for the proper and orderly regulation of the business of trust or company service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing.

Holder of authorisation to ensure that principal officers and beneficial owners are fit and proper persons.

95. (1) The holder of an authorisation shall take reasonable steps to ensure that the following persons are fit and proper persons:

(a) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(b) any person who is a beneficial owner of the business concerned.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €2,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of authorisation by Minister on application of holder.

96. The Minister shall revoke an authorisation on the application of the holder of the authorisation, but only if satisfied that the holder of the authorisation has fully complied with each of the following:

(a) any conditions of the authorisation;

(b) any prescribed requirements referred to in *section 94*;

(c) *section 95*;

(d) *section 98*;

(e) *section 106*.

Revocation of authorisation other than on application of holder.

97. (1) The Minister may revoke an authorisation only if the Minister has reasonable grounds to be satisfied of any of the following:

(a) the holder of the authorisation has not commenced to carry on business as a trust or company service provider within 12 months after the date on which the authorisation was granted;

(b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months;

(c) the authorisation was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the holder of the authorisation;

(ii) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the business concerned;

(e) the holder of the authorisation has contravened or is contravening the obligations imposed on trust or company service providers, as designated persons, under this Part;

(f) the holder of the authorisation has contravened or is contravening any of the following:

(i) a condition of the authorisation;

(ii) a prescribed requirement referred to in *section 94*;

(iii) *section 95*;

(iv) *section 98*;

(v) *section 106*;

(g) the holder of the authorisation is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part;

(h) in a case where the holder of the authorisation is a body corporate, the body corporate is being wound up;

(i) in a case where the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State;

(k) in a case where the holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.

(2) If the Minister proposes to revoke an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to revoke the authorisation.

(3) The notice shall—

(a) specify the grounds on which the Minister proposes to revoke the authorisation, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not revoke the authorisation.

(4) Not later than 21 days after a notice is served under *subsection (2)* on the holder of an authorisation, the holder may make written representations to the Minister showing why the Minister should not revoke the authorisation.

(5) The Minister may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with *subsection (4)*.

(6) As soon as practicable after revoking an authorisation under this section, the Minister shall serve written notice of the revocation on the person who was the holder of the authorisation. The notice shall include a statement—

(a) setting out the reasons for revoking the authorisation, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the revocation, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the revocation, the holder may, within one month after being served with the notice of revocation, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister.

(7) The revocation of an authorisation under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under *section 100*.

Direction not to carry out business other than as directed.

98. (1) If the Minister reasonably believes that there may be grounds for revoking an authorisation under *section 97*, the Minister may serve on the holder of the authorisation a direction in writing prohibiting the holder from carrying on business as a trust or company service provider other than in accordance with conditions specified by the Minister.

(2) The Minister shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) informing the holder of the authorisation concerned that—

(i) the holder may appeal to an Appeal Tribunal against the direction, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the direction, the holder may, within one month after being served with the direction, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister,

and

(c) specifying the conditions with which the holder of the authorisation is required to comply.

(3) The Minister may, by notice in writing served on the holder of the authorisation concerned, amend or revoke a direction given under this section.

(4) Without prejudice to the generality of *subsection (3)*, the Minister may, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(5) A direction under this section takes effect from the date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under *section 100*.

(6) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or

(b) on the revocation of the holder's authorisation under this Chapter, whichever occurs first.

(7) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.

(8) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Minister to publish notice of revocation or direction.

99. As soon as practicable after revoking an authorisation under *section 96* or *97*, or giving a direction under *section 98*, the Minister shall publish in *Iris Oifigiúil* a notice giving particulars of the revocation or direction.

Appeals against decisions of Minister.

100. (1) In this section, "appealable decision" means a decision of the Minister under—

(a) *section 89* to refuse an application for an authorisation,

(b) *section 89*, as applied by *section 92*, to refuse an application for the renewal of an authorisation,

(c) *section 90* to impose conditions on an authorisation,

(d) *section 90*, as applied by *section 92*, to impose conditions on an authorisation that is renewed,

(e) *section 93* to amend an authorisation,

(f) *section 97* to revoke an authorisation, or

(g) *section 98* to serve a direction on the holder of an authorisation.

(2) A person aggrieved by an appealable decision may, within one month after being served with notice of the decision, serve a notice of the person's intention to appeal against the decision on the Minister in the form provided or specified by the Minister.

(3) On receipt of the notification, the Minister shall refer the matter to an Appeal Tribunal established under *section 101*.

(4) The Appeal Tribunal may invite the person and the Minister to make written submissions to it in relation to the appeal.

(5) The Appeal Tribunal shall notify the person, in writing, of the following matters:

(a) the date and time of the hearing of the appeal;

(b) that the person may attend the hearing;

(c) that the person may be represented at the hearing by a barrister, solicitor or agent.

(6) An Appeal Tribunal may refuse to hear, or continue to hear, an appeal under this section if it is of the opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation.

(7) The Appeal Tribunal shall (unless the appeal is withdrawn, or discontinued or dismissed under subsection (6)) determine the appeal by—

(a) affirming the decision of the Minister to which the appeal relates, or

(b) substituting its determination for that decision.

(8) The Appeal Tribunal shall notify its determination in writing to the Minister and the person appealing.

(9) Within 3 months after the date on which an appeal is determined by an Appeal Tribunal, the Minister or person who appealed may appeal to the High Court on any question of law arising from the determination.

Appeal Tribunals.

101. [Repealed]

101A. (1) On the commencement of section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020 there shall stand established a tribunal which shall be known as the Appeal Tribunal to consider and determine appeals made pursuant to this Act.

(2) The Appeal Tribunal shall be independent in the exercise of its functions under this Act and shall regulate its own procedures.

(3) The Appeal Tribunal may sit in divisions of itself to consider appeals.

(4) The Appeal Tribunal shall consist of a chairperson and such number of ordinary members as the Minister considers necessary from time to time for the efficient discharge of its functions.

(5) The chairperson and the ordinary members of the Appeal Tribunal shall be appointed by the Minister and the appointment shall be subject to such terms and conditions, including terms and conditions relating to remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure and Reform.

(6) Each member of the Appeal Tribunal shall be a practising barrister or solicitor of not less than 10 years' practice.

(7) The term of office of a member of the Appeal Tribunal shall be 5 years and a member of the Appeal Tribunal shall be eligible for reappointment as such member for a second term not exceeding 5 years.

(8) A member of the Appeal Tribunal may at any time resign his or her office as such member by giving notice in writing to the Minister and the resignation shall take effect on and from the date of receipt of the notice.

(9) A member of the Appeal Tribunal may be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the member has become incapable through ill-health or otherwise of effectively performing the functions of the Appeal Tribunal.

(10) If a member of the Appeal Tribunal dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Appeal Tribunal to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Appeal Tribunal who occasioned the vacancy and shall hold office for the remainder of the term of office for which his or her predecessor was appointed.

(11) Where a member of the Appeal Tribunal is—

(a) nominated as a member of Seanad Éireann, 15 5 10 15 20 25 30 35 40

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to Part XIII of the second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,

(d) elected or co-opted as a member of a local authority, (e) appointed to judicial office, or

(e) appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

Provision of information by Garda Síochána as to whether or not person is fit and proper person.

102. (1) The Minister may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Minister in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

(a) the holder or proposed holder of an authorisation;

(b) in a case where the holder or proposed holder of the authorisation is a body corporate, a partnership or an individual carrying on, or proposing to carry on, business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) any person who is a beneficial owner of the business of the holder or proposed holder of the authorisation concerned.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Minister with information in accordance with a request of the Minister under this section.

Extension of powers under Chapter 8 for purposes related to this Chapter.

103. (1) The functions of a State competent authority, in relation to designated persons, under *Chapter 8*, may be performed by the Minister to assist in carrying out functions in relation to trust or company service providers under this Chapter.

(2) For that purpose, *sections 66* to *83* apply with any necessary modifications, including the following:

(a) a relevant authorised officer has, in respect of trust or company service providers within the meaning of this Chapter, all of the functions that an authorised officer appointed by a State competent authority under *section 72* has in respect of designated persons;

(b) a judge of the District Court, in the case of an application under *section 78* by a relevant authorised officer in respect of a trust or company service provider, has all of the functions that such a judge has, in the case of a similar application under that section by an authorised officer appointed by a State competent authority under *section 72*, in respect of a designated person;

(c) *section 79* applies so as to enable a relevant authorised officer to be accompanied and assisted in the exercise of the officer's powers as referred to in that section;

(d) *section 80* applies to a person who engages in conduct, referred to in that section, in relation to—

(i) a relevant authorised officer, and

(ii) any person accompanying and assisting the officer in accordance with *section 79* as applied by *paragraph (c)*.

(3) This section has effect whether or not the Minister is the State competent authority for any class of trust or company service providers.

(4) In this section "relevant authorised officer" means an authorised officer appointed by the Minister under section 72, as applied by this section.

Register of persons holding authorisations.

104. (1) The Minister shall establish and maintain a register of persons authorised under this Chapter to carry on business as a trust or company service provider containing—

(a) the name and the address of the principal place of business of each person authorised to carry on business as a trust or company service provider, and

(b) such other information as may be prescribed.

(2) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(3) The Minister shall maintain the register at an office in the State.

(4) Members of the public are entitled, without charge, to inspect the register during ordinary business hours.

(5) The Minister may publish a register in written, electronic or other form and a member of the public is entitled to obtain a copy of a register or of an entry in a register on payment of such reasonable copying charges as may be prescribed (if any).

(6) The holder of an authorisation to whom an entry in the Register relates shall, as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(7) In any legal proceedings, a certificate purporting to be signed by the Minister and stating that a person—

(a) is recorded in the Register as the holder of an authorisation,

(b) is not recorded in the Register as the holder of an authorisation,

(c) was recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation, or

(d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation,

is evidence of the matter referred to in *paragraph (a)*, *(b)*, *(c)* or *(d)* (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(8) The Minister may prescribe particulars for the purposes of *subsection (1) (b)* or *section 105* only if satisfied that those particulars reasonably relate to the business of trust or company service providers or to the regulation of the business of trust or company service providers under this Part.

Minister to publish list of persons holding authorisations.

105. The Minister shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in *Iris Oifigiúil* a list of persons holding authorisations, together with other prescribed particulars (if any).

Holders of authorisations to retain certain records.

106. (1) The holder of an authorisation shall—

(a) retain at an office or other premises in the State such records as may be specified by the Minister, and

(b) notify the Minister in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by *subsection (1)* is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect

to the retention of records by the holder of an authorisation, including the requirements specified in *section 55*.

(3) The holder of an authorisation shall retain the records referred to in *subsection (1)* for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the holder, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The holder of an authorisation may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed on a holder of an authorisation under this section continue to apply to a person who has been the holder of an authorisation, but has ceased to hold an authorisation or to carry on business as a trust or company service provider.

(6) A requirement for the holder of an authorisation that is a body corporate to retain any record under this section applies to any body corporate that is a successor to, or a continuation of, the body corporate.

(7) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(8) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Chapter 9A

Virtual Asset Service Providers

Interpretation

106A. In this Chapter—

'Act of 1942' means the Central Bank Act 1942;

'Bank' means the Central Bank of Ireland;

'FATF' means the Financial Action Task Force on Money Laundering and Countering the Financing of Terrorism established by the Paris G7 Summit of 1989;

'prescribed' means prescribed by regulations made by the Bank;

'principal officer' means—

(a) in relation to a body corporate, any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or

(b) in relation to a partnership—

(i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and

(ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

'registration' means a registration granted by the Bank under this Chapter to permit a person to carry on business as a virtual asset service provider and, if such a permission is amended under this Chapter, means the registration as amended.

Fit and proper person

106B. For the purposes of this Chapter, a person is not a fit and proper person if any of the following apply:

(a) the person has been convicted of any of the following offences:

(i) money laundering;

(ii) terrorist financing;

(iii) an offence involving fraud, dishonesty or breach of trust;

(iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in subparagraph (i), (ii) or (iii) if the conduct occurred in the State;

(b) in a case where the person is an individual, the person is under 18 years of age;

(c) the person—

(i) has suspended payments due to the person's creditors,

(ii) is unable to meet other obligations to the person's creditors, or

(iii) is an individual who is an undischarged bankrupt;

(d) the person is otherwise not a fit and proper person.

Registrations held by partnerships

106C. (1) A reference in a relevant document to a holder or proposed holder of a registration includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified.

(2) A reference in subsection (1) to a relevant document is a reference to any of the following:

(a) this Chapter;

(b) a regulation made for the purposes of this Chapter;

(c) a registration or condition of a registration;

(d) any notice or direction given under this Chapter;

(e) any determination under this Chapter.

(3) Without prejudice to the generality of subsection (1) or section 111, where any requirement is imposed by or under this Chapter on the holder of a registration, and failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of a registration) who contravenes the requirement is liable for the offence.

Scope of Bank's supervision – performance of certain functions

106D. (1) The functions conferred on the Bank under—

(a) Parts II, IIIC, VIIA, VIIIA and IX of the Act of 1942,

(b) Parts 3 and 4 of the Central Bank Reform Act 2010, and

(c) Parts 2, 3, 7 and 9 of the Central Bank (Supervision and Enforcement) Act 2013, shall, in addition to being performable for the purposes to which those provisions relate, be performable for the purposes of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.

(2) The Minister, where he or she considers it appropriate to do so and following consultation with the Bank, may make regulations conferring additional functions connected with the functions conferred by or under any enactment on the Bank for the purpose of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.

(3) Regulations under subsection (2) may provide for such additional functions as may be necessary for the more effective implementation of Recommendations made from time to time by FATF to address and mitigate the risks related to money laundering and terrorist financing

Obligation on virtual asset service providers to register with Bank

106E. (1) A person shall not carry on business as a virtual asset service provider, claim to be a virtual asset service provider or represent that the person is a virtual asset service provider unless the person is registered with the Bank under this Chapter.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years or both.

Transitional provision for existing virtual asset service providers

106F. (1) Notwithstanding section 106E, a person carrying on business as a virtual asset service provider immediately before the coming into operation of this Chapter, is taken to be registered to carry on business as a virtual asset service provider until the Bank has

granted or refused an application to register the person, provided that the person applies to the Bank under section 106G for registration, no later than 3 months after that section comes into operation.

(2) Where a person is taken to be registered to carry on business as a virtual asset service provider under subsection (1), the Bank may do either or both of the following:

(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of virtual asset service providers;

(b) direct that person not to carry on business as a virtual asset service provider for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Application for registration

106G. (1) An individual, body corporate or partnership may apply to the Bank to be registered under this section.

(2) An application for registration under this section shall—

(a) be in a form provided or specified by the Bank,

(b) specify the name of—

(i) the applicant,

(ii) in a case where the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be), and (iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(c) specify the address at which the business of a virtual asset service provider is proposed to be carried on,

(d) contain such other information, and be accompanied by such documents, as the Bank may reasonably request including, for the purposes of the Bank assessing whether persons referred to in paragraph (b) can comply with the provisions of Part 4 and are fit and proper persons, such information and documents as the Bank may reasonably require relating to the steps taken by the applicant to ensure that those persons are fit and proper persons and the process of verification carried out by the applicant for the purposes of so ensuring, and

(e) be accompanied by such fees as are payable in accordance with section 32E of the Act of 1942 in respect of the performance by the Bank of its functions under the Act of 2010.

(3) For the purposes of assessing whether a beneficial owner is a fit and proper person, the Bank may request the person by notice in writing to attend before a specified officer or employee of the Bank for interview.

(4) Nothing in this section or any notice given by the Bank under this section requires a person—

(a) to produce to the Bank a document that the person could not have been compelled to produce to a court,

(b) to give to the Bank information that the person could not have been compelled to give to a court, or

(c) to answer a question (either in writing or at interview) that the person could not have been compelled to answer in a court.

(5) The Bank may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Bank to determine the application for registration.

Grant and refusal of applications for registration

106H. (1) The Bank may refuse an application for registration under section 106G only if—

(a) the application does not comply with the requirements of section 106G,

(b) the applicant does not provide any additional documents or information in accordance with a notice given under section 106G,

(c) the Bank has reasonable grounds to be satisfied that information given to the Bank by the applicant in connection with the application is false or misleading in any material particular,

(d) the Bank has reasonable grounds to be satisfied that any of the following persons, is not a fit and proper person:

(i) the applicant;

(ii) in a case in which the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(e) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with the obligations imposed on the applicant under this Chapter, or as a designated person under this Part,

(f) the applicant has failed to satisfy the Bank that the applicant's business risk assessment, policies and procedures are adequate or fit for purpose,

(g) the applicant has failed to satisfy the Bank that it has in place the resources, procedures and arrangements for the provision of the business of a virtual asset service provider and the performance of activities, taking into account the nature, scale and complexity of its business and all the obligations that the provider has to comply with as a designated person under this Act,

(h) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with each of the following:

(i) any conditions that the Bank would have imposed on the registration concerned, if the Bank had granted the application;

(ii) any prescribed requirements referred to in section 106M,

(i) the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Bank,

(j) where the applicant fails to demonstrate, where applicable, that it can manage and mitigate the risks of engaging in activities that involve the use of anonymity-enhancing technologies or mechanisms and other technologies that obfuscate the identity of the sender, recipient, holder or beneficial owner of a virtual asset,

(k) in a case where the applicant is a body corporate, the body corporate is being wound up,

(l) in a case where the applicant is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(m) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State,

(n) in a case where the applicant is a subsidiary of a body corporate has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State, or (o) there are objective and demonstrable grounds for believing that the management body of the applicant may pose a threat to its sound and prudent management and to the adequate consideration of its clients and the integrity of the market.

(2) If the Bank proposes to refuse an application, the Bank shall serve on the applicant a notice in writing—

(a) specifying the grounds on which the Bank proposes to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the service of the notice, make written representations to the Bank showing why the Bank should grant the application.

(3) Not later than 21 days after a notice is served on an applicant under subsection (2), the applicant may make written representations to the Bank showing why the Bank should grant the application.

(4) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with subsection (3).

(5) As soon as practicable after refusing an application, the Bank shall serve a written notice of the refusal on the applicant including a statement setting out the grounds on which the Bank has refused the application.

(6) A decision of the Bank to refuse an application under section 106G is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(7) If the Bank does not refuse the application, it shall grant it and, on granting the application, the Bank shall—

(a) record the appropriate particulars of the applicant in the register of persons permitted by the Bank to carry on business as a virtual asset service provider, and

(b) issue the applicant with a registration that permits the applicant to carry on business as a virtual asset service provider.

Bank may impose conditions when granting an application for registration

106I. (1) In granting an application for registration under this Chapter, the Bank may impose on the holder of the registration any conditions that the Bank considers necessary for the proper and orderly regulation of the holder's business as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) The Bank shall specify any such conditions in the registration granted to the holder or in one or more documents annexed to that registration.

(3) If, under this section, the Bank imposes any conditions on a registration, the Bank shall serve on the holder of the registration, together with the registration, a written notice of the imposition of the conditions that includes a statement setting out the grounds on which the Bank has imposed the conditions.

(4) A decision of the Bank to register a person subject to conditions under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Terms of registration

106J. (1) A registration comes into force on the day on which the registration is granted, or, if a later date is specified in the registration, on that later date, whether or not an appeal against any conditions of registration is made under section 106I.

(2) A registration remains in force, unless sooner revoked under this Chapter from the date on which it comes into force.

Bank may amend registration

106K. (1) The Bank may amend a registration granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Bank considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the registration as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If the Bank proposes to amend a registration under this section, the Bank shall serve on the holder of the registration, a notice in writing informing the holder of the Bank's intention to amend the registration.

(3) The notice shall—

(a) specify the proposed amendment, and

(b) inform the holder of the registration that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not make that amendment.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not amend the registration.

(5) The Bank may amend a registration only after having considered any representations to the Bank made in accordance with subsection (4) showing why the Bank should not amend the registration.

(6) The Bank shall serve written notice of any amendment of a registration on the holder of the registration including a statement setting out the grounds on which the Bank has amended the registration.

(7) A decision of the Bank to amend a registration granted under this Chapter is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) The amendment of a registration under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under this section.

Regulatory disclosure statement

106L. (1) Subject to subsection (2), the holder of a registration shall include a statement (in this section referred to as a 'regulatory disclosure statement') in the prescribed form in all advertisements for its services stating that the holder of the registration is registered and supervised by the Bank for anti-money laundering and countering the financing of terrorism purposes only.

(2) For the purposes of this section, the Bank may prescribe the form of the regulatory disclosure statement including its size and colour and font type and the manner in which the disclosure statement shall be displayed.

(3) In this section, 'advertisement' means any form of commercial communication which is intended to publicise or otherwise promote the holder of a registration in relation to the provision by the holder of virtual asset services.

Offence to fail to comply with conditions or prescribed requirements

106M. (1) The holder of a registration commits an offence if the holder fails to comply with—

(a) any condition of the registration, or

(b) any prescribed requirements.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Bank may prescribe requirements for the purposes of subsection (1)(b) only if the Bank is satisfied that it is necessary to do so for the proper and orderly regulation of the business of virtual asset service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing.

Holder of registration to ensure that beneficial owners are fit and proper persons

106N. (1) The holder of a registration shall take reasonable steps to ascertain that any person who is a beneficial owner of the virtual asset service provider concerned is a fit and proper person.

(2) A person who contravenes subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of registration by Bank on application of holder

106O. The Bank shall revoke a registration on the application of the holder of the registration, but only if satisfied that the holder of the registration has fully complied with each of the following:

(a) any conditions of the registration;

(b) any prescribed requirements referred to in section 106M;

(c) section 106N;

(d) section 106Q;

(e) section 106Y,

and if satisfied that the persons in management positions have complied with their obligations to be fit and proper persons.

Revocation of registration other than on application of holder

106P. (1) The Bank may revoke a registration under this Chapter only if the Bank has reasonable grounds to be satisfied of any of the following:

(a) the holder of the registration has not commenced carrying on business as a virtual asset service provider within 12 months after the date on which the registration was granted;

(b) the holder of the registration has not carried on such a business within the immediately preceding 6 months;

(c) the registration was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the holder of the registration;

(ii) in a case where the holder of the registration is a body corporate, a partnership or an individual carrying on business as a virtual asset service provider, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the business concerned;

(e) the holder of the registration has contravened or is contravening the obligations imposed on virtual asset service providers, as designated persons, under this Part;

(f) the holder of the registration has failed to satisfy the Bank that its business risk assessment, policies and procedures are adequate or fit for purpose;

(g) the virtual asset service provider has contravened or is contravening any of the following:

(i) a condition of the registration;

(ii) a specified requirement referred to in section 106M;

(iii) section 106N;

(iv) section 106Q;

(v) section 106Y;

(h) the holder of the registration is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part;

(i) in a case where the holder of the registration is a body corporate, the body corporate is being wound up;

(j) in a case where the holder of the registration is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(k) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State;

(l) in a case where the holder of the registration is a subsidiary of a body corporate that has been registered to carry on business as a virtual asset service provider

in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State.

(2) If the Bank proposes to revoke a registration under this section, the Bank shall serve on the holder of the registration a notice in writing informing the holder of the Bank's intention to revoke the registration.

(3) The notice shall—

(a) specify the grounds on which the Bank proposes to revoke the registration, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not revoke the registration.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not revoke the registration.

(5) The Bank may revoke the registration only after having considered any representations made by the holder of a registration in accordance with subsection (4).

(6) As soon as practicable after revoking a registration under this section, the Bank shall serve written notice of the revocation on the person who was the holder of a registration including a statement setting out the reasons for revoking the registration.

(7) A decision of the Bank to revoke a registration under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) The revocation of a registration under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under this section.

Direction not to carry out business other than as directed

106Q. (1) If the Bank reasonably believes that there may be grounds for revoking a registration under section 106P, the Bank may serve on the holder of the registration a direction in writing prohibiting the holder from carrying on business as a virtual asset service provider other than in accordance with conditions specified by the Bank in the direction.

(2) The Bank shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) specifying the period during which the direction is to remain in force, and

(c) specifying the conditions with which the holder of the registration is required to comply.

(3) A decision of the Bank to give a direction under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) The Bank may, by notice in writing served on the holder of the registration concerned, amend or revoke a direction given under this section.

(5) Without prejudice to the generality of subsection (3), the Bank may, by notice in writing given to the holder of the registration concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(6) A direction under this section takes effect from the date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under this section.

(7) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under subsection (4), at the end of the extended period, or

(b) on the revocation of the holder's registration under this Chapter, whichever occurs first.

(8) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.

(9) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Bank to publish notice of revocation

106R. As soon as is practicable after revoking a registration under section 106O or 106P, the Bank shall publish in Iris Oifigiúil a notice giving particulars of the revocation. Register of Virtual Asset Service Providers

106S. (1) The Bank shall establish and maintain a register (to be known as 'the Register of Virtual Asset Service Providers' and in this Act referred to as 'the Register') of persons registered under this Chapter to carry on business as a virtual asset service provider containing—

(a) the name and the address of the principal place of business of each person registered to carry on business as a virtual asset service provider,

(b) such other information as may be prescribed.

(2) The Register may be in book form, electronic form or such other form as the Bank may determine and may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(3) The Bank shall publish a register in written, electronic or other form and a member of the public is entitled to obtain a copy of the Register or of an entry in the Register on payment of such reasonable copying charges as may be prescribed (if any) under section 32E of the Act of 1942 for the purposes of this section.

(4) The holder of a registration to which an entry in the Register relates, shall as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Bank of the error, or change in circumstances, as the case may be.

(5) In any legal proceedings, a certificate purporting to be signed by the Bank and stating that a person—

(a) is recorded in the Register as the holder of a registration;

(b) is not recorded in the Register as the holder of a registration;

(c) was recorded in the Register as being, at a specified date or during a specified period, the holder of a registration; or

(d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of a registration, is evidence of the matter referred to in paragraph (a), (b), (c) or (d) (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(6) The Bank may prescribe particulars for the purposes of subsection (1) (b) or section 106T only if satisfied that those particulars reasonably relate to the business of virtual asset service providers or to the regulation of the business of virtual asset service providers under this Chapter.

Restriction on acquisition of beneficial interest in holders of registrations

106T. (1) A proposed acquirer shall not, directly or indirectly, acquire a beneficial interest in the holder of a registration without the prior approval of the Bank in writing of the intended size of the interest.

(2) A notification under subsection (1) shall include sufficient information to enable the Bank to consider the proposed acquisition according to the nature of the proposed acquirer and the proposed acquisition, and in particular shall include information on who the proposed acquirers are, the persons to be responsible for their management (where applicable), how the proposed acquisition is to be financed and the structure of the resulting group.

(3) In assessing a proposed acquisition, the Bank shall—

(a) have regard to the likely influence of the proposed acquirer on the holder of the registration concerned, and

(b) appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:

(i) the reputation of the proposed acquirer;

(ii) the reputation and experience of the individuals who will direct the business of the holder of the registration concerned as a result of the proposed acquisition;

(a) the purported acquisition is of no effect to pass title to any share or any other interest, and

(b) any exercise of powers based on the purported acquisition of the interest concerned is void.

(6) A decision by the Bank to oppose a proposed acquisition is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(7) In this section—

'proposed acquirer' means a person who proposes to acquire or increase a beneficial interest in the holder of a registration and includes a group of persons acting in concert to acquire such an interest;

'proposed acquisition' means the proposed acquisition of a beneficial interest in the holder of a registration.

Powers of Bank in relation to beneficial owners

106U. (1) Where the Bank has reason to believe that a person who is a beneficial owner of the business of the holder of a registration is exercising an influence on the direction of the affairs of the holder of the registration which is, or is likely to be, prejudicial to the compliance by the holder concerned with any obligations under this Act, the Bank shall, subject to subsection

(2) notify the person that it so believes, and direct the person in writing to take specified measures to bring that influence to an end within a specified period. (2) Before issuing a direction to a person under subsection (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) Where the Bank is of the opinion that a direction under subsection (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

(a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the holder of the registration concerned and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the holder of the registration from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;

(b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the holder of the registration concerned;

specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

(a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the holder of the registration concerned and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the holder of the registration from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;

(b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the holder of the registration concerned;

(c) an order requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the holder of the registration concerned within a period specified by the Court;

(d) such other order as the Court considers appropriate.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings before it may be heard otherwise than in public.

(6) In this section 'Court' means the High Court.

Obligation on holder of registration to report certain suspicions to Bank

106V. If at any time the holder of a registration suspects on reasonable grounds that any person who is a beneficial owner of the holder of the registration is not a fit and proper person, it shall notify the suspicion in writing to the Bank together with particulars setting out the basis for the suspicion. Provision of information by Garda Síochána as to whether or not person is fit and proper person 106W.

(1) The Bank may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Bank in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

(a) the holder or proposed holder of a registration;

(b) in a case where the holder or proposed holder of a registration is a body corporate, a partnership or an individual carrying on, or proposing to carry on, business as a virtual asset service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) any person who is a beneficial owner of the business of the holder or proposed holder of the registration concerned.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Bank with information in accordance with a request of the Bank under this section.

Bank's power to make regulations

106X. (1) The Bank may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Chapter, regulations under this Chapter may contain such incidental, supplementary and consequential provisions as appear to the Bank to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made by the Bank under this Chapter shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Holders of registrations to retain certain records

106Y. (1) The holder of a registration shall—

(a) retain at an office or other premises in the State such records as may be specified by the Bank, and

(b) notify the Bank in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by subsection (1) is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the holder of a registration, including the requirements specified in section 55.

(3) The holder of a registration shall retain the records referred to in subsection (1) for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the virtual asset service provider, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The holder of a registration may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed on the holder of a registration under this section, continue to apply to a person who has been the holder of a registration, but has ceased to hold a registration or to carry on business as a virtual asset service provider.

(6) A requirement that the holder of a registration that is a body corporate, retain any record under this section, applies to any body corporate that is a successor to, or a continuation of, the body corporate.

(7) The Bank may prescribe requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(8) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Chapter 9B

Designation of Classes of Express Trust (and Matters Related to Such Trusts) for Certain Purposes

Purpose of Chapter

106Z. (1) The purpose of this Chapter is to make provision for the meaning that certain words or expressions shall have in regulations that are made, on or after the commencement of section 26 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020, under section 3 of the European Communities Act 1972, for the purpose of giving effect to Article 31 of the Fourth Money Laundering Directive.

(2) Nothing in this Chapter applies to the construction of a word or expression used in another Chapter of this Part.

Operation and interpretation (Chapter 9B)

106ZA. (1) Where the relevant regulations specify that, with respect to a particular word or expression, the designated meaning in the Act of 2010 shall apply then the meaning as hereafter provided in this Chapter shall apply with respect to that word or expression.

(2) A reference in this Chapter to a definition being 'designated' with respect to a particular word or expression is a reference to the definition (with respect to the particular word or expression) being designated for the purposes of the relevant regulations.

(3) In this Chapter— 'Act of 1997' means the Taxes Consolidation Act 1997; 'relevant regulations' means the regulations referred to in section 106Z(1).

(4) In this Chapter, a reference to the Fourth Money Laundering Directive is a reference to that Directive as amended by the Fifth Money Laundering Directive.

Power to prescribe certain matters

106ZB. The Minister for Finance may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

Relevant trust – designated meaning

106ZC. (1) The following definition is designated with respect to 'relevant trust': 'relevant trust' means an express trust established by deed or other declaration in writing and any other arrangement or class of arrangements as may be prescribed but does not include an excluded arrangement.

(2) For the purposes of the definition, designated by subsection (1), with respect to 'relevant trust', 'excluded arrangement' means an arrangement of the following kind:

(a) an occupational pension scheme that is an approved scheme pursuant to Chapter 1 of Part 30 of the Act of 1997;

(b) an approved retirement fund within the meaning of Chapter 2 of Part 30 of the Act of 1997;

(c) a profit sharing scheme or employee share ownership trust approved pursuant to Part 17 of the Act of 1997;

(d) a trust for restricted shares within the meaning of section 128D of the Act of 1997;

(e) the Haemophilia HIV Trust which was established by deed dated the 22nd day of November 1989, made between the Minister for Health, of the one part and certain other persons, of the other part;

(f) a unit trust within the meaning of the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (S.I. No. 233 of 2020), the beneficial ownership of which, by virtue of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019), is required to be registered in the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts;

(g) such other arrangement or class of arrangements as may be prescribed**.**

(3) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be an excluded arrangement for the purpose of subsection (2)(g), where he or she is satisfied that such arrangement or class of arrangements is not an express trust or similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters —

(a) the low risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to:

(i) the legal structure of such arrangement or class of arrangements;

(ii) any supervision or regulation of such arrangement or class of arrangements under any enactment,

and

(b) the non-application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements.

(4) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be a relevant trust for the purpose of the definition, designated by subsection (1), with respect to 'relevant trust' where he or she is satisfied that such arrangement or class of arrangements is an express trust or a similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters—

(a) the risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to:

(i) the legal structure of such arrangement or class of arrangements;

(ii) the absence of, or any limitations in, the supervision or regulation of such arrangement or class of arrangements under any enactment,

and

(b) the application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements.

Beneficial owner in relation to relevant trusts – designated meaning

106ZD. (1) Subject to subsections (5) to (7), the following definition is designated with respect to 'beneficial owner' (in relation to a relevant trust):

'beneficial owner', in relation to a relevant trust, means any of the following:

(a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the relevant trust property;

(b) in the case of a relevant trust other than one that is set up or operates entirely for the benefit of individuals referred to in paragraph (a), the class of individuals in whose interest the trust is set up or operates;

(c) any individual who has control over the relevant trust;

(d) the settlor;

(e) the trustee;

(f) the protector.

(2) For the purposes of the definition, designated by subsection (1), with respect to 'beneficial owner' (in relation to a relevant trust), subsections (3) to (7) shall apply; the relevant regulations may, for convenience of reference, set out any of the provisions of this section (whether those that precede or follow this subsection) notwithstanding the application (provided for by section 106ZA(1)) of those provisions to those regulations.

(3) Except as provided by subsection (5), in this section 'control', in relation to a relevant trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

(a) dispose of, advance, lend, invest, pay or apply the trust property;

(b) vary the relevant trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of any power referred to in paragraphs (a) to (d).

(4) For the purposes of the definition of 'control' in subsection (3), an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

(5) Notwithstanding subsection (1), 'beneficial owner', in relation to a relevant trust established for the purpose of holding any assets of an approved body of persons established for, and existing for, the sole purpose of promoting amateur games or amateur sports within the meaning of section 235 of the Act of 1997, means the trustees, the committee or other governing body of the club or association, and any other individual who has control over the relevant trust.

(6) Notwithstanding subsection (1), 'beneficial owner', in relation to a relevant trust that is a charitable trust within the meaning of section 2 of the Charities Act 2009, means the trustees and the committee or other governing body of the charitable trust, and any other individual who has control over the charitable trust.

(7) Notwithstanding subsection (1), 'beneficial owner', in relation to an estate—

(a) of a deceased person in the course of administration, and

(b) in relation to which there is provision for a relevant trust for one or more beneficiaries,

means the executor or administrator of the estate, and no other person, for the period in which the estate is being administered.

CHAPTER 10

Other

Guidelines.

107. [Repealed]

Defence.

107A. It shall be a defence in proceedings for an offence under this Part for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence.

Minister may delegate certain functions under this Part.

108. (1) The Minister may, by instrument in writing, delegate any of the Minister's functions under *Chapter 8* or *9*, or under *section 109*, to a named officer or an officer of a particular class or description.

(2) A delegation under this section may be made subject to such conditions or limitations as to the performance of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) The Minister may, by instrument in writing, revoke a delegation under this section.

(4) A function delegated under this section may, while the delegation remains unrevoked, be performed by the delegate in accordance with the terms of the delegation.

(5) The Minister may continue to perform any functions delegated under this section.

(6) Nothing in this section shall be construed as affecting the application to this Act of the general law concerning the imputing of acts of an officer of a Minister of the Government to the Minister of the Government.

(7) In this section, "officer" means an officer of the Minister who is an established civil servant for the purposes of the Civil Service Regulation Act 1956.

Obligation for certain designated persons to register with Central Bank of Ireland

108A. (1) Subject to *subsection (2)*, a person who is a designated person pursuant to *paragraph (a)* of the definition of 'financial institution' in *section 24(1)* and *section 25(1)(b)* shall register with the Bank.

(2) *Subsection (1)* shall not apply to a designated person that is authorised or licensed to carry on its activities by, or is registered with, the Bank under—

(a) an Act of the Oireachtas (other than this Act),

(b) a statute that was in force in Saorstát Eireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under an Act of the Oireachtas or a statute referred to in *paragraph (b)*.

(3) A designated person who is required to register under this section commits an offence if the person fails to do so and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years (or both).

(4) The Bank shall establish and maintain a register of persons that register under this section (referred to in this section as 'the Register').

(5) The following particulars shall be entered into the Register in respect of each designated person registered:

(a) the name of the designated person;

(b) the address of the head office and registered office of the designated person;

(c) the activities that the designated person carries out that are contained within the meaning of paragraph (a) of the definition of financial institution in section 24(1).

(6) [deleted]

(7) The Bank may specify a procedure for registering under this section.

(8) The Register may be in book form, electronic form or such other form as the Bank may determine. The Register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(9) The particulars entered in the Register pursuant to this section relating to a person who is a designated person pursuant to section 25(1)(b) and paragraph (a) of the definition of financial institution in section 24(1) maybe removed from the Register where that person ceases to be a designated person pursuant to those provisions or is authorised or licensed to carry on its activities by, or is registered with, the Bank under an enactment specified in paragraph (a), (b) or (c) of subsection (2).

(10) [deleted]

(11) In this section 'Bank' means the Central Bank of Ireland.

Obligation for cheque cashing offices to register with Central Bank of Ireland

108B. (1) A person shall not carry on business as a cheque cashing office unless the person is registered under this section.

(2) A person who contravenes *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

(3) Save to the extent that such procedures are provided for under this section, the Bank may specify procedures for registering under this section.

(4) An individual, body corporate or partnership may apply to the Bank to be registered under this section.

(5) An application for registration under this section shall—

(a) be in a form provided or specified by the Bank,

(b) specify the name of—

(i) the applicant,

(ii) in a case where the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be), and

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(c) specify the address of the registered office of the applicant,

(d) specify the address at which the business of a cheque cashing office is proposed to be carried on, and

(e) contain such other information, and be accompanied by such documents, as the Bank may reasonably request including, for the purposes of the Bank

assessing whether persons referred to in paragraph (b) are fit and proper persons, such information and documents as the Bank may reasonably require relating to the steps taken by the applicant to ensure that those persons are fit and proper persons and the process of verification carried out by the applicant for the purposes of so ensuring.

(6) The Bank may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Bank to determine the application for registration under this section.

(7) Subject to section 108D, the Bank may refuse an application for registration under this section only if—

(a) the application does not comply with the requirements of subsection (5),

(b) the applicant does not provide any additional documents or information in accordance with a notice given under subsection (6),

(c) the Bank has reasonable grounds to be satisfied that information given to the Bank by the applicant in connection with the application is false or misleading in any material particular,

(d) the Bank has reasonable grounds to be satisfied that any of the following persons is not a fit and proper person:

(i) the applicant;

(ii) in a case in which the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(e) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with the obligations imposed on it under this Chapter,

(f) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with each of the following:

(i) any conditions to which the registration would have been subject;

(ii) a direction of the Bank under *section 108G(1)*,

(g) the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated under this Chapter to the satisfaction of the Bank,

(h) in a case where the applicant is a body corporate, the body corporate is being wound up,

(i) in a case where the applicant is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the person to carry on business as a cheque cashing office in the other Member State, or

(k) in a case where the applicant is a subsidiary of a body corporate that is authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the body corporate to carry on business as a cheque cashing office in the other Member State.

(8) If the Bank does not refuse an application for registration, the Bank shall register the applicant under this section.

(9) The Bank shall establish and maintain a register of persons registered under this section (referred to in this section as 'the Register').

(10) The following particulars shall be entered into the Register in respect of each person registered under this section (in this section and sections 108C to 108I referred to as "the person registered"):

(a) the name of the person registered;

(b) the address of the registered office of the person registered;

(c) the address at which the business of a cheque cashing office is carried on.

(11) Subject to subsection (12), the Register may be in book form, electronic form or such other form as the Bank may determine.

(12) The Register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(13) In this section and sections 108C to 108I—

'Bank' means the Central Bank of Ireland;

'principal officer' has the same meaning as it has in *Chapter 9*.

Cancellation of registration and removal from register

108C. (1) Subject to *section 108D*, the Bank may cancel the registration of a person under this section only if the Bank has reasonable grounds to be satisfied of any of the following:

(a) the person registered has not commenced to carry on business as a cheque cashing office within 12 months after the date on which the person was registered;

(b) the person registered has not carried on such a business within the 6 months immediately preceding the cancellation;

(c) registration was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the person registered;

(ii) in a case where the person registered is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the person registered;

(e) the person registered has contravened or is contravening the obligations imposed on it under this Chapter;

(f) the person registered has contravened or is contravening any of the following:

(i) a condition to which the registration is subject;

(ii) a direction of the Bank under *section 108G(1)*;

(g) the person registered is so structured, or the business of that person is so organised, that the person is not capable of being regulated under this Chapter;

(h) in a case where the person registered is a body corporate, the body corporate is being wound up;

(i) in a case where the person registered is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the person to carry on business as a cheque cashing office in the other Member State;

(k) in a case where the person registered is a subsidiary of a body corporate that is authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the body corporate to carry on business as a cheque cashing office in the other Member State.

(2) The particulars relating to a person entered in the Register pursuant to this section shall be removed from the Register where the Bank cancels the registration of that person in accordance with this section.

Notice of refusal or cancellation of registration and right to make representations

108D. (1) If the Bank proposes to—

(a) refuse to register a person under *section 108B*, or

(b) cancel a registration of a person under *section 108C*,

the Bank shall serve on the person a notice in writing informing the person of the Bank's intention to refuse to register the person or cancel the registration, as the case may be.

(2) A notice served under *subsection (1)* shall—

(a) specify the grounds on which the Bank proposes to refuse or cancel the registration, and

(b) inform the person that the person may, within 21 days after the serving of the notice, make written representations to the Bank showing why the Bank should register the person, or not cancel the registration, as the case may be.

(3) Not later than 21 days after a notice is served on a person under *subsection (1)*, the person may make written representations to the Bank showing why the Bank should register the person, or not cancel the registration, as the case may be.

(4) The Bank may—

(a) refuse to register a person under *section 108B*, or

(b) cancel a registration of a person under *section 108C*,

as the case may be, only after having considered any representations made by the person in accordance with *subsection (3)*.

(5) As soon as practicable after refusing to register a person under section 108B or cancelling a registration under section 108C, the Bank shall serve a written notice of the refusal or cancellation, as the case may be, on the person concerned, including a statement setting out the reasons for the refusal or cancellation, as the case may be.

(6) A decision of the Bank to refuse to register a person under section 108B or to cancel a registration under section 108C is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Registration subject to conditions

108E. (1) The Bank may decide to register a person under *section 108B* subject to such conditions as the Bank considers necessary for the proper and orderly regulation of the registered person's business as a cheque cashing office and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If, under this section, the Bank decides to register a person subject to conditions, the Bank shall serve on the person registered a written notice of the conditions that includes a statement setting out the reasons for the decision.

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) A person registered commits an offence if he or she fails to comply with any condition to which the registration is subject and is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(4) A decision of the Bank to register a person subject to conditions under *subsection (1)* is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Person registered to ensure that principal officers and beneficial owners are fit and proper persons

108F. A person registered shall take reasonable steps to ensure that the following persons are fit and proper persons:

(a) in a case where the person registered is a body corporate, a partnership or an individual carrying on business as a cheque cashing office as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(b) any person who is a beneficial owner of the business concerned.

Direction not to carry out business other than as directed

108G. (1) If the Bank reasonably believes that there may be grounds for cancelling a registration under *section 108C*, the Bank may serve on the person registered a direction in writing prohibiting that person from carrying on business as a cheque cashing office other than in accordance with conditions specified by the Bank in the direction.

(2) The Bank shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) specifying the period during which the direction remains in force, and

(c) specifying the conditions with which the person registered is required to comply.

(3) The Bank may, by notice in writing served on the person registered concerned, amend or revoke a direction given under subsection (1).

(4) Without prejudice to the generality of subsection (3), the Bank may, by notice in writing given to the person registered concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(5) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or

(b) on the cancellation of the registration of a person under *section 108C*, whichever occurs first.

(6) A person who contravenes a direction given under subsection (1), or fails to comply with a condition contained in the direction, commits an offence.

(7) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

(8) A decision of the Bank to give a direction under subsection (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Provision of information by Garda Síochána as to whether or not person is fit and proper person

108H. (1) The Bank may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Bank in determining, for the purposes of *sections 108B* to *108I*, whether or not any of the following persons is a fit and proper person:

(a) the person who proposes to carry on or carries on, as the case may be, the business of a cheque cashing office;

(b) in a case in which the person referred to in *paragraph (a)* is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) in a case in which there is a beneficial owner of the person referred to in *paragraph (a)*, the beneficial owner.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Bank with information in accordance with a request of the Bank under *subsection (1)*.

Persons registered to retain certain records

108I. (1) A person registered shall—

(a) retain at an office or other premises in the State such records as may be specified by the Bank, and

(b) notify the Bank in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by *subsection (1)* is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the person registered.

(3) The person registered shall retain the records referred to in *subsection (1)* for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the person registered, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The person registered may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed by subsections (1) and (3) on a person registered continue to apply to a person who has been registered under section 108B, but has ceased to be so registered or to carry on business as a cheque cashing office.

(6) Where the person registered is a body corporate, the requirement to retain any record under this section applies to any body corporate that is a successor to, or a continuation of, the person registered.

(7) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

Registration of persons directing private members' clubs.

109.— (1) A person who is a designated person pursuant to *section 25(1)(h)* shall register with the Minister in accordance with such procedures as may be prescribed or otherwise imposed by the Minister.

(2) A person who is required to register under this section commits an offence if the person fails to do so and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years (or both).

(3) The following particulars shall be entered into a register established and maintained by the Minister for the purposes of this section:

(a) the name of each designated person who registers under this section;

(b) the name and address of the premises of the private members' club in relation to which the person is a designated person;

(c) any prescribed information as may be reasonably required by the Minister for the purposes of this Act.

(4) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(5) The Minister shall maintain the register at an office of the Department.

(6) The Minister may prescribe particulars for the purposes of subsection (3)(c) only if satisfied that those particulars reasonably relate to the business or regulation of persons directing members' clubs as designated persons.

(7) The Minister may publish the register in written, electronic or other form and a member of the public is entitled to obtain a copy of the register or of an entry in the register on payment of such reasonable copying charges as may be prescribed (if any).

(8) The particulars entered in the register pursuant to this section relating to a person who is a designated person pursuant to section 25(1)(h) may be removed from the register where that person ceases to be a designated person pursuant to that provision.

Managers and beneficial owners of private members' clubs to hold certificates of fitness

109A. (1) An individual who—

(a) effectively directs a private members' club at which gambling activities are carried on, or

(b) is a beneficial owner of a private members' club at which gambling activities are carried on,

shall hold a certificate of fitness and probity (referred to in this section and *sections 109B*, *109C*, *109D* and *109E* as a 'certificate of fitness') granted by a Superintendent of the Garda Síochána or, as the case may be, by the Minister.

(2) An individual who fails to comply with *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or both.

(3) Where on the date that is 6 months from the coming into force of this section an individual has applied for a certificate of fitness, this section shall not apply to that individual until such time as the application, and any appeal in relation to the application, has been finally determined.

Application for certificate of fitness

109B. (1) Upon compliance with *subsection (2)*, an individual shall make an application for a certificate of fitness—

(a) where the individual ordinarily resides in the State—

(i) to the Superintendent of the Garda Síochána for the district in which he or she ordinarily resides, or

(ii) to the Superintendent of the Garda Síochána for the district in which the private members' club concerned is located or is proposed to be located,

or

(b) where the individual ordinarily resides outside the State, to the Minister.

(2) An individual intending to apply for a certificate of fitness under this section shall, not later than 14 days and not earlier than one month before making the application, publish in two daily newspapers circulating in the State, a notice in such form as may be prescribed, of his or her intention to make the application.

(3) An application for a certificate of fitness under this section shall be in such form as may be prescribed.

(4) The applicant for a certificate of fitness shall provide the Superintendent of the Garda Síochána, or as the case may be, the Minister to whom the application concerned is made with all such information as he or she may reasonably require for the purposes of determining whether a relevant consideration referred to in *section 109C* exists.

(5) A Superintendent of the Garda Síochána, or as the case may be, the Minister to whom an application for a certificate of fitness is duly made under this section shall, not later than 56 days after receiving the application, either—

(a) grant the application and issue a certificate of fitness to the applicant, or

(b) refuse the application.

(6) A certificate of fitness under this section shall be in such form as may be prescribed.

(7) An individual who, in applying for a certificate of fitness under this section, makes a statement or provides information to a Superintendent of the Garda Síochána or, as the case may be, to the Minister, that he or she knows, or ought reasonably to know, is false or misleading in a material respect commits an offence and is liable—

(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 2 years, or both.

(8) A Superintendent of the Garda Síochána shall, as soon as may be after making a decision in relation to an application for a certificate of fitness, notify the Minister in writing of that decision.

Grounds of refusal to grant certificate of fitness

109C. (1) A Superintendent of the Garda Síochána or, as the case may be, the Minister shall not refuse an application for a certificate of fitness made in accordance with *section 109B* unless—

(a) a relevant consideration exists, or

(b) he or she is not satisfied that the applicant has provided such information as he or she reasonably requires for the purposes of determining whether a relevant consideration exists.

(2) For the purposes of *subsection (1)*, a relevant consideration exists if—

(a) the applicant stands convicted of an offence under—

(i) an enactment relating to excise duty on betting,

(ii) the Gaming and Lotteries Acts 1956 to 2013,

(iii) section 1078 of the Taxes Consolidation Act 1997,

(iv) the Criminal Justice (Theft and Fraud Offences) Act 2001, or

(v) this Act,

(b) the applicant stands convicted of an offence under the law of a place (other than the State)—

(i) consisting of an act or omission that, if committed in the State, would constitute an offence referred to in *paragraph (a)*, or

(ii) relating to the conduct of gambling,

or

(c) the applicant was previously refused a certificate of fitness and either—

(i) the applicant did not appeal the refusal, or

(ii) on appeal to the District Court, the refusal was affirmed.

(3) In this section, 'enactment' means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Eireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution,

(c) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in *paragraph (b)*.

Duration of certificate of fitness

109D. (1) A certificate of fitness shall remain in force until the expiration of 3 years after the date on which the certificate was issued.

(2) If, before the expiration of a certificate of fitness, the individual to whom it was issued makes an application for a new certificate of fitness, the first-mentioned certificate of fitness shall remain in force—

(a) until the issue of the new certificate of fitness,

(b) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or by the Minister and the individual does not make a request referred to in *section 109E(1)*, until the expiration of the period within which the request may be made,

(c) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or by the Minister and the individual makes a request referred to in section *109E(1)* but does not bring an appeal under that section, until the expiration of the period specified in *subsection (3)* of that section, or

(d) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or the Minister and the individual appeals the refusal in accordance with *section 109E*, until—

(i) the District Court affirms the refusal in accordance with that section, or

(ii) the issue of a new certificate of fitness pursuant to a direction of the District Court under *subsection (4)(b)* of that section

Appeal where application for certificate of fitness is refused

109E. (1) If a Superintendent of the Garda Síochána, or as the case may be, the Minister refuses an application for a certificate of fitness, he or she shall, on the request in writing of the applicant made not later than 14 days after the refusal, give the applicant a statement in writing of the reasons for the refusal.

(2) A person to whom a certificate of fitness has been refused may, not later than 14 days after receiving a statement in writing under *subsection (1)*, appeal the refusal to the District Court.

(3) A person who brings an appeal under this section shall, in such manner and within such period as may be prescribed give notice of the appeal to the Superintendent of the Garda Síochána concerned or, as the case may be, the Minister.

(4) The District Court may, upon an appeal under this section, either—

(a) affirm the refusal, or

(b) grant the appeal and direct the Superintendent of the Garda Síochána concerned, or as the case may be, the Minister to issue a certificate of fitness to the appellant.

(5) The Superintendent of the Garda Síochána concerned or, as the case may be, the Minister shall comply with a direction of the District Court under this section not later than 3 days after the giving of the direction.

(6) The respondent in an appeal under this section shall not be entitled to advance as a reason for opposing an appeal under this section a reason not specified in a statement of the reasons for a refusal given to the appellant pursuant to a request under subsection (1).

(7) If the District Court affirms a refusal under subsection (4)(a), it may also make an order requiring the appellant to pay the costs incurred by the respondent in defending the appeal and may determine the amount of such costs.

(8) There shall be no appeal to the Circuit Court from a decision of the District Court under this section.

(9) An appeal under this section by a person ordinarily resident in the State shall be brought before a judge of the District Court assigned to the District Court district—

(a) in which he or she ordinarily resides, or

(b) in which the private members' club concerned is located or is proposed to be located.

(10) An appeal under this section by a person not ordinarily resident in the State shall be brought before a judge of the District Court assigned to the Dublin Metropolitan District.

PART 5

MISCELLANEOUS

Service of documents.

110.— (1) A notice or other document that is required or permitted, under this Act, to be served on or given to a person shall be addressed to the person by name and may be served or given to the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or carries on business;

(c) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business;

(d) if an address for service has been furnished, by leaving it at, or sending it by post in a pre-paid registered letter to, that address;

(e) in the case of a direction to an individual or body (whether incorporated or unincorporated) under *Part 3* not to carry out any specified service or transaction at a branch or place of business of the body or individual, by leaving it at, or by sending it by post in a pre-paid registered letter to, the address of the branch or place of business (as the case may be);

(f) if the person giving notice considers that notice should be given immediately and a fax machine is located at an address referred to in *paragraph (b)*, *(c)*, *(d)* or *(e)*, by sending it by fax to that machine, but only if the sender's fax machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section—

(a) a company registered under the Companies Acts is taken to be ordinarily resident at its registered office, and

(b) any body corporate other than a company registered under the Companies Acts or any unincorporated body is taken to be ordinarily resident at its principal office or place of business in the State.

(3) Nothing in *subsection (1)(e)* prevents the serving or giving of a direction or other document for the purposes of *Part 3* under any other provision of this section.

(4) This section is without prejudice to any mode of service or of giving a notice or any other document provided for under any other enactment or rule of law.

(5) This section does not apply in relation to the service of a notice on the Minister referred to in *section 100 (2)*.

Offences — directors and others of bodies corporate and unincorporated bodies.

111. Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

(a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or

(b) a member of the committee of management or other controlling authority of the body, or a person purporting to act in that capacity,

that person is taken to have also committed the offence and may be proceeded against and punished accordingly.

Disclosure of information in good faith.

112. (1) This section applies to the disclosure in good faith, to a member of the Garda Síochána or to any person who is concerned in the investigation or prosecution of an offence of money laundering or terrorist financing, of—

(a) a suspicion that any property has been obtained in connection with any such offence, or derives from property so obtained, or

(b) any matter on which such a suspicion is based.

(2) A disclosure to which this section applies shall not be treated, for any purpose, as a breach of any restriction on the disclosure of information imposed by any other enactment or rule of law.

Amendment of Bail Act 1997.

113. The Schedule to the Bail Act 1997 is amended by inserting the following paragraph after paragraph 34 (inserted by section 48 of the Criminal Justice (Miscellaneous Provisions) Act 2009):

"*Money Laundering.*

35. Any offence under Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.".

Amendment of Central Bank Act 1942.

114. (1) In this section, "Act of 1942" means the Central Bank Act 1942.

(2) Section 33AK(5) (inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Act of 1942 is amended by deleting paragraph (*n*).

(3) The Act of 1942 is amended by inserting the following after section 33AN (inserted by section 10 of the Central Bank and Financial Services Authority of Ireland Act 2004):

"Application of Part to credit unions.

33ANA.— (1) This Part applies in relation to—

(a) the commission or suspected commission by a credit union of a contravention of—

(i) a provision of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010,

(ii) any direction given to the credit union under a provision of Part 4 of that Act,

(iii) any condition or requirement imposed on the credit union under a provision of Part 4 of that Act or under any direction given to the credit union under a provision of that Part, or

(iv) any obligation imposed on the credit union by this Part or imposed by the Regulatory Authority pursuant to a power exercised under this Part,

and

(b) participation, by a person concerned in the management of a credit union, in the commission by the credit union of such a contravention.

(2) For those purposes—

(a) a reference in this Part to a regulated financial service provider includes a reference to a credit union,

(b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a credit union, of a provision, direction, condition, requirement or obligation referred to in subsection (1), and

(c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a credit union.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) This section has effect notwithstanding anything to the contrary in section 184 of the Credit Union Act 1997.".

(4) Schedule 2 (substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) to the Act of 1942 is amended in Part 1 by inserting the following at the end of the Part:

No. __ of 2010	*Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*	*Part 4*

Prescribed amounts under section 33AQ of Central Bank Act 1942 in respect of certain contraventions

114A. (1) In this section 'Act of 1942' means the Central Bank Act 1942 and 'designated person' means a designated person within the meaning of Part 4.

(2) Notwithstanding subsection (4) of section 33AQ of the Act of 1942, in the case of a contravention of *Chapter 3*, *4* or *6* of *Part 4*, or *section 30B*, *57*, *57A*, *58* or *59*, by a designated person, the prescribed amount for the purpose of subsection (3)(c) of section 33AQ is—

(a) if the designated person is a body corporate or an unincorporated body, the greatest of—

(i) €10,000,000,

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined), and

(iii) an amount equal to 10 per cent of the turnover of the body for its last complete financial year before the finding is made,

(b) if the designated person is a natural person—

(i) where the designated person is not a credit institution or financial institution, the greater of—

(i) €1,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined),

(ii) where the designated person is a credit institution or financial institution, the greater of—

(i) €5,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined).

(3) Notwithstanding subsection (6) of section 33AQ of the Act of 1942, in the case of a contravention of *Chapter 3*, *4* or *6* of *Part 4*, or *section 30B*, *57*, *57A*, *58* or *59*, by a designated person, the prescribed amount for the purpose of subsection (5)(b) of section 33AQ is—

(a) where the designated person is not a credit institution or financial institution, the greater of—

(i) €1,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined),

(b) where the designated person is a credit institution or financial institution, the greater of—

(i) €5,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined).

(4) For the purposes of *subsection (2)(a)(iii)*, 'turnover of the body' means total annual turnover of the designated person according to the latest available accounts approved by the management body of the designated person or, where the designated person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU[12], the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Amendment of Courts (Supplemental Provisions) Act 1961.

115. Section 32A(1) of the Courts (Supplemental Provisions) Act 1961 (inserted by section 180 of the Criminal Justice Act 2006) is amended as follows:

(a) in paragraph (*d*) (inserted by section 18 of the Criminal Justice (Surveillance) Act 2009) by substituting "Criminal Justice (Surveillance) Act 2009;" for "Criminal Justice (Surveillance) Act 2009.";

(b) by inserting the following paragraph after paragraph (*d*):

"(e) any of the following powers under Part 3 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010:

(i) the power to order a person not to carry out any service or transaction;

(ii) the power to revoke an order referred to in subparagraph (i);

(iii) the power to make an order in relation to property if considered essential to do so for the purpose of enabling—

(I) the person who applies for the order to discharge the reasonable living and other necessary expenses incurred or to be incurred in respect of the person or the person's dependants, or

(II) the person who applies for the order to carry on a business, trade, profession or other occupation to which any of the property relates.".

Consequential amendment of Central Bank Act 1997.

116. Section 28 (substituted by section 27 of the Central Bank and Financial Services Authority of Ireland Act 2004) of the Central Bank Act 1997 is amended, in the definitions of "bureau de change business" and "money transmission service", by substituting the following for paragraphs (*a*) and (*b*) of those definitions:

"(*a*) by a person or body that is required to be licensed, registered or otherwise authorised by the Bank under a designated enactment (other than under this Part) or designated statutory instrument, or".

Consequential amendment of Criminal Justice Act 1994.

117. (1) In this section, "Act of 1994" means the Criminal Justice Act 1994.

(2) Section 3(1) of the Act of 1994 is amended in the definition of "drug trafficking" by substituting the following for paragraph (*d*):

"(*d*) engaging in any conduct (whether or not in the State) in relation to property obtained, whether directly or indirectly, from anything done in relation to a controlled drug, being conduct that—

(i) is an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* ("*Part 2* of the *Act of 2010*") or would have been an offence under that Part if the Part had been in operation at the time when the conduct was engaged in, or

(ii) in the case of conduct in a place outside of the State, other than conduct referred to in subparagraph (i)—

(I) would be an offence under *Part 2* of the *Act of 2010* if done in corresponding circumstances in the State, or

(II) would have been an offence under that Part if done in corresponding circumstances in the State and if the Part had been in operation at the time when the conduct was engaged in, or".

(3) Section 3(1) of the Act of 1994 is amended in the definition of "drug trafficking offence" by substituting the following for paragraph (*e*):

"section 31 of the Criminal Justice Act 1994, as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001".

Consequential amendment of Criminal Justice (Theft and Fraud Offences) Act 2001.

119. Section 40(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 is amended by substituting the following for the definition of "money laundering":

"'money laundering' means an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*;".

Consequential amendment of Investor Compensation Act 1998.

120. (1) In this section, "Act of 1998" means the Investor Compensation Act 1998.

(2) Section 30(1) of the Act of 1998 is amended in the definition of "net loss" by substituting the following for subparagraph (iii):

"(iii) money or investment instruments arising out of transactions in respect of which an offence has been committed under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (" Act of 2010 "),

(iv) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of Part IV of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2010*,

(v) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of section 57 or 58 of the Criminal Justice Act 1994 prior to the repeal of that provision by the Act of 2010, or

(vi) money or investment instruments arising out of transactions in respect of which there has been a criminal conviction, at any time, for money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing 12.".

(3) Section 35 of the Act of 1998 is amended by substituting the following for subsection (3):

"(3) Notwithstanding the time limits provided for in subsections (1) and (2), the competent authority may direct the Company or a compensation scheme approved under section 25, as appropriate, to suspend any payment to an eligible investor, where the investor has been charged with any of the following offences, pending the judgment of a court in respect of the charge:

(a) an offence under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (" Act of 2010");

(b) an offence committed, prior to the repeal by the Act of 2010 of any of the following provisions of the Criminal Justice Act 1994, under that provision:

(i) a provision of Part IV;

(ii) section 57;

(iii) section 58;

(c) an offence otherwise arising out of, or relating to, money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.".

Consequential amendment of Taxes Consolidation Act 1997.

121. (1) In this section, "Act of 1997" means the Taxes Consolidation Act 1997.

(2) Section 898F (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

(*a*) in subsection (3) by substituting "which is acceptable for the purposes of *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "it acquires by virtue of section 32 of the Criminal Justice Act 1994";

(*b*) in subsection (4) by substituting "which is acceptable for the purposes of *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "it acquires by virtue of section 32 of the Criminal Justice Act 1994";

(*c*) in subsection (5)(*a*) (substituted by section 124(1)(*a*) of the Finance Act 2006) by inserting "(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)" after "in accordance with this section";

(*d*) by inserting the following paragraph after subsection (6)(*a*):

"(*aa*) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (*a*), to continue to treat that individual as so identified and so resident, shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.";

(*e*) in subsection (6)(*b*) by inserting "or (*aa*)" after "paragraph (*a*)";

(*f*) in subsection (7) by inserting "(or as established, before the relevant commencement date, in accordance with this section as in force before that date)" after "this section";

(*g*) by inserting the following subsection after subsection (7):

"(8) In this section, 'relevant commencement date' means the date on which *section 121(2)* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* comes into operation.".

(3) Section 898G (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

(*a*) in subsection (2) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*b*) in subsection (4)(*b*) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*c*) in subsection (5)(*b*)(iii) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*d*) in subsection (6)(*a*) (substituted by section 124(1)(*b*) of the Finance Act 2006) by inserting "(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)" after "in accordance with this section";

(*e*) by inserting the following paragraph after subsection (8)(*a*):

"(*aa*) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (*a*), to continue to treat that individual as so identified and so resident,

shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.";

(f) in subsection (8)(*b*) by inserting "or (*aa*)" after "paragraph (*a*)";

(*g*) in subsection (9) by inserting "(or as established, before the relevant commencement date, in accordance with this section as in force before that date)" after "this section";

(*h*) by inserting the following subsection after subsection (9):

"(10) In this section, ' relevant commencement date' means the date on which comes into operation.".

Consequential amendment of Taxi Regulation Act 2003.

122. Section 36(1)(*f*) of the Taxi Regulation Act 2003 is amended by substituting "*Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "Part IV of the Criminal Justice Act 1994".

SCHEDULE 1

REVOCATIONS OF STATUTORY INSTRUMENTS

Title of Instrument (1)	Number and Year (2)	Extent of Revocation (3)
Criminal Justice Act 1994 (Section 32(10)(*a*)) Regulations 1995	S.I. No. 104 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*b*)) Regulations 1995	S.I. No. 105 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*d*)) Regulations 1995	S.I. No. 106 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*b*)) (No. 2) Regulations 1995	S.I. No. 324 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*a*)) Regulations 2003	S.I. No. 216 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) Regulations 2003	S.I. No. 242 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Amendment) Regulations 2003	S.I. No. 416 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2003	S.I. No. 618 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed Activities) Regulations 2004	S.I. No. 3 of 2004	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2004	S.I. No. 569 of 2004	The whole Regulations.

SCHEDULE 2

ANNEX I TO DIRECTIVE 2013/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 JUNE 2013[13] ON ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS AND THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS, AMENDING DIRECTIVE 2002/87/EC AND REPEALING DIRECTIVES 2006/48/EC AND 2006/49/EC

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.

2. Lending including *inter alia*: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007[14] on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

   (a) money market instruments (cheques, bills, certificates of deposit, etc.);

   (b) foreign exchange;

   (c) financial futures and options;

   (d) exchange and interest-rate instruments;

   (e) transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex Ito Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, when

referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013.

SCHEDULE 3

NON-EXHAUSTIVE LIST OF FACTORS SUGGESTING POTENTIALLY LOWER RISK

(1) Customer risk factors:

(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;

(b) public administrations or enterprises;

(c) customers that are resident in geographical areas of lower risk as set out in *subparagraph (3)*.

(2) Product, service, transaction or delivery channel risk factors:

(a) life assurance policies for which the premium is low;

(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;

(e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money).

(3) Geographical risk factors - registration, establishment, residence in:

(a) Member States;

(b) third countries having effective anti-money laundering (AML) or combating financing of terrorism (CFT) systems;

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

(d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised Financial Action Task Force (FATF) recommendations and effectively implement these requirements.

SCHEDULE 4

NON-EXHAUSTIVE LIST OF FACTORS SUGGESTING POTENTIALLY HIGHER RISK

(1) Customer risk factors:

(a) the business relationship is conducted in unusual circumstances;

(b) customers that are resident in geographical areas of higher risk as set out in *subparagraph (3)*;

(c) non-resident customers;

(d) legal persons or arrangements that are personal asset-holding vehicles;

(e) companies that have nominee shareholders or shares in bearer form;

(f) businesses that are cash intensive;

(g) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;

(h) the customer is a third country national who applies for residence rights or citizenship in the State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the State;

(2) Product, service, transaction or delivery channel risk factors:

(a) private banking;

(b) products or transactions that might favour anonymity;

(c) non face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;

(d) payment received from unknown or unassociated third parties;

(e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;

(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.

(3) Geographical risk factors:

(a) countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;

(b) countries identified by credible sources as having significant levels of corruption or other criminal activity;

(c) countries subject to sanctions, embargos or similar measures issued by organisations such as, for example, the European Union or the United Nations;

(d) countries (or geographical areas) providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

Matheson

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010 CONSOLIDATION

Marked Up Version

Number 6 *of* 2010

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010

Updated to 18 March 2021

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

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SCHEDULE 2

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LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION SCHEDULE 3

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SCHEDULE 4

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ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Central Bank Act 1942	1942, No. 22
Central Bank Act 1997	1997, No. 8
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Central Bank and Financial Services Authority of Ireland Act 2004	2004, No. 21
Civil Service Regulation Act 1956	1956, No. 46
Companies Acts	
Companies (Auditing and Accounting) Act 2003	2003, No. 44
Courts (Supplemental Provisions) Act 1961	1961, No. 39
Credit Union Act 1997	1997, No. 15
Criminal Justice Act 1994	1994, No. 15
Criminal Justice Act 2006	2006, No. 26
Criminal Justice (Mutual Assistance) Act 2008	2008, No. 7
Criminal Justice (Miscellaneous Provisions) Act 2009	2009, No. 28
Criminal Justice (Surveillance) Act 2009	2009, No. 19
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50

Criminal Law Act 1997	1997, No. 14
Data Protection Acts 1988 and 2003	
European Arrest Warrant Act 2003	2003, No. 45
Extradition Act 1965	1965, No. 17
Finance Act 2004	2004, No. 8
Finance Act 2006	2006, No. 6
Freedom of Information Act 1997	1997, No. 13
Investment Intermediaries Act 1995	1995, No. 11
Investor Compensation Act 1998	1998, No. 37
Mercantile Marine Act 1955	1955, No. 29
Partnership Act 1890	53 & 54 Vic.,c. 39
Solicitors (Amendment) Act 1994	1994, No. 27
Taxes Consolidation Act 1997	1997, No. 39
Taxi Regulation Act 2003	2003, No. 25

Number 6 of 2010

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) ACT 2010

REVISED

Updated to 18 March 2021

AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING; TO PROVIDE FOR THE REGISTRATION OF PERSONS DIRECTING PRIVATE MEMBERS' CLUBS; TO PROVIDE FOR THE AMENDMENT OF THE CENTRAL BANK ACT 1942 AND THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961; TO PROVIDE FOR THE CONSEQUENTIAL REPEAL OF CERTAIN PROVISIONS OF THE CRIMINAL JUSTICE ACT 1994; THE CONSEQUENTIAL AMENDMENT OF CERTAIN ENACTMENTS AND THE REVOCATION OF CERTAIN STATUTORY INSTRUMENTS; AND TO PROVIDE FOR RELATED MATTERS.

[5th May, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

(2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

(3) An order under *subsection (2)* may, in respect of the repeal of the provisions of the Criminal Justice Act 1994 specified in *section 4*, and the revocation of the statutory instruments specified in *Schedule 1* effected by *section 4(2)*, appoint different days for the repeal of different provisions of the Criminal Justice Act 1994 and the revocation of different statutory instruments or different provisions of them.

Interpretation.

2. (1) In this Act—

'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

'Fourth Money Laundering Directive' means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015[2] on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;

"Fifth Money Laundering Directive" means Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 20181 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU;

"Minister" means the Minister for Justice, Equality and Law Reform;

"money laundering" means an offence under *Part 2* ;

"personal data" means personal data within the meaning of—

(i) the Data Protection Act 1988,

(ii) the Data Protection Regulation, or

(iii) Part 5 of the Data Protection Act 2018;

"prescribed" means prescribed by the Minister by regulations made under this Act;

"property" means all real or personal property, whether or not heritable or moveable, and includes money and choses in action and any other intangible or incorporeal property;

"terrorist financing" means an offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005;

"Third Money Laundering Directive" means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2], as amended by the following:

(a) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC 3;

(b) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC [4].

(2) A word or expression used in this Act and also used in the Fourth Money Laundering Directive has, unless the contrary intention appears, the same meaning in this Act as in that Directive.

(3) In this Act a reference to an Appeal Tribunal shall be construed as a reference to the Appeal Tribunal established under section 101A (inserted by section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020).

Regulations.

3. (1) The Minister may, after consulting with the Minister for Finance, by regulations provide for any matter referred to in this Act (other than section 106ZC (inserted by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020)) as prescribed or to be prescribed.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister (or, in the case of regulations under section 106ZC, the Minister for Finance) to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Repeals and revocations.

4. (1) Sections 31, 32, 32A, 57(1) to (6) and (7)(*a*), 57A and 58(2) of the Criminal Justice Act 1994 are repealed.

(2) The statutory instruments specified in *column (1)* of *Schedule 1* are revoked to the extent specified in *column (3)* of that Schedule.

Expenses.

5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas and the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

PART 2

MONEY LAUNDERING OFFENCES

Interpretation (*Part 2*).

6.— In this Part—

'criminal conduct' means—

(a) conduct that constitutes an offence,

(b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State, or

(c) conduct occurring in a place outside the State that would constitute an offence under section 5(1) or 6(1) of the Criminal Justice (Corruption Offences) Act 2018 if it were to occur in the State and the person or official, as the case may be, concerned doing the act, or making the omission, concerned in relation to his or her office, employment, position or business is a foreign official within the meaning of that Act;

"proceeds of criminal conduct" means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of this Part."

Money laundering occurring in State.

7.— (1) A person commits an offence if—

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

(ii) converting, transferring, handling, acquiring, possessing or using the property;

(iii) removing the property from, or bringing the property into, the State, and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

(2) A person who attempts to commit an offence under *subsection (1)* commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(4) A reference in this section to knowing or believing that property is the proceeds of criminal conduct includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct.

(5) For the purposes of subsections (1) and (2), a person is reckless as to whether or not property is the proceeds of criminal conduct if the person disregards, in relation to property, a risk of such a nature and degree that, considering the circumstances in which the person carries out any act referred to in subsection (1) or (2), the disregard of that risk involves culpability of a high degree.

(6) For the purposes of subsections (1) and (2), a person handles property if the person—

(a) receives, or arranges to receive, the property, or

(b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person.

(7) A person does not commit an offence under this section in relation to the doing of any thing in relation to property that is the proceeds of criminal conduct so long as—

(a) the person does the thing in accordance with a direction, order or authorisation given under Part 3, or

(b) without prejudice to the generality of paragraph (a), the person is a designated person, within the meaning of Part 4, who makes a report in relation to the property, and does the thing, in accordance with section 42.

Money laundering outside State in certain circumstances

8.— (1) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *section 7* commits an offence if any of the following circumstances apply:

(a) the conduct takes place on board an Irish ship, within the meaning of section 9 of the Mercantile Marine Act 1955,

(b) the conduct takes place on an aircraft registered in the State,

(c) the conduct constitutes an offence under the law of that place and the person is—

(i) an individual who is a citizen of Ireland or ordinarily resident in the State, or

(ii) a body corporate established under the law of the State or a company registered under the Companies Acts,

(d) a request for the person's surrender, for the purpose of trying him or her for an offence in respect of the conduct, has been made under Part II of the Extradition Act 1965 by any country and the request has been finally refused (whether or not as a result of a decision of a court), or

(e) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct, and a final determination has been made that—

(i) the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003, or

(ii) the person should not be surrendered to the issuing state.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under this section is, in a case where *subsection (1)(c)* applies, taken to be ordinarily resident in the State on the date of the commission of the offence.

(4) In this section, "European arrest warrant" and "issuing state" have the same meanings as they have in the European Arrest Warrant Act 2003.

Attempts, outside State, to commit offence in State

9. (1) A person who attempts, in a place outside the State, to commit an offence under *section 7(1)* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

Aiding, abetting, counselling or procuring outside State commission of offence in State.

10. (1) A person who, in a place outside the State, aids, abets, counsels or procures the commission of an offence under *section 7* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) This section is without prejudice to section 7(1) of the Criminal Law Act 1997.

Presumptions and other matters.

11.— (1) In this section "specified conduct" means any of the following acts referred to in *section 7(1)* (including *section 7(1)* as applied by *section 8* or *9*):

(a) concealing or disguising the true nature, source, location, disposition, movement or ownership of property, or any rights relating to property;

(b) converting, transferring, handling, acquiring, possessing or using property;

(c) removing property from, or bringing property into, the State or a place outside the State.

(2) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged, or attempted to engage, in specified conduct in relation to property that is the proceeds of criminal conduct, in circumstances in which it is reasonable to conclude that the accused—

(a) knew or believed the property was the proceeds of criminal conduct, or

(b) was reckless as to whether or not the property was the proceeds of criminal conduct,

the accused is presumed to have so known or believed, or been so reckless, unless the court or jury, as the case may be, is satisfied, having regard to the whole of the evidence, that there is a reasonable doubt that the accused so knew or believed or was so reckless.

(3) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances are evidence that the property is the proceeds of criminal conduct.

(4) For the purposes of *subsection (3)*, circumstances in which it is reasonable to conclude that property is the proceeds of criminal conduct include any of the following:

(a) the value of the property concerned is, it is reasonable to conclude, out of proportion to the income and expenditure of the accused or another person in a case where the accused engaged in the specified conduct concerned on behalf of, or at the request of, the other person;

(b) the specified conduct concerned involves the actual or purported purchase or sale of goods or services for an amount that is, it is reasonable to conclude, out of proportion to the market value of the goods or services (whether the amount represents an overvaluation or an undervaluation);

(c) the specified conduct concerned involves one or more transactions using false names;

(d) the accused has stated that he or she engaged in the specified conduct concerned on behalf of, or at the request of, another person and has not provided information to the Garda Síochána enabling the other person to be identified and located;

(e) where an accused has concealed or disguised the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property, the accused has no reasonable explanation for that concealment or disguise.

(5) Nothing in *subsection (4)* limits the circumstances in which it is reasonable to conclude, for the purposes of *subsection (3)*, that property is the proceeds of criminal conduct.

(6) Nothing in this section prevents *subsections (2)* and *(3)* being applied in the same proceedings.

(7) *Subsections (2)* to *(6)* extend to proceedings for an offence under—

(a) *section 10*, or

(b) section 7(1) of the Criminal Law Act 1997 of aiding, abetting, counselling or procuring the commission of an offence under *section 7*, *8* or *9*,

and for that purpose any reference to an accused in *subsections (2)* to *(6)* is to be construed as a reference to a person who committed, or is alleged to have committed, the offence concerned.

(8) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not necessary, in order to prove that property is the proceeds of criminal conduct, to establish that—

(a) a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property, or

(b) a particular person committed an offence comprising criminal conduct in relation to the property.

(9) In proceedings for an offence under this Part, or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not a defence for the accused to show that the accused believed the property concerned to be the proceeds of a particular offence comprising criminal conduct when in fact the property was the proceeds of another offence.

Location of proceedings relating to offences committed outside State.

12.— Proceedings for an offence under *section 8, 9* or *10* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Consent of DPP required for proceedings for offences committed outside State.

13.— If a person is charged with an offence under *section 8, 9* or *10*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

Certificate may be evidence in proceedings under this Part.

14 (1) In any proceedings for an offence under this Part in which it is alleged that property the subject of the offence is the proceeds of criminal conduct occurring in a place outside the State, a certificate—

(a) purporting to be signed by a lawyer practising in the place, and

(b) stating that such conduct is an offence in that place,

is evidence of the matters referred to in that certificate, unless the contrary is shown.

(2) A certificate referred to in *subsection (1)* is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(3) In a case where a certificate referred to in *subsection (1)* is written in a language other than the Irish language or the English language, unless the contrary is shown—

(*a*) a document purporting to be a translation of that certificate into the Irish language or the English language, as the case may be, and that is certified as correct by a person appearing to be competent to so certify, is taken—

(i) to be a correct translation of the certificate, and

(ii) to have been certified by the person purporting to have certified it, and

(*b*) the person is taken to be competent to so certify.

(4) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(c),* a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

(*a*) a passport was issued by that Department to a person on a specified date, and

(*b*) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(5) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8 (1) (d)* or *(e)*, a certificate purporting to be signed by the Minister and stating any of the matters referred to in that paragraph is evidence of those matters, and is taken to have been signed by the Minister, unless the contrary is shown.

Double jeopardy

15.— A person who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under *section 8, 9* or *10* consisting of the conduct, or substantially the same conduct, that constituted the offence of which the person has been acquitted or convicted.

Revenue offence committed outside State.

16.— For the avoidance of doubt, a reference in this Part to an offence under the law of a place outside the State includes a reference to an offence in connection with taxes, duties, customs or exchange regulation.

PART 3

DIRECTIONS, ORDERS AND AUTHORISATIONS RELATING TO INVESTIGATIONS

Direction or order not to carry out service or transaction.

17.— (1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, direct a person not to carry out any specified service or transaction during the period specified in the direction, not exceeding 7 days, if the member is satisfied that, on the basis of information that the Garda Síochána has obtained or received (whether or not in a report made under Chapter 4 of Part 4), such a direction is reasonably necessary to enable the Garda Síochána to carry out preliminary investigations into whether or not there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

(2) A judge of the District Court may order a person not to carry out any specified service or transaction during the period specified in the order, not exceeding 28 days, if satisfied by information on oath of a member of the Garda Síochána, that—

(a) there are reasonable grounds to suspect that the service or transaction would, if it were to proceed, comprise or assist in money laundering or terrorist financing, and

(b) an investigation of a person for that money laundering or terrorist financing is taking place.

(3) An order may be made, under subsection (2), in relation to a particular service or transaction, on more than one occasion.

(4) An application for an order under subsection (2)—

(a) shall be made ex parte and shall be heard otherwise than in public, and

(b) shall be made to a judge of the District Court assigned to the district in which the order is proposed to be served.

(5) A person who fails to comply with a direction or order under this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(6) Any act or omission by a person in compliance with a direction or order under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

Notice of direction or order.

18.— (1) As soon as practicable after a direction is given or order is made under section 17, the member of the Garda Síochána who gave the direction or applied for the order shall ensure that any person who the member is aware is affected by the direction or order is given notice, in writing, of the direction or order unless—

(a) it is not reasonably practicable to ascertain the whereabouts of the person, or

(b) there are reasonable grounds for believing that disclosure to the person would prejudice the investigation in respect of which the direction or order is given.

(2) Notwithstanding subsection (1)(b), a member of the Garda Síochána shall give notice, in writing, of a direction or order under this section to any person who is, or appears to be, affected by it as soon as practicable after the Garda Síochána becomes aware that the person is aware that the direction has been given or order has been made.

(3) Nothing in subsection (1) or (2) requires notice to be given to a person to whom a direction is given or order is addressed under this section.

(4) A notice given under this section shall include the reasons for the direction or order concerned and advise the person to whom the notice is given of the person's right to make an application under section 19 or 20 .

(5) The reasons given in the notice need not include details the disclosure of which there are reasonable grounds for believing would prejudice the investigation in respect of which the direction is given or order is made.

Revocation of direction or order on application.

19.— (1) At any time while a direction or order is in force under section 17, a judge of the District Court may revoke the direction or order if the judge is satisfied, on the application of a

person affected by the direction or order, as the case may be, that the matters referred to in section 17(1) or (2) do not, or no longer, apply.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

Order in relation to property subject of direction or order

20.— (1) At any time while a direction or order is in force under section 17, in relation to property, a judge of the District Court may, on application by any person affected by the direction or order concerned, as the case may be, make any order that the judge considers appropriate in relation to any of the property concerned if satisfied that it is necessary to do so for the purpose of enabling the person—

(a) to discharge the reasonable living and other necessary expenses, including legal expenses in or in relation to legal proceedings, incurred or to be incurred in respect of the person or the person's dependants, or

(b) to carry on a business, trade, profession or other occupation to which any of the property relates.

(2) Such an application may be made only if notice has been given to the Garda Síochána in accordance with any applicable rules of court.

Cessation of direction or order on cessation of investigation

21.— (1) A direction or order under section 17 ceases to have effect on the cessation of an investigation into whether the service or transaction the subject of the direction or order would, if it were to proceed, comprise or assist in money laundering or terrorist financing.

(2) As soon as practicable after a direction or order under section 17 ceases, as a result of subsection (1), to have effect, a member of the Garda Síochána shall give notice in writing of the fact that the direction or order has ceased to have effect to—

(a) the person to whom the direction or order has been given, and

(b) any other person who the member is aware is affected by the direction or order.

Suspicious transaction report not to be disclosed.

22.— A report made under Chapter 4 of Part 4 shall not be disclosed, in the course of proceedings under section 17 or 19, to any person other than the judge of the District Court concerned.

Authorisation to proceed with act that would otherwise comprise money laundering.

23.— (1) A member of the Garda Síochána not below the rank of superintendent may, by notice in writing, authorise a person to do a thing referred to in section 7(1) if the member is satisfied that the thing is necessary for the purposes of an investigation into an offence.

(2) The doing of any thing in accordance with an authorisation under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.

(3) Subsection (2) is without prejudice to section 7 (7).

PART 4

PROVISIONS RELATING TO FINANCE SERVICES INDUSTRY, PROFESSIONAL SERVICE PROVIDERS AND OTHERS

CHAPTER 1

Interpretation (Part 4)

Definitions.

24.— (1) In this Part—

"barrister" means a practising barrister;

"beneficial owner" has the meaning assigned to it by sections 26 to 30 ;

"business relationship", in relation to a designated person and a customer of the person, means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing;

'business risk assessment' has the meaning given to it by section 30A;

'Capital Requirements Regulation' means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 as amended by—

(a) Commission Delegated Regulation (EU) 2015/62 of 10 October 2014[54] amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio,

(b) Regulation (EU) 2016/1014 of the European Parliament and of the Council of 8 June 2016[55] amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers,

(c) Commission Delegated Regulation (EU) 2017/2188 of 11 August 2017[56] amending Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards the waiver on own funds requirements for certain covered bonds,

(d) Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017[57] amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State,

(e) Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017[58] amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms,

(f) Commission Delegated Regulation (EU) 2018/405 of 21 November 2017[59] correcting certain language versions of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012,

(g) Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019[60] amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures,

(h) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019[61] amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012,

(i) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019[62] on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, and

(j) Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020[63] amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic;

'collective investment undertaking' means—

(a) an undertaking for collective investment in transferable securities authorised in accordance with the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) or otherwise in accordance with the Directive of 2009,

(b) an alternative investment fund within the meaning of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013),

(c) a management company authorised in accordance with the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 or otherwise in accordance with the Directive of 2009, or

(d) an alternative investment fund manager within the meaning of the European Union (Alternative Investment Fund Managers) Regulations 2013;

"competent authority" has the meaning assigned to it by *sections 60* and *61*;

"correspondent relationship" means—

(a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services, or

(b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;

"credit institution" means—

(a) a credit institution within the meaning of point (1) of Article 4(1) of the Capital Requirements Regulation, or

(b) An Post in respect of any activity that it carries out, whether as principal or agent, that would render it, or a principal for whom it is an agent, a credit institution as a result of the application of *paragraph (a)*;

''custodian wallet provider'' means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies;

"customer"—

(a) in relation to an auditor, means—

(i) a body corporate to which the auditor has been appointed as an auditor, or

(ii) in the case of an auditor appointed to audit the accounts of an unincorporated body of persons or of an individual, the unincorporated body or the individual,

(b) in relation to a relevant independent legal professional, includes, in the case of the provision of services by a barrister, a person who is a client of a solicitor seeking advice from the barrister for or on behalf of the client and does not, in that case, include the solicitor, or

(c) in relation to a trust or company service provider, means a person with whom the trust or company service provider has an arrangement to provide services as such a service provider;

"Department" means the Department of Justice, Equality and Law Reform;

"designated accountancy body" means a prescribed accountancy body, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003;

"designated person" has the meaning assigned to it by *section 25*;

"Directive of 2009" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

"EEA State" means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

'Electronic Identification Regulation' means Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

"electronic money" means electronic money within the meaning of the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011);

"external accountant" means a person who by way of business provides accountancy services (other than when providing such services to the employer of the person) whether or not the person holds accountancy qualifications or is a member of a designated accountancy body;

"financial institution" means—

(a) an undertaking that carries out one or more of the activities set out at reference numbers 2 to 12, 14 and 15 of the Schedule to the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) or foreign exchange services, but does not include an undertaking—

(i) that does not carry out any of the activities set out at those reference numbers other than one or more of the activities set out at reference number 7, and

(ii) whose only customers (if any) are members of the same group as the undertaking,

(b) an insurance undertaking within the meaning of Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), in so far as it carries out life assurance activities,

(c) a person, other than a person falling within Regulation 4(1) of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), whose regular occupation or business is—

(i) the provision to other persons, or the performance, of investment services and activities within the meaning of those Regulations, or

(ii) bidding directly in auctions in accordance with Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community on behalf of its clients,

(*d*) an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act),

(*e*) a collective investment undertaking that markets or otherwise offers its units or shares,

(*f*) an insurance intermediary within the meaning of the Insurance Mediation Directive (other than a tied insurance intermediary within the meaning of that Directive) that provides life assurance or other investment-related services, or

(*g*) An Post, in respect of any activity it carries out, whether as principal or agent—

(i) that would render it, or a principal for whom it is an agent, a financial institution as a result of the application of any of the foregoing paragraphs,

(ii) that is set out at reference number 1 in the Schedule to the European Union (Capital Requirements) Regulations 2014, or

(iii) that would render it, or a principal for whom it is an agent, an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act) if section 2(6) of that Act did not apply;

(h) a virtual asset service provider.

"group" means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013[6] on the annual financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"high-risk third country" means a jurisdiction identified by the European Commission in accordance with Article 9 of the Fourth Money Laundering Directive;

"Insurance Mediation Directive" means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation 7;

"Markets in Financial Instruments Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC 9;

"member", in relation to a designated accountancy body, means a member, within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003, of a designated accountancy body;

"member", in relation to the Irish Taxation Institute, means a person who is subject to the professional and ethical standards of the Institute, including its investigation and disciplinary procedures, but does not include a person who is admitted to its membership as a student;

'monitoring', in relation to a business relationship between a designated person and a customer, means the designated person, on an ongoing basis—

(*a*) scrutinising transactions, and the source of wealth or of funds for those transactions, undertaken during the relationship in order to determine if the transactions are consistent with the designated person's knowledge of—

(i) the customer,

(ii) the customer's business and pattern of transactions, and

(iii) the customer's risk profile (as determined under section 30B), and

(*b*) ensuring that documents, data and information on customers are kept up to date in accordance with its internal policies, controls and procedures adopted in accordance with section 54;

"national risk assessment" means the assessment carried out by the State in accordance with paragraph 1 of Article 7 of the Fourth Money Laundering Directive;

"occasional transaction' means, in relation to a customer of a designated person where the designated person does not have a business relationship with the customer, a single transaction, or a series of transactions that are or appear to be linked to each other, and—

(*a*) in a case where the designated person concerned is a person referred to in section 25(1)(h), that the amount of money or the monetary value concerned—

(i) paid to the designated person by the customer, or

(ii) paid to the customer by the designated person, is in aggregate not less than €2,000,

(*b*) in a case where the transaction concerned consists of a transfer of funds (within the meaning of Regulation (EU) No. 2015/847 of the European Parliament and of the Council of 20 May 2015[7]) that the amount of money to be transferred is in aggregate not less than €1,000,

(*bb*) in a case where the designated person concerned is a person referred to in *section 25(1)(i)*, that the amount concerned—

(i) paid to the designated person by the customer, or

(ii) paid to the customer by the designated person, is in aggregate not less than €10,000, and

(*c*) in a case other than one referred to in *paragraphs (a)*, *(b)* or *(bb)*, that the amount or aggregate of amounts concerned is not less than €15,000;

"payment service" has the same meaning as in the Payment Services Directive;

"Payment Services Directive" means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC 10;

"professional service provider" means an auditor, external accountant, tax adviser, relevant independent legal professional or trust or company service provider;

"property service provider" means a person who provides a property service within the meaning of the Property Services (Regulation) Act 2011:

(a) the auction of property other than land;

(b) the purchase or sale, by whatever means, of land;

but does not include a service provided by a local authority in the course of the performance of its statutory functions under any statutory provision;

"public body" means an FOI body within the meaning of the Freedom of Information Act 2014;

"regulated market" means—

(a) a regulated market with the meaning of point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014[8] on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, located within the EEA, or

(b) a regulated market that subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the following:

(i) disclosure obligations set out in Articles 17 and 19 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014[9] on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC,

(ii) disclosure obligations consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003[10] on the prospectuses to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC,

(iii) disclosure obligations consistent with Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004[11] on the harmonisation of transparency requirements in relation to information about issuers whose securities

are admitted to trading on a regulated market and amending Directive 2001/34/EC, and

(iv) disclosure requirements consistent with EU legislation made under the provisions mentioned in *subparagraphs (i)* to *(iii)*;

"relevant independent legal professional" means a barrister, solicitor or notary who carries out any of the following services:

(*a*) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

(i) buying or selling land or business entities;

(ii) managing the money, securities or other assets of clients;

(iii) opening or managing bank, savings or securities accounts;

(iv) organising contributions necessary for the creation, operation or management of companies;

(v) creating, operating or managing trusts, companies or similar structures or arrangements;

(*b*) acting for or on behalf of clients in financial transactions or transactions relating to land;

"relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a designated accountancy body or of the Irish Taxation Institute;

"senior management" means an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;

"solicitor" means a practising solicitor;

"State competent authority" has the meaning assigned to it by *section 62*;

"tax adviser" means a person who by way of business provides advice about the tax affairs of other persons;

"transaction" means—

(*a*) in relation to a professional service provider, any transaction that is carried out in connection with a customer of the provider and that is—

(i) in the case of a provider acting as an auditor, the subject of an audit carried out by the provider in respect of the accounts of the customer,

(ii) in the case of a provider acting as an external accountant or tax adviser, or as a trust or company service provider, the subject of a service carried out by the provider for the customer, or

(iii) in the case of a provider acting as a relevant independent legal professional, the subject of a service carried out by the professional for the customer of a kind referred to in *paragraph (a)* or *(b)* of the definition of "relevant independent legal professional" in this subsection;

and

(*b*) in relation to a casino or private members' club, a transaction, such as the purchase or exchange of tokens or chips, or the placing of a bet, carried out in connection with gambling activities carried out on the premises of the casino or club by a customer of the casino or club;

"transferable securities" means transferable securities within the meaning of the European Union (Markets in Financial Instruments) Regulations 2017;

"trust or company service provider" means any person whose business it is to provide any of the following services:

(a) forming companies or other bodies corporate;

(b) acting as a director or secretary of a company under an arrangement with a person other than the company;

(c) arranging for another person to act as a director or secretary of a company;

(d) acting, or arranging for a person to act, as a partner of a partnership;

(e) providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership;

(f) acting, or arranging for another person to act, as a trustee of a trust;

(g) acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

"virtual asset" means 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;

"virtual asset service provider" means a person who by way of business carries out one or more of 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) transfer 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;

(e) participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both;

but does not include a designated person that is not a financial or credit institution and that provides virtual asset services in an incidental manner and is subject to supervision by a national competent authority, other than the Bank;

(2) The Minister may prescribe a regulated financial market for the purposes of the definition of "regulated market" in *subsection (1)* only if the Minister is satisfied that the market is in a place other than an EEA State that imposes, on companies whose securities are admitted to trading on the market, disclosure requirements consistent with legislation of the European Communities.

Meaning of "designated person".

25. (1) In this Part, "designated person" means any person, acting in the State in the course of business carried on by the person in the State, who or that is—

(a) a credit institution, except as provided by *subsection (4)*,

(b) a financial institution, except as provided by *subsection (4)*,

(c) an auditor, external accountant or tax adviser or any other person whose principal business or professional activity is to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters,

(d) subject to *subsection (1A)*, a relevant independent legal professional,

(e) a trust or company service provider,

(f) a property service provider including a property service provider acting as an intermediary in the letting of immovable property, but only in respect of transactions for which the monthly rent amounts to a total of at least €10,000,

(g) a casino,

(h) a person who effectively directs a private members' club at which gambling activities are carried on, but only in respect of those gambling activities,

(i) any person trading in goods, but only in respect of transactions involving payments, to the person or by the person in cash, of a total 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),

(ia) a virtual asset service provider,

(ib) a person trading or acting as an intermediary in the trade of works of art (including when carried out by an art gallery or an auction house) but only 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),

(ic) a person storing, trading or acting as an intermediary in the trade of works of art when this is carried out in a free port but only in respect of transactions of a total value of at least €10,000 (whether in one transaction or as a series of transactions that are or appear to be linked to each other), or

(j) any other person of a prescribed class.

(1A) A relevant independent legal professional shall be a designated person only as respects the carrying out of the services specified in the definition of 'relevant independent legal professional' in *section 24(1)*.

(2) For the purposes of this Part, a person is to be treated as a designated person only in respect of those activities or services that render the person a designated person.

(3) A reference in this Part to a designated person does not include a reference to any of the following:

(a) the Minister for Finance;

(b) the Central Bank of Ireland;

(c) the National Treasury Management Agency.

(4) A person is not to be treated as a designated person for the purposes of this Part solely as a result of operating as a credit institution or financial institution, in the course of business, if—

(a) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution is €70,000 (or such other amount as may be prescribed) or less,

(b) the total of any single transaction, or a series of transactions that are or appear to be linked to each other, in respect of which the person operates as a credit institution or financial institution does not exceed €1,000 (or such other lesser amount as may be prescribed),

(c) the annual turnover of the person's business that is attributable to operating as a credit institution or financial institution does not exceed 5 per cent of the business's total annual turnover,

(d) the person's operation as a credit institution or financial institution is directly related and ancillary to the person's main business activity, and

(e) (e) the person provides services when operating as a credit institution or financial institution only to persons who are customers in respect of the person's main business activity, rather than to members of the public in general.

(5) *Subsection (4)* does not apply in relation to any prescribed class of person.

(6) For the avoidance of doubt and without prejudice to the generality of *subsection (1)(a)* or *(b)*, a credit or financial institution that acts in the State in the course of business carried on by the institution in the State, by means of a branch situated in the State, is a designated person whether or not the institution is incorporated, or the head office of the institution is situated, in a place other than in the State.

(7) The Minister may prescribe a class of persons for the purposes of *subsection (1)(j)* only if the Minister is satisfied that any of the business activities engaged in by the class—

(*a*) may be used for the purposes of—

(i) money laundering,

(ii) terrorist financing, or

(iii) an offence that corresponds or is similar to money laundering or terrorist financing under the law of a place outside the State,

or

(*b*) are of a kind likely to result in members of the class obtaining information on the basis of which they may become aware of, or suspect, the involvement of customers or others in money laundering or terrorist financing.

(8) The Minister may, in any regulations made under *subsection (7)* prescribing a class of persons, apply to the class such exemptions from, or modifications to, provisions of this Act as the Minister considers appropriate, having regard to any risk that the business activities engaged in by the class may be used for a purpose referred to in *paragraph (a)* of that subsection.

(9) The Minister may prescribe an amount for the purposes of *paragraph (a)* or *(b)* of *subsection (4)*, in relation to a person's business activities as a credit institution or financial institution, only if the Minister is satisfied that, in prescribing the amount, the purposes of that subsection will likely be fulfilled, including that—

(a) those activities are carried out by the person on a limited basis, and

(b) there is little risk that those activities may be used for a purpose referred to in *subsection (7)(a)*.

(10) The Minister may prescribe a class of persons for the purpose of *subsection (5)* only if the Minister is satisfied that the application of *subsection (4)* to the class involves an unacceptable risk that the business activities engaged in by the class may be used for a purpose referred to in *subsection (7)(a)*.

Beneficial owner in relation to bodies corporate.

26. In this Part, 'beneficial owner', in relation to a body corporate, has the meaning given to it by point (6)(a) of Article 3 of the Fourth Money Laundering Directive.

Beneficial owner in relation to partnerships.

27. In this Part, "beneficial owner", in relation to a partnership, means any individual who—

(a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership, or

(b) otherwise **[**controls**]** the partnership.

Beneficial owner in relation to trusts.

28. (1) [deleted]

(2) In this Part, "beneficial owner", in relation to a trust, means any of the following:

(a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the trust property;

(b) in the case of a trust other than one that is set up or operates entirely for the benefit of individuals referred to in *paragraph (a)*, the class of individuals in whose main interest the trust is set up or operates;

(c) any individual who has control over the trust;

(d) the settlor;

(e) the trustee;

(f) the protector.

(3) For the purposes of and without prejudice to the generality of *subsection (2)*, an individual who is the beneficial owner of a body corporate that—

(a) is entitled to a vested interest of the kind referred to in *subsection (2)(a)*, or

(b) has control over the trust, is taken to be entitled to the vested interest or to have control over the trust (as the case may be).

(4) Except as provided by *subsection (5)*, in this section "control", in relation to a trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

(a) dispose of, advance, lend, invest, pay or apply trust property;

(b) vary the trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of any power referred to in *paragraphs (a)* to *(d)*.

(5) For the purposes of the definition of "control" in *subsection (4)*, an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

29. In this Part, "beneficial owner", in relation to an estate of a deceased person in the course of administration, means the executor or administrator of the estate concerned.

Other persons who are beneficial owners.

30. (1) In this Part, "beneficial owner", in relation to a legal entity or legal arrangement, other than where *section 26, 27* or *28*, applies, means—

(a) if the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from the property of the entity or arrangement,

(b) if the individuals who benefit from the entity or arrangement have yet to be determined, the class of such individuals in whose main interest the entity or arrangement is set up or operates, and

(c) any individual who exercises control over the property of the entity or arrangement,

(d) any person holding a position, in relation to the legal entity or legal arrangement that is similar or equivalent to the position specified in *paragraphs (d)* to *(f)* of *section 28(2)* in relation to a trust.

(2) For the purposes of and without prejudice to the generality of *subsection (1)*, any individual who is the beneficial owner of a body corporate that benefits from or exercises control over the property of the entity or arrangement is taken to benefit from or exercise control over the property of the entity or arrangement.

(3) In this Part, "beneficial owner", in relation to a case other than a case to which *section 26, 27, 28* or *29*, or *subsection (1)* of this section, applies, means any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.

(4) [deleted]

Chapter 1A

Risk assessment by designated persons

Business risk assessment by designated persons

30A. (1) A designated person shall carry out an assessment (in this Act referred to as a 'business risk assessment') to identify and assess the risks of money laundering and terrorist financing involved in carrying on the designated person's business activities taking into account at least the following risk factors:

(a) the type of customer that the designated person has;

(b) the products and services that the designated person provides;

(c) the countries or geographical areas in which the designated person operates;

(d) the type of transactions that the designated person carries out;

(e) the delivery channels that the designated person uses;

(f) other prescribed additional risk factors.

(2) A designated person carrying out a business risk assessment shall have regard to the following:

(a) any information in the national risk assessment which is of relevance to all designated persons or a particular class of designated persons of which the designated person is a member;

(b) any guidance on risk issued by the competent authority for the designated person;

(c) where the designated person is a credit institution or financial institution, any guidelines addressed to credit institutions and financial institutions issued by the European Banking Authority, the European Securities and Markets Authority or the European Insurance and Occupational Pensions Authority in accordance with the Fourth Money Laundering Directive.

(3) A business risk assessment shall be documented unless a competent authority for a designated person decides under Article 8 of the Fourth Money Laundering Directive that an individual documented risk assessment is not required and notifies the designated person.

(4) A designated person shall keep the business risk assessment, and any related documents, up to date in accordance with its internal policies, controls and procedures adopted in accordance with *section 54*.

(5) A business risk assessment shall be approved by senior management.

(6) A designated person shall make records of a business risk assessment available, on request, to the competent authority for that designated person.

(7) The Minister may prescribe additional risk factors to be taken into account in a risk assessment under *subsection (1)* only where he or she is satisfied that it is appropriate to consider such matters in order to accurately identify and assess the risks of money laundering or terrorist financing.

(8) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).

Application of risk assessment in applying customer due diligence

30B. (1) For the purposes of determining the extent of measures to be taken under *subsections (2)* and *(2A)* of *section 33* and *subsections (1)* and *(3)* of *section 35* a designated person shall identify and assess the risk of money laundering and terrorist financing in relation to the customer or transaction concerned, having regard to—

(a) the relevant business risk assessment,

(b) the matters specified in *section 30A(2)*,

(c) any relevant risk variables, including at least the following:

(i) the purpose of an account or relationship;

(ii) the level of assets to be deposited by a customer or the size of transactions undertaken;

(iii) the regularity of transactions or duration of the business relationship;

(iv) any additional prescribed risk variable,

(d) the presence of any factor specified in *Schedule 3* or prescribed under *section 34A* suggesting potentially lower risk,

(e) the presence of any factor specified in *Schedule 4*, and

(f) any additional prescribed factor suggesting potentially higher risk.

(2) A determination by a designated person under *subsection (1)* shall be documented where the competent authority for the designated person, having regard to the size and nature of the designated person and the need to accurately identify and assess the risks of money laundering or terrorist financing, so directs.

(3) For the purposes of *subsection (2)*, a State competent authority may direct a class of designated persons for whom it is the competent authority to document a determination in writing.

(4) The Minister may prescribe additional risk variables to which regard is to be had under *subsection (1)(c)(iv)* only where he or she is satisfied that it is appropriate to consider such matters in order to accurately identify and assess the risks of money laundering or terrorist financing.

(5) A designated person who fails to document a determination in accordance with a direction under *subsection (2)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).

Chapter 2

Designation of places other than Member States — procedures for detecting money laundering or terrorist financing

Designation of places imposing requirements equivalent to Third Money Laundering Directive.

31. [Repealed]

Designation of places having inadequate procedures for detection of money laundering or terrorist financing.

32. [Repealed]

CHAPTER 3

Customer Due Diligence

Identification and verification of customers and beneficial owners.

33.— (1) A designated person shall apply the measures specified in *subsection (2)*, in relation to a customer of the designated person –

(a) prior to establishing a business relationship with the customer,

(b) prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

(c) prior to carrying out any service for the customer, if, having regard to the circumstances, including—

(i) the customer, or the type of customer, concerned,

(ii) the type of any business relationship which the person has with the customer,

(iii) the type of service or of any transaction or product in respect of which the service is sought,

(iv) the purpose (or the customer's explanation of the purpose) of the service or of any transaction or product in respect of which the service is sought,

(v) the value of any transaction or product in respect of which the service is sought,

(vi) the source (or the customer's explanation of the source) of funds for any such transaction or product,

the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing, or

or

(d) prior to carrying out any service for the customer if—

(i) the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer, whether obtained under this section or section 32 of the Criminal Justice Act 1994 ("the 1994 Act") prior to its repeal by this Act or under any administrative arrangements that the person may have applied before section 32 of the 1994 Act operated in relation to the person, and

(ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, and

(e) at any time, including a situation where the relevant circumstances of a customer have changed, where the risk of money laundering and terrorist financing warrants their application, or

(f) at any time where the designated person is obliged by virtue of any enactment or rule of law, including the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. No. 549 of 2012), to contact a customer for the purposes of reviewing any relevant information relating to the beneficial owner connected with the customer.

(2) The measures that shall be applied, in accordance with *section 30B*, by a designated person under *subsection (1)* are as follows:

(a) identifying the customer, and verifying the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including—

(i) documents from a government source (whether or not a State government source),

(ia) information from relevant trust services as specified in the Electronic Identification Regulation, or

(ii) any prescribed class of documents, or any prescribed combination of classes of documents;

(b) identifying any beneficial owner connected with the customer or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—

(i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is,

(ii) in the case of a legal entity or legal arrangement of a kind referred to in *section 26, 27, 28* or *30*, to understand the ownership and control structure of the entity or arrangement concerned, and

(iii) where the beneficial owner is the senior managing official referred to in Article 3(6)(a)(ii) of the Fourth Money Laundering Directive, 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.

(2A) When applying the measures specified in *subsection (2)*, a designated person shall verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person in accordance with *subsection (2)*.

(3) Nothing in *subsection (2)(a)(i)* or *(ii)* limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

(4) [deleted]

(5) Notwithstanding *subsection (1)(a)*, a designated person may verify the identity of a customer or beneficial owner, in accordance with *subsection (2)*, during the establishment of a business relationship with the customer if the designated person has reasonable grounds to believe that—

(a) verifying the identity of the customer or beneficial owner (as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business, and

(b) there is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing,

but the designated person shall take reasonable steps to verify the identity of the customer or beneficial owner, in accordance with *subsection (2)*, as soon as practicable.

(6) Notwithstanding *subsection (1)(a)*, a credit institution or financial institution may allow an account, including an account that permits transactions in transferable securities, to be opened with it by a customer before verifying the identity of the customer or a beneficial owner, in accordance with *subsection (2)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before carrying out that verification.

(7) In addition to the measures required in relation to a customer and a beneficial owner under this section, credit institutions and financial institutions shall apply the measures specified in *subsections (7A)* to *(7C)* to the beneficiaries of life assurance and other investment-related assurance policies.

(7A) As soon as the beneficiaries of life assurance and other investment-related assurance policies are identified or designated, a credit institution or financial institution shall—

(a) take the names of beneficiaries that are identified as specifically named persons or legal arrangements, and

(b) in the case of beneficiaries designated by characteristics, class or other means, obtain sufficient information to satisfy the institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(7B) A credit institution or financial institution shall verify the identity of a beneficiary referred to in *paragraph (a)* or *(b)* of *subsection (7A)* at the time of the payout in accordance with *subsection (2)*.

(7C) In the case of assignment, in whole or in part, of a policy of life assurance or other investment-related assurance to a third party, a credit institution or financial institution that is aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person, or legal arrangement, receiving for his or her, or its, own benefit the value of the policy assigned.

(7D) In addition to the measures required in relation to a customer and a beneficial owner, in the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, a designated person shall obtain sufficient information concerning the beneficiary to satisfy the designated person that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.

(8) Subject to *subsection (8A)*, a designated person who is unable to apply the measures specified in subsection (2) or (4) in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information required under this section—

(a) shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified, and

(b) shall discontinue the business relationship (if any) with the customer.

(8A) Nothing in *subsection (8)* or *section 35(2)* shall operate to prevent a relevant independent legal professional or relevant professional adviser—

(a) ascertaining the legal position of a person, or

(b) performing the task of defending or representing a person in, or in relation to, civil or criminal proceedings, including providing advice on instituting or avoiding such proceedings.

(9) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) [deleted]

(11) The Minister may prescribe a class of documents, or a combination of classes of documents, for the purposes of *subsection (2)(a)(ii)*, only if the Minister is satisfied that the class or combination of documents would be adequate to verify the identity of customers of designated persons.

(12) For the purposes of *subsection (2)(a)(ii)*, the Minister may prescribe different classes of documents, or combinations of classes of documents, for different kinds of designated persons, customers, transactions, services or risks of money laundering or terrorist financing.

Electronic money derogation

33A. (1) Subject to *section 33(1)(c)* and *(d)* and *subsection (2)*, a designated person is not required to apply the measures specified in *subsection (2)* or *(2A)* of *section 33*, or *section 35*, with respect to electronic money if—

(a) the payment instrument concerned—

(i) is not reloadable, or

(ii) cannot be used outside of the State and has a maximum monthly payment transactions limit not exceeding €150,

(b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €150,

(c) the payment instrument concerned is used exclusively to purchase goods and services,

(d) the payment instrument concerned cannot be funded with anonymous electronic money,

(e) the issuer of the payment instrument concerned carries out sufficient monitoring of the transactions or business relationship concerned to enable the detection of unusual or suspicious transactions,

(f) the transaction concerned is not a redemption in cash or cash withdrawal of the monetary value of the electronic money of an amount exceeding €50 and

(g) the transaction concerned is not a remote payment transaction (within the meaning of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 20153 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC) of an amount exceeding €50.

(2) A designated person shall not apply the exemption provided for in *subsection (1)* if—

(a) (a)the customer concerned is established, or resident in, a high-risk third country, or

(b) (b)the designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned, under section 37.

(3) A credit institution or financial institution acting as an acquirer shall not accept a payment carried out with an anonymous prepaid card issued in a state other than a Member State unless the payment instrument concerned complies with the requirements of subsections (1) and (2).

(4) A person who fails to comply with subsection (3) commits an offence and is liable—

(i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Exemptions from section 33.

34.— [Repealed]

Simplified customer due diligence

34A. (1) Subject to *section 33(1)(c)* and *(d)*, a designated person may take the measures specified in *sections 33(2)* and *35* in such manner, to such extent and at such times as is reasonably warranted by the lower risk of money laundering or terrorist financing in relation to a business relationship or transaction where the designated person—

(a) identifies in the relevant business risk assessment, an area of lower risk into which the relationship or transaction falls, and

(b) considers that the relationship or transaction presents a lower degree of risk.

(2) For the purposes of identifying an area of lower risk a designated person shall have regard to—

(a) the matters specified in section 30A(2),

(b) the presence of any factor specified in Schedule 3, and

(c) any additional prescribed factor suggesting potentially lower risk.

(3) Where a designated person applies simplified due diligence measures in accordance with *subsection (1)* it shall—

(a) keep a record of the reasons for its determination and the evidence on which it was based, and

(b) carry out sufficient monitoring of the transactions and business relationships to enable the designated person to detect unusual or suspicious transactions.

(4) The Minister may prescribe other factors, additional to those specified in *Schedule 3*, to which a designated person is to have regard under *subsection (2)* only if he or she is satisfied that the presence of those factors suggests a potentially lower risk of money laundering or terrorist financing.

(5) For the purposes of *subsection (1)*, a business relationship or transaction may be considered to present a lower degree of risk if a reasonable person having regard to the matters specified in *paragraphs (a)* to *(f)* of *section 30B(1)* would determine that the relationship or transaction presents a lower degree of risk of money laundering or terrorist financing.

Special measures applying to business relationships.

35.— (1) A designated person shall obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of a business relationship with a customer prior to the establishment of the relationship.

(2) Subject to section 33(8A), a designated person who is unable to obtain such information, as a result of any failure on the part of the customer, shall not provide the service sought by the customer for so long as the failure continues.

(3) A designated person shall monitor any business relationship that it has with a customer to the extent reasonably warranted by the risk of money laundering or terrorist financing.

(3A) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations

2019 (S.I. No. 16 of 2019) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register.

(3B) Notwithstanding subsection (3A), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that the information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register in accordance with subsection (3A) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.

(3C) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019) (modified by the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles Regulations 2020) (S.I. No. 233 of 2020) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts.

(3D) Notwithstanding subsection (3C), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts in accordance with subsection (3C) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.

(4) Except as provided by section 36, a designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Exemption from section 35(1). Exemption from section 35(1).

36.— [Repealed]

Examination of background and purpose of certain transactions

36A. (1) A designated person shall, as far as possible, in accordance with policies and procedures adopted in accordance with section 54, examine the background and purpose of all transactions that—

(a) are complex,

(b) are unusually large,

(c) are conducted in an unusual pattern, or

(d) do not have an apparent economic or lawful purpose.

(2) A designated person shall increase the degree and nature of monitoring of a business relationship in order to determine whether transactions referred to in *subsection (1)* appear suspicious.

(3) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Enhanced customer due diligence — politically exposed persons.

37.— (1) A designated person shall take steps to determine whether or not—

(a) a customer, or a beneficial owner connected with the customer or service concerned, or

(b) a beneficiary of a life assurance policy or other investment-related assurance policy, or a beneficial owner of the beneficiary,

is a politically exposed person or an immediate family member, or a close associate, of a politically exposed person.

(2) The designated person shall take the steps referred to in *subsection (1)*—

(*a*) in relation to a person referred to *subsection (1)(a)*, prior to

(i) establishing a business relationship with the customer, or

(ii) carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

and

(b) in relation to a person mentioned in *subsection (1)(b)*—

(i) prior to the payout of the policy, or

(ii) at the time of the assignment, in whole or in part, of the policy.

(3) The steps to be taken are such steps as are reasonably warranted by the risk that the customer, or beneficiary**]** or beneficial owner (as the case may be) is involved in money laundering or terrorist financing.

(4) If a designated person knows or has reasonable grounds to believe that a customer is, or has become, a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall—

(a) ensure that approval is obtained from senior management of the designated person before a business relationship is established or continued with the customer,

(b) determine the source of wealth and of funds for the following transactions—

(i) transactions the subject of any business relationship with the customer that are carried out with the customer or in respect of which a service is sought, or

(ii) any occasional transaction that the designated person carries out with, for or on behalf of the customer or that the designated person assists the customer to carry out,

and

(c) in addition to measures to be applied in accordance with *section 35(3)*, apply enhanced monitoring of the business relationship with the customer.

(4A) A designated person shall continue to apply the measures referred to in subsection (4) to a politically exposed person 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.

(5) Notwithstanding subsections *(2)(a)* and *(4)(a),* a credit institution or financial institution may allow a bank account to be opened with it by a customer before taking the steps referred to in *subsection (1)* or seeking the approval referred to in *subsection (4)(a),* so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or any beneficial owner concerned before taking the steps or seeking the approval, as the case may be.

(6) If a designated person knows or has reasonable grounds to believe that a beneficial owner connected with a customer or with a service sought by a customer, is, or has become, a politically exposed person or an immediate family member or close associate of a politically exposed person, the designated person shall apply the measures specified in *subsection (4)(a)*, *(b)* and *(c)* in relation to the customer concerned.

(6A) If a designated person knows or has reasonable grounds to believe that a beneficiary of a life assurance or other investment-related assurance policy, or a beneficial owner of the beneficiary concerned, is a politically exposed person, or an immediate family member or a close associate of a politically exposed person, and that, having regard to section 39, there is a higher risk of money laundering or terrorist financing, it shall—

(a) inform senior management before payout of policy proceeds, and

(b) conduct enhanced scrutiny of the business relationship with the policy holder.

(7) For the purposes of *subsections (4)*, *(6)* and *(6A)*, a designated person is deemed to know that another person is a politically exposed person or an immediate family member or close associate of a politically exposed person if, on the basis of—

(a) information in the possession of the designated person (whether obtained under *subsections (1)* to *(3)* or otherwise),

(b) in a case where the designated person has contravened *subsection (1)* or *(2)*, information that would have been in the possession of the person if the person had complied with that provision, or

(c) public knowledge,

there are reasonable grounds for concluding that the designated person so knows.

(8) A designated person who is unable to apply the measures specified in *subsection (1)*, *(3)*, *(4)* or *(6)* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information—

(a) shall discontinue the business relationship (if any) with the customer for so long as the failure continues, and

(b) shall not provide the service or carry out the transaction sought by the customer for so long as the failure continues.

(9) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) In this section—

"close associate" of a politically exposed person includes any of the following persons:

(a) any individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the politically exposed person;

(b) any individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the politically exposed person;

"immediate family member" of a politically exposed person includes any of the following persons:

(a) any spouse of the politically exposed person;

(b) any person who is considered to be equivalent to a spouse of the politically exposed person under the national or other law of the place where the person or politically exposed person resides;

(c) any child of the politically exposed person;

(d) any spouse of a child of the politically exposed person;

(e) any person considered to be equivalent to a spouse of a child of the politically exposed person under the national or other law of the place where the person or child resides;

(f) any parent of the politically exposed person;

(g) any other family member of the politically exposed person who is of a prescribed class;

"politically exposed person" means an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including any of the following individuals (but not including any middle ranking or more junior official):

(a) a specified official;

(b) a member of the administrative, management or supervisory body of a state-owned enterprise;

(c) any individual performing a prescribed function;

"specified official" means any of the following officials (including any such officials in an institution of the European Communities or an international body):

(a) a head of state, head of government, government minister or deputy or assistant government minister;

(b) a member of a parliament or of a similar legislative body; (*bb*) a member of the governing body of a political party;

(c) a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;

(d) a member of a court of auditors or of the board of a central bank;

(e) an ambassador, chargé d'affairs or high-ranking officer in the armed forces;

(f) a director, deputy director or member of the board of, or person performing the equivalent function in relation to, an international organisation.

(11) The Minister may prescribe a class of family member of a politically exposed person, for the purposes of *paragraph (g)* of the definition of "immediate family member" of a politically exposed person in *subsection (10)*, only if the Minister is satisfied that it would be appropriate for the provisions of this section to be applied in relation to members of the class, having regard to any heightened risk, arising from their close family relationship with the politically exposed person, that such members may be involved in money laundering or terrorist financing.

(12) The Minister may, with the consent of the Minister for Finance, issue guidelines to the competent authorities in respect of functions in the State that may be considered to be prominent public functions and each competent authority shall have regard to any such guidelines.

(13) The Minister may, where he or she believes it is necessary to do so, and with the consent of the Minister for Finance, issue guidelines to the competent authorities for the purpose of facilitating the consistent, effective and risk-based application of this section.

Enhanced customer due diligence — correspondent banking relationships.

38. (1) A credit institution or financial institution ('the institution') shall not enter into a correspondent relationship with another credit institution or financial institution ('the respondent institution') situated in a place other than a Member State unless, prior to commencing the relationship involving the execution of payments, the institution—

(a) has gathered sufficient information about the respondent institution to understand fully the nature of the business of the respondent institution,

(b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the respondent institution, and the quality of supervision or monitoring of the operation of the respondent institution in the place, are sound,

(c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the respondent institution, that those controls are sound,

(d) has ensured that approval has been obtained from the senior management of the institution,

(e) has documented the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent relationship and, in particular—

(i) the responsibilities of the institution arising under this Part, and

(ii) any responsibilities of the respondent institution arising under requirements equivalent to those specified in the Fourth Money Laundering Directive,

and

(f) in the case of a proposal that customers of the respondent institution have direct access to a payable-through account held with the institution in the name of the respondent institution, is satisfied on reasonable grounds that the respondent institution—

(i) has identified and verified the identity of those customers, and is able to provide to the institution, upon request, the documents (whether or not in electronic form) or information used by the institution to identify and verify the identity of those customers,

(ii) has applied measures equivalent to the measure referred to in *section 35(1)* in relation to those customers, and

(iii) is applying measures equivalent to the measure referred to in *section 35(3)* in relation to those customers.

(2) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

38A (1) Subject to subsection (2), a designated person shall apply the following measures to manage and mitigate the risk of money laundering and terrorist financing additional to those specified in this chapter, when dealing with a customer established or residing in a high-risk third country:

(a) obtaining additional information on the customer and on the beneficial owner;

(b) obtaining additional information on the intended nature of the business relationship;

(c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;

(d) obtaining information on the reasons for the intended or performed transactions;

(e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.

(2) *Subsection (1)* shall not apply where—

(a) the customer is a branch or majority-owned subsidiary of a designated person and is located in a high-risk third country,

(b) the designated person referred to in paragraph (a) is established in a Member State, and

(c) the branch or majority-owned subsidiary referred to in paragraph (a) is in compliance with the group-wide policies and procedures of the group of which it is a member adopted in accordance with Article 45 of the Fourth Money Laundering Directive.

(3) In the circumstances specified in subsection (2), the designated person shall—

(a) identify and assess the risk of money laundering or terrorist financing in relation to the business relationship or transaction concerned, having regard to section 30B, and

(b) apply customer due diligence measures specified in this Chapter to the extent reasonably warranted by the risk of money laundering or terrorist financing.

(4) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Enhanced due diligence in cases of heightened risk

39 (1) Without prejudice to *sections 37*, *38* and *59*, a designated person shall apply measures to manage and mitigate the risk of money laundering or terrorist financing, additional to those specified in this Chapter, to a business relationship or transaction that presents a higher degree of risk.

(2) For the purposes of *subsection (1)* a business relationship or transaction shall be considered to present a higher degree of risk if a reasonable person having regard to the matters specified in *paragraphs (a)* to *(f)* of *section 30B(1)* would determine that the business relationship or transaction presents a higher risk of money laundering or terrorist financing.

(3) The Minister may prescribe other factors, additional to those specified in *Schedule 4*, suggesting potentially higher risk only if he or she is satisfied that the presence of those factors suggests a potentially higher risk of money laundering or terrorist financing.

(4) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Reliance on other persons to carry out customer due diligence.

40 (1) In this section, "relevant third party" means—

(a) a person, carrying on business as a designated person in the State—

(i) that is a credit institution,

(ii) that is a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both),

(iii) who is an external accountant or auditor and who is also a member of a designated accountancy body,

(iv) who is a tax adviser, and who is also a solicitor or a member of a designated accountancy body or of the Irish Taxation Institute,

(v) who is a relevant independent legal professional, or

(vi) who is a trust or company service provider, and who is also a member of a designated accountancy body, a solicitor or authorised to carry on business by the Central Bank of Ireland,

(b) a person carrying on business in another Member State who is supervised or monitored for compliance with the requirements specified in the Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI of that Directive and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the Member State,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) and authorised to operate as a financial institution under the laws of the Member State, or

(iii) (iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the other Member State,

(c) a person who carries on business in a place (other than a Member State) which is not a high-risk third country, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Fourth Money Laundering Directive, and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the place,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or

(iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place, or]

(d) a person who carries on business in a high-risk third country, is a branch or majority-owned subsidiary of an obliged entity established in the Union, and fully complies with group-wide policies and procedures in accordance with Article 45 of the Fourth Money Laundering Directive and is—

(i) a credit institution authorised to operate as a credit institution under the laws of the place,

(ii) a financial institution (other than an undertaking that is a financial institution solely because the undertaking provides either foreign exchange services or payment services, or both) authorised to operate as a financial institution under the laws of the place, or

(iii) an external accountant, auditor, tax adviser, legal professional or trust or company service provider subject to mandatory professional registration or mandatory professional supervision under the laws of the place.

(1A) Without prejudice to the generality of *paragraphs (b)* and *(c)* of *subsection (1)*, for the purposes of those paragraphs, a person is supervised or monitored for compliance with the requirements specified in the Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI, or requirements equivalent to those requirements, where—

(a) the person and the designated person seeking to rely upon this section are part of the same group,

(b) the group applies customer due diligence and record keeping measures and policies and procedures to prevent and detect the commission of money laundering and terrorist financing in accordance with the Fourth Money Laundering Directive or requirements equivalent to those specified in the Fourth Money Laundering Directive, and

(c) the effective implementation of the requirements referred to in *paragraph (b)* is supervised at group level by a competent authority of the state where the parent company is incorporated.

(2) A reference in *subsection (1)(b)(iii)* and *(c)(iii)* to a legal professional is a reference to a person who, by way of business, provides legal or notarial service

(3) Subject to *subsections (4)* and *(5)*, a designated person may rely on a relevant third party to apply, in relation to a customer of the designated person, any of the measures that the designated person is required to apply, in relation to the customer, under *section 33* or *35 (1)*.

(4) A designated person may rely on a relevant third party to apply a measure under *section 33* or *35 (1)* only if—

(a) there is an arrangement between the designated person (or, in the case of a designated person who is an employee, the designated person's employer) and the relevant third party under which it has been agreed that the designated person may rely on the relevant third party to apply any such measure, and

(b) the designated person is satisfied that the circumstances specified in *paragraphs (a)* to *(c)* of *subsection (1A)* exist, or on the basis of the arrangement, that the relevant third party will forward to the designated person, as soon as practicable after a request from the designated person, any documents (whether or not in electronic form) or information relating to the customer (including any information from relevant trust services as set out in the Electronic Identification Regulation) that has been obtained by the relevant third party in applying the measure.

(5) A designated person who relies on a relevant third party to apply a measure under section 33 or 35(1) remains liable, under section 33 or 35(1), for any failure to apply the measure.

(6) A reference in this section to a relevant third party on whom a designated person may rely to apply a measure under section 33 or 35(1) does not include a reference to a person who applies the measure as an outsourcing service provider or an agent of the designated person.

(7) Nothing in this section prevents a designated person applying a measure under section 33 or 35(1) by means of an outsourcing service provider or agent provided that the designated person remains liable for any failure to apply the measure.

Financial Intelligence Unit

State Financial Intelligence Unit

40A. (1) FIU Ireland may carry out, on behalf of the State, all the functions of an EU Financial Intelligence Unit (FIU) under the Fourth Money Laundering Directive.

(2) In this Part 'FIU Ireland' means those members of the Garda Síochána, or members of the civilian staff of the Garda Síochána, appointed by the Commissioner of the Garda Síochána in that behalf.

Powers of FIU Ireland to receive and analyse information

40B (1) FIU Ireland shall be responsible for receiving and analysing suspicious transaction reports and other information relevant to money laundering or terrorist financing for the purpose of preventing, detecting and investigating possible money laundering or terrorist financing.

(2) FIU Ireland's analysis function shall consist of conducting—

(a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information depending on the type and volume of the disclosures received and the expected use of the information after dissemination, and

(b) a strategic analysis addressing money laundering and terrorist financing trends and patterns.

Powers of certain members of FIU Ireland to obtain information

40C (1) A member of the Garda Síochána who is a member of FIU Ireland shall have access to the central registers established by the State for the purposes of paragraph (3) of Article 30 and paragraph (4) of Article 31 of the Fourth Money Laundering Directive.

(2) A member of the Garda Síochána who is a member of FIU Ireland may, for the purposes of preventing, detecting, investigating or combating money laundering or terrorist financing request any person to provide FIU Ireland with information held by that person under any enactment giving effect to paragraph (1) of Article 30 or paragraph (1) of Article 31 of the Fourth Money Laundering Directive.

(3) A member of the Garda Síochána who is a member of FIU Ireland may make a request in writing for any financial, administrative or law enforcement information that FIU Ireland requires in order to carry out its functions from any of the following:

(a) a designated person;

(b) a competent authority;

(c) the Revenue Commissioners;

(d) the Minister for Employment Affairs and Social Protection.

(4) A designated person who, without reasonable excuse, fails to comply with a request for information under *subsection (2)* or *(3)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine not exceeding €500,000 or imprisonment not exceeding 3 years (or both).

Power of FIU Ireland to respond to requests for information from competent authorities

40D (1) FIU Ireland shall respond as soon as practicable to any request for information which is based on a concern relating to money laundering or terrorist financing that it receives from—

(a) a competent authority,

(b) the Revenue Commissioners, or

(c) the Minister for Employment Affairs and Social Protection.

(2) FIU Ireland may provide the results of its analyses and any additional relevant information to a person mentioned in *subsection (1)* where there are grounds to suspect money laundering or terrorist financing.

(3) FIU Ireland shall be under no obligation to comply with the request for information where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested.

Power of FIU Ireland to share information

40E (1) FIU Ireland may share information with other Financial Intelligence Units (FIUs), in accordance with subsection III of Section 3 of Chapter VI of the Fourth Money Laundering Directive.

(2) FIU Ireland may provide any information obtained by it—

(a) from a central register referred to in section 40C(1), or

(b) following a request under subsection (2) or (3) of section 40C,

to a competent authority or to another FIU.

CHAPTER 4

Reporting of suspicious transactions and of transactions involving certain places

Interpretation (Chapter 4).

41.— In this Chapter, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.

Requirement for designated persons and related persons to report suspicious transactions.

42.— (1) A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to FIU Ireland and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds.

(2) The designated person shall make the report as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in money laundering or terrorist financing.

(3) For the purposes of *subsections (1)* and *(2)*, a designated person is taken not to have reasonable grounds to know or suspect that another person commits an offence on the basis of having received information until the person has scrutinised the information in the course of reasonable business practice (including automated banking transactions).

(4) For the purposes of *subsections (1)* and *(2)*, a designated person may have reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing if the designated person is unable to apply any measures specified in *section 33(2)* or *(4)*, *35(1)* or *37(1)*, *(3)*, *(4)* or *(6),* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information.

(5) Nothing in *subsection (4)* limits the circumstances in which a designated person may have reasonable grounds, on the basis of information obtained in the course of carrying out business as a designated person, to suspect that another person has committed an offence of money laundering or terrorist financing.

(6) A designated person who is required to report under this section shall disclose the following information in the report:

(a) the information on which the designated person's knowledge, suspicion or reasonable grounds are based;

(b) the identity, if the designated person knows it, of the person who the designated person knows, suspects or has reasonable grounds to suspect has been or is engaged in an offence of money laundering or terrorist financing;

(c) the whereabouts, if the designated person knows them, of the property the subject of the money laundering, or the funds the subject of the terrorist financing, as the case may be;

(d) any other relevant information.

(6A) A designated person who is required to make a report under this section shall respond to any request for additional information by FIU Ireland or the Revenue Commissioners as soon as practicable after receiving the request and shall take all reasonable steps to provide any information specified in the request.

(7) A designated person who is required to make a report under this section shall not proceed with any suspicious transaction or service connected with the report, or with a transaction or service the subject of the report, prior to the sending of the report to FIU Ireland and the Revenue Commissioners unless—

(a) it is not practicable to delay or stop the transaction or service from proceeding, or

(b) the designated person is of the reasonable opinion that failure to proceed with the transaction or service may result in the other person suspecting that a report may be (or may have been) made or that an investigation may be commenced or in the course of being conducted.

(8) Nothing in *subsection (7)* authorises a designated person to proceed with a service or transaction if the person has been directed or ordered not to proceed with the service or transaction under *section 17* and the direction or order is in force.

(9) Except as provided by *section 46*, a person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(10) A reference in *subsection (7)* to a suspicious transaction or service is a reference to a transaction or service that there are reasonable grounds for suspecting would, if it were to proceed—

(a) comprise money laundering or terrorist financing, or

(b) assist in money laundering or terrorist financing.

(11) FIU Ireland shall, where practicable, provide timely feedback to a designated person who is required to make a report under this section on the effectiveness of and follow-up to reports made to it under this section.

Requirement for designated persons to report transactions connected with places designated under section 32.

43.— [Repealed]

Defence — internal reporting procedures

44. (1) Without prejudice to the way in which a report may be made under *section 42,* such a report may be made in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of the section concerned.

(2) It is a defence for a person charged with an offence under *section 42* to prove that the person was, at the time of the purported offence, an employee who made a report under that section, in accordance with such an internal reporting procedure, to another person.

Use of reported and other information in investigations.

45. (1) Information included in a report under this Chapter may be used in an investigation into money laundering or terrorist financing or any other offence.

(2) Nothing in this section limits the information that may be used in an investigation into any offence.

Disclosure not required in certain circumstances.

46 (1) Nothing in this Chapter requires the disclosure of information that is subject to legal privilege.

(2) Nothing in this Chapter requires a relevant professional adviser to disclose information that he or she has received from or obtained in relation to a client in the course of ascertaining the legal position of the client.

(3) *Subsection (2)* does not apply to information received from or obtained in relation to a client with the intention of furthering a criminal purpose.

Disclosure not to be treated as breach.

47.— The disclosure of information by a person in accordance with this Chapter shall not be treated, for any purpose, as a breach of any restriction imposed by any other enactment or rule of law on disclosure by the person or any other person on whose behalf the disclosure is made.

CHAPTER 5

Tipping off by designated persons

Interpretation (Chapter 5).

48 In this Chapter, "legal adviser" means a barrister or solicitor.

Tipping off.

49.— (1) A designated person who knows or suspects, on the basis of information obtained in the course of carrying on business as a designated person, that a report has been, or is required to be, made under *Chapter 4* shall not make any disclosure that is likely to prejudice an investigation that may be conducted following the making of the report under that Chapter.

(2) A designated person who knows or suspects, on the basis of information obtained by the person in the course of carrying on business as a designated person, that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed, shall not make any disclosure that is likely to prejudice the investigation.

(3) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(4) In this section, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.

Defence — disclosure to customer in case of direction or order to suspend service or transaction.

50. It is a defence in any proceedings against a person ("the defendant") for an offence under *section 49*, in relation to a disclosure, for the defendant to prove that—

(a) the disclosure was to a person who, at the time of the disclosure, was a customer of the defendant or of a designated person on whose behalf the defendant made the disclosure,

(b) the defendant, or the designated person on whose behalf the defendant made the disclosure, was directed or ordered under section 17 not to carry out any specified service or transaction in respect of the customer, and

(c) the disclosure was solely to the effect that the defendant, or a designated person on whose behalf the defendant made the disclosure, had been directed by a member of the Garda Síochána, or ordered by a judge of the District Court, under section 17 not to carry out the service or transaction for the period specified in the direction or order.

Defences — disclosures within undertaking or group.

51.— (1) It is a defence in any proceedings against an individual for an offence under *section 49*, in relation to a disclosure, for the individual to prove that, at the time of the disclosure—

(a) he or she was an agent, employee, partner, director or other officer of, or was engaged under a contract for services by, an undertaking, and

(b) he or she made the disclosure to an agent, employee, partner, director or other officer of, or a person engaged under a contract for services by, the same undertaking.

(2) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

(a) the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, and

(b) the disclosure was to—

(i) a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or

(ii) a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures adopted in accordance with section 54, or, as the case may be, Article 45 of the Fourth Money Laundering Directive.

(3) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

(a) the person was a legal adviser or relevant professional adviser,

(b) both the person making the disclosure and the person to whom it was made carried on business in a Member State or in a country other than a high-risk third country], and

(c) those persons performed their professional activities within different undertakings that shared common ownership, management or control.

Defences — other disclosures between institutions or professionals.

52. (1) This section applies to a disclosure—

(a) by or on behalf of a credit institution to another credit institution,

(b) by or on behalf of a financial institution to another financial institution,

(c) by or on behalf of a legal adviser to another legal adviser, or

(d) by or on behalf of a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure to which this section applies, for the person to prove that, at the time of the disclosure—

(a) the disclosure related to—

(i) a customer or former customer of the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made, or

(ii) a transaction, or the provision of a service, involving both the person (or an institution or adviser on whose behalf the person made the disclosure) and the institution or adviser to which or whom it was made,

(b) the disclosure was only for the purpose of preventing money laundering or terrorist financing,

(c) the institution or adviser to which or whom the disclosure was made was situated in a Member State or in a country other than a high-risk third country, and

(d) the institution or adviser making the disclosure, or on whose behalf the disclosure was made, and the institution or adviser to which or whom it was made were subject to equivalent duties of professional confidentiality and the protection of personal data.

(3) A reference in this section to a customer of an adviser includes, in the case of an adviser who is a barrister, a reference to a person who is a client of a solicitor who has sought advice from the barrister for or on behalf of the client.

Defences — other disclosures

53. (1) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

(a) the disclosure was to the authority that, at the time of the disclosure, was the competent authority responsible for monitoring that person, or for monitoring the person on whose behalf the disclosure was made, under this Part,

(b) the disclosure was for the purpose of the detection, investigation or prosecution of an offence (whether or not in the State), or

(c) the person did not know or suspect, at the time of the disclosure, that the disclosure was likely to have the effect of prejudicing an investigation into

whether an offence of money laundering or terrorist financing had been committed.

(2) It is a defence in any proceedings against a person for an offence under *section 49*, in relation to a disclosure, for the person to prove that—

(a) at the time of the disclosure, the person was a legal adviser or relevant professional adviser,

(b) the disclosure was to the person's client and solely to the effect that the person would no longer provide the particular service concerned to the client,

(c) the person no longer provided the particular service after so informing the client, and

(d) the person made any report required in relation to the client in accordance with Chapter 4.

CHAPTER 6

Internal policies and procedures, training and record keeping

Internal policies and procedures and training.

54. (1) A designated person shall adopt internal policies, controls and procedures in relation to the designated person's business to prevent and detect the commission of money laundering and terrorist financing.

(2) In particular, a designated person shall adopt internal policies, controls and procedures to be followed by any persons involved in carrying out the obligations of the designated person under this Part.

(3) The internal policies, controls and procedures referred to in *subsection (1)* shall include policies, controls and procedures dealing with—

(a) the identification, assessment, mitigation and management of risk factors relating to money laundering or terrorist financing,

(b) customer due diligence measures,

(c) monitoring transactions and business relationships,

(d) the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature to be related to money laundering or terrorist financing,

(e) measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,

(f) measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered,

(g) reporting (including the reporting of suspicious transactions),

(h) record keeping,

(i) measures to be taken to keep documents and information relating to the customers of that designated person up to date,

(j) measures to be taken to keep documents and information relating to risk assessments by that designated person up to date,

(k) internal systems and controls to identify emerging risks and keep business-wide risk assessments up to date, and

(l) monitoring and managing compliance with, and the internal communication of, these policies, controls and procedures.

(4) A designated person shall ensure that policies, controls and procedures adopted in accordance with this section are approved by senior management and shall keep such policies, controls and procedures under review, in particular when there are changes to the business profile or risk profile of the designated person.

(5) In preparing internal policies, controls and procedures under this section, the designated person shall have regard to any guidelines on preparing, implementing and reviewing such policies and procedures that are issued by the competent authority for that designated person.

(6) A designated person shall ensure that persons involved in the conduct of the designated person's business are—

(a) instructed on the law relating to money laundering and terrorist financing, and

(b) provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.

(6A) A designated person shall have in place appropriate procedures for their employees, or persons in a comparable position, to report a contravention of this Act internally through a specific, independent and anonymous channel, proportionate to the nature and size of the designated person concerned.

(7) A designated person shall appoint an individual at management level, (to be called a 'compliance officer') to monitor and manage compliance with, and the internal communication of, internal policies, controls and procedures adopted by the designated person under this section if directed in writing to do so by the competent authority for that designated person.

(8) A designated person shall appoint a member of senior management with primary responsibility for the implementation and management of anti-money laundering measures in accordance with this Part if directed in writing to do so by the competent authority for that designated person.

(9) A designated person shall undertake an independent, external audit to test the effectiveness of the internal policies, controls and procedures outlined in this section if directed in writing to do so by the competent authority for that designated person.

(10) A reference in this section to persons involved in carrying out the obligations of the designated person under this Part includes a reference to directors and other officers, and employees, of the designated person.

(11) The obligations imposed on a designated person under this section do not apply to a designated person who is an employee of another designated person.

(12) *Subsections (6)*, *(6A)*, *(7)*, *(8)*, and *(9)* do not apply to a designated person who is an individual and carries on business alone as a designated person.

(13) A competent authority shall not issue a direction for the purposes of *subsection (7)*, *(8)* or *(9)* unless it is satisfied that, having regard to the size and nature of the designated person, it is appropriate to do so.

(14) A competent authority may make a direction to a class of designated persons for whom it is the competent authority for the purposes of *subsection (7)*, *(8)* or *(9)*.

(15) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Keeping of records by designated persons.

55. (1) A designated person shall keep records evidencing the procedures applied, and information obtained, by the designated person under *Chapter 3* in relation to—

(a) each customer, and

(b) in the case of a designated person to whom section 38 applies, each correspondent relationship.

(2) Without prejudice to the generality of *subsection (1)*, a designated person shall take the original or a copy of all documents used by the designated person for the purposes of *Chapter 3*, including all documents used to verify the identity of customers (including information from relevant trust services as set out in the Electronic Identification Regulation) or beneficial owners in accordance with *section 33*.

(3) A designated person shall keep records evidencing the history of services and transactions carried out in relation to each customer of the designated person.

(4) Subject to *subsections (4A)*, *(4B)* and *(4C)*, the documents and other records referred to in *subsections (1)* to *(3)* shall be retained by the designated person for a period of not less than 5 years after—

(a) in the case of a record referred to in *subsection (1)(a)*, the date on which the designated person ceases to provide any service to the customer concerned or the date of the last transaction (if any) with the customer, whichever is the later,

(b) in the case of a record referred to in *subsection (1) (b)*, the date on which the correspondent relationship concerned ends,

(c) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular transaction by the designated person with, for or on behalf of the customer (other than a record to which *paragraph (d)* applies), the date on which the particular transaction is completed or discontinued,

(d) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular occasional transaction comprised of a series of transactions, with, for or on behalf of a customer, the date on which the series of transactions is completed or discontinued, or

(e) in the case of a record referred to in *subsection (3)* evidencing the carrying out of a particular service for or on behalf of the customer (other than a record to which *paragraph (c)* or *(d)* applies), the date on which the particular service is completed or discontinued.

(4A) Where a member of the Garda Síochána not below the rank of Sergeant having carried out a thorough assessment of the necessity and proportionality of further retention is satisfied—

(a) that certain documents or records, or documents or records relating to a certain business relationship or occasional transaction, are required for the purposes of an investigation related to money laundering or terrorist financing, or

(b) notwithstanding the fact that a decision to institute proceedings against a person may not have been taken, that the documents or records are likely to be required for the prosecution of an offence of money laundering or terrorist financing,

the member may give a direction in writing to a designated person to retain the documents and other records for a period, up to a maximum of 5 years, additional to the period referred to in *subsection (4)*.

(4B) Where a direction has been given to a designated person in accordance with *subsection (4A)* and neither *paragraph (a)* nor *(b)* of that subsection continue to apply a member of the Garda Síochána shall, as soon as practicable, notify the designated person to whom the direction was given of that fact and the direction shall expire on the date of that notification.

(4C) A designated person who is given a direction under *subsection (4A)* shall retain the documents or records specified in the direction until the earlier of—

(a) the expiration of the additional period specified in the direction, and

(b) the expiration of the direction.

(5) *Subsection (4)(a)* extends to any record that was required to be retained under section 32(9)(*a*) of the Act of 1994 immediately before the repeal of that provision by this Act.

(6) *Subsection (4)(c)* to *(e)* extends to any record that was required to be retained under section 32(9)(*b*) of the Criminal Justice Act 1994 immediately before the repeal of that provision by this Act and for that purpose—

(a) a reference in *subsection (4)(c)* to *(e)* to a record referred to in *subsection (3)* includes a reference to such a record, and

(b) a reference in *subsection (4)(d)* to an occasional transaction comprised of a series of transactions includes a reference to a series of transactions referred to in section 32(3)(*b*) of the Criminal Justice Act 1994.

(7) A designated person may keep the records referred to in *subsections (1)* to *(6)* wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(7A) The records required to be kept by a designated person under this section may be kept outside the State provided that the designated person ensures that those records are produced in the State to—

(a) a member of the Garda Síochána,

(b) an authorised officer appointed under section 72,

(c) a relevant authorised officer within the meaning of section 103, or

(d) a person to whom the designated person is required to produce such records in relation to his or her business, trade or profession,

as soon as practicable after the records concerned are requested, or where the obligation to produce the records arises under an order of a court made under section 63 of the Criminal Justice Act 1994, within the period which applies to such production under the court order concerned.

(7B) Upon the expiry of the retention periods referred to in this section a designated person shall ensure that any personal data contained in any document or other record retained solely for the purposes of this section is deleted.

(8) The requirements imposed by this section are in addition to, and not in substitution for, any other requirements imposed by any other enactment or rule of law with respect to the keeping and retention of records by a designated person.

(9) The obligations that are imposed on a designated person under this section continue to apply to a person who has been a designated person, but has ceased to carry on business as a designated person.

(10) A requirement for a designated person that is a body corporate to retain any record under this section extends to any body corporate that is a successor to, or a continuation of, the body corporate.

(11) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(12) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

CHAPTER 7

Special provisions applying to credit and financial institutions

Measures for retrieval of information relating to business relationships.

56. (1) A designated person shall have systems in place to enable it to respond fully and promptly to enquiries from the Garda Síochána—

(a) as to whether or not it has, or has had, a business relationship, within the previous 5 years, with a person specified by the Garda Síochána, and

(b) the nature of any such relationship with that person.

(2) A designated person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Group-wide policies and procedures

57. (1) A designated person that is part of a group shall implement group-wide policies and procedures, including data protection policies and policies and procedures for sharing information within the group, for the purposes of carrying out customer due diligence and preventing and detecting the commission of money laundering and terrorist financing.

(2) A designated person incorporated in the State that operates a branch, majority-owned subsidiary or establishment in a place other than the State shall ensure that the branch, majority-owned subsidiary or establishment adopts and applies group-wide policies and procedures referred to in *subsection (1)*.

(3) Where a place referred to in *subsection (2)*, other than a Member State, is a place that does not permit the implementation of the policies and procedures required under *subsection (1)* the designated person shall—

(a) ensure that each of its branches and majority-owned subsidiaries in that place applies additional measures to effectively handle the risk of money laundering or terrorist financing, and

(b) notify the competent authority for that designated person of the additional measures applied under *paragraph (a)*.

(4) A designated person incorporated in the State that operates a branch, majority-owned subsidiary or establishment in another Member State shall ensure that the branch, majority-owned subsidiary or establishment complies with the requirements of the Fourth Money Laundering Directive as they apply in that Member State.

(5) A designated person incorporated in the State that has a branch or majority-owned subsidiary located in a place, other than a Member State, in which the minimum requirements relating to the prevention and detection of money laundering and terrorist financing are less strict than those of the State shall ensure that the branch or majority-owned subsidiary implement the requirements of the State, including requirements relating to data protection, to the extent that the third country's law so allows.

(6) Subject to section 49, a designated person that is part of a group that makes a report under section 42 shall share that report within the group for the purposes of preventing and detecting the commission of money laundering and terrorist financing unless otherwise instructed by FIU Ireland.

(7) A designated person that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Additional measures where implementation of policies and procedures is not possible

57A. (1) Where a competent authority receives a notification under *section 57(3)(b)* and is not satisfied that the additional measures applied in accordance with that subsection are sufficient for the purposes of carrying out customer due diligence and preventing and detecting the commission of money laundering and terrorist financing it shall exercise additional supervisory actions, where necessary requesting a group to close down its operations in the third country and may, by notice in writing, direct the designated person to take such additional actions as the competent authority considers necessary to mitigate the risk of money laundering or terrorist financing.

(2) A notice under *subsection (1)*—

(a) may direct the group—

(i) not to establish a business relationship,

(ii) to terminate a business relationship, or

(iii) not to undertake a transaction,

and

(*b*) shall specify the matters which, in the opinion of the competent authority, give rise to the risk of money laundering or terrorist financing and in respect of which the additional measures taken are insufficient.

(3) A notice under *subsection (1)* shall take effect—

(a) where the notice so declares, immediately the notice is received by the person on whom it is served,

(b) in any other case—

(i) where no appeal is taken against the notice, on the expiration of the period during which such an appeal may be taken or the day specified in the notice as the day on which it is to come into effect, whichever is the later, or

(ii) in case such an appeal is taken, on the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or the day specified in the notice as that on which it is to come into effect, whichever is the later.

(4) A designated person that is aggrieved by a notice may, within the period of 30 days beginning on the day on which the notice is served, appeal against the notice to the High Court and in determining the appeal the court may—

(a) if the court is satisfied that in the circumstances of the case it is reasonable to do so, confirm the notice, with or without modification, or

(b) cancel the notice.

(5) The bringing of an appeal against a notice which is to take effect in accordance with *subsection (3)(a)* shall not have the effect of suspending the operation of the notice, but the appellant may apply to the court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(6) Where on the hearing of an appeal under this section a notice is confirmed the High Court may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the High Court considers appropriate.

(7) A person who appeals under *subsection (4)* against a notice or who applies for a direction suspending the application of the notice under *subsection (6)* shall at the same time notify the competent authority concerned of the appeal or the application and the grounds for the appeal or the application and the competent authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) A designated person that fails to comply with a direction made by the competent authority for that designated person under *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(9) A competent authority may, by notice in writing to the designated person concerned, vary or revoke a notice under subsection (1).

Anonymous accounts.

58. (1) A credit institution or financial institution shall not set up an anonymous account for, or provide an anonymous passbook or safe-deposit box to, any customer.

(2) A credit institution or financial institution shall not keep any anonymous account, or anonymous passbook, that was in existence immediately before the commencement of this section for any customer.

(3) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Relationships between credit institutions and shell banks.

59. (1) A credit institution or financial institution shall not enter into a correspondent relationship with a shell bank.

(2) A credit institution or financial institution that has entered into a correspondent relationship with a shell bank before the commencement of this section shall not continue that relationship.

(3) A credit institution or financial institution shall not engage in or continue a correspondent relationship with a bank that the institution knows permits its accounts to be used by a shell bank.

(4) A credit institution or financial institution shall apply appropriate measures to ensure that it does not enter into or continue a correspondent relationship that permits its accounts to be used by a shell bank.

(5) A credit institution or financial institution that fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

(6) In this section, 'shell bank' means a credit institution or financial institution (or a body corporate that is engaged in activities equivalent to those of a credit institution or financial institution) that—

(a) does not have a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated,

(b) is not authorised to operate, and is not subject to supervision, as a credit institution, or as a financial institution, (or equivalent) in the jurisdiction in which it is incorporated, and

(c) is not affiliated with another body corporate that—

(i) has a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated, and

(ii) is authorised to operate, and is subject to supervision, as a credit institution, a financial institution or an insurance undertaking, in the jurisdiction in which it is incorporated.

CHAPTER 8

Monitoring of designated persons

Meaning of "competent authority".

60.— (1) Subject to *section 61*, a reference in this Part to the competent authority for a designated person is a reference to the competent authority prescribed for the class of designated persons to which the designated person belongs.

(2) If no such competent authority is prescribed, a reference in this Part to the competent authority is a reference to the following:

(a) in the case of a designated person that is a credit institution or a financial institution, the Central Bank of Ireland;

(b) in the case of a designated person who is an auditor, external accountant, tax adviser or trust or company service provider—

(i) if the person is a member of a designated accountancy body, the designated accountancy body, or

(ii) if the person is not a member of a designated accountancy body and is a body corporate, or a body of unincorporated persons, carrying out its functions under this Part through officers and members of it who are members of a designated accountancy body, the designated accountancy body;

(c) in the case of a designated person who is a solicitor, the Law Society of Ireland;

(d) in the case of a designated person who is a barrister, the Legal Services Regulatory Authority;

(da) [deleted]

(db) in the case of a designated person that is a property services provider, the Property Services Regulatory Authority;

(e) in the case of any designated person other than a designated person referred to in paragraph (a), (b), (c) or (d) or (db), the Minister.

(3) The Minister may prescribe a competent authority for a class of designated persons, for the purpose of *subsection (1)*, only if the Minister is satisfied that the competent authority is more appropriate than the competent authority specified in subsection (2) for the class of designated persons, having regard to the nature of the business activities engaged in by that class.

Agreements between competent authorities where more than one applicable.

61. (1) Where there is more than one competent authority for a designated person under *section 60*, those competent authorities may agree that one of them will act as the

competent authority for that person, and references in this Part to a competent authority are to be construed accordingly.

(2) An agreement under this section, in relation to a designated person, takes effect when the competent authority who has agreed to act as the competent authority for the designated person gives notice, in writing, to that person.

(3) An agreement under this section, in relation to a designated person, ceases to have effect when—

(a) any of the parties to the agreement gives notice, in writing, to the other parties of the termination of the agreement,

(b) the agreement expires, or

(c) as a result of the operation of *section 60(1)*, the competent authority who has agreed to act as the competent authority is no longer a competent authority of the person under *section 60*,

whichever is the earliest.

Meaning of "State competent authority".

62. (1) In this Part, a reference to a State competent authority is a reference to one of the following competent authorities:

(a) the Central Bank of Ireland;

(b) the Minister;

(c) such other competent authority as is prescribed.

(2) The Minister may prescribe a competent authority as a State competent authority for the purposes of *subsection (1) (c)* only if—

(a) the Minister is satisfied that the competent authority is appropriate, having regard to the functions of State competent authorities under this Part, and

(b) the competent authority is a Minister of the Government or an officer of a particular class or description of a Department of State or is a body (not being a company) by or under an enactment.

General functions of competent authorities.

63. (1) A competent authority shall effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements specified in this Part.

(2) The measures that are reasonably necessary include reporting to the Garda Síochána and Revenue Commissioners any knowledge or suspicion that the competent authority has that a designated person has been or is engaged in money laundering or terrorist financing.

(3) In determining, in any particular case, whether a designated person has complied with any of the requirements specified in this Part, a competent authority shall consider

whether the person is able to demonstrate to the competent authority that the requirements have been met.

(4) A competent authority that, in the course of monitoring a designated person under this section, acquires any knowledge or forms any suspicion that another person has been or is engaged in money laundering or terrorist financing shall report that knowledge or suspicion to the Garda Síochána and Revenue Commissioners.

Supervision

63A. (1) Competent authorities shall take the necessary measures to prevent persons convicted of a relevant offence from performing a management function in or being the beneficial owners of the designated persons referred to in *paragraphs (c)*, *(d)* and *(f)* of *section 25(1)*.

(2) Any person performing a management function in or being the beneficial owner of the designated persons referred to in *subsection (1)* and who is convicted of a relevant offence must inform the relevant competent authority within 30 days of the day on which that person was convicted of the relevant offence.

(3) Any designated person for which or in respect of which a person who is convicted of a relevant offence, performs a management function or is a beneficial owner, shall inform its competent authority of the conviction within 30 days of the date on which the designated person became aware of the conviction.

(4) In this section "a relevant offence" means—

(a) an offence under this Act,

(b) an offence specified in Schedule 1 to the Criminal Justice Act 2011, or

(c) an offence under the law of a place (other than the State), consisting of an act or omission that, if done or omitted to be done in the State, would, under the law of the State, constitute an offence under *subsections (a)* or *(b)*.

(5) A person who fails to comply with *subsection (2)* or *(3)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 2 years or both.

Co-operation with Member State competent authorities

63B. (1) This section applies to designated persons—

(a) which operate establishments in the State and which have their head offices in another Member State, or

(b) which operate establishments in another Member State and which have their head offices in the State.

(2) A competent authority for designated persons to which this section applies shall take the necessary steps—

(a) to co-operate with Member State competent authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing,

(b) to co-ordinate activities to counter money laundering and terrorist financing with Member State competent authorities, and

(c) to co-operate with Member State competent authorities to ensure the effective supervision of designated persons to which this section applies.

(2A) Co-operation with Member State competent authorities under this section by a competent authority may include the sharing of information which the competent authority is not prevented from disclosing by the law of the State and the provision of assistance shall not be refused on the basis that:

(a) the request for the sharing of information or the provision of assistance is also considered to involve tax matters;

(b) the law of the State requires the competent authority to maintain secrecy or confidentiality except in those cases where the relevant information that is sought is protected by legal privilege;

(c) there is an inquiry, investigation or proceeding underway in the State, unless the sharing of such information or the provision of assistance would impede the inquiry, investigation or proceeding; or

(d) the nature or status of the requesting competent authority is different from that of the competent authority of whom the request is made.

(3) In this section "Member State competent authority", in relation to a Member State (other than the State), means the authority designated by that Member State to be the competent authority in that Member State for the purposes of the Fourth Money Laundering Directive.

Supervision by competent authorities

63C. Each competent authority shall—

(a) adopt a risk-based approach to the exercise of its supervisory functions,

(b) ensure that its employees and officers have access both at its offices and elsewhere to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector,

(c) base the frequency and intensity of on-site and off-site supervision on the risk profile of designated persons, and on the risks of money laundering and terrorist financing in the State,

(d) review, both periodically and when there are major events or developments in their management and operations, their assessment of the money laundering and terrorist financing risk profile of designated persons, including the risks of non-compliance with the provisions of this Act, and

(e) take into account the degree of discretion allowed to the designated person, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.

Duties of competent authorities

63D. (1) A competent authority, other than a State competent authority, shall make arrangements to ensure that—

(a) its supervisory functions are exercised independently of any of its other functions which do not relate to disciplinary matters,

(b) sensitive information relating to its supervisory functions is appropriately handled within the competent authority,

(c) it employs only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions and maintain high professional standards, including standards of confidentiality and data protection and standards addressing conflicts of interest, and

(d) a contravention of a requirement imposed by or under this Act by a designated person it is responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under its rules.

(2) A competent authority, other than a State competent authority, shall—

(a) provide adequate resources to carry out the supervisory functions, and

(b) appoint a person to monitor and manage the competent authority's compliance with its duties under this Act.

(3) The person appointed under *subsection (2)(b)* shall be responsible—

(*a*) for liaison with—

(i) another competent authority, and

(ii) any Member State competent authority (within the meaning of *section 63B*),

(b) for ensuring that the competent authority responds fully and as soon as possible to any request from an authority referred to in *subsection (a)(i)* or *(ii)* for information about any person it supervises.

Reporting breaches to competent authority

63E. (1) Each competent authority shall establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of this Act.

(2) Each competent authority shall provide one or more secure communication channels for persons reporting the matters referred to in subsection (1).

(3) Each competent authority shall ensure that the channels of communication referred to in subsection (2) can also be used by persons to report any threats or retaliatory or hostile actions they are subjected to for reporting suspected breaches of this Act."

Application of other enactments.

64. Nothing in this Part limits any functions that a competent authority (including a State competent authority) has under any other enactment or rule of law.

Annual Reporting

65. (1) A competent authority shall include, in each annual report published by the authority, an account of the activities that it has carried out in performing its functions under this Act during the year to which the annual report relates.

(2) Where a competent authority is not a State competent authority, each annual report published by the authority shall include information regarding the measures taken by the authority to monitor compliance by designated persons with the provisions of this Part.

Request to bodies to provide names, addresses and other information relating to designated persons.

66. (1) In this section, a reference to relevant information, in relation to a person, that is held by a body is a reference to any of the following information that is held by the body:

(a) the name, address or other contact details of the person;

(b) any other prescribed information relating to the person.

(2) A State competent authority may, by notice in writing, request any public body, or any body that represents, regulates or licenses, registers or otherwise authorises persons carrying on any trade, profession, business or employment, to provide the authority with any relevant information, in relation to—

(a) any designated persons for whom the authority is a competent authority, or

(b) any persons whom the body reasonably considers may be such designated persons.

(3) A State competent authority may make a request under this section only in relation to information that is reasonably required by the authority to assist the authority in carrying out its functions under this Part.

(4) Notwithstanding any other enactment or rule of law, a body that receives a request under this section shall disclose the relevant information concerned.

(5) The Minister may prescribe information, for the purposes of *subsection (1)(b)*, that a State competent authority may request under this section only if the Minister is satisfied that the information is appropriate, having regard to the functions of the State competent authority under this Part.

Direction to furnish information or documents

67. (1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to provide such information or documents (or both) relating to the designated person specified in the notice.

(2) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) In giving a direction under this section, a State competent authority shall specify the manner in which any document or information is required to be furnished and a reasonable time by which the document or information is required to be furnished.

(4) A person is required to furnish documents in accordance with this section only if the documents are in the person's possession or within the person's power to obtain lawfully.

(5) If a person knows the whereabouts of documents to which the direction applies, the person shall furnish to the State competent authority who gave the direction a statement, verified by a statutory declaration, identifying the whereabouts of the documents. The person shall furnish the statement no later than the time by which the direction specifies that the documents are required to be furnished.

(6) A person who, without reasonable excuse, fails to comply with *subsection (5)* commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(7) If any document required to be furnished under this section is in electronic, mechanical or other form, the document shall be furnished in written form, unless the direction specifies otherwise.

(8) A State competent authority may take copies of, or extracts from, any document furnished to the authority under this section.

Direction to provide explanation of documents.

68. (1) A State competent authority may, by notice in writing, direct a designated person for whom the authority is a competent authority to furnish to the authority an explanation of any documents relating to the designated person that—

(a) the person has furnished to the authority in complying with a direction under *section 67*, or

(b) an authorised officer has lawfully removed from premises under *section 77* (including as applied by *section 78*).

(2) In giving a direction under this section, a State competent authority shall specify the manner in which any explanation of a document is required to be furnished and a reasonable time by which the explanation is required to be furnished.

(3) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

Purpose of direction under section 67 or 68.

69. A State competent authority may give a direction under *section 67* or *68* only in relation to information or documents reasonably required by the authority to assist the authority to perform its functions under this Part.

Self-incrimination (sections 67 and 68).

70. Nothing in *section 67* or *68* requires a person to comply with a direction under the section concerned to furnish any information if to do so might tend to incriminate the person.

Directions to comply with obligations under this Part.

71. (1) A State competent authority may, by notice in writing, direct a designated person or a class of designated persons in respect of whom the authority is the competent authority to—

(a) discontinue, or refrain from engaging in, specified conduct that in the opinion of the authority concerned constitutes, or, if engaged in, would constitute, a breach of any specified provision of this Part, or

(b) take specific actions or to establish specific processes or procedures that in the opinion of the authority are reasonably necessary for the purposes of complying with any specified provision of this Part.

(2) The State competent authority shall specify in any such direction a reasonable period of time within which the person to whom it is given is required to comply with the direction.

(3) If a designated person to whom a direction has been issued under subsection (1) fails to comply with the direction and is subsequently found guilty of an offence—

(a) which consists of the conduct specified in the direction given under subsection (1)(a), or

(b) which would not have been committed if the direction under subsection (1)(b) had been complied with,

the court may take the failure to comply with the direction into account as an aggravating factor in determining any sentence to be imposed on the person for the offence.

Appointment of authorised officers.

72. (1) A State competent authority may appoint employees of the authority or other persons who, in the opinion of the authority, are suitably qualified or experienced, to be authorised officers for the purpose of this Chapter.

(2) A State competent authority may revoke any appointment made by the authority under *subsection (1)*.

(3) An appointment or revocation under this section shall be in writing.

(4) A person's appointment by a State competent authority as an authorised officer ceases—

(a) on the revocation by the authority of the appointment,

(b) in a case where the appointment is for a specified period, on the expiration of the period,

(c) on the person's resignation from the appointment, or

(d) in a case where the person is an employee of the authority—

(i) on the resignation of the person as an employee of the authority, or

(ii) on the termination of the person's employment with the authority for any other reason.

Warrant of appointment.

73. (1) Every authorised officer appointed by a State competent authority shall be furnished with a warrant of appointment as an authorised officer by the State competent authority.

(2) In the course of performing the functions of an authorised officer under this Chapter, the officer shall, if requested to do so by any person affected, produce the officer's warrant of appointment for inspection.

Powers may only be exercised for assisting State competent authority.

74. An authorised officer may exercise powers as an authorised officer under this Chapter only for the purpose of assisting the State competent authority that appointed the authorised officer in the performance of the authority's functions under this Part.

General power of authorised officers to enter premises.

75. (1) An authorised officer may enter any premises at which the authorised officer reasonably believes that the business of a designated person has been or is carried on.

(2) An authorised officer may enter any premises at which the authorised officer reasonably believes records or other documents relating to the business of a designated person are located.

(3) An authorised officer may enter premises under *subsection (1)* or *(2)*—

(a) in a case where the authorised officer reasonably believes that the business of a designated person is carried on at the premises (as referred to in *subsection (1)*), at any time during which the authorised officer reasonably believes that the business is being carried on there, or

(b) in any other case, at any reasonable time.

Entry into residential premises only with permission or warrant.

76. Nothing in this Chapter shall be construed as empowering an authorised officer to enter any dwelling without the permission of the occupier or the authority of a warrant under *section 78.*

Power of authorised officers to do things at premises.

77. (1) An authorised officer may, at any premises lawfully entered by the officer, do any of the following:

(a) inspect the premises;

(b) request any person on the premises who apparently has control of, or access to, records or other documents that relate to the business of a designated

person (being a designated person whose competent authority is the State competent authority who appointed the authorised officer)—

(i) to produce the documents for inspection, and

(ii) if any of those documents are in an electronic, mechanical or other form, to reproduce the document in a written form;

(c) inspect documents produced or reproduced in accordance with such a request or found in the course of inspecting the premises;

(d) take copies of those documents or of any part of them (including, in the case of a document in an electronic, mechanical or other form, a copy of the document in a written form);

(e) request any person at the premises who appears to the authorised person to have information relating to the documents, or to the business of the designated person, to answer questions with respect to the documents or that business;

(f) remove and retain the documents (including in the case of a document in an electronic, mechanical or other form, a copy of the information in a written form) for the period reasonably required for further examination;

(g) request a person who has charge of, operates or is concerned in the operation of data equipment, including any person who has operated that equipment, to give the officer all reasonable assistance in relation to the operation of the equipment or access to the data stored within it;

(h) secure, for later inspection, the premises or part of the premises at which the authorised officer reasonably believes records or other documents relating to the business of the designated person are located.

(2) A person to whom a request is made in accordance with *subsection (1)* shall—

(a) comply with the request so far as it is possible to do so, and

(b) give such other assistance and information to the authorised officer with respect to the business of the designated person concerned as is reasonable in the circumstances.

(3) A reference in this section to data equipment includes a reference to any associated apparatus.

(4) A reference in this section to a person who operates or has operated data equipment includes a reference to a person on whose behalf data equipment is operated or has been operated.

Entry to premises and doing of things under warrant

78. (1) A judge of the District Court may issue a warrant under this section if satisfied, by information on oath of an authorised officer, that there are reasonable grounds for believing that—

(*a*) documents relating to the business of a designated person that are required for the purpose of assisting the State competent authority that appointed the

authorised officer under this Chapter in the performance of the authority's functions under this Part are contained on premises, and

(*b*) the premises comprise a dwelling or an authorised officer has been obstructed or otherwise prevented from entering the premises under *section 75*.

(2) A warrant under this section authorises an authorised officer, at any time or times within one month of the issue of the warrant—

(a) to enter the premises specified in the warrant, and

(b) to exercise the powers conferred on authorised officers by this Chapter or any of those powers that are specified in the warrant.

(3) Entry to premises the subject of a warrant may be effected with the use of reasonable force.

Authorised officer may be accompanied by others.

79. An authorised officer may be accompanied, and assisted in the exercise of the officer's powers (including under a warrant issued under *section 78*), by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

Offence to obstruct, interfere or fail to comply with request.

80. (1) A person commits an offence if the person, without reasonable excuse—

(a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under this Chapter, or

(b) fails to comply with a requirement, or request made by an authorised officer, under *section 77* (including as applied by *section 78*).

(2) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both).

(3) A reference in this section to an authorised officer includes a member of the Garda Síochána or other person who is accompanying and assisting the officer in accordance with *section 79*.

Self-incrimination — questions of authorised officers.

81. Nothing in this Chapter requires a person to answer questions if to do so might tend to incriminate the person.

Production of documents or information not required in certain circumstances.

82. Nothing in this Chapter requires the production of any document or information subject to legal privilege.

Disclosure or production not to be treated as breach or to affect lien

83. (1) The disclosure or production of any information or document by a person in accordance with this Chapter shall not be treated as a breach of any restriction under any enactment

or rule of law on disclosure or production by the person or any other person on whose behalf the information or document is disclosed or produced.

(2) The production referred to in *subsection (1)* of any item forming part of the documents relating to the business of a designated person shall not prejudice any lien that the designated person or any other person claims over that item.

CHAPTER 9

Authorisation of Trust or Company Service Providers

Interpretation (Chapter 9).

84. (1) In this Chapter—

"Authorisation" means an authorisation to carry on business as a trust or company service provider granted under this Chapter and, if such an authorisation is renewed or amended under this Chapter, means, unless the context otherwise requires, the authorisation as renewed or amended (as the case may be);

"principal officer" means—

(a) in relation to a body corporate, any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or

(b) in relation to a partnership—

(i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and

(ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

'subsidiary' has the meaning assigned to it by section 155 of the Companies Act 1963

"trust or company service provider" does not include any of the following:

(a) a member of a designated accountancy body;

(b) a barrister or solicitor;

(c) a credit institution or financial institution.

(2) (a) Subject to paragraph (b), in this Chapter a reference to the Minister shall, in a case where the applicant for or the holder of an authorisation is a subsidiary of a credit or financial institution, be construed as a reference to the Central Bank of Ireland.

(b) Paragraph (a) does not apply to—

(i) section 88(5),

(ii) sections 89(5)(b)(ii), 90(3)(b)(ii), 93(6)(b)(ii), 97(6)(b)(ii), 98(2)(b)(ii) and 100(2) in so far as those provisions relate to the specifying of a form by the Minister,

(iii) section 94(3),

(iv) section 101,

(v) section 104(8),

(vi) section 106(7).

Meaning of “fit and proper person”.

85. For the purposes of this Chapter and *sections 108B* to *108I*, a person is not a fit and proper person if any of the following apply:

(a) the person has been convicted of any of the following offences:

(i) money laundering;

(ii) terrorist financing;

(iii) an offence involving fraud, dishonesty or breach of trust;

(iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in *subparagraph (i)*, *(ii)* or *(iii)* if the conduct occurred in the State;

(b) in a case where the person is an individual, the person is under 18 years of age;

(c) the person—

(i) has suspended payments due to the person’s creditors,

(ii) is unable to meet other obligations to the person’s creditors, or

(iii) is an individual who is an undischarged bankrupt;

(d) the person is otherwise not a fit and proper person.

Authorisations held by partnerships.

86. (1) A reference in a relevant document to the holder or proposed holder of an authorisation includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified.

(2) A reference in *subsection (1)* to a relevant document is a reference to any of the following:

(a) this Chapter;

(b) a regulation made for the purposes of this Chapter;

(c) an authorisation or condition of an authorisation;

(d) any notice or direction given under this Chapter;

(e) any determination under this Chapter.

(3) Without prejudice to the generality of *subsection (1)* or *section 111*, where any requirement is imposed by or under this Chapter on the holder of an authorisation and

failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of an authorisation) who contravenes the requirement is liable for the offence.

Prohibition on carrying on business of trust or company service provider without authorisation.

87. (1) A person commits an offence if the person carries on business as a trust or company service provider without being the holder of an authorisation issued by the Minister under this Chapter.

(2) A person who commits an offence under *subsection (1)* is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment not exceeding 5 years (or both).

Application for authorisation.

88. (1) An individual, body corporate or partnership may apply to the Minister for an authorisation to carry on business as a trust or company service provider.

(2) The application shall—

(a) be in a form provided or specified by the Minister,

(b) specify the name of—

(i) the proposed holder of the authorisation,

(ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carryon business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be), and

(iii) any person who is, or is proposed to be, a beneficial owner of the business,

(c) be accompanied by any consent, in the form provided or specified by the Minister, that is required to enable access to personal data held by other persons or bodies and that is required to assist the Minister in determining, for the purposes of section 89 (including as applied by section 92) whether or not the proposed holder and other persons referred to in paragraph (b) are fit and proper persons,

(d) contain such other information, and be accompanied by such documents, as the Minister requests,

(e) be accompanied by the prescribed fee (if any).

(3) The Minister may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional

information and documents as are reasonably necessary to enable the Minister to determine the application.

(4) As soon as practicable after an applicant becomes aware that any information or document provided to the Minister under this section contains a material inaccuracy or has changed in any material particular, including information or a document provided in relation to an application that has been granted, but not including information or a document provided in relation to an application that has been refused, the applicant shall give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(5) For the purposes of *subsection (2)(e)* (including as applied by *section 92*), the Minister may prescribe different fees, to accompany applications for authorisations under this Chapter, for different classes of proposed holders of those authorisations and in prescribing such fees may differentiate between the fee to accompany such an application for an authorisation (not being an application for the renewal of such an authorisation) and the fee to accompany an application for the renewal of such an authorisation.

Grant and refusal of applications for authorisation.

89. (1) The Minister may refuse an application under *section 88* only if—

(a) the application does not comply with the requirements of *section 88*,

(b) the applicant does not provide any additional documents or information in accordance with a notice given under *section 88 (3)*,

(c) the Minister has reasonable grounds to be satisfied that information given to the Minister by the applicant in connection with the application is false or misleading in any material particular,

(d) the Minister has reasonable grounds to be satisfied that any of the following persons is not a fit and proper person:

(i) the proposed holder of the authorisation;

(ii) in a case where the proposed holder of the authorisation is a body corporate or partnership or an individual who proposes to carryon business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) (iii) any person who is, or is proposed to be, a beneficial owner of the business concerned,

(e) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with the obligations imposed on trust or company service providers, as designated persons, under this Part,

(f) the applicant has failed to satisfy the Minister that the proposed holder of the authorisation will comply with each of the following:

(i) any conditions that the Minister would have imposed on the authorisation concerned if the Minister had granted the application;

(ii) any prescribed requirements referred to in *section 94*;

(iii) *section 95*;

(iv) *section 98*;

(v) *section 106*,

(g) the proposed holder of the authorisation is so structured, or the business of the proposed holder is so organised, that the proposed holder is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Minister,

(h) in a case where the proposed holder of the authorisation is a body corporate, the body corporate is being wound up,

(i) in a case where the proposed holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State, or

(k) in a case where the proposed holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.

(2) If the Minister proposes to refuse an application, the Minister shall serve on the applicant a notice in writing—

(a) specifying the grounds on which the Minister proposes to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the serving of the notice, make written representations to the Minister showing why the Minister should grant the application.

(3) Not later than 21 days after a notice is served on an applicant under *subsection (2)*, the applicant may make written representations to the Minister showing why the Minister should grant the application.

(4) The Minister may refuse an application only after having considered any representations made by the applicant in accordance with *subsection (3)*.

(5) As soon as practicable after refusing an application, the Minister shall serve a written notice of the refusal on the applicant. The notice shall include a statement—

(a) setting out the grounds on which the Minister has refused the application, and

(b) informing the applicant that—

(i) the applicant may appeal to an Appeal Tribunal against the refusal, and

(ii) if the applicant proposes to appeal to an Appeal Tribunal against the refusal, the applicant may, within one month after being served with the notice of refusal, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(6) If the Minister does not refuse the application, he or she shall grant it and, on granting the application, the Minister shall—

(a) record the appropriate particulars of the holder of the authorisation in the register of persons authorised to carry on business as a trust or company service provider, and

(b) issue the applicant with an authorisation that authorises the holder of the authorisation to carry on business as a trust or company service provider.

Minister may impose conditions when granting an application for an authorisation.

90. (1) In granting an application for an authorisation under this Chapter, the Minister may impose on the holder of the authorisation any conditions that the Minister considers necessary for the proper and orderly regulation of the holder's business as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) The Minister shall specify any such conditions in the authorisation granted to the holder or in one or more documents annexed to that authorisation.

(3) If, under this section, the Minister imposes any conditions on an authorisation, the Minister shall serve on the holder of the authorisation, together with the authorisation, a written notice of the imposition of the conditions that includes a statement—

(a) setting out the grounds on which the Minister has imposed the conditions, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the imposition of any of the conditions, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the imposition of any of the conditions, the holder may, within one month after being served with the notice of the imposition of conditions, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

Terms of authorisation.

91. (1) An authorisation comes into force on the day on which the authorisation is granted, or, if a later date is specified in the authorisation, on that later date, whether or not an appeal against any conditions of the authorisation is made under *section 100*.

(2) An authorisation remains in force, unless sooner revoked under this Chapter, for a period of 3 years from the date on which it comes into force.

(3) A reference in this section to an authorisation does not include a reference to an authorisation that is renewed under *section 92*.

Renewal of authorisation.

92. (1) The Minister may renew an authorisation on the application of the holder of the authorisation unless the authorisation has been revoked under this Chapter.

(2) *Sections 88* to *90* apply, with any necessary modifications, in relation to an application for the renewal of an authorisation.

(3) An application for the renewal of an authorisation shall be made not less than 10 weeks before the end of the period for which it was granted.

(4) In addition to the grounds specified in *section 89* (as applied by *subsection (2)*), the Minister may refuse to grant a renewed authorisation on the grounds that the application for renewal has been made less than 10 weeks before the end of the period for which the authorisation was granted.

(5) If an application for the renewal of an authorisation is made within the time provided for in *subsection (3)* and is not determined by the Minister before the end of the period for which the authorisation was granted, the authorisation remains in force until the date on which the application is determined.

(6) A renewed authorisation comes into force on—

(a) in a case where *subsection (5)* applies, the date on which the application is determined, or

(b) in any other case, the day immediately following the end of the period for which the authorisation that it renews was granted or last renewed, as the case may be.

(7) A renewed authorisation, unless sooner revoked under this Chapter, remains in force for a period of 3 years from the date on which it comes into force under subsection (6).

(8) Subsections (6) and (7) have effect whether or not an appeal against any conditions of the authorisation is made under section 100.

Minister may amend authorisation.

93. (1) The Minister may amend an authorisation granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Minister considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the authorisation as a trust or company service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If the Minister proposes to amend an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to amend the authorisation.

(3) The notice shall—

(a) specify the proposed amendment, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not make that amendment.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of an authorisation, the holder may make written representations to the Minister showing why the Minister should not amend the authorisation.

(5) The Minister may amend an authorisation only after having considered any representations to the Minister made in accordance with subsection (4) showing why the Minister should not amend the authorisation.

(6) The Minister shall serve written notice of any amendment of an authorisation on the holder of the authorisation. The notice shall include a statement—

(a) setting out the grounds on which the Minister has amended the authorisation, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the amendment, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the amendment, the holder may, within one month after being served with the notice of amendment, serve a notice of intention to appeal on the Minister, in the form provided or specified by the Minister.

(7) The amendment of an authorisation under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under section 100.

Offence to fail to comply with conditions or prescribed requirements.

94. (1) The holder of an authorisation commits an offence if the holder fails to comply with—

(a) any condition of the authorisation, or

(b) any prescribed requirements.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €2,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Minister may prescribe requirements for the purposes of *subsection (1)(b)* only if the Minister is satisfied that it is necessary to do so for the proper and orderly regulation of the business of trust or company service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing.

Holder of authorisation to ensure that principal officers and beneficial owners are fit and proper persons.

95. (1) The holder of an authorisation shall take reasonable steps to ensure that the following persons are fit and proper persons:

(a) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(b) any person who is a beneficial owner of the business concerned.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €2,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of authorisation by Minister on application of holder.

96. The Minister shall revoke an authorisation on the application of the holder of the authorisation, but only if satisfied that the holder of the authorisation has fully complied with each of the following:

(a) any conditions of the authorisation;

(b) any prescribed requirements referred to in *section 94*;

(c) *section 95*;

(d) *section 98*;

(e) *section 106*.

Revocation of authorisation other than on application of holder.

97. (1) The Minister may revoke an authorisation only if the Minister has reasonable grounds to be satisfied of any of the following:

(a) the holder of the authorisation has not commenced to carry on business as a trust or company service provider within 12 months after the date on which the authorisation was granted;

(b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months;

(c) the authorisation was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the holder of the authorisation;

(ii) in a case where the holder of the authorisation is a body corporate, a partnership or an individual carrying on business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the business concerned;

(e) the holder of the authorisation has contravened or is contravening the obligations imposed on trust or company service providers, as designated persons, under this Part;

(f) the holder of the authorisation has contravened or is contravening any of the following:

(i) a condition of the authorisation;

(ii) a prescribed requirement referred to in *section 94*;

(iii) *section 95*;

(iv) *section 98*;

(v) *section 106*;

(g) the holder of the authorisation is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part;

(h) in a case where the holder of the authorisation is a body corporate, the body corporate is being wound up;

(i) in a case where the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the person to carry on business as a trust or company service provider in the other Member State;

(k) in a case where the holder of the authorisation is a subsidiary of a body corporate that is authorised to carry on business as a trust or company service provider in another Member State, an authority of the other Member State that performs functions similar to those of the Minister under this Chapter has terminated the authority of the body corporate to carry on business as a trust or company service provider in the other Member State.

(2) If the Minister proposes to revoke an authorisation under this section, the Minister shall serve on the holder of the authorisation a notice in writing informing the holder of the Minister's intention to revoke the authorisation.

(3) The notice shall—

(a) specify the grounds on which the Minister proposes to revoke the authorisation, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Minister showing why the Minister should not revoke the authorisation.

(4) Not later than 21 days after a notice is served under *subsection (2)* on the holder of an authorisation, the holder may make written representations to the Minister showing why the Minister should not revoke the authorisation.

(5) The Minister may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with *subsection (4)*.

(6) As soon as practicable after revoking an authorisation under this section, the Minister shall serve written notice of the revocation on the person who was the holder of the authorisation. The notice shall include a statement—

(a) setting out the reasons for revoking the authorisation, and

(b) informing the holder that—

(i) the holder may appeal to an Appeal Tribunal against the revocation, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the revocation, the holder may, within one month after being served with the notice of revocation, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister.

(7) The revocation of an authorisation under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under *section 100*.

Direction not to carry out business other than as directed.

98. (1) If the Minister reasonably believes that there may be grounds for revoking an authorisation under *section 97*, the Minister may serve on the holder of the authorisation a direction in writing prohibiting the holder from carrying on business as a trust or company service provider other than in accordance with conditions specified by the Minister.

(2) The Minister shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) informing the holder of the authorisation concerned that—

(i) the holder may appeal to an Appeal Tribunal against the direction, and

(ii) if the holder proposes to appeal to an Appeal Tribunal against the direction, the holder may, within one month after being served with the direction, serve a notice of intention to appeal on the Minister in the form provided or specified by the Minister,

and

(c) specifying the conditions with which the holder of the authorisation is required to comply.

(3) The Minister may, by notice in writing served on the holder of the authorisation concerned, amend or revoke a direction given under this section.

(4) Without prejudice to the generality of *subsection (3)*, the Minister may, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(5) A direction under this section takes effect from the date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under *section 100*.

(6) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or

(b) on the revocation of the holder's authorisation under this Chapter, whichever occurs first.

(7) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.

(8) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Minister to publish notice of revocation or direction.

99. As soon as practicable after revoking an authorisation under *section 96* or *97*, or giving a direction under *section 98*, the Minister shall publish in *Iris Oifigiúil* a notice giving particulars of the revocation or direction.

Appeals against decisions of Minister.

100. (1) In this section, "appealable decision" means a decision of the Minister under—

(a) *section 89* to refuse an application for an authorisation,

(b) *section 89*, as applied by *section 92*, to refuse an application for the renewal of an authorisation,

(c) *section 90* to impose conditions on an authorisation,

(d) *section 90*, as applied by *section 92*, to impose conditions on an authorisation that is renewed,

(e) *section 93* to amend an authorisation,

(f) *section 97* to revoke an authorisation, or

(g) *section 98* to serve a direction on the holder of an authorisation.

(2) A person aggrieved by an appealable decision may, within one month after being served with notice of the decision, serve a notice of the person's intention to appeal against the decision on the Minister in the form provided or specified by the Minister.

(3) On receipt of the notification, the Minister shall refer the matter to an Appeal Tribunal established under *section 101*.

(4) The Appeal Tribunal may invite the person and the Minister to make written submissions to it in relation to the appeal.

(5) The Appeal Tribunal shall notify the person, in writing, of the following matters:

(a) the date and time of the hearing of the appeal;

(b) that the person may attend the hearing;

(c) that the person may be represented at the hearing by a barrister, solicitor or agent.

(6) An Appeal Tribunal may refuse to hear, or continue to hear, an appeal under this section if it is of the opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation.

(7) The Appeal Tribunal shall (unless the appeal is withdrawn, or discontinued or dismissed under subsection (6)) determine the appeal by—

(a) affirming the decision of the Minister to which the appeal relates, or

(b) substituting its determination for that decision.

(8) The Appeal Tribunal shall notify its determination in writing to the Minister and the person appealing.

(9) Within 3 months after the date on which an appeal is determined by an Appeal Tribunal, the Minister or person who appealed may appeal to the High Court on any question of law arising from the determination.

Appeal Tribunals.

101. [Repealed]

101A. (1) On the commencement of section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020 there shall stand established a tribunal which shall be known as the Appeal Tribunal to consider and determine appeals made pursuant to this Act.

(2) The Appeal Tribunal shall be independent in the exercise of its functions under this Act and shall regulate its own procedures.

(3) The Appeal Tribunal may sit in divisions of itself to consider appeals.

(4) The Appeal Tribunal shall consist of a chairperson and such number of ordinary members as the Minister considers necessary from time to time for the efficient discharge of its functions.

(5) The chairperson and the ordinary members of the Appeal Tribunal shall be appointed by the Minister and the appointment shall be subject to such terms and conditions, including terms and conditions relating to remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure and Reform.

(6) Each member of the Appeal Tribunal shall be a practising barrister or solicitor of not less than 10 years' practice.

(7) The term of office of a member of the Appeal Tribunal shall be 5 years and a member of the Appeal Tribunal shall be eligible for reappointment as such member for a second term not exceeding 5 years.

(8) A member of the Appeal Tribunal may at any time resign his or her office as such member by giving notice in writing to the Minister and the resignation shall take effect on and from the date of receipt of the notice.

(9) A member of the Appeal Tribunal may be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the member has become incapable through ill-health or otherwise of effectively performing the functions of the Appeal Tribunal.

(10) If a member of the Appeal Tribunal dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Appeal Tribunal to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Appeal Tribunal who occasioned the vacancy and shall hold office for the remainder of the term of office for which his or her predecessor was appointed.

(11) Where a member of the Appeal Tribunal is—

(a) nominated as a member of Seanad Éireann, 15 5 10 15 20 25 30 35 40

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to Part XIII of the second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,

(d) elected or co-opted as a member of a local authority, (e) appointed to judicial office, or

(e) appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

Provision of information by Garda Síochána as to whether or not person is fit and proper person.

102. (1) The Minister may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Minister in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

(a) the holder or proposed holder of an authorisation;

(b) in a case where the holder or proposed holder of the authorisation is a body corporate, a partnership or an individual carrying on, or proposing to carry on, business as a trust or company service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) any person who is a beneficial owner of the business of the holder or proposed holder of the authorisation concerned.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Minister with information in accordance with a request of the Minister under this section.

Extension of powers under Chapter 8 for purposes related to this Chapter.

103. (1) The functions of a State competent authority, in relation to designated persons, under *Chapter 8*, may be performed by the Minister to assist in carrying out functions in relation to trust or company service providers under this Chapter.

(2) For that purpose, *sections 66* to *83* apply with any necessary modifications, including the following:

(a) a relevant authorised officer has, in respect of trust or company service providers within the meaning of this Chapter, all of the functions that an authorised officer appointed by a State competent authority under *section 72* has in respect of designated persons;

(b) a judge of the District Court, in the case of an application under *section 78* by a relevant authorised officer in respect of a trust or company service provider, has all of the functions that such a judge has, in the case of a similar application under that section by an authorised officer appointed by a State competent authority under *section 72*, in respect of a designated person;

(c) *section 79* applies so as to enable a relevant authorised officer to be accompanied and assisted in the exercise of the officer's powers as referred to in that section;

(d) *section 80* applies to a person who engages in conduct, referred to in that section, in relation to—

(i) a relevant authorised officer, and

(ii) any person accompanying and assisting the officer in accordance with *section 79* as applied by *paragraph (c)*.

(3) This section has effect whether or not the Minister is the State competent authority for any class of trust or company service providers.

(4) In this section "relevant authorised officer" means an authorised officer appointed by the Minister under section 72, as applied by this section.

Register of persons holding authorisations.

104. (1) The Minister shall establish and maintain a register of persons authorised under this Chapter to carry on business as a trust or company service provider containing—

(a) the name and the address of the principal place of business of each person authorised to carry on business as a trust or company service provider, and

(b) such other information as may be prescribed.

(2) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(3) The Minister shall maintain the register at an office in the State.

(4) Members of the public are entitled, without charge, to inspect the register during ordinary business hours.

(5) The Minister may publish a register in written, electronic or other form and a member of the public is entitled to obtain a copy of a register or of an entry in a register on payment of such reasonable copying charges as may be prescribed (if any).

(6) The holder of an authorisation to whom an entry in the Register relates shall, as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Minister of the error or change in circumstances, as the case may be.

(7) In any legal proceedings, a certificate purporting to be signed by the Minister and stating that a person—

(a) is recorded in the Register as the holder of an authorisation,

(b) is not recorded in the Register as the holder of an authorisation,

(c) was recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation, or

(d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of an authorisation,

is evidence of the matter referred to in *paragraph (a)*, *(b)*, *(c)* or *(d)* (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(8) The Minister may prescribe particulars for the purposes of *subsection (1) (b)* or *section 105* only if satisfied that those particulars reasonably relate to the business of trust or company service providers or to the regulation of the business of trust or company service providers under this Part.

Minister to publish list of persons holding authorisations.

105. The Minister shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in *Iris Oifigiúil* a list of persons holding authorisations, together with other prescribed particulars (if any).

Holders of authorisations to retain certain records.

106. (1) The holder of an authorisation shall—

(a) retain at an office or other premises in the State such records as may be specified by the Minister, and

(b) notify the Minister in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by *subsection (1)* is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect

to the retention of records by the holder of an authorisation, including the requirements specified in *section 55*.

(3) The holder of an authorisation shall retain the records referred to in *subsection (1)* for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the holder, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The holder of an authorisation may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed on a holder of an authorisation under this section continue to apply to a person who has been the holder of an authorisation, but has ceased to hold an authorisation or to carry on business as a trust or company service provider.

(6) A requirement for the holder of an authorisation that is a body corporate to retain any record under this section applies to any body corporate that is a successor to, or a continuation of, the body corporate.

(7) The Minister may make regulations prescribing requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(8) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Chapter 9A

Virtual Asset Service Providers

Interpretation

106A. In this Chapter—

'Act of 1942' means the Central Bank Act 1942;

'Bank' means the Central Bank of Ireland;

'FATF' means the Financial Action Task Force on Money Laundering and Countering the Financing of Terrorism established by the Paris G7 Summit of 1989;

'prescribed' means prescribed by regulations made by the Bank;

'principal officer' means—

(a) in relation to a body corporate, any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or

(b) in relation to a partnership—

(i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and

(ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

'registration' means a registration granted by the Bank under this Chapter to permit a person to carry on business as a virtual asset service provider and, if such a permission is amended under this Chapter, means the registration as amended.

Fit and proper person

106B. For the purposes of this Chapter, a person is not a fit and proper person if any of the following apply:

(a) the person has been convicted of any of the following offences:

(i) money laundering;

(ii) terrorist financing;

(iii) an offence involving fraud, dishonesty or breach of trust;

(iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in subparagraph (i), (ii) or (iii) if the conduct occurred in the State;

(b) in a case where the person is an individual, the person is under 18 years of age;

(c) the person—

(i) has suspended payments due to the person's creditors,

(ii) is unable to meet other obligations to the person's creditors, or

(iii) is an individual who is an undischarged bankrupt;

(d) the person is otherwise not a fit and proper person.

Registrations held by partnerships

106C. (1) A reference in a relevant document to a holder or proposed holder of a registration includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified.

(2) A reference in subsection (1) to a relevant document is a reference to any of the following:

(a) this Chapter;

(b) a regulation made for the purposes of this Chapter;

(c) a registration or condition of a registration;

(d) any notice or direction given under this Chapter;

(e) any determination under this Chapter.

(3) Without prejudice to the generality of subsection (1) or section 111, where any requirement is imposed by or under this Chapter on the holder of a registration, and failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of a registration) who contravenes the requirement is liable for the offence.

Scope of Bank's supervision – performance of certain functions

106D. (1) The functions conferred on the Bank under—

(a) Parts II, IIIC, VIIA, VIIIA and IX of the Act of 1942,

(b) Parts 3 and 4 of the Central Bank Reform Act 2010, and

(c) Parts 2, 3, 7 and 9 of the Central Bank (Supervision and Enforcement) Act 2013, shall, in addition to being performable for the purposes to which those provisions relate, be performable for the purposes of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.

(2) The Minister, where he or she considers it appropriate to do so and following consultation with the Bank, may make regulations conferring additional functions connected with the functions conferred by or under any enactment on the Bank for the purpose of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.

(3) Regulations under subsection (2) may provide for such additional functions as may be necessary for the more effective implementation of Recommendations made from time to time by FATF to address and mitigate the risks related to money laundering and terrorist financing

Obligation on virtual asset service providers to register with Bank

106E. (1) A person shall not carry on business as a virtual asset service provider, claim to be a virtual asset service provider or represent that the person is a virtual asset service provider unless the person is registered with the Bank under this Chapter.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years or both.

Transitional provision for existing virtual asset service providers

106F. (1) Notwithstanding section 106E, a person carrying on business as a virtual asset service provider immediately before the coming into operation of this Chapter, is taken to be registered to carry on business as a virtual asset service provider until the Bank has

granted or refused an application to register the person, provided that the person applies to the Bank under section 106G for registration, no later than 3 months after that section comes into operation.

(2) Where a person is taken to be registered to carry on business as a virtual asset service provider under subsection (1), the Bank may do either or both of the following:

(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of virtual asset service providers;

(b) direct that person not to carry on business as a virtual asset service provider for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Application for registration

106G. (1) An individual, body corporate or partnership may apply to the Bank to be registered under this section.

(2) An application for registration under this section shall—

(a) be in a form provided or specified by the Bank,

(b) specify the name of—

(i) the applicant,

(ii) in a case where the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be), and (iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(c) specify the address at which the business of a virtual asset service provider is proposed to be carried on,

(d) contain such other information, and be accompanied by such documents, as the Bank may reasonably request including, for the purposes of the Bank assessing whether persons referred to in paragraph (b) can comply with the provisions of Part 4 and are fit and proper persons, such information and documents as the Bank may reasonably require relating to the steps taken by the applicant to ensure that those persons are fit and proper persons and the process of verification carried out by the applicant for the purposes of so ensuring, and

(e) be accompanied by such fees as are payable in accordance with section 32E of the Act of 1942 in respect of the performance by the Bank of its functions under the Act of 2010.

(3) For the purposes of assessing whether a beneficial owner is a fit and proper person, the Bank may request the person by notice in writing to attend before a specified officer or employee of the Bank for interview.

(4) Nothing in this section or any notice given by the Bank under this section requires a person—

(a) to produce to the Bank a document that the person could not have been compelled to produce to a court,

(b) to give to the Bank information that the person could not have been compelled to give to a court, or

(c) to answer a question (either in writing or at interview) that the person could not have been compelled to answer in a court.

(5) The Bank may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Bank to determine the application for registration.

Grant and refusal of applications for registration

106H. (1) The Bank may refuse an application for registration under section 106G only if—

(a) the application does not comply with the requirements of section 106G,

(b) the applicant does not provide any additional documents or information in accordance with a notice given under section 106G,

(c) the Bank has reasonable grounds to be satisfied that information given to the Bank by the applicant in connection with the application is false or misleading in any material particular,

(d) the Bank has reasonable grounds to be satisfied that any of the following persons, is not a fit and proper person:

(i) the applicant;

(ii) in a case in which the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(e) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with the obligations imposed on the applicant under this Chapter, or as a designated person under this Part,

(f) the applicant has failed to satisfy the Bank that the applicant's business risk assessment, policies and procedures are adequate or fit for purpose,

(g) the applicant has failed to satisfy the Bank that it has in place the resources, procedures and arrangements for the provision of the business of a virtual asset service provider and the performance of activities, taking into account the nature, scale and complexity of its business and all the obligations that the provider has to comply with as a designated person under this Act,

(h) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with each of the following:

(i) any conditions that the Bank would have imposed on the registration concerned, if the Bank had granted the application;

(ii) any prescribed requirements referred to in section 106M,

(i) the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Bank,

(j) where the applicant fails to demonstrate, where applicable, that it can manage and mitigate the risks of engaging in activities that involve the use of anonymity-enhancing technologies or mechanisms and other technologies that obfuscate the identity of the sender, recipient, holder or beneficial owner of a virtual asset,

(k) in a case where the applicant is a body corporate, the body corporate is being wound up,

(l) in a case where the applicant is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(m) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State,

(n) in a case where the applicant is a subsidiary of a body corporate has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State, or (o) there are objective and demonstrable grounds for believing that the management body of the applicant may pose a threat to its sound and prudent management and to the adequate consideration of its clients and the integrity of the market.

(2) If the Bank proposes to refuse an application, the Bank shall serve on the applicant a notice in writing—

(a) specifying the grounds on which the Bank proposes to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the service of the notice, make written representations to the Bank showing why the Bank should grant the application.

(3) Not later than 21 days after a notice is served on an applicant under subsection (2), the applicant may make written representations to the Bank showing why the Bank should grant the application.

(4) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with subsection (3).

(5) As soon as practicable after refusing an application, the Bank shall serve a written notice of the refusal on the applicant including a statement setting out the grounds on which the Bank has refused the application.

(6) A decision of the Bank to refuse an application under section 106G is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(7) If the Bank does not refuse the application, it shall grant it and, on granting the application, the Bank shall—

(a) record the appropriate particulars of the applicant in the register of persons permitted by the Bank to carry on business as a virtual asset service provider, and

(b) issue the applicant with a registration that permits the applicant to carry on business as a virtual asset service provider.

Bank may impose conditions when granting an application for registration

106I. (1) In granting an application for registration under this Chapter, the Bank may impose on the holder of the registration any conditions that the Bank considers necessary for the proper and orderly regulation of the holder's business as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) The Bank shall specify any such conditions in the registration granted to the holder or in one or more documents annexed to that registration.

(3) If, under this section, the Bank imposes any conditions on a registration, the Bank shall serve on the holder of the registration, together with the registration, a written notice of the imposition of the conditions that includes a statement setting out the grounds on which the Bank has imposed the conditions.

(4) A decision of the Bank to register a person subject to conditions under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Terms of registration

106J. (1) A registration comes into force on the day on which the registration is granted, or, if a later date is specified in the registration, on that later date, whether or not an appeal against any conditions of registration is made under section 106I.

(2) A registration remains in force, unless sooner revoked under this Chapter from the date on which it comes into force.

Bank may amend registration

106K. (1) The Bank may amend a registration granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Bank considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the registration as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If the Bank proposes to amend a registration under this section, the Bank shall serve on the holder of the registration, a notice in writing informing the holder of the Bank's intention to amend the registration.

(3) The notice shall—

(a) specify the proposed amendment, and

(b) inform the holder of the registration that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not make that amendment.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not amend the registration.

(5) The Bank may amend a registration only after having considered any representations to the Bank made in accordance with subsection (4) showing why the Bank should not amend the registration.

(6) The Bank shall serve written notice of any amendment of a registration on the holder of the registration including a statement setting out the grounds on which the Bank has amended the registration.

(7) A decision of the Bank to amend a registration granted under this Chapter is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) The amendment of a registration under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under this section.

Regulatory disclosure statement

106L. (1) Subject to subsection (2), the holder of a registration shall include a statement (in this section referred to as a 'regulatory disclosure statement') in the prescribed form in all advertisements for its services stating that the holder of the registration is registered and supervised by the Bank for anti-money laundering and countering the financing of terrorism purposes only.

(2) For the purposes of this section, the Bank may prescribe the form of the regulatory disclosure statement including its size and colour and font type and the manner in which the disclosure statement shall be displayed.

(3) In this section, 'advertisement' means any form of commercial communication which is intended to publicise or otherwise promote the holder of a registration in relation to the provision by the holder of virtual asset services.

Offence to fail to comply with conditions or prescribed requirements

106M. (1) The holder of a registration commits an offence if the holder fails to comply with—

(a) any condition of the registration, or

(b) any prescribed requirements.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Bank may prescribe requirements for the purposes of subsection (1)(b) only if the Bank is satisfied that it is necessary to do so for the proper and orderly regulation of the business of virtual asset service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing.

Holder of registration to ensure that beneficial owners are fit and proper persons

106N. (1) The holder of a registration shall take reasonable steps to ascertain that any person who is a beneficial owner of the virtual asset service provider concerned is a fit and proper person.

(2) A person who contravenes subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of registration by Bank on application of holder

106O. The Bank shall revoke a registration on the application of the holder of the registration, but only if satisfied that the holder of the registration has fully complied with each of the following:

(a) any conditions of the registration;

(b) any prescribed requirements referred to in section 106M;

(c) section 106N;

(d) section 106Q;

(e) section 106Y,

and if satisfied that the persons in management positions have complied with their obligations to be fit and proper persons.

Revocation of registration other than on application of holder

106P. (1) The Bank may revoke a registration under this Chapter only if the Bank has reasonable grounds to be satisfied of any of the following:

(a) the holder of the registration has not commenced carrying on business as a virtual asset service provider within 12 months after the date on which the registration was granted;

(b) the holder of the registration has not carried on such a business within the immediately preceding 6 months;

(c) the registration was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the holder of the registration;

(ii) in a case where the holder of the registration is a body corporate, a partnership or an individual carrying on business as a virtual asset service provider, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the business concerned;

(e) the holder of the registration has contravened or is contravening the obligations imposed on virtual asset service providers, as designated persons, under this Part;

(f) the holder of the registration has failed to satisfy the Bank that its business risk assessment, policies and procedures are adequate or fit for purpose;

(g) the virtual asset service provider has contravened or is contravening any of the following:

(i) a condition of the registration;

(ii) a specified requirement referred to in section 106M;

(iii) section 106N;

(iv) section 106Q;

(v) section 106Y;

(h) the holder of the registration is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part;

(i) in a case where the holder of the registration is a body corporate, the body corporate is being wound up;

(j) in a case where the holder of the registration is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(k) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State;

(l) in a case where the holder of the registration is a subsidiary of a body corporate that has been registered to carry on business as a virtual asset service provider

in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State.

(2) If the Bank proposes to revoke a registration under this section, the Bank shall serve on the holder of the registration a notice in writing informing the holder of the Bank's intention to revoke the registration.

(3) The notice shall—

(a) specify the grounds on which the Bank proposes to revoke the registration, and

(b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not revoke the registration.

(4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not revoke the registration.

(5) The Bank may revoke the registration only after having considered any representations made by the holder of a registration in accordance with subsection (4).

(6) As soon as practicable after revoking a registration under this section, the Bank shall serve written notice of the revocation on the person who was the holder of a registration including a statement setting out the reasons for revoking the registration.

(7) A decision of the Bank to revoke a registration under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) The revocation of a registration under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under this section.

Direction not to carry out business other than as directed

106Q. (1) If the Bank reasonably believes that there may be grounds for revoking a registration under section 106P, the Bank may serve on the holder of the registration a direction in writing prohibiting the holder from carrying on business as a virtual asset service provider other than in accordance with conditions specified by the Bank in the direction.

(2) The Bank shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) specifying the period during which the direction is to remain in force, and

(c) specifying the conditions with which the holder of the registration is required to comply.

(3) A decision of the Bank to give a direction under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) The Bank may, by notice in writing served on the holder of the registration concerned, amend or revoke a direction given under this section.

(5) Without prejudice to the generality of subsection (3), the Bank may, by notice in writing given to the holder of the registration concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(6) A direction under this section takes effect from the date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under this section.

(7) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under subsection (4), at the end of the extended period, or

(b) on the revocation of the holder's registration under this Chapter, whichever occurs first.

(8) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.

(9) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Bank to publish notice of revocation

106R. As soon as is practicable after revoking a registration under section 106O or 106P, the Bank shall publish in Iris Oifigiúil a notice giving particulars of the revocation. Register of Virtual Asset Service Providers

106S. (1) The Bank shall establish and maintain a register (to be known as 'the Register of Virtual Asset Service Providers' and in this Act referred to as 'the Register') of persons registered under this Chapter to carry on business as a virtual asset service provider containing—

(a) the name and the address of the principal place of business of each person registered to carry on business as a virtual asset service provider,

(b) such other information as may be prescribed.

(2) The Register may be in book form, electronic form or such other form as the Bank may determine and may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(3) The Bank shall publish a register in written, electronic or other form and a member of the public is entitled to obtain a copy of the Register or of an entry in the Register on payment of such reasonable copying charges as may be prescribed (if any) under section 32E of the Act of 1942 for the purposes of this section.

(4) The holder of a registration to which an entry in the Register relates, shall as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Bank of the error, or change in circumstances, as the case may be.

(5) In any legal proceedings, a certificate purporting to be signed by the Bank and stating that a person—

(a) is recorded in the Register as the holder of a registration;

(b) is not recorded in the Register as the holder of a registration;

(c) was recorded in the Register as being, at a specified date or during a specified period, the holder of a registration; or

(d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of a registration, is evidence of the matter referred to in paragraph (a), (b), (c) or (d) (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(6) The Bank may prescribe particulars for the purposes of subsection (1) (b) or section 106T only if satisfied that those particulars reasonably relate to the business of virtual asset service providers or to the regulation of the business of virtual asset service providers under this Chapter.

Restriction on acquisition of beneficial interest in holders of registrations

106T. (1) A proposed acquirer shall not, directly or indirectly, acquire a beneficial interest in the holder of a registration without the prior approval of the Bank in writing of the intended size of the interest.

(2) A notification under subsection (1) shall include sufficient information to enable the Bank to consider the proposed acquisition according to the nature of the proposed acquirer and the proposed acquisition, and in particular shall include information on who the proposed acquirers are, the persons to be responsible for their management (where applicable), how the proposed acquisition is to be financed and the structure of the resulting group.

(3) In assessing a proposed acquisition, the Bank shall—

(a) have regard to the likely influence of the proposed acquirer on the holder of the registration concerned, and

(b) appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:

(i) the reputation of the proposed acquirer;

(ii) the reputation and experience of the individuals who will direct the business of the holder of the registration concerned as a result of the proposed acquisition;

(a) the purported acquisition is of no effect to pass title to any share or any other interest, and

(b) any exercise of powers based on the purported acquisition of the interest concerned is void.

(6) A decision by the Bank to oppose a proposed acquisition is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(7) In this section—

'proposed acquirer' means a person who proposes to acquire or increase a beneficial interest in the holder of a registration and includes a group of persons acting in concert to acquire such an interest;

'proposed acquisition' means the proposed acquisition of a beneficial interest in the holder of a registration.

Powers of Bank in relation to beneficial owners

106U. (1) Where the Bank has reason to believe that a person who is a beneficial owner of the business of the holder of a registration is exercising an influence on the direction of the affairs of the holder of the registration which is, or is likely to be, prejudicial to the compliance by the holder concerned with any obligations under this Act, the Bank shall, subject to subsection

(2) notify the person that it so believes, and direct the person in writing to take specified measures to bring that influence to an end within a specified period. (2) Before issuing a direction to a person under subsection (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) Where the Bank is of the opinion that a direction under subsection (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

(a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the holder of the registration concerned and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the holder of the registration from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;

(b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the holder of the registration concerned;

specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

(a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the holder of the registration concerned and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the holder of the registration from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;

(b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the holder of the registration concerned;

(c) an order requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the holder of the registration concerned within a period specified by the Court;

(d) such other order as the Court considers appropriate.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings before it may be heard otherwise than in public.

(6) In this section 'Court' means the High Court.

Obligation on holder of registration to report certain suspicions to Bank

106V. If at any time the holder of a registration suspects on reasonable grounds that any person who is a beneficial owner of the holder of the registration is not a fit and proper person, it shall notify the suspicion in writing to the Bank together with particulars setting out the basis for the suspicion. Provision of information by Garda Síochána as to whether or not person is fit and proper person 106W.

(1) The Bank may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Bank in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

(a) the holder or proposed holder of a registration;

(b) in a case where the holder or proposed holder of a registration is a body corporate, a partnership or an individual carrying on, or proposing to carry on, business as a virtual asset service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) any person who is a beneficial owner of the business of the holder or proposed holder of the registration concerned.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Bank with information in accordance with a request of the Bank under this section.

Bank's power to make regulations

106X. (1) The Bank may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Chapter, regulations under this Chapter may contain such incidental, supplementary and consequential provisions as appear to the Bank to be necessary or expedient for the purposes of the regulations.

(3) Every regulation made by the Bank under this Chapter shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Holders of registrations to retain certain records

106Y. (1) The holder of a registration shall—

(a) retain at an office or other premises in the State such records as may be specified by the Bank, and

(b) notify the Bank in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by subsection (1) is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the holder of a registration, including the requirements specified in section 55.

(3) The holder of a registration shall retain the records referred to in subsection (1) for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the virtual asset service provider, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The holder of a registration may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed on the holder of a registration under this section, continue to apply to a person who has been the holder of a registration, but has ceased to hold a registration or to carry on business as a virtual asset service provider.

(6) A requirement that the holder of a registration that is a body corporate, retain any record under this section, applies to any body corporate that is a successor to, or a continuation of, the body corporate.

(7) The Bank may prescribe requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.

(8) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Chapter 9B

Designation of Classes of Express Trust (and Matters Related to Such Trusts) for Certain Purposes

Purpose of Chapter

106Z. (1) The purpose of this Chapter is to make provision for the meaning that certain words or expressions shall have in regulations that are made, on or after the commencement of section 26 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020, under section 3 of the European Communities Act 1972, for the purpose of giving effect to Article 31 of the Fourth Money Laundering Directive.

(2) Nothing in this Chapter applies to the construction of a word or expression used in another Chapter of this Part.

Operation and interpretation (Chapter 9B)

106ZA. (1) Where the relevant regulations specify that, with respect to a particular word or expression, the designated meaning in the Act of 2010 shall apply then the meaning as hereafter provided in this Chapter shall apply with respect to that word or expression.

(2) A reference in this Chapter to a definition being 'designated' with respect to a particular word or expression is a reference to the definition (with respect to the particular word or expression) being designated for the purposes of the relevant regulations.

(3) In this Chapter— 'Act of 1997' means the Taxes Consolidation Act 1997; 'relevant regulations' means the regulations referred to in section 106Z(1).

(4) In this Chapter, a reference to the Fourth Money Laundering Directive is a reference to that Directive as amended by the Fifth Money Laundering Directive.

Power to prescribe certain matters

106ZB. The Minister for Finance may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

Relevant trust – designated meaning

106ZC. (1) The following definition is designated with respect to 'relevant trust': 'relevant trust' means an express trust established by deed or other declaration in writing and any other arrangement or class of arrangements as may be prescribed but does not include an excluded arrangement.

(2) For the purposes of the definition, designated by subsection (1), with respect to 'relevant trust', 'excluded arrangement' means an arrangement of the following kind:

(a) an occupational pension scheme that is an approved scheme pursuant to Chapter 1 of Part 30 of the Act of 1997;

(b) an approved retirement fund within the meaning of Chapter 2 of Part 30 of the Act of 1997;

(c) a profit sharing scheme or employee share ownership trust approved pursuant to Part 17 of the Act of 1997;

(d) a trust for restricted shares within the meaning of section 128D of the Act of 1997;

(e) the Haemophilia HIV Trust which was established by deed dated the 22nd day of November 1989, made between the Minister for Health, of the one part and certain other persons, of the other part;

(f) a unit trust within the meaning of the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (S.I. No. 233 of 2020), the beneficial ownership of which, by virtue of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019), is required to be registered in the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts;

(g) such other arrangement or class of arrangements as may be prescribed**.**

(3) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be an excluded arrangement for the purpose of subsection (2)(g), where he or she is satisfied that such arrangement or class of arrangements is not an express trust or similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters —

(a) the low risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to:

(i) the legal structure of such arrangement or class of arrangements;

(ii) any supervision or regulation of such arrangement or class of arrangements under any enactment,

and

(b) the non-application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements.

(4) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be a relevant trust for the purpose of the definition, designated by subsection (1), with respect to 'relevant trust' where he or she is satisfied that such arrangement or class of arrangements is an express trust or a similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters—

(a) the risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to:

(i) the legal structure of such arrangement or class of arrangements;

(ii) the absence of, or any limitations in, the supervision or regulation of such arrangement or class of arrangements under any enactment,

and

(b) the application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements.

Beneficial owner in relation to relevant trusts – designated meaning

106ZD. (1) Subject to subsections (5) to (7), the following definition is designated with respect to 'beneficial owner' (in relation to a relevant trust):

'beneficial owner', in relation to a relevant trust, means any of the following:

(a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the relevant trust property;

(b) in the case of a relevant trust other than one that is set up or operates entirely for the benefit of individuals referred to in paragraph (a), the class of individuals in whose interest the trust is set up or operates;

(c) any individual who has control over the relevant trust;

(d) the settlor;

(e) the trustee;

(f) the protector.

(2) For the purposes of the definition, designated by subsection (1), with respect to 'beneficial owner' (in relation to a relevant trust), subsections (3) to (7) shall apply; the relevant regulations may, for convenience of reference, set out any of the provisions of this section (whether those that precede or follow this subsection) notwithstanding the application (provided for by section 106ZA(1)) of those provisions to those regulations.

(3) Except as provided by subsection (5), in this section 'control', in relation to a relevant trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following:

(a) dispose of, advance, lend, invest, pay or apply the trust property;

(b) vary the relevant trust;

(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;

(d) appoint or remove trustees;

(e) direct, withhold consent to or veto the exercise of any power referred to in paragraphs (a) to (d).

(4) For the purposes of the definition of 'control' in subsection (3), an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies.

(5) Notwithstanding subsection (1), 'beneficial owner', in relation to a relevant trust established for the purpose of holding any assets of an approved body of persons established for, and existing for, the sole purpose of promoting amateur games or amateur sports within the meaning of section 235 of the Act of 1997, means the trustees, the committee or other governing body of the club or association, and any other individual who has control over the relevant trust.

(6) Notwithstanding subsection (1), 'beneficial owner', in relation to a relevant trust that is a charitable trust within the meaning of section 2 of the Charities Act 2009, means the trustees and the committee or other governing body of the charitable trust, and any other individual who has control over the charitable trust.

(7) Notwithstanding subsection (1), 'beneficial owner', in relation to an estate—

(a) of a deceased person in the course of administration, and

(b) in relation to which there is provision for a relevant trust for one or more beneficiaries,

means the executor or administrator of the estate, and no other person, for the period in which the estate is being administered.

CHAPTER 10

Other

Guidelines.

107. [Repealed]

Defence.

107A. It shall be a defence in proceedings for an offence under this Part for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence.

Minister may delegate certain functions under this Part.

108. (1) The Minister may, by instrument in writing, delegate any of the Minister's functions under *Chapter 8* or *9*, or under *section 109*, to a named officer or an officer of a particular class or description.

(2) A delegation under this section may be made subject to such conditions or limitations as to the performance of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) The Minister may, by instrument in writing, revoke a delegation under this section.

(4) A function delegated under this section may, while the delegation remains unrevoked, be performed by the delegate in accordance with the terms of the delegation.

(5) The Minister may continue to perform any functions delegated under this section.

(6) Nothing in this section shall be construed as affecting the application to this Act of the general law concerning the imputing of acts of an officer of a Minister of the Government to the Minister of the Government.

(7) In this section, "officer" means an officer of the Minister who is an established civil servant for the purposes of the Civil Service Regulation Act 1956.

Obligation for certain designated persons to register with Central Bank of Ireland

108A. (1) Subject to *subsection (2)*, a person who is a designated person pursuant to *paragraph (a)* of the definition of 'financial institution' in *section 24(1)* and *section 25(1)(b)* shall register with the Bank.

(2) *Subsection (1)* shall not apply to a designated person that is authorised or licensed to carry on its activities by, or is registered with, the Bank under—

(a) an Act of the Oireachtas (other than this Act),

(b) a statute that was in force in Saorstát Eireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under an Act of the Oireachtas or a statute referred to in *paragraph (b)*.

(3) A designated person who is required to register under this section commits an offence if the person fails to do so and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years (or both).

(4) The Bank shall establish and maintain a register of persons that register under this section (referred to in this section as 'the Register').

(5) The following particulars shall be entered into the Register in respect of each designated person registered:

(a) the name of the designated person;

(b) the address of the head office and registered office of the designated person;

(c) the activities that the designated person carries out that are contained within the meaning of paragraph (a) of the definition of financial institution in section 24(1).

(6) [deleted]

(7) The Bank may specify a procedure for registering under this section.

(8) The Register may be in book form, electronic form or such other form as the Bank may determine. The Register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(9) The particulars entered in the Register pursuant to this section relating to a person who is a designated person pursuant to section 25(1)(b) and paragraph (a) of the definition of financial institution in section 24(1) maybe removed from the Register where that person ceases to be a designated person pursuant to those provisions or is authorised or licensed to carry on its activities by, or is registered with, the Bank under an enactment specified in paragraph (a), (b) or (c) of subsection (2).

(10) [deleted]

(11) In this section 'Bank' means the Central Bank of Ireland.

Obligation for cheque cashing offices to register with Central Bank of Ireland

108B. (1) A person shall not carry on business as a cheque cashing office unless the person is registered under this section.

(2) A person who contravenes *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

(3) Save to the extent that such procedures are provided for under this section, the Bank may specify procedures for registering under this section.

(4) An individual, body corporate or partnership may apply to the Bank to be registered under this section.

(5) An application for registration under this section shall—

(a) be in a form provided or specified by the Bank,

(b) specify the name of—

(i) the applicant,

(ii) in a case where the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be), and

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(c) specify the address of the registered office of the applicant,

(d) specify the address at which the business of a cheque cashing office is proposed to be carried on, and

(e) contain such other information, and be accompanied by such documents, as the Bank may reasonably request including, for the purposes of the Bank

assessing whether persons referred to in paragraph (b) are fit and proper persons, such information and documents as the Bank may reasonably require relating to the steps taken by the applicant to ensure that those persons are fit and proper persons and the process of verification carried out by the applicant for the purposes of so ensuring.

(6) The Bank may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Bank to determine the application for registration under this section.

(7) Subject to section 108D, the Bank may refuse an application for registration under this section only if—

(a) the application does not comply with the requirements of subsection (5),

(b) the applicant does not provide any additional documents or information in accordance with a notice given under subsection (6),

(c) the Bank has reasonable grounds to be satisfied that information given to the Bank by the applicant in connection with the application is false or misleading in any material particular,

(d) the Bank has reasonable grounds to be satisfied that any of the following persons is not a fit and proper person:

(i) the applicant;

(ii) in a case in which the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is, or is proposed to be, a beneficial owner of the applicant,

(e) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with the obligations imposed on it under this Chapter,

(f) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with each of the following:

(i) any conditions to which the registration would have been subject;

(ii) a direction of the Bank under *section 108G(1)*,

(g) the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated under this Chapter to the satisfaction of the Bank,

(h) in a case where the applicant is a body corporate, the body corporate is being wound up,

(i) in a case where the applicant is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the person to carry on business as a cheque cashing office in the other Member State, or

(k) in a case where the applicant is a subsidiary of a body corporate that is authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the body corporate to carry on business as a cheque cashing office in the other Member State.

(8) If the Bank does not refuse an application for registration, the Bank shall register the applicant under this section.

(9) The Bank shall establish and maintain a register of persons registered under this section (referred to in this section as 'the Register').

(10) The following particulars shall be entered into the Register in respect of each person registered under this section (in this section and sections 108C to 108I referred to as "the person registered"):

(a) the name of the person registered;

(b) the address of the registered office of the person registered;

(c) the address at which the business of a cheque cashing office is carried on.

(11) Subject to subsection (12), the Register may be in book form, electronic form or such other form as the Bank may determine.

(12) The Register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(13) In this section and sections 108C to 108I—

'Bank' means the Central Bank of Ireland;

'principal officer' has the same meaning as it has in *Chapter 9*.

Cancellation of registration and removal from register

108C**.** (1) Subject to *section 108D*, the Bank may cancel the registration of a person under this section only if the Bank has reasonable grounds to be satisfied of any of the following:

(a) the person registered has not commenced to carry on business as a cheque cashing office within 12 months after the date on which the person was registered;

(b) the person registered has not carried on such a business within the 6 months immediately preceding the cancellation;

(c) registration was obtained by means of a false or misleading representation;

(d) any of the following persons is not a fit and proper person:

(i) the person registered;

(ii) in a case where the person registered is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(iii) any person who is a beneficial owner of the person registered;

(e) the person registered has contravened or is contravening the obligations imposed on it under this Chapter;

(f) the person registered has contravened or is contravening any of the following:

(i) a condition to which the registration is subject;

(ii) a direction of the Bank under *section 108G(1)*;

(g) the person registered is so structured, or the business of that person is so organised, that the person is not capable of being regulated under this Chapter;

(h) in a case where the person registered is a body corporate, the body corporate is being wound up;

(i) in a case where the person registered is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise;

(j) in a case where any person referred to in paragraph (d) has been authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the person to carry on business as a cheque cashing office in the other Member State;

(k) in a case where the person registered is a subsidiary of a body corporate that is authorised to carry on business as a cheque cashing office in another Member State, an authority of the other Member State that performs functions similar to those of the Bank under this Chapter has terminated the authority of the body corporate to carry on business as a cheque cashing office in the other Member State.

(2) The particulars relating to a person entered in the Register pursuant to this section shall be removed from the Register where the Bank cancels the registration of that person in accordance with this section.

Notice of refusal or cancellation of registration and right to make representations

108D. (1) If the Bank proposes to—

(a) refuse to register a person under *section 108B*, or

(b) cancel a registration of a person under *section 108C*,

the Bank shall serve on the person a notice in writing informing the person of the Bank's intention to refuse to register the person or cancel the registration, as the case may be.

(2) A notice served under *subsection (1)* shall—

(a) specify the grounds on which the Bank proposes to refuse or cancel the registration, and

(b) inform the person that the person may, within 21 days after the serving of the notice, make written representations to the Bank showing why the Bank should register the person, or not cancel the registration, as the case may be.

(3) Not later than 21 days after a notice is served on a person under *subsection (1)*, the person may make written representations to the Bank showing why the Bank should register the person, or not cancel the registration, as the case may be.

(4) The Bank may—

(a) refuse to register a person under *section 108B*, or

(b) cancel a registration of a person under *section 108C*,

as the case may be, only after having considered any representations made by the person in accordance with *subsection (3)*.

(5) As soon as practicable after refusing to register a person under section 108B or cancelling a registration under section 108C, the Bank shall serve a written notice of the refusal or cancellation, as the case may be, on the person concerned, including a statement setting out the reasons for the refusal or cancellation, as the case may be.

(6) A decision of the Bank to refuse to register a person under section 108B or to cancel a registration under section 108C is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Registration subject to conditions

108E. (1) The Bank may decide to register a person under *section 108B* subject to such conditions as the Bank considers necessary for the proper and orderly regulation of the registered person's business as a cheque cashing office and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing.

(2) If, under this section, the Bank decides to register a person subject to conditions, the Bank shall serve on the person registered a written notice of the conditions that includes a statement setting out the reasons for the decision.

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) A person registered commits an offence if he or she fails to comply with any condition to which the registration is subject and is liable—

(a) on summary conviction, to a class C fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(4) A decision of the Bank to register a person subject to conditions under *subsection (1)* is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Person registered to ensure that principal officers and beneficial owners are fit and proper persons

108F. A person registered shall take reasonable steps to ensure that the following persons are fit and proper persons:

(a) in a case where the person registered is a body corporate, a partnership or an individual carrying on business as a cheque cashing office as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be);

(b) any person who is a beneficial owner of the business concerned.

Direction not to carry out business other than as directed

108G. (1) If the Bank reasonably believes that there may be grounds for cancelling a registration under *section 108C*, the Bank may serve on the person registered a direction in writing prohibiting that person from carrying on business as a cheque cashing office other than in accordance with conditions specified by the Bank in the direction.

(2) The Bank shall include in a direction under this section a statement—

(a) setting out the reasons for giving the direction,

(b) specifying the period during which the direction remains in force, and

(c) specifying the conditions with which the person registered is required to comply.

(3) The Bank may, by notice in writing served on the person registered concerned, amend or revoke a direction given under subsection (1).

(4) Without prejudice to the generality of subsection (3), the Bank may, by notice in writing given to the person registered concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months.

(5) A direction under this section ceases to have effect—

(a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or

(b) on the cancellation of the registration of a person under *section 108C*, whichever occurs first.

(6) A person who contravenes a direction given under subsection (1), or fails to comply with a condition contained in the direction, commits an offence.

(7) A person who commits an offence under this section is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

(8) A decision of the Bank to give a direction under subsection (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

Provision of information by Garda Síochána as to whether or not person is fit and proper person

108H. (1) The Bank may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Bank in determining, for the purposes of *sections 108B* to *108I*, whether or not any of the following persons is a fit and proper person:

(a) the person who proposes to carry on or carries on, as the case may be, the business of a cheque cashing office;

(b) in a case in which the person referred to in *paragraph (a)* is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be);

(c) in a case in which there is a beneficial owner of the person referred to in *paragraph (a)*, the beneficial owner.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Bank with information in accordance with a request of the Bank under *subsection (1)*.

Persons registered to retain certain records

108I. (1) A person registered shall—

(a) retain at an office or other premises in the State such records as may be specified by the Bank, and

(b) notify the Bank in writing of the address of any office or other premises where those records are retained.

(2) The requirement imposed by *subsection (1)* is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the person registered.

(3) The person registered shall retain the records referred to in *subsection (1)* for a period of not less than 6 years after—

(a) in the case of a record made in relation to a customer of the person registered, the last dealing with the customer, or

(b) in any other case, the record is made.

(4) The person registered may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form.

(5) The obligations that are imposed by subsections (1) and (3) on a person registered continue to apply to a person who has been registered under section 108B, but has ceased to be so registered or to carry on business as a cheque cashing office.

(6) Where the person registered is a body corporate, the requirement to retain any record under this section applies to any body corporate that is a successor to, or a continuation of, the person registered.

(7) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years (or both).

Registration of persons directing private members' clubs.

109.— (1) A person who is a designated person pursuant to *section 25(1)(h)* shall register with the Minister in accordance with such procedures as may be prescribed or otherwise imposed by the Minister.

(2) A person who is required to register under this section commits an offence if the person fails to do so and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years (or both).

(3) The following particulars shall be entered into a register established and maintained by the Minister for the purposes of this section:

(a) the name of each designated person who registers under this section;

(b) the name and address of the premises of the private members' club in relation to which the person is a designated person;

(c) any prescribed information as may be reasonably required by the Minister for the purposes of this Act.

(4) The register may be in book form, electronic form or such other form as the Minister may determine. The register may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form.

(5) The Minister shall maintain the register at an office of the Department.

(6) The Minister may prescribe particulars for the purposes of subsection (3)(c) only if satisfied that those particulars reasonably relate to the business or regulation of persons directing members' clubs as designated persons.

(7) The Minister may publish the register in written, electronic or other form and a member of the public is entitled to obtain a copy of the register or of an entry in the register on payment of such reasonable copying charges as may be prescribed (if any).

(8) The particulars entered in the register pursuant to this section relating to a person who is a designated person pursuant to section 25(1)(h) may be removed from the register where that person ceases to be a designated person pursuant to that provision.

Managers and beneficial owners of private members' clubs to hold certificates of fitness

109A. (1) An individual who—

(a) effectively directs a private members' club at which gambling activities are carried on, or

(b) is a beneficial owner of a private members' club at which gambling activities are carried on,

shall hold a certificate of fitness and probity (referred to in this section and *sections 109B*, *109C*, *109D* and *109E* as a 'certificate of fitness') granted by a Superintendent of the Garda Síochána or, as the case may be, by the Minister.

(2) An individual who fails to comply with *subsection (1)* commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or both.

(3) Where on the date that is 6 months from the coming into force of this section an individual has applied for a certificate of fitness, this section shall not apply to that individual until such time as the application, and any appeal in relation to the application, has been finally determined.

Application for certificate of fitness

109B. (1) Upon compliance with *subsection (2)*, an individual shall make an application for a certificate of fitness—

(a) where the individual ordinarily resides in the State—

(i) to the Superintendent of the Garda Síochána for the district in which he or she ordinarily resides, or

(ii) to the Superintendent of the Garda Síochána for the district in which the private members' club concerned is located or is proposed to be located,

or

(b) where the individual ordinarily resides outside the State, to the Minister.

(2) An individual intending to apply for a certificate of fitness under this section shall, not later than 14 days and not earlier than one month before making the application, publish in two daily newspapers circulating in the State, a notice in such form as may be prescribed, of his or her intention to make the application.

(3) An application for a certificate of fitness under this section shall be in such form as may be prescribed.

(4) The applicant for a certificate of fitness shall provide the Superintendent of the Garda Síochána, or as the case may be, the Minister to whom the application concerned is made with all such information as he or she may reasonably require for the purposes of determining whether a relevant consideration referred to in *section 109C* exists.

(5) A Superintendent of the Garda Síochána, or as the case may be, the Minister to whom an application for a certificate of fitness is duly made under this section shall, not later than 56 days after receiving the application, either—

(a) grant the application and issue a certificate of fitness to the applicant, or

(b) refuse the application.

(6) A certificate of fitness under this section shall be in such form as may be prescribed.

(7) An individual who, in applying for a certificate of fitness under this section, makes a statement or provides information to a Superintendent of the Garda Síochána or, as the case may be, to the Minister, that he or she knows, or ought reasonably to know, is false or misleading in a material respect commits an offence and is liable—

(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 2 years, or both.

(8) A Superintendent of the Garda Síochána shall, as soon as may be after making a decision in relation to an application for a certificate of fitness, notify the Minister in writing of that decision.

Grounds of refusal to grant certificate of fitness

109C. (1) A Superintendent of the Garda Síochána or, as the case may be, the Minister shall not refuse an application for a certificate of fitness made in accordance with *section 109B* unless—

(a) a relevant consideration exists, or

(b) he or she is not satisfied that the applicant has provided such information as he or she reasonably requires for the purposes of determining whether a relevant consideration exists.

(2) For the purposes of *subsection (1)*, a relevant consideration exists if—

(a) the applicant stands convicted of an offence under—

(i) an enactment relating to excise duty on betting,

(ii) the Gaming and Lotteries Acts 1956 to 2013,

(iii) section 1078 of the Taxes Consolidation Act 1997,

(iv) the Criminal Justice (Theft and Fraud Offences) Act 2001, or

(v) this Act,

(b) the applicant stands convicted of an offence under the law of a place (other than the State)—

(i) consisting of an act or omission that, if committed in the State, would constitute an offence referred to in *paragraph (a)*, or

(ii) relating to the conduct of gambling,

or

(c) the applicant was previously refused a certificate of fitness and either—

(i) the applicant did not appeal the refusal, or

(ii) on appeal to the District Court, the refusal was affirmed.

(3) In this section, 'enactment' means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Eireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution,

(c) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in *paragraph (b)*.

Duration of certificate of fitness

109D. (1) A certificate of fitness shall remain in force until the expiration of 3 years after the date on which the certificate was issued.

(2) If, before the expiration of a certificate of fitness, the individual to whom it was issued makes an application for a new certificate of fitness, the first-mentioned certificate of fitness shall remain in force—

(a) until the issue of the new certificate of fitness,

(b) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or by the Minister and the individual does not make a request referred to in *section 109E(1)*, until the expiration of the period within which the request may be made,

(c) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or by the Minister and the individual makes a request referred to in section *109E(1)* but does not bring an appeal under that section, until the expiration of the period specified in *subsection (3)* of that section, or

(d) in circumstances where the application is refused by the Superintendent of the Garda Síochána concerned or the Minister and the individual appeals the refusal in accordance with *section 109E*, until—

(i) the District Court affirms the refusal in accordance with that section, or

(ii) the issue of a new certificate of fitness pursuant to a direction of the District Court under *subsection (4)(b)* of that section

Appeal where application for certificate of fitness is refused

109E. (1) If a Superintendent of the Garda Síochána, or as the case may be, the Minister refuses an application for a certificate of fitness, he or she shall, on the request in writing of the applicant made not later than 14 days after the refusal, give the applicant a statement in writing of the reasons for the refusal.

(2) A person to whom a certificate of fitness has been refused may, not later than 14 days after receiving a statement in writing under *subsection (1)*, appeal the refusal to the District Court.

(3) A person who brings an appeal under this section shall, in such manner and within such period as may be prescribed give notice of the appeal to the Superintendent of the Garda Síochána concerned or, as the case may be, the Minister.

(4) The District Court may, upon an appeal under this section, either—

(a) affirm the refusal, or

(b) grant the appeal and direct the Superintendent of the Garda Síochána concerned, or as the case may be, the Minister to issue a certificate of fitness to the appellant.

(5) The Superintendent of the Garda Síochána concerned or, as the case may be, the Minister shall comply with a direction of the District Court under this section not later than 3 days after the giving of the direction.

(6) The respondent in an appeal under this section shall not be entitled to advance as a reason for opposing an appeal under this section a reason not specified in a statement of the reasons for a refusal given to the appellant pursuant to a request under subsection (1).

(7) If the District Court affirms a refusal under subsection (4)(a), it may also make an order requiring the appellant to pay the costs incurred by the respondent in defending the appeal and may determine the amount of such costs.

(8) There shall be no appeal to the Circuit Court from a decision of the District Court under this section.

(9) An appeal under this section by a person ordinarily resident in the State shall be brought before a judge of the District Court assigned to the District Court district—

(a) in which he or she ordinarily resides, or

(b) in which the private members' club concerned is located or is proposed to be located.

(10) An appeal under this section by a person not ordinarily resident in the State shall be brought before a judge of the District Court assigned to the Dublin Metropolitan District.

PART 5

MISCELLANEOUS

Service of documents.

110.— (1) A notice or other document that is required or permitted, under this Act, to be served on or given to a person shall be addressed to the person by name and may be served or given to the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or carries on business;

(c) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business;

(d) if an address for service has been furnished, by leaving it at, or sending it by post in a pre-paid registered letter to, that address;

(e) in the case of a direction to an individual or body (whether incorporated or unincorporated) under *Part 3* not to carry out any specified service or transaction at a branch or place of business of the body or individual, by leaving it at, or by sending it by post in a pre-paid registered letter to, the address of the branch or place of business (as the case may be);

(f) if the person giving notice considers that notice should be given immediately and a fax machine is located at an address referred to in *paragraph (b)*, *(c)*, *(d)* or *(e)*, by sending it by fax to that machine, but only if the sender's fax machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section—

(a) a company registered under the Companies Acts is taken to be ordinarily resident at its registered office, and

(b) any body corporate other than a company registered under the Companies Acts or any unincorporated body is taken to be ordinarily resident at its principal office or place of business in the State.

(3) Nothing in *subsection (1)(e)* prevents the serving or giving of a direction or other document for the purposes of *Part 3* under any other provision of this section.

(4) This section is without prejudice to any mode of service or of giving a notice or any other document provided for under any other enactment or rule of law.

(5) This section does not apply in relation to the service of a notice on the Minister referred to in *section 100 (2)*.

Offences — directors and others of bodies corporate and unincorporated bodies.

111. Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

(a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or

(b) a member of the committee of management or other controlling authority of the body, or a person purporting to act in that capacity,

that person is taken to have also committed the offence and may be proceeded against and punished accordingly.

Disclosure of information in good faith.

112. (1) This section applies to the disclosure in good faith, to a member of the Garda Síochána or to any person who is concerned in the investigation or prosecution of an offence of money laundering or terrorist financing, of—

(a) a suspicion that any property has been obtained in connection with any such offence, or derives from property so obtained, or

(b) any matter on which such a suspicion is based.

(2) A disclosure to which this section applies shall not be treated, for any purpose, as a breach of any restriction on the disclosure of information imposed by any other enactment or rule of law.

Amendment of Bail Act 1997.

113. The Schedule to the Bail Act 1997 is amended by inserting the following paragraph after paragraph 34 (inserted by section 48 of the Criminal Justice (Miscellaneous Provisions) Act 2009):

"*Money Laundering.*

35. Any offence under Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.".

Amendment of Central Bank Act 1942.

114. (1) In this section, "Act of 1942" means the Central Bank Act 1942.

(2) Section 33AK(5) (inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Act of 1942 is amended by deleting paragraph (*n*).

(3) The Act of 1942 is amended by inserting the following after section 33AN (inserted by section 10 of the Central Bank and Financial Services Authority of Ireland Act 2004):

"Application of Part to credit unions.

33ANA.— (1) This Part applies in relation to—

(a) the commission or suspected commission by a credit union of a contravention of—

(i) a provision of Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010,

(ii) any direction given to the credit union under a provision of Part 4 of that Act,

(iii) any condition or requirement imposed on the credit union under a provision of Part 4 of that Act or under any direction given to the credit union under a provision of that Part, or

(iv) any obligation imposed on the credit union by this Part or imposed by the Regulatory Authority pursuant to a power exercised under this Part,

and

(b) participation, by a person concerned in the management of a credit union, in the commission by the credit union of such a contravention.

(2) For those purposes—

(a) a reference in this Part to a regulated financial service provider includes a reference to a credit union,

(b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a credit union, of a provision, direction, condition, requirement or obligation referred to in subsection (1), and

(c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a credit union.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) This section has effect notwithstanding anything to the contrary in section 184 of the Credit Union Act 1997.".

(4) Schedule 2 (substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) to the Act of 1942 is amended in Part 1 by inserting the following at the end of the Part:

No. __ of 2010	*Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*	*Part 4*

Prescribed amounts under section 33AQ of Central Bank Act 1942 in respect of certain contraventions

114A. (1) In this section 'Act of 1942' means the Central Bank Act 1942 and 'designated person' means a designated person within the meaning of Part 4.

(2) Notwithstanding subsection (4) of section 33AQ of the Act of 1942, in the case of a contravention of *Chapter 3*, *4* or *6* of *Part 4*, or *section 30B*, *57*, *57A*, *58* or *59*, by a designated person, the prescribed amount for the purpose of subsection (3)(c) of section 33AQ is—

(a) if the designated person is a body corporate or an unincorporated body, the greatest of—

(i) €10,000,000,

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined), and

(iii) an amount equal to 10 per cent of the turnover of the body for its last complete financial year before the finding is made,

(b) if the designated person is a natural person—

(i) where the designated person is not a credit institution or financial institution, the greater of—

(i) €1,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined),

(ii) where the designated person is a credit institution or financial institution, the greater of—

(i) €5,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined).

(3) Notwithstanding subsection (6) of section 33AQ of the Act of 1942, in the case of a contravention of *Chapter 3*, *4* or *6* of *Part 4*, or *section 30B*, *57*, *57A*, *58* or *59*, by a designated person, the prescribed amount for the purpose of subsection (5)(b) of section 33AQ is—

(a) where the designated person is not a credit institution or financial institution, the greater of—

(i) €1,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined),

(b) where the designated person is a credit institution or financial institution, the greater of—

(i) €5,000,000, and

(ii) twice the amount of any benefit derived by the person from the contravention (where that benefit can be determined).

(4) For the purposes of *subsection (2)(a)(iii)*, 'turnover of the body' means total annual turnover of the designated person according to the latest available accounts approved by the management body of the designated person or, where the designated person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU[12], the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Amendment of Courts (Supplemental Provisions) Act 1961.

115. Section 32A(1) of the Courts (Supplemental Provisions) Act 1961 (inserted by section 180 of the Criminal Justice Act 2006) is amended as follows:

(a) in paragraph (*d*) (inserted by section 18 of the Criminal Justice (Surveillance) Act 2009) by substituting "Criminal Justice (Surveillance) Act 2009;" for "Criminal Justice (Surveillance) Act 2009.";

(b) by inserting the following paragraph after paragraph (*d*):

"(e) any of the following powers under Part 3 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010:

(i) the power to order a person not to carry out any service or transaction;

(ii) the power to revoke an order referred to in subparagraph (i);

(iii) the power to make an order in relation to property if considered essential to do so for the purpose of enabling—

(I) the person who applies for the order to discharge the reasonable living and other necessary expenses incurred or to be incurred in respect of the person or the person's dependants, or

(II) the person who applies for the order to carry on a business, trade, profession or other occupation to which any of the property relates.".

Consequential amendment of Central Bank Act 1997.

116. Section 28 (substituted by section 27 of the Central Bank and Financial Services Authority of Ireland Act 2004) of the Central Bank Act 1997 is amended, in the definitions of "bureau de change business" and "money transmission service", by substituting the following for paragraphs (*a*) and (*b*) of those definitions:

"(*a*) by a person or body that is required to be licensed, registered or otherwise authorised by the Bank under a designated enactment (other than under this Part) or designated statutory instrument, or".

Consequential amendment of Criminal Justice Act 1994.

117. (1) In this section, "Act of 1994" means the Criminal Justice Act 1994.

(2) Section 3(1) of the Act of 1994 is amended in the definition of "drug trafficking" by substituting the following for paragraph (*d*):

"(*d*) engaging in any conduct (whether or not in the State) in relation to property obtained, whether directly or indirectly, from anything done in relation to a controlled drug, being conduct that—

(i) is an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* ("*Part 2* of the *Act of 2010*") or would have been an offence under that Part if the Part had been in operation at the time when the conduct was engaged in, or

(ii) in the case of conduct in a place outside of the State, other than conduct referred to in subparagraph (i)—

(I) would be an offence under *Part 2* of the *Act of 2010* if done in corresponding circumstances in the State, or

(II) would have been an offence under that Part if done in corresponding circumstances in the State and if the Part had been in operation at the time when the conduct was engaged in, or".

(3) Section 3(1) of the Act of 1994 is amended in the definition of "drug trafficking offence" by substituting the following for paragraph (*e*):

"section 31 of the Criminal Justice Act 1994, as substituted by section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001".

Consequential amendment of Criminal Justice (Theft and Fraud Offences) Act 2001.

119. Section 40(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001 is amended by substituting the following for the definition of "money laundering":

"'money laundering' means an offence under *Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*;".

Consequential amendment of Investor Compensation Act 1998.

120. (1) In this section, "Act of 1998" means the Investor Compensation Act 1998.

(2) Section 30(1) of the Act of 1998 is amended in the definition of "net loss" by substituting the following for subparagraph (iii):

"(iii) money or investment instruments arising out of transactions in respect of which an offence has been committed under the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (" Act of 2010 "),

(iv) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of Part IV of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2010*,

(v) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of section 57 or 58 of the Criminal Justice Act 1994 prior to the repeal of that provision by the Act of 2010, or

(vi) money or investment instruments arising out of transactions in respect of which there has been a criminal conviction, at any time, for money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing 12.".

(3) Section 35 of the Act of 1998 is amended by substituting the following for subsection (3):

"(3) Notwithstanding the time limits provided for in subsections (1) and (2), the competent authority may direct the Company or a compensation scheme approved under section 25, as appropriate, to suspend any payment to an eligible investor, where the investor has been charged with any of the following offences, pending the judgment of a court in respect of the charge:

(a) an offence under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (" Act of 2010");

(b) an offence committed, prior to the repeal by the Act of 2010 of any of the following provisions of the Criminal Justice Act 1994, under that provision:

(i) a provision of Part IV;

(ii) section 57;

(iii) section 58;

(c) an offence otherwise arising out of, or relating to, money laundering, within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.".

Consequential amendment of Taxes Consolidation Act 1997.

121. (1) In this section, "Act of 1997" means the Taxes Consolidation Act 1997.

(2) Section 898F (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

(*a*) in subsection (3) by substituting "which is acceptable for the purposes of *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "it acquires by virtue of section 32 of the Criminal Justice Act 1994";

(*b*) in subsection (4) by substituting "which is acceptable for the purposes of *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "it acquires by virtue of section 32 of the Criminal Justice Act 1994";

(*c*) in subsection (5)(*a*) (substituted by section 124(1)(*a*) of the Finance Act 2006) by inserting "(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)" after "in accordance with this section";

(*d*) by inserting the following paragraph after subsection (6)(*a*):

"(*aa*) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (*a*), to continue to treat that individual as so identified and so resident, shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.";

(*e*) in subsection (6)(*b*) by inserting "or (*aa*)" after "paragraph (*a*)";

(*f*) in subsection (7) by inserting "(or as established, before the relevant commencement date, in accordance with this section as in force before that date)" after "this section";

(*g*) by inserting the following subsection after subsection (7):

"(8) In this section, 'relevant commencement date' means the date on which *section 121(2)* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* comes into operation.".

(3) Section 898G (substituted by section 90 of, and Schedule 4 to, the Finance Act 2004) of the Act of 1997 is amended as follows:

(*a*) in subsection (2) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*b*) in subsection (4)(*b*) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*c*) in subsection (5)(*b*)(iii) by substituting " *Chapter 3* of *Part 4* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "section 32 of the Criminal Justice Act 1994";

(*d*) in subsection (6)(*a*) (substituted by section 124(1)(*b*) of the Finance Act 2006) by inserting "(or has done so, before the relevant commencement date, in accordance with this section as in force before that date)" after "in accordance with this section";

(*e*) by inserting the following paragraph after subsection (8)(*a*):

"(*aa*) A paying agent who—

(i) before the relevant commencement date, established the identity and residence of an individual under this section as in force before that date, and

(ii) was required, immediately before the relevant commencement date and as a result of paragraph (*a*), to continue to treat that individual as so identified and so resident,

shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.";

(f) in subsection (8)(*b*) by inserting "or (*aa*)" after "paragraph (*a*)";

(*g*) in subsection (9) by inserting "(or as established, before the relevant commencement date, in accordance with this section as in force before that date)" after "this section";

(*h*) by inserting the following subsection after subsection (9):

"(10) In this section, ' relevant commencement date' means the date on which comes into operation.".

Consequential amendment of Taxi Regulation Act 2003.

122. Section 36(1)(*f*) of the Taxi Regulation Act 2003 is amended by substituting "*Part 2* of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*" for "Part IV of the Criminal Justice Act 1994".

SCHEDULE 1

REVOCATIONS OF STATUTORY INSTRUMENTS

Title of Instrument (1)	Number and Year (2)	Extent of Revocation (3)
Criminal Justice Act 1994 (Section 32(10)(*a*)) Regulations 1995	S.I. No. 104 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*b*)) Regulations 1995	S.I. No. 105 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*d*)) Regulations 1995	S.I. No. 106 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*b*)) (No. 2) Regulations 1995	S.I. No. 324 of 1995	The whole Regulations.
Criminal Justice Act 1994 (Section 32(10)(*a*)) Regulations 2003	S.I. No. 216 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) Regulations 2003	S.I. No. 242 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Amendment) Regulations 2003	S.I. No. 416 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2003	S.I. No. 618 of 2003	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed Activities) Regulations 2004	S.I. No. 3 of 2004	The whole Regulations.
Criminal Justice Act 1994 (Section 32) (Prescribed States or Countries) Regulations 2004	S.I. No. 569 of 2004	The whole Regulations.

SCHEDULE 2

ANNEX I TO DIRECTIVE 2013/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 JUNE 2013[13] ON ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS AND THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS, AMENDING DIRECTIVE 2002/87/EC AND REPEALING DIRECTIVES 2006/48/EC AND 2006/49/EC

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.

2. Lending including *inter alia*: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007[14] on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

   (a) money market instruments (cheques, bills, certificates of deposit, etc.);

   (b) foreign exchange;

   (c) financial futures and options;

   (d) exchange and interest-rate instruments;

   (e) transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex Ito Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, when

referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013.

SCHEDULE 3

NON-EXHAUSTIVE LIST OF FACTORS SUGGESTING POTENTIALLY LOWER RISK

(1) Customer risk factors:

(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;

(b) public administrations or enterprises;

(c) customers that are resident in geographical areas of lower risk as set out in *subparagraph (3)*.

(2) Product, service, transaction or delivery channel risk factors:

(a) life assurance policies for which the premium is low;

(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;

(e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money).

(3) Geographical risk factors - registration, establishment, residence in:

(a) Member States;

(b) third countries having effective anti-money laundering (AML) or combating financing of terrorism (CFT) systems;

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

(d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised Financial Action Task Force (FATF) recommendations and effectively implement these requirements.

SCHEDULE 4

NON-EXHAUSTIVE LIST OF FACTORS SUGGESTING POTENTIALLY HIGHER RISK

(1) Customer risk factors:

(a) the business relationship is conducted in unusual circumstances;

(b) customers that are resident in geographical areas of higher risk as set out in *subparagraph (3)*;

(c) non-resident customers;

(d) legal persons or arrangements that are personal asset-holding vehicles;

(e) companies that have nominee shareholders or shares in bearer form;

(f) businesses that are cash intensive;

(g) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;

(h) the customer is a third country national who applies for residence rights or citizenship in the State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the State;

(2) Product, service, transaction or delivery channel risk factors:

(a) private banking;

(b) products or transactions that might favour anonymity;

(c) non face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;

(d) payment received from unknown or unassociated third parties;

(e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;

(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.

(3) Geographical risk factors:

(a) countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;

(b) countries identified by credible sources as having significant levels of corruption or other criminal activity;

(c) countries subject to sanctions, embargos or similar measures issued by organisations such as, for example, the European Union or the United Nations;

(d) countries (or geographical areas) providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

4 IRELAND

4.1 Highlights of the 2021 Act

4.1.1 Introduction

As explained in the Introduction to this Toolkit, the 2021 Act, which amends the 2010 Act transposes the 5MLD into Irish law was signed by the President of Ireland on 18 March 2021 and commenced on 23 April 2021[2].

The 2021 Act largely reflects the legislative outline set out previously, in the 2019 General Scheme, with some changes (e.g., the scheme proposed legislative provisions to support the Criminal Assets Bureau and An Garda Síochána in the administration of their AML/CFT functions by improving their access to bank records in electronic form).

4.1.2 Key Amendments

The 2021 Act effects a number of key changes to Irish AML/CFT law, including the following:

(a) New designated persons in scope

The 2021 Act extends the scope of 'designated persons' to include additional categories of businesses including virtual asset service providers ("**VASPs**"), letting agents and high-value art dealers. Please find further information on the VASP regime below at 4.2.

(b) New obligations on designated persons

The 2021 Act introduces new obligations on 'designated persons' to ascertain that information concerning the beneficial ownership of a customer has been entered in the relevant beneficial ownership register, before establishing a business relationship with a customer to which beneficial ownership regulations apply (such as a company or a trust). A designated person must not engage in that business relationship until the relevant information is obtained. By way of derogation however, a financial institution is permitted to open an account ahead of obtaining such information but cannot allow any transactions on that account.

(c) CDD on e-money instruments

The 2021 Act lowers the value threshold for conducting customer due diligence ("**CDD**") on e-money instruments from €250 to €150. The existing prohibition on setting up anonymous passbooks applicable to financial and credit institutions has been amended to include safe-deposit boxes.

(d) Enhanced CDD for customers in high-risk countries

The 2021 Act introduces enhanced CDD measures for customers in high-risk third countries. Such measures involve obtaining "*additional information*" (as defined) on the customer, beneficial owner(s), their sources of wealth, the intended nature of the business relationship, and completed or intended transactions.

2 S.I. No. 188 of 2021. All sections other than section 8 came into effect on 23 April 2021. Section 8 came into effect on 24 April 2021.

(e) Politically Exposed Persons

The 2021 Act amends the existing politically exposed person ("**PEP**") requirements, including broadening the scope of the definition of PEP to include "*any individual performing a prescribed function*". Under the 2021 Act, the Minister for Justice and Equality, with the consent of the Minister for Finance, is empowered to issue guidelines to competent authorities in respect of the functions in the State considered to be "*prominent public functions*".[3]

(f) FIU to provide 'timely feedback' to designated persons

The 2021 Act provides that the Financial Intelligence Unit shall provide timely feedback to a designated person who is required to make a report on the effectiveness of and follow-up to reports made.

4.1.3 Elements of 5MLD yet to be transposed

While the 2021 Act transposes the majority of 5MLD into Irish law, there are provisions of the Directive which have yet to be transposed. These include:

(a) A Central Register for Express Trusts

5MLD places an obligation on Member States to create a publicly available central register of beneficial ownership for express trusts (irrespective of whether it generates tax consequences) whose trustees are resident in Ireland or which are otherwise administered in Ireland. The establishment of a central register for express trusts will require the introduction of a separate statutory instrument by the Department of Finance.

(b) A Central Register of Bank Accounts

5MLD requires Member States to put in place by national centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification of any natural or legal persons holding or controlling payments accounts, bank accounts and safety deposit boxes. It is expected that the Department of Finance will introduce legislative amendments to give effect to this provision in due course.

4.1.4 VASPs

Of particular note, in respect of the amendments brought about by the 2021 Act, are the provisions which bring VASPs within the scope of Ireland's AML regime for the first time and also creates a bespoke regulatory framework for such firms. These changes, including the definition of "Virtual Asset Service Provider" used in the 2021 Act, go further than the minimum requirements of 5MLD and seek to bring Irish law on VASPs into line with the FATF Recommendations on the regulation of VASPs first published in June 2019.

The 2021 Act introduces a number of new definitions into the existing AML regime, such as:

(1) **Virtual Asset**, meaning 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 Provider**, meaning a person who, by way of business, carries out one or more of the following activities for, or on behalf of, another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer 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;
- custodian wallet provider; and/or
- participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both;

but does not include a designated person that is not a financial or credit institution and that provides virtual asset services in an incidental manner and is subject to supervision by a national competent authority, other than the Central Bank; and

3 These guidelines have yet to be published, as at the date of writing.

(3) **Custodian Wallet Provider**, meaning an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.

Section 25 of the 2021 Act inserts a Section 106E into the 2010 Act, requiring firms providing services relating to virtual assets to register with the Central Bank of Ireland ("**Central Bank**") for AML purposes in order to carry on such activities. This will mean that the VASP will be subject to the same AML requirements as other designated persons.

4.1.4.1 Registration as a VASP

Section 106F of the 2021 Act provides that a firm carrying out virtual asset services immediately prior to the enactment of the provisions, will be taken to be registered to carry on such services until the Central Bank is in a position to grant / refuse an application to register the firm, provided that the firm seeks registration for AML purposes no later than 3 months following the enactment of these provisions. This allows existing firms providing virtual asset services to continue to provide these services following the commencement of the 2021 Act into law, without any business interruption, up until the point of the Central Bank's acceptance of its registration.

The 2021 Act also outlines the factors the Central Bank may consider in deciding to refuse a firm's registration application. These include a failure to satisfy the Central Bank:

- of the firms' ability to comply with its obligations as a designated person;
- the firm will have in place sufficient resources and procedures to carry on business as a virtual asset service provider; and
- the firm can manage and mitigate the risks of engaging in activities that involve the use of anonymity enhancing technologies or mechanisms that obfuscate the identity of the sender, recipient, holder or beneficial owner of a virtual asset.

Furthermore, a registered firm providing virtual asset services will be required to include a regulatory disclosure statement in all of its advertisements for services, stating that the holder of the registration is registered and supervised by the Central Bank for AML and CFT purposes only.

4.1.4.2 Who does the registration requirement apply to?

Section 106E of the 2021 Act extends the registration obligation to "all persons carrying on business" as a VASP. Interestingly, the 2021 Act does not make any express exception for firms that may already be authorised by the Central Bank under other legislative frameworks (for example as e-money institutions or payment institutions).

On 16 March 2021, the Central Bank published the details of the new process for firms to apply for registration with the Central Bank. Firms providing virtual asset services will be required to register with the Central Bank for AML/CFT purposes only, in accordance with the 2021 Act and the Central Bank's supervision remit in respect of AML/CFT compliance by such firms will commence from the date on which the 2021 Act takes effect. To assist firms in preparing for registration, the Central Bank has provided a sample VASP Registration Form. Although the Registration Form is not in final form at the time of writing, firms applying for AML/CFT registration with the Central Bank are likely to be required to submit the Registration Form together with supporting documentation including:

- a copy of the applicant firm's AML/CFT policies, procedures and risk assessment;
- particulars of all direct and indirect ownership and management in the applicant firm;
- individual questionnaires to assess the fitness and probity of all individuals who are proposed to hold pre-approved control functions in the firm;
- a business plan setting out the firm's proposed activities, transaction flows, projections and any outsourcing arrangements envisaged;
- details of the firm's proposed organisational structure, AML/CFT reporting lines and staffing arrangements; and
- details of the firm's AML/CTF training plan.

If a firm that is currently authorised by the Central Bank for prudential and/or conduct of business services is providing, or plans to provide, virtual asset services, this firm is obliged to register with the Central Bank in relation to these activities. Firms providing virtual asset services will be "*designated persons*" for the purposes of the 2010 Act and will be required to comply with the AML/CFT obligations contained under Part 4 of the 2010 Act.

4.1.4.3 Other relevant developments

The 2021 Act comes at a time of other significant regulatory developments for crypto-asset service providers in the European Union (the "**EU**"). In September 2020, the Commission published its proposal for the establishment of an EU-level regime for crypto-assets, the Market in Crypto-Assets Regulation ("**MiCA**"). MiCA will seek to bring all crypto-assets within the remit of EU financial services regulation for the first time. This regime will likely involve the creation of a more formal authorisation process for unregulated subsidiaries that are providing virtual asset services, and importantly, enable the passporting of these rights across the EEA. It is therefore likely that many firms requiring registration as a VASP under Irish law will eventually either be required to, or seek to, obtain an authorisation under the more useful MiCA framework once it is finalised at EU level in the future. For more details on the MiCA, please see Matheson's Insight here.

4.2 Highlights of the 2018 Act

4.2.1 Introduction

The 2018 Act[4] was commenced with effect from 26 November 2018 transposing the 4MLD into Irish Law (see our update on 4MLD here)[5].

The 2018 Act adopts a more pronounced risk-based approach that requires businesses to have the appropriate policies and procedures in place to determine the risks attaching to each customer or transaction, on a case-by-case basis. The key practical change is that tailoring the control environment to each business is more important than ever to demonstrate legislative and regulatory compliance.

Below are some of the key amendments which we believe clients need to be aware of.

4.2.2 Key Amendments

4.2.2.1 Risk Assessment

Chapter 1 A of the 2010 Act requires that a business risk assessment is carried out by a Designated Person of the risk of money laundering and terrorist financing ("**ML/TF**") inherent in carrying on that business, and also requires the application of such a risk assessment in the context of carrying out CDD.

The business risk assessment must include factors such as customer base, products and services, geographic risk, transactions and delivery channels. It must also take account of the details of the National Risk Assessment for Ireland, and any guidance issued by the Central Bank and any guidelines issued by the relevant European Supervisory Authorities[6] ("**ESAs**"), depending on the industry in question.

A business risk assessment must be approved by senior management, documented, kept up to date and records must be available to the Central Bank on request. Failure to comply with Chapter 1 A is a criminal offence punishable by an unlimited fine and up to 5 years in prison.

4.2.2.2 Customer Due Diligence

Risk Assessment

The requirement to perform a customer risk assessment (distinct from the business risk assessment) now applies in respect of all customers. The customer risk assessment must have regard to the business risk assessment, as well as the purpose of an account or relationship, the level of assets to be deposited, the size of transactions, the regularity of transactions or duration of the business relationship. Additionally, Schedule 3 of the 2010 Act sets out a non-exhaustive list of factors that may indicate a lower financing ML/TF risk. Conversely, Schedule 4 sets out a list of factors that may indicate a higher ML/TF risk.

Simplified CDD

In accordance with the risk-based approach of the 4MLD, simplified CDD may be applied where the customer presents a low risk of ML/TF. The basis for the decision to apply simplified CDD must be retained and the relationship must be subject to ongoing monitoring to enable the detection of unusual or suspicious transactions.

Enhanced CDD

Enhanced CDD must be applied where the customer presents a high risk of ML/TF. This includes customers established or residing in a high-risk third country. However, enhanced CDD does not apply to a customer that is a branch or majority owned subsidiary of an EU established entity that is compliant with that entity's group-wide

4 Section 32 in respect of the Legal Services Regulatory Authority, as the competent authority for solicitors and barristers, has not yet been commenced. On 16 July 2020, the European Court of Justice (the "**ECJ**") ordered Ireland to pay a fine of €2 million to the Commission, due to Ireland's failure to fully transpose MLD4 on time.

5 This link is to the most up to date NRA as at the time of publication of this document, firms should ensure that this is still appropriate, if relying on this link into the future.

6 The ESAs includes the European Banking Authority ("**EBA**"), the European Securities and Markets Authority ("**ESMA**") and the European Insurance and Occupational Pensions Authority ("**EIOPA**")

policies and procedures adopted in accordance with 4MLD. Enhanced CDD must also be applied to politically PEPs, regardless of residence (ie, Irish-based PEPs are no longer exempt).

Failure to comply with enhanced CDD requirements is now a criminal offence punishable by an unlimited fine and up to five years in prison.

Monitoring

The definition of 'monitoring' now includes a requirement to keep customer's CDD up to date. There is also a requirement to conduct CDD at any time where the risk of ML/TF warrants its application, including a situation where the customer's circumstances have changed.

Complex Transactions and Unusual Transactions

The 2018 Act includes a requirement to examine complex or unusually large transactions or unusual patterns and to apply enhanced monitoring accordingly.

4.2.2.3 Policies and Procedures

The topics which must be addressed by policies and procedures are now more extensive including: the identification, assessment and management of risk factors; CDD measures; monitoring transactions and business relationships; reporting; record keeping measures; systems to identify emerging risks; and monitoring and managing the internal communication of such policies. Regard must also be had to any guidelines issued by the Central Bank.

Once again, policies and procedures must be approved by senior management and kept under review.

4.2.2.4 Registers of Beneficial Ownership

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 ("**the Prior Regulations**") requires that most Irish companies must gather information on individuals who are their underlying beneficial owners. The European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 imposes similar obligations on Irish trusts.

On 26 March 2019, the Department of Finance published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 which came into force on 22 March 2019. The 2019 Regulations operate to repeal, restate and expand the scope of the Prior Regulations[7].

The obligation on such corporate and other legal entities to gather information and to establish and maintain a beneficial ownership register remains (a "**Beneficial Ownership Register**"). However, the 2019 Regulations also require that, such entities must also file their beneficial ownership details on a central beneficial ownership register (the "**Central Register**"). This requirement came into operation on 22 June 2019.

The Irish corporates and other legal entities which were in scope under the Prior Regulations are the entities falling within the scope of the 2019 Regulations and are called "relevant entities". Irish companies continue to be excluded from the scope of the 2019 Regulations if they are listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU or are already subject to equivalent international standards which ensure transparency of ownership information. Irish incorporated subsidiaries of listed companies are not exempt.

The 2019 Regulations were themselves modified by the European Union (Modification of Statutory Instruement No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (the "**2020 Regulations**"). The 2020 Regulations oblige the Central Bank to establish a central beneficial ownership register for certain kinds of regulated financial service providers established in Ireland.

The Central Bank has a dedicated area on its website containing:

- general information on the register;
- FAQs in relation to the register and how entities can submit the required information; and
- secure return upload facility for entities submitting their information.

7. See Matheson's update on The Central Register of Beneficial Ownership - It's Time for Corporates to Get Ready.

Currently, the entities contained on the Central Register maintained by the Central Bank are:

- Irish Collective Asset-Management Vehicles ("**ICAVs**")
- Unit Trusts
- Credit Unions

Investment Limited Partnerships and Common Contractual Funds will be added to the Central Register from 1 September 2021.

4.2.3 Enforcement

The Financial Intelligence Unit of the Garda Siochana is referred to as 'FIU Ireland' within the 2018 Act and has been empowered to carry out all the obligations of an EU Financial Intelligence Unit under 4MLD. This change grants formal recognition to the unit of An Garda Siochana which carries out this role. FIU Ireland will have access to national central registers of beneficial ownership, and has gained new powers to request information from "any person" including Competent Authorities (ie, regulatory bodies) and the Revenue Commissioners. FIU Ireland has also been empowered to share information with other EU Fills.

4.2.4 European Union (Money Laundering and Terrorist Financing) Regulations 2019

The European Union (Money Laundering and Terrorist Financing) Regulations 2019 (the "**2019 Regulations**") entered into force on 18 November 2019, amending the 2010 Act to give further effect in Irish law to 4MLD.

Whistleblowing

The 2019 Regulations amend the 2010 Act by inserting a section 54(6A) into the 2010 Act, which provides that a "designated person" within the meaning of the Act shall have in place appropriate procedures for their employees (or individuals in a comparable position) to report a contravention of the 2010 Act internally, through a specific, independent and anonymous channel. Said procedures should be proportionate to the nature and size of the designated person concerned. Section 54 (6A) of the 2019 Regulations transposes Article 61(3) of 4MLD into Irish law.

Failure to comply with the new section 54(6A) carries a fine and/or up to five years in prison, following a conviction on indictment.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

4.3 Schedule 2 Firms

Introduction

The commencement of Section 108A of the 2010 Act, which transposed the 4MLD into Irish law, on 26 November 2018, introduced a statutory requirement that obliges many firms, providing otherwise unregulated financial services in Ireland, to register with the Central Bank for AML purposes.

While the 2010 Act has always applied to unregulated financial service providers, the introduction of Section 108A was intended to close a gap in the 2010 Act, whereby unregulated financial services firms were not, ever required to register with a competent authority such as the Central Bank about their AML compliance and / or provide legal declarations confirming that they were in fact observing the requirements of 2010 Act.

In high level terms, the obligation to register with the Central Bank under Section 108A may extend to any legal or natural person:

(a) that falls within the revised definition of a "financial institution" under the 2010 Act; or

(b) who carries on the business of a "cheque cashing office".

However, there are certain exemptions from the obligation to register (discussed in greater detail below) that may be relevant.

What Kind of Activities will trigger the Requirement to Register under Section 108A of 2010 Act?

The definition of 'financial institution' in the 2010 Act has been expanded by cross referring to certain activities listed in numbers 2 to 12, 14 and 15 of Schedule 2 of 2010 Act. The activities in Schedule 2 that can trigger the registration requirement under Section 108A can be found here.

If a firm offers any of the above services and is not otherwise authorised or licenced to carry on business by the Central Bank, it will need to register with the Central Bank as a 'Schedule 2 firm' under Section 108A of 2010 Act.

What Does this Mean in Practice?

Many of the activities listed in Schedule 2 would ordinarily require an authorisation under existing Irish financial services law and so the Section 108A registration obligations do not apply to firms that are already regulated by the Central Bank. However, because some of the activities listed above are not currently, in and of themselves, regulated activities under Irish law, Section 108A is likely to have a significant impact on certain types of financial service firms that have not required any regulatory authorisation from the CBI to date. Firms who lend only to SMEs, or who provide financial leasing or factoring services to SMEs, are just two examples of the types of unregulated financial service providers operating in the Irish marketplace that will be caught by Section 108A.

A failure to register with the Central Bank under Section 108A when required to do so is an offence. A conviction on indictment may be punished by an unlimited fine or imprisonment not exceeding 5 years (or both).

Are there any other Exemptions from the Obligation to Register under Section 108A?

The main exemption is that if a firm is already authorised by or registered with the Central Bank under existing Irish financial services law then they do not need to re-register under Section 108A.

There is also an exemption for firms who only trade on own account in certain types of financial instruments and whose only customers (if any) are members of the same group as that firm.

Finally, there is also a "de minimis" exemption for firms which provide Schedule 2 activities on a very small scale and in a manner which is ancillary to its main business activity. There are quite a number of criteria that need to be cumulatively satisfied in order to rely on this particular exemption and this exemption is likely to be difficult to avail of in practical terms, as a result.

What Does Registration Involve?

The registration process is relatively straightforward and involves the completion of an excel-based spreadsheet with details on the firm, its business model and financial positon, etc. This is then submitted by email to the

Central Bank. SPVs must also disclose whether they have Section 110 status under the Taxes Consolidation Act 1997 and / or any other reporting obligations to the Central Bank. Further, the Central Bank has released a Schedule 2 registration Guidance. This can be found here.

Importantly, the form requires two directors of the firm to declare that it has an appropriate AML control framework in place to ensure it can comply with the requirements of 2010 Act.

Once registered, the firm's details will be recorded in a register maintained by the Central Bank. To date the Central Bank has not published this register on its website, as is commonly the case for other types of regulatory authorisations.

Repeat registration is not required and firms are only required to contact the Central Bank by email to update their registration if any material events occur. See the list of post-registration changes here.

Commentary

Since November 2018, Schedule 2 Firms have been under a legal obligation to register with the Central Bank for AML purposes and confirm that their business observes the requirements of 2010 Act. In practice, in order to provide the confirmations required by the registration form, firms need to ensure that they (to the extent they are not already in place) have robust AML policies and procedures in place. Compliance with these requirements should not be approached from a "good is good enough" or a "nearly compliant" point of view. Full compliance is what is required by the Central Bank.

Although the registration process under Section 108A is relatively straightforward, unregulated firms must be conscious that they will need to continuously monitor and enhance the systems and controls they use to combat the risk of money laundering and terrorist financing in their business. This is a significant compliance challenge for any business, regardless of their size or scale.

AML compliance amongst regulated financial service providers has been a key focus for the Central Bank's Enforcement Division in recent years and some record fines have been levied on regulated firms who have been found to have inadequate policies and procedures in place.

Next Steps

Firms should consider whether they can rely on one of the exemptions above and if not, prepare to register with the Central Bank under Section 108A as soon as possible. As part of this, they must review their AML policies and procedures to ensure they are in keeping with the requirements of the 2010 Act and update where necessary.

4.4 Schedule 2 Firms - Dear CEO Letter issued December 2020

On 16 December 2020, the Central Bank issued a "Dear CEO" letter (the "**Letter**") to Schedule 2 Firms highlighting its concerns with low levels of compliance with AML obligations. The Letter also sets out the Central Bank's findings from its supervisory engagements with firms in accordance with Part 4 of the 2010 Act, which includes conducting inspections and holding ad hoc meetings with registered firms, as well as the Central Bank's expectations in this regard. The Central Bank's expectations addressed to Schedule 2 firms are, in our experience, entirely consistent with the regulator's approach to AML / CTF compliance in other sectors and for compliance professionals with responsibility for AML / CTF nothing contained in the Letter will be a surprise.

Board Oversight and Governance

As with many "Dear CEO" letters, the Central Bank's first observation was addressed to boards. This is particularly relevant for the SPVs which were the focus of the Central Bank's review given that these vehicles have no staff so it falls on the boards to ensure compliance. Firms are expected to ensure that AML / CTF is a regular agenda item at board meetings, and ensure a framework is in place to identify and adopt updates in the relevant legislation for ongoing compliance.

It is not mandatory for a Schedule 2 firm to appoint a Money Laundering Reporting Officer but it is considered to be best practice. If appointed, they (or their equivalent who has been clearly allocated AML responsibilities by the firm) should actively report to the Board on a frequent basis. It is recommended that this would include on relevant outsourced arrangements, where the Board does not have direct oversight, and the firm must be able to evidence that they are monitoring the progress of management action points arising from these arrangements. It may be that contracts with service providers will need to be revised to provide the support necessary to meet the applicable AML / CTF obligations.

Risk Assessments

Where a firm relies on a third party, or another entity within a group of companies, to carry out its AML/ CTF business wide risk assessment on its behalf, it must relate to risks and controls associated with the firm specifically, rather than focus on those of the wider group. The objective should be a focussed risk assessment not a generic one. This risk assessment should be refreshed annually, and approval by the board must be formally evidenced.

Policies and Procedures

Firms must ensure to have documented AML / CTF policy and procedures in place, that are tailored to the specific business activities and associated risk factors of the firm, and which are consistent with Irish legislative requirements. Similar to the point on risk assessments, this finding comes from the Central Bank's finding too many firms using "cookie cutter" precedents derived from group with not enough adapted to the specific circumstances of the Schedule 2 firm itself.

Customer Due Diligence ("CDD")

Firms must consider the identity of their customers and must conduct appropriate due diligence in accordance with the level of risk involved with their customers. The Letter noted that many firms were inconsistent in determining who were their customers. This comment seemed particularly focussed on firms that raise capital from investors through loan notes and then subsequently lend that capital to third party borrowers as part of an investment strategy. There are broad obligations in Section 54 of the 2010 Act to prevent and detect money laundering and terrorist financing but the detailed due diligence obligations in section 33 only apply to customers. It is critical for firms to correctly distinguish between customers and others in order to correctly understand their obligations under the 2010.

Politically Exposed Persons ("PEPs") and Financial Sanctions ("FS")

Firms should ensure that the policies and procedures are in place to identify and escalate PEP and FS alerts, including the process and appropriate reporting lines to be followed. Where screening tools are relied upon, firms

should ensure appropriate oversight and ongoing assurance testing and monitoring is in place to ensure they are fit for purpose. Suspicious Transaction Reporting ("STR") Firms should ensure their policies and procedures include details for the escalation of suspicions, including the personnel to whom suspicions should be raised / reported. If AML responsibilities are outsourced to third parties, the firm should ensure the third party is subject to the appropriate level of oversight. The level of STRs being made by the firm should be regularly reported to the Board of Directors.

Training

Training materials should be tailored to the business of the firm and be reflective of the standards and practices the firm should be exhibiting to meet its obligations. These materials should be kept up-to-date and in line with Irish legislative requirements.

Conclusion

The focus of the Central Bank's guidance and expectations in the Letter centres around Irish SPVs, who have registered as Schedule 2 firms and have failed to put in place bespoke AML policies and procedures, an AML business-wide risk assessment, or relevant tailored outsourcing agreements for AML. Firms using generic, 'off the shelf,' policies and outsourcing agreements fail to take into account the specific business activities and risk factors faced by the firm, and will face Central Bank scrutiny in the event of any investigation conducted following registration as a Schedule 2 firm. These firms should carefully take time to design more tailored AML compliance arrangements prior to registration with the Central Bank, and ensure these arrangements are updated and under constant review. For SPVs the support of third party service providers will undoubtedly be critical in enabling boards to demonstrate compliance in a way which meets the expectations of the Central Bank.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

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Guidance for Completion of the Schedule 2 Anti-Money Laundering Registration Form

May 2019

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1. Schedule 2 Anti-Money Laundering Registration

The law in Ireland on anti-money laundering and the countering of the financing of terrorism is governed by The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by Part 2 of the Criminal Justice Act 2013 and the Criminal Justice (Money Laundering and Terrorist Financing), (Amendment) Act 2018 ('the Act').

The Central Bank of Ireland (the 'Central Bank') is the competent authority in Ireland for the monitoring and supervision of financial and credit institutions' compliance with their obligations under the Act. The Central Bank is empowered to take measures that are reasonably necessary to ensure that credit and financial institutions comply with the provisions of the Act.

On 26 November 2018, Section 108A of the Criminal Justice (Money Laundering and Terrorist Financing), (Amendment) Act 2018 introduced for the first time a statutory requirement for certain firms to register for anti-money laundering purposes with the Central Bank. For the purposes of this guidance such firms are referred to as "Schedule 2 firms"

2. When does the obligation to register as a Schedule 2 firm arise?

If your firm offers any of the following services and **it is not otherwise authorised or licenced to carry on business by the Central Bank**, then it may need to register with the Central Bank as a 'Schedule 2 firm':

Schedule 2 Activities:

1. Lending including inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
2. Financial leasing.
3. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 200714 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.
4. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 3.
5. Guarantees and commitments.
6. Trading for own account or for account of customers in any of the following:
    (a) money market instruments (cheques, bills, certificates of deposit, etc.);
    (b) foreign exchange;
    (c) financial futures and options;
    (d) exchange and interest-rate instruments; and
    (e) transferable securities.
7. Participation in securities issues and the provision of services relating to such issues.
8. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

9. Money broking.
10. Portfolio management and advice.
11. Safekeeping and administration of securities.
12. Safe custody services.
13. Issuing electronic money

3. Exemptions from Obligation to Register

If your firm is carrying out the Schedule 2 activities, the obligation to register does not occur if your firm falls into any of the following 2 exemptions:

i. If cumulatively
   (a) Your firm only carries out Schedule 2 Activity 6 above; and
   (b) Your firm's customers (if any) are members of the same group as your firm.

or

ii. If cumulatively ,
   (a) your firm's annual turnover is less than €70,000;
   (b) the total of any single transaction, or series of linked transactions in relation to your firm's Schedule 2 activities does not exceed €1,000;
   (c) your firm's Schedule 2 activities do not exceed 5% of your firm's total turnover;
   (d) your firm's Schedule 2 activities are directly related to and ancillary to your firm's main business activities; and
   (e) your firm only provides Schedule 2 activities to customers of your main business activities, rather than the public in general.

4. How to register as a Schedule 2 firm

Firms that need to register with the Central Bank as a Schedule 2 firm must do so by using the

- Link to Schedule 2 Registration Form

Completed registration forms should be e-mailed to the Central Bank at the following address:

Schedule2@centralbank.ie

The Central Bank will not commence the processing of any registration until all required information in the registration form as been completed. Incomplete registration forms will be returned without review.

Firms must inform the Central Bank of any changes to the information provided in the registration form.

If you have any queries in relation to the registration form and/or the registration process, please address them to:

Schedule2@centralbank.ie

5. Purpose of this Guidance

The purpose of this guidance is to provide information to firms who are required to register with the Central Bank under Section 108A of the Act.

This guidance does not constitute legal advice nor does it seek to interpret relevant legislation. Independent legal advice should be sought if in any doubt as to whether registration as a Schedule 2 firm is required.

In advance of making an application for registration, each potential applicant must assess whether its proposed business model requires registration.

6. Data Protection

The Central Bank will process personal data provided by you in order to fulfil its statutory functions or to fulfil its business operations. Any personal data provided will be processed in accordance with the requirements of data protection legislation. Should you have any queries concerning the processing of personal data by the Central Bank, these can be submitted to dataprotection@centralbank.ie .

A copy of the Central Bank's Data Protection Notice is available here.

7. Completing the Registration Form

The firm must complete **all** sections of the registration form. Where a drop down box is available; the selection should be made using the available options.

The firm **MUST NOT** 'Copy and Paste' data into any cells contained within the registration form. Information should only be entered in the format specified.

The following table provides further guidance on completing specific fields within the registration form.

To Note: The table only provides guidance on those fields where guidance is necessary.

All registration forms must be submitted in Excel format only.
Registration forms submitted in other formats (for example: PDF) will be returned and the firm will be requested to resubmit via Excel.

Completion Notes	
General	
Reference	**Notes**
Firm	If applicable, where the term ''firm'' is used this also refers to ''branch'' or "sole trader'' etc. For branches, the information sought in the registration form relates only to the Schedule 2 activities of the Irish branch.
Customer	Where the term "customer" is used this also refers to "client", "consumer", "investor" etc. The firm should only include information regarding customers to whom it provides Schedule 2 activities.
Section 1. Contact Details	
Principal Contact Details	
Schedule 2 Number	The Schedule 2 number is not required when a firm makes its initial registration. This number will be assigned to a firm after its details have been uploaded to the Schedule 2 register. The Schedule 2 number must be used in any subsequent submission or communication with the Central Bank.
Full Legal Name of Firm	This is the legal name of the firm. (for example as registered with the Companies Registration Office ('CRO'))
Principal Contact Details	This should be someone who is part of the management of, or works directly for, the firm and not a legal or professional advisor. Preferably, this person should be located in the State.
Principal Business Address	
Principal Business Address	This is the main place where work is performed or business carried out and is the location of the firm's central management and control.
Trading Name of Firm	The trading name a firm operates under may be different to its legal name. Details of the trading name used by the firm should be provided, if the trading name is different to the legal name of the firm
Legal Advisor Details	

Completion Notes	
Legal Advisor	Legal Advisor details should only be provided if the firm intends to allow its legal advisors to correspond with the Central Bank directly on the firm's behalf. In such circumstances, the firm must inform its legal advisors that it has provided the legal advisors contact details to the Central Bank.
Registration/Submission type:	
Registration/Submission Type	The form is capable of being used for different submission types from initial registration to annual updates. The questions in this section will determine the type of submission being made. All three questions must be answered. These questions prescribe which fields must be completed by the firm based on the responses given. Mandatory fields are marked with an '*'.
Section 2. Applicant Details	
Business Details	
Legal Status of Firm	The firm must choose legal status from the dropdown menu. If "Other", please provide details in the text box shown.
CRO Number	This only applies to incorporated entities who have registered with the CRO. Only a valid CRO number should be entered into this field. This question does not apply if the firm is a sole trader, partnership or other type of unincorporated entity.
LEI Code	The Legal Entity Identifier (LEI) is a 20-character reference code to uniquely identify legally distinct entities that engage in financial transactions and associated reference data. If the firm does not have an LEI code, then it is **not** required to obtain one.

Completion Notes	
Schedule 2 Business Activities	
Nature of Schedule 2 Business Activity	The firm must choose its most significant Schedule 2 activity from the dropdown menu. For example "*Lending*" Significance may be judged in terms of scale of that Schedule 2 activity in proportion to its other activities (for example Percentage of Schedule 2 turnover as a percentage of overall business turnover)
Nature of Schedule 2 Activity - Subsector	The firm must choose the sub category of its principal Schedule 2 activity from the dropdown menu. To follow on from the previous example: If the firm has chosen "Lending" as its principle Schedule 2 activity, then it must choose which sub-category of lending applies. For example "*Factoring* "
More than one Schedule 2 Activity	Where the firm engages in more than one Schedule 2 activity it must choose the next most significant Schedule 2 from the dropdown menu.
More than two Schedule 2 Activities	Where the firm engages in more than two Schedule 2 activities, it must list the remaining Schedule 2 activities, it undertakes in order of significance in the context of its overall business activities. (for example percentage of total Schedule 2 turnover as a percentage of overall business turnover)
Schedule 2 Rationale	
Schedule 2 Rationale	The firm should provide further details of the Schedule 2 activities it undertakes (Schedule 2 Business Model)
Business Profile	
Total Number of Customers	If the firm is unsure as to the exact number of customers it has then it should include approximate numbers to the nearest hundred (for example "600 customers")
Types of Customers	More than one type of customer can be selected If "*Other*", please provide details in the text box shown.

Completion Notes	
Geographic Location of Firm's customer base and business activities	Select the relevant location(s) from the options provided. If Other is selected please provide details in the available field
Total Staff	Only staff directly employed by the firm should be included. Staff from outsourced service providers or group companies should not be included.
Distribution Channels	Please note more than one selection can be made if applicable. The relevant distribution channels should be ranked 1-5, with 1 inferring the main distribution channel. Select N/A where appropriate. All questions in this section must be answered
Financial Details for Schedule 2 Activities	
General	All financial figures should be reported in Euro thousands (€'000) The '€' and 'k' symbols should be omitted when keying in this data and only digits should be input For example: "€325,652" should be stated as "326"
Total Schedule 2 Assets	Only assets in relation to Schedule 2 activities as per most recent annual statements should be included Please provide an estimate if the Schedule 2 assets are not readily distinguishable from other assets of the firm.
Total Schedule 2 Turnover	''Turnover'' refers to the gross annual turnover of the firm as per the last financial statements. Only turnover in relation to Schedule 2 activities should be included Please provide an estimate if the Schedule 2 turnover is not readily distinguishable from other turnover of the firm.
Schedule 2 activities as a percentage of overall activities	This can be expressed as : $\frac{\text{Schedule 2 Turnover}}{\text{Total Turnover}} \times 100$ Please select to the nearest "5%" in the drop down menu provided.
Section 3 Group Undertakings	

Completion Notes	
Details of Group Structure	This should include details of all direct and indirect parent and/or subsidiary holdings
Parent Central Bank Institution Code	This is the unique identifier assigned to firms by the Central Bank (for example; at time of authorisation, registration or for reporting purposes) If the firm is unsure of its parent's Central Bank Institution Code, it should refer to the registers section the Central Bank website and search by "Name of Firm" for "Ref No."
Institution Code for parents regulated outside Ireland	This is the unique identifier assigned to firms by their regulator at time of authorisation If the firm is unsure of its parent's institution code, it should seek this information from its parent.
Name of Regulator	This should include the full title and jurisdiction of the parent's regulator.
Section 4. Reporting to the Central Bank	
Special Purpose Entity ('SPE')	This section should only be completed by SPEs For the purposes of this registration form, an SPE is a legal entity, with little or no physical presence and narrow, specific, and/or ring-fenced, objectives, such as the segregation of risks, assets and/or liabilities, or as a cash conduit.
Central Bank Institution Code	This is the unique identifier assigned to firms by the Central Bank for statistical reporting purposes.
Declarations	
The declarations must be signed by the person responsible for making this registration on behalf of the firm. The appropriate person(s) depends on the firm's type:	
A sole trader	The sole trader
A company with one Director	The director
A company with more than one director	Two directors
A partnership	Two partners
A limited liability partnership	Two members
A limited partnership	The general partner of partners
An incorporated association (other than a limited partnership)	One person authorised to sign on behalf of all other members (this must be supported by a resolution of the committee of management or equivalent. Such resolution should be made available to the Central Bank upon request)
END	

T: +353 (0)1 224 6000
E: Schedule2@centralbank.ie
www.centralbank.ie

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4.6 Central Bank Suspicious Transaction Reports

The 2010 Act requires designated persons to monitor customer transactions to identify suspicious transactions. The level of monitoring carried out is on a risk basis and therefore increased monitoring is required for more complex transactions.

Suspicious transaction reports (**"STRs"**) should be made to the FIU and to the Office of the Revenue Commissioners (**"Revenue"**).

Since September 2020, STRs must be submitted to Revenue using Revenue's Online Service ("**ROS**") only. To submit an STR online, the designated person must first register for the ROS service and obtain a digital certificate and then register for STR Reporting and request a sub user certificate for all Money Laundering Reporting Officers ("**MLROs**").

Section 54 of the 2010 Act requires a designated person to adopt policies and procedures to prevent and detect the commission of ML/TF. The Central Bank has noted its expectation that as part of this requirement, all designated persons are registered with ROS.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

4.7 New Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector

Introduction

The enactment of the 2018 Act necessitated the Central Bank to issue Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (**"AML Guidelines")** in September 2019.

The AML Guidelines supersede the previous "Core Guidelines" last issued by the Department of Finance in 2012 and supplement Part 4 of the 2010 Act and assist firms in better understanding their obligations under the 4MLD, transposed through the 2018 Act.

Speaking at the launch of the AML Guidelines, Derville Rowland, Director General, Financial Conduct at the Central Bank, provided an insight into the purpose of the AML Guidelines:

"The purpose of the guidelines we are launching this morning is to help firms to understand their obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 which was updated last year when the Fourth EU Anti-Money Laundering Directive was transposed in to Irish law.

Our message to firms today is that they must adopt a risk-based approach to fulfilling their obligations and ensure that their controls, policies and procedures are fit for purpose, up-to-date, tested, and kept under constant review and scrutiny"

Commentary

CDD

It is notable that the AML Guidelines are much more high level (and therefore far less detailed) than the previous Core Guidelines on the subject of CDD. In particular, there is no longer a prescriptive list of acceptable CDD documentation, firms should instead maintain their own lists of documents which they will accept for the purposes of CDD.

The rationale given by the Central Bank for this approach is that it wants the AML Guidelines to keep pace with "technological developments" and not to be overly reliant on "checklist" approaches to CDD. This is consistent with the general move towards a more holistic, risk based approach under the reforms introduced by 4MLD.

It must also be borne in mind that the EBA has published revised guidelines on CDD which are sector-specific.

Business risk assessments

There is some helpful guidance in the AML Guidelines on the business-wide risk assessments firms are expected to carry out under the provisions contained in Section 30A of the 2010 Act. A business-wide risk assessment should assist firms to understand where they are exposed and which areas they should prioritise to combat ML / TF.

Firms should rely on their business-wide risk assessment of the risks inherent in their business to in turn inform their risk-based approach to the identification and verification of an individual customer. This in turn should drive the level and extent of due diligence appropriate to that customer.

Governance and record-keeping

The chapters in the AML Guidelines on governance and record-keeping are quite helpful in that they concisely summarise the Central Bank's main expectations in these two areas where the 2010 Act is not particularly detailed. As a result, these are two areas where firms regularly fall down during onsite AML inspections. The guidance in the AML Guidelines will give firms a better overview of what the Central Bank requires in practice, and this should ensure fewer cases of enforcement action due to AML deficiencies.

Training

The AML Guidelines state that all employees, directors and agents of a firm must be trained in relation to the firm's AML and CFT policy. Further, firms must provide training which is specific to the AML/CFT role that a member of staff is engaged in.

The AML Guidelines have been amended in relation to training assessments. The Guidelines state that *"Firms should ensure that the AML/CFT training provided includes an assessment or examination during the training session, which should be passed by all participants in order for the AML/CFT training to be recorded as completed. If the training does not contain an assessment or examination, Firms must be in a position to demonstrate effectiveness of training and staff understanding in relation to same."* This suggests that firms should carry out some assessment of those participating in its AML/CFT training programme.

PEPs

The AML Guidelines have been updated in relation to PEPs. The AML Guidelines now require firms to allocate responsibility for the approval of PEP relationships. The AML Guidelines state that a firm must ensure that: *"the approval of a PEP relationship is conducted by individuals who are appropriately skilled and empowered".* This process must be subject to appropriate oversight.

Source of wealth and source of funds of PEPs

Further, the AML Guidelines provide that: "*firms should verify the source of wealth and the source of funds based on reliable and independent data, documents or information.*" This differs from the draft Guidelines where independent verification was necessary only where a "particularly high" money laundering or terrorist financing risk could be attributed to a PEP relationship.

Topics which require further guidance

While the Central Bank has made the AML Guidelines more succinct in order to encourage the move towards a risk based approach to AML, there are still certain topics where it would be helpful if the Central Bank articulated its regulatory expectations, including:

- the types of AML due diligence that should be carried out whenever a firm is proposing to acquire a portfolio of business from another regulated financial service provider;
- the obligations that apply to EEA branches of Irish authorised firms (e.g. in terms of the degree of management oversight by the Irish firm, and clear guidance as to which authorities branches should file suspicious transaction reports to); and
- further detail on what it expects in local and group-wide policies and procedures.

The Central Bank has confirmed its AML Guidelines are a "live" document and will be amended from time to time in future. Both Seana Cunnigham and Tommy Hannfin of the Central Bank have indicated that the AML Guidelines will be updated in light of the 2021 Act. It will be interesting to see to what extent, if any, they also look to update them to have regard to the EBA Revised Guidelines.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

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Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector

September 2019

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1. Introduction

1.1 Purpose and Scope

The purpose of the Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector ('the Guidelines') is to assist Firms that are credit and financial institutions ('Firms') in understanding their AML/CFT obligations under Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) ('CJA 2010').

The Guidelines set out the expectations of the Central Bank of Ireland ('Central Bank') regarding the factors that Firms should take into account when identifying, assessing and managing ML/TF risks.

1.2 Status

The Guidelines do not constitute secondary legislation. Firms must always refer directly to the CJA 2010 when ascertaining their statutory obligations. The Guidelines do not replace or override any legal and/or regulatory requirements. In the event of a discrepancy between the Guidelines and the CJA 2010, the CJA 2010 will apply. The Guidelines are not exhaustive and do not set limitations on the steps to be taken by Firms to meet their statutory obligations.

The Guidelines should not be construed as legal advice or legal interpretation. It is a matter for Firms to seek legal advice if they are unsure regarding the application of the CJA 2010 to their particular set of circumstances.

For convenience to the user, from time to time, certain text from the CJA 2010 may be directly quoted in italics or otherwise summarised in the Guidelines. For the avoidance of doubt, such quotes or references are contained in blue text boxes. If any inconsistencies occur between the text in the Guidelines and the CJA 2010, the CJA 2010 prevails. References to sections of legislation within the Guidelines should be taken as references to the CJA 2010 unless otherwise stated.

Where the Guidelines have not provided guidance on a specific section from Part 4 of the CJA 2010, it is because that section of the CJA 2010 already provides clear and detailed information on the obligations of Firms and further guidance is unnecessary. The guidance also highlights where the CJA 2010 has been materially amended by the 2018 legislative amendments.

Where lists or examples are included in the Guidelines, such lists or examples are non-exhaustive. The examples present some, but not the only ways, in which Firms might comply with their obligations. The Guidelines do not take the place of a Firm performing its own assessment of the manner in which it shall comply with its statutory obligations. The Guidelines are not a checklist of things that all Firms must do or not do in order to reduce their ML/TF risk, and should not be used as such by Firms.

The Guidelines are not the only source of guidance on ML/TF risk. Firms are reminded that other bodies produce guidance that may also be relevant and useful.

Nothing in the Guidelines should be read as providing an express or implied assurance that the Central Bank would defer or refrain from using its enforcement powers where a suspected breach of the CJA 2010 comes to its attention.

The Central Bank will update or amend the Guidelines from time to time, as appropriate.

1.3 Data Protection

Firms shall comply with their obligations under Part 4 of the CJA 2010 having regard to their obligations under data protection legislation[1].

1.4 Glossary

The following terms are used throughout the Guidelines:

AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
CJA 2010	Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by the Criminal Justice Act 2013 and the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018
CJA 2005	Criminal Justice (Terrorist Offences) Act 2005
EDD	Enhanced Due Diligence
EEA	European Economic Area
ESAs	European Supervisory Authorities (comprising the European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets Authority)
EU	European Union
FATF	Financial Action Task Force, the global AML/CFT standard-setting body
Firm(s)	Credit or financial institution(s) subject to the CJA 2010

[1] Article 6.1(c) of Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR) specifically allows for the lawful processing of personal data where "processing is necessary for compliance with a legal obligation to which the controller is subject".

FS	International Financial Sanctions (restrictive measures)
FTR	**Funds Transfer Regulation** Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds as supplemented by S.I. No. 608/2017 - European Union (Information Accompanying Transfers of Funds) Regulations 2017
FIU Ireland	State Financial Intelligence Unit
ML	Money Laundering
MLRO	Money Laundering Reporting Officer
ML/TF	**Money Laundering/Terrorist Financing**
Risk Factors GL	Guidelines issued by the ESAs in accordance with Articles 17 and 18(4) of 4AMLD on simplified and enhanced due diligence and the factors which credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transactions
Relevant Third Party	Those persons identified in Section 40. (1) (a) – (d) of the CJA 2010
SDD	Simplified Due Diligence
TF	Terrorist Financing
3AMLD	Third EU AML Directive (Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005)
4AMLD	Fourth EU AML Directive (Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015)

Any term used in the Guidelines should be construed in accordance with its definition under the CJA 2010.

2. Legal and Regulatory Framework

2.1 Legislative Framework

The Irish AML/CFT legislative framework is set out in the CJA 2010. This framework was updated with the transposition of 4AMLD into Irish law in *2018 pursuant to the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018*.

Part 4 of the CJA 2010 obliges Firms to put in place an effective, risk-based AML/CFT framework, which includes the application of a risk based approach, customer due diligence ("CDD") measures, reporting of suspicious transactions, governance, policies and procedures, record keeping and training.

2.2 Regulatory Framework

The Central Bank is the competent authority for the monitoring of credit and financial institutions' compliance with the CJA 2010 and is responsible for taking reasonable measures to secure such compliance. The Central Bank is also the competent authority for monitoring compliance with the Funds Transfer Regulation.

2.3 International Framework

The FATF is the global standard setting body in the area of AML/CFT. It has set out standards or recommendations, which include the preventative (compliance) measures to be put in place to combat money laundering and terrorist financing. The FATF publishes guidance on the risk-based approach to AML/CFT (including sector specific guidance)[2].

The European Union (EU) enacts AML/CFT legislation (directives and regulations), which are either transposed or directly effective in national laws.

The ESAs play an important role in taking steps to ensure that competent authorities and Firms apply European AML/CFT legislation effectively and consistently[3]. Guidelines are published by the ESAs and the Central Bank complies with ESA guidelines by incorporating them into supervisory processes and, where relevant, into these Guidelines.

As the Guidelines do not replace the guidance published by ESAs and FATF, Firms should ensure that they are familiar with and have regard to the guidance published by these bodies.

[2] https://www.fatf-gafi.org/

[3] http://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money

3. Money Laundering and Terrorist Financing

3.1 Money Laundering

Money Laundering means an offence as set out under Section 7 of the CJA 2010. It involves the intentional or reckless conversion of property, generated from "criminal conduct", so that the criminal origin of the property is difficult to trace.

Section 7(1) of the CJA 2010 provides that a person commits a [Money Laundering] offence in the State if:

"(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;
(ii) converting, transferring, handling, acquiring, possessing or using the property;
(iii) removing the property from, or bringing the property into, the State,

and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct."

Section 7(2) of the CJA 2010 provides that a person who attempts to commit an offence under subsection (1) commits an offence.

"Criminal conduct" is defined in Section 6 of the CJA 2010. This definition encompasses all offences whether minor or serious, summary or indictable.

Section 6 of the CJA 2010 defines Criminal Conduct as including:

"*Conduct that constitutes an offence or conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State*"

"Proceeds of Criminal Conduct" is defined in Section 6 of the CJA 2010.

Section 6 of the CJA 2010 defines Proceeds of Criminal Conduct as:

"Any property that is derived from or obtained through criminal conduct, whether directly or indirectly or in whole or in part…"

3.2 Terrorist Financing

Terrorist Financing means an offence under Section 13 of the Criminal Justice (Terrorist Offences) Act 2005 (CJA 2005).

Section 13(1) of CJA 2005 provides that a person is guilty of a terrorist financing offence if:

" in or outside the State, the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part in order to carry out—

a) an act that constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that is listed in the annex to the Terrorist Financing Convention, or

b) an act (other than one referred to in paragraph (a)) —

(i) That is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and
(ii) The purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do, or abstain from doing, any act."

Section 13(2) of CJA 2005 provides that a person who attempts to commit an offence under subsection (1) is guilty of an offence.

4. Risk Management

4.1 Risk-Based Approach

Section 30A and 30B of the CJA 2010 require Firms to apply a risk-based approach when applying AML/CFT compliance measures.

Sections 30A and 30B also provide for the application of appropriate measures to higher risk customers or areas of business to combat ML/TF. However, it is recognised that resources are finite and must be allocated on a risk sensitive basis. Firms are obliged to understand the level of risk presented by a customer and to be in a position to apply a risk-based approach in their compliance programs.

In applying a risk-based approach to their AML/CFT obligation, Firms should be cognisant of the importance and benefits of financial inclusion. A "zero tolerance" approach, or wholesale termination of business relationships with entire categories of customers, without an individual assessment of their risk, is not consistent with the risk-based approach.

4.2 Business Risk Assessment

Section 30A of the CJA 2010 requires Firms to conduct a Business Risk Assessment

Section 30B of the CJA 2010 requires Firms to identify and assess risk in applying customer due diligence

A business risk assessment should consist of two distinct but related steps:

- Identifying ML and TF risks relevant to a Firm's business; and
- Assessing the identified ML and TF risks in order to understand how to mitigate those risks.

Firms should rely on their assessment of the risks inherent in their business to inform their risk-based approach to the identification and verification of an individual customer. This in turn should drive the level and extent of due diligence appropriate to that customer. A Business Risk Assessment should assist Firms to understand where they are exposed and which areas they should prioritise to combat ML/TF.

4.2.1 Sources

Firms should use various relevant sources when carrying out their Business Risk Assessment, examples include:

- The National Risk Assessment for Ireland on Money Laundering and Terrorist Financing;
- European Commission's Supra-national Risk Assessment;
- National Risk Assessment of the other jurisdiction(s) in which the Firm operates or customers of a Firm are located;
- Communications issued by FIU Ireland;
- Risk Factors contained in Schedule 3 and 4 of the CJA 2010;
- Guidance, circulars and other communication from the Central Bank and other relevant regulatory bodies;
- Information from industry bodies;
- Information from international standard setting bodies such as Mutual Evaluation Reports (MERs) or thematic reviews;
- Guidelines, Regulatory Technical Standards and Opinions issued by the ESAs;
- EU Measures, including financial sanctions and designation of high risk countries;
- Information from international institutions and standard setting bodies relevant to ML/TF risks (e.g. UN, IMF, Basel, FATF); and
- Other credible and reliable sources that can be accessed individually or through commercially available databases or tools that are determined necessary by a Firm on a risk-sensitive basis.

4.3 Risk Factors

Section 30A.(1) of the CJA 2010 sets out the risk factors Firms are required to take into account when conducting their Business Risk Assessment. The risk factors must be relevant to the Firm's business and include consideration of at least the following; customer; products and services; types of transaction carried out; countries or geographic areas and delivery channels.

Firms should take a holistic view of the risk associated with any given situation and note that unless required by the CJA 2010 or EU legislation, the presence of isolated risk factors does not necessarily move a relationship into a higher or lower risk category.

4.4 Customer Risk

When identifying the risk associated with their customers, including their customers' beneficial owners, Firms should consider the risk related to:

- The customer's and the customer's beneficial owner's business or professional activity;
- The customer's and the customer's beneficial owner's reputation insofar as it informs the Firm about the customer's or beneficial owner's financial crime risk; and
- The customer's and the customer's beneficial owner's nature and behaviour.

4.4.1 Customer's Business or Professional Activities

Firms should consider the risk factors associated with a customer's or their beneficial owner's business or professional activity including for example (recognising that each of

these factors will not be relevant to every customer), whether the customer or its beneficial owner:

- Has political connections, for example:
  - the customer or its beneficial owner is a Politically Exposed Person (PEP) or has any other relevant links to a PEP; or
  - One or more of the customer's directors are PEPs and if so, these PEPs exercise significant control over the customer or beneficial owner[4];

- Has links to sectors that are commonly associated with higher corruption risk, such as construction, pharmaceuticals and healthcare, arms trade and defense, extractive industries, and public procurement;

- Has links to sectors that are associated with higher ML or TF risk, for example certain Money Service Businesses, casinos or dealers in precious metals;

- Has links to sectors that involve significant amounts of cash;

- Is a legal person or a legal arrangement and if so, the purpose of their establishment and the nature of their business;

- Holds another prominent position or enjoys a high public profile that might enable them to abuse this position for private gain. For example, they are:
  - Senior local or regional public officials with the ability to influence the awarding of public contracts;
  - Decision-making members of high profile sporting bodies;
  - Individuals that are known to influence the government and other senior decision-makers; or

- Is a public body or state owned entity from a jurisdiction with high levels of corruption.

Other risk factors that Firms may consider in relation to a customer's business or professional activity include, for example, whether:

- The customer is a legal person subject to enforceable disclosure requirements that ensure that reliable information about the customer's beneficial owner is publicly available. For example, a public company listed on a regulated market or other trading platform that makes such disclosure a condition for listing and/or admission to trading;

- The customer is a credit or financial institution acting on its own account from a

[4]Where a customer or their beneficial owner is a PEP, Firms must always apply enhanced due diligence measures in line with Section 37 of the CJA 2010.

jurisdiction with an effective AML/CFT regime. For example whether:
  - It is supervised for compliance with local AML/CFT obligations; and
  - If so supervised, there is no evidence that the customer has been subject to supervisory sanctions or enforcement for failure to comply with AML/CFT obligations or wider conduct requirements in recent years; or

- The customer's background is consistent with what the Firm knows about it. For example:
  - Its former, current or planned business activity;
  - The turnover of the business;
  - Its source of funds; and
  - The customer's or beneficial owner's source of wealth.

4.4.2 Customer's Reputation

Risk factors that Firms should consider, where appropriate, when assessing the risks associated with a customer's or their beneficial owner's reputation include, for example whether:

- There are adverse media reports or other relevant information sources about the customer or its beneficial owner. For example, there are reliable and credible allegations of criminality or terrorism against the customer or their beneficial owners. Firms should determine the credibility of allegations inter alia based on the quality and independence of the source data and the persistence of reporting of these allegations. Firms should note that the absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing;

- The customer, beneficial owner or anyone publicly known to be closely associated with them has currently, or had in the past, their assets frozen due to administrative or criminal proceedings or allegations of terrorism or terrorist financing;

- The customer or beneficial owner has been the subject of a suspicious transactions report by the Firm in the past; or

- The Firm has in-house information about the customer's or their beneficial owner's integrity, obtained for example, in the course of a long-standing business relationship.

4.4.3 Customer's Nature and Behaviour

Risk factors that Firms should consider, where appropriate, when assessing the risk associated with a customer's or their beneficial owner's nature and behaviour[5] include, for example, whether:

[5] Firms should note that not all of these risk factors will be apparent at the outset but may emerge only once a business relationship has been established

- The customer is unable to provide robust evidence of their identity[6];
- The Firm has doubts about the veracity or accuracy of the customer's or beneficial owner's identity;
- There are indications that the customer is seeking to avoid the establishment of a business relationship. For example, the customer wishes to carry out a number of separate wire transfers, or other service, without opening an account, where the opening of an account with a Firm might make more economic sense;
- The customer's ownership and control structure appears unnecessarily complex or opaque and there is no obvious commercial or lawful rationale for such structures;
- The customer has nominee shareholders, where there is no obvious reason for having these;
- The customer is a special purpose vehicle (SPV) or structured finance company where beneficial ownership is not transparent;
- There are frequent or unexplained changes to a customer's legal, governance or beneficial ownership structures (e.g., to its board of directors);
- The customer requests transactions that are complex, unusually or unexpectedly large or have an unusual or unexpected pattern without apparent economic or lawful purpose or a sound commercial rationale;
- There are grounds to suspect that the customer is trying to evade specific thresholds such as those set out under the definition of "occasional transaction" under the CJA 2010;
- The customer requests unnecessary or unreasonable levels of secrecy. For example, the customer is reluctant to share CDD information, or appears to disguise the true nature of its business;
- The customer's or beneficial owner's source of wealth or source of funds cannot be easily and plausibly explained. For example through its occupation, inheritance or investments;
- The customer does not use the products and services it has taken out as expected when the business relationship was first established;

[6] Firms should note that there may be legitimate reasons that a customer may be unable to provide robust evidence of their identity, for example if the customer is an asylum seeker, the EBA has issued an 'Opinion on the application of Customer Due Diligence Measures to customers who are asylum seekers from higher risk third countries and territories', see https://eba.europa.eu/documents/10180/1359456/EBA-Op-2016-07+%28Opinion+on+Customer+Due+Diligence+on+Asylum+Seekers%29.pdf

- The customer is a non-resident and its needs could be better serviced elsewhere. For example, there is no apparent sound economic and/or lawful rationale for the customer requesting the type of financial service sought in this jurisdiction[7];

- The customer is a non-profit organisation whose activities put them at a heightened risk of being abused for terrorist financing purposes; or

- The customer is insensitive to price or significant losses on investments.

4.5 Country or Geographic Risk

Country or Geographic Risk relates to:

- Jurisdictions in which the customer and beneficial owner is based;

- Jurisdictions which are the customer´s and beneficial owner's main places of business; and

- Jurisdictions to which the customer and beneficial owner appear to have relevant personal links, of which the Firm should reasonably have been aware.

When identifying the risk associated with countries and geographic areas, Firms should consider for example the risk factors related to:

- The nature and purpose of the business relationship within the jurisdiction;

- The effectiveness of the jurisdiction's AML/CFT regime ;

- The level of predicate offences relevant to money laundering within the jurisdiction;

- The level of ML/TF risk associated with the jurisdiction;

- Any economic or financial sanctions against a jurisdiction; and

- The level of legal transparency and tax compliance within the jurisdiction.

4.5.1 Nature and Purpose of the Business Relationship within the Jurisdiction

The nature and purpose of the business relationship will often determine the relative importance of individual country and geographic risk factors. Risk factors Firms should consider, where appropriate, include for example:

- Where the funds used in the business relationship have been generated abroad, the level of predicate offences relevant to money laundering and the effectiveness of a country's legal system;

[7] *Article* 16 of Directive 2014/92/EU creates a right for customers who are legally resident in the EU to obtain a basic payment account, but this right applies only to the extent that credit institutions can comply with their AML/CFT obligations. See, in particular, Articles 1(7) and 16(4) of Directive 2014/92/EU

- Where funds are received from or sent to jurisdictions where groups committing terrorist offences are known to be operating, the extent to which this is expected or might give rise to suspicion is based on what the Firm knows about the purpose and nature of the business relationship;

- Where the customer is a credit or financial institution, the adequacy of the country's AML/CFT regime and the effectiveness of AML/CFT supervision; or

- For customers other than natural persons, the extent to which the country in which the customer (and where applicable, the beneficial owner/s) is registered, effectively complies with international tax transparency standards.

4.5.2 Effectiveness of Jurisdiction's AML/CFT Regime

Risk factors that Firms should consider when assessing the risk associated with the effectiveness of a jurisdiction's AML/CFT regime include, for example, whether:

- The country has been identified by the European Commission as having strategic deficiencies in their AML/CFT regime, under *Article* 9 of 4 AMLD[8]; or

- There is information from one or more credible and reliable sources about the quality of the jurisdiction's AML/CFT controls, including information about the quality and effectiveness of regulatory enforcement and oversight. Examples of possible sources include:
  - Mutual Evaluations of the FATF or FATF-style Regional Bodies (FSRB)[9];
  - The FATF's list of high risk and non-cooperative jurisdictions;
  - International Monetary Fund assessments; and
  - Financial Sector Assessment Programme reports (FSAPs).

Firms should identify lower risk jurisdictions in line with the ESA's Risk Factor GLs and Schedule 3 of CJA 2010.

4.5.3 Level of Jurisdiction's Predicate Offences

Risk factors that Firms should consider when assessing the risk associated with the level of predicate offences relevant to money laundering in a jurisdiction include, for example, whether:

- There is information from credible and reliable public sources about the level of predicate offences relevant to money laundering, for example corruption, organised crime, tax crime or serious fraud. Examples include corruption perceptions indices; OECD country reports on the implementation of the OECD's anti-bribery convention;

[8] Article 18 (1) of 4AMLD provides that if Firms deal with natural or legal persons resident or established in third countries that the European Commission has identified as presenting a high money laundering or terrorist financing risk, Firms must always apply enhanced due diligence measures

[9] Firms should note that membership of the FATF or an FSRB, e.g. MoneyVal, does not, of itself, mean that the jurisdiction's AML/CFT regime is adequate and effective.

and the UNODC World Drug Report; or

- There is information from more than one credible and reliable source about the capacity of the jurisdiction's investigative and judicial system effectively to investigate and prosecute these offences.

4.5.4 Level of Jurisdiction's TF Risk

Risk factors that Firms should consider when assessing the level of TF risk associated with a jurisdiction include, for example, whether:

- There is information, for example, from law enforcement or credible and reliable open media sources, suggesting that a jurisdiction provides funding or support for terrorist activities or that groups committing terrorist offences are known to be operating in the country or territory; or

- The jurisdiction is subject to financial sanctions, embargoes or measures that are related to terrorism, financing of terrorism or proliferation issued, for example, by the United Nations and the EU.

4.5.5 Level of Jurisdiction's Transparency and Tax Compliance

Risk factors that Firms should consider when assessing the jurisdiction's level of transparency and tax compliance include, for example, whether:

- There is information from more than one credible and reliable source that the country has been deemed compliant with international tax transparency and information sharing standards and there is evidence that relevant rules are effectively implemented in practice. Examples of possible sources include:
  - Reports by the OECD's Global Forum on Transparency and the Exchange of Information for Tax Purposes, which rate jurisdictions for tax transparency and information sharing purposes;
  - Assessments of the jurisdiction's commitment to automatic exchange of information based on the Common Reporting Standard;
  - Assessments by the FATF of the jurisdiction's compliance with FATF Recommendations 9, 24 and 25 and Immediate Outcomes 2 and 5[10]; or
  - FSRB or IMF assessments (for example IMF staff assessments of Offshore Financial Centres);

- The jurisdiction is committed to, and has effectively implemented, the Common Reporting Standard on Automatic Exchange of Information, which the G20 adopted in 2014; and

- The jurisdiction has put in place reliable and accessible beneficial ownership registers.

[10] http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)

4.6 Products, Services and Transactions

Risk factors that Firms should consider when assessing the risk associated with their products, services or transactions, include, for example:

- The level of transparency, or opaqueness, the product, service or transaction affords;
- The complexity of the product, service or transaction; and
- The value or size of the product, service or transaction.

4.6.1 Transparency of Products, Services or Transactions Risk

Risk factors that Firms should consider when assessing the risk associated with the transparency of products, services or transactions include, where appropriate, for example:

- The extent to which products or services facilitate, or allow anonymity or opaqueness of customer, ownership or beneficiary structures that could be used for illicit purposes, for example:
  - Pooled accounts, bearer shares, fiduciary deposits, offshore and certain trusts;
  - Legal entities structured in a way to take advantage of anonymity; and
  - Dealings with shell companies or companies with nominee shareholders;
- The extent to which is it possible for a third party that is not part of the business relationship to give instructions, for example, certain correspondent banking relationships.

4.6.2 Complexity of Products, Services or Transactions

Risk factors that Firms should consider when assessing the risks associated with a product, service or transaction's complexity include, where appropriate, for example:

- The extent that the transaction is complex and involves multiple parties or multiple jurisdictions, for example, certain trade finance transactions;
- Conversely, the extent that the transaction is straightforward, for example, regular payments into a pension fund;
- The extent that the products or services allow payments from third parties or accept overpayments. Where third party payments are permitted, the extent to which:
  - The Firm can identify the third party and understands their relationship with the customer, for example a state welfare body; and
  - Products and services are funded primarily by fund transfers from the customer's own account at another financial institution that is subject to AML/CFT standards and oversight comparable to those required under 4AMLD;
- The risks associated with new or innovative products or services, in particular where

this involves the use of new technologies or payment methods.

4.6.3 Value and Size of Products, Services or Transactions

Risk factors that Firms should consider when assessing the risk associated with the value or size of a product, service or transaction include, where appropriate, for example:

- The extent that products or services may be cash intensive, for example, certain types of payment services and current accounts; and

- The extent that products or services facilitate or encourage high value transactions, for example there are no caps on certain transaction values or levels of premium that could limit the use of the product or service for money laundering or terrorist financing purposes.

4.7 Channel/Distribution Risk

When identifying the risk associated with Channel/ Distribution, Firms should consider the risk factors related to:

- The extent that the business relationship is conducted on a non-face to face basis; and

- Any introducers or intermediaries the Firm utilises and the nature of their relationship to the Firm.

4.7.1 How the Business Relationship is Conducted

Risk factors that Firms should consider when assessing the risk associated with how the business relationship is conducted, include for example, whether:

- The customer is physically present for identification purposes. If they are not,
  - Whether the Firm uses reliable forms of non-face to face CDD; and
  - The extent that the Firm has taken steps to prevent impersonation or identity fraud.

4.7.2 Channels used to introduce Customer to the Firm

Risk factors that Firms should consider when assessing the risk associated with customers introduced to the Firm, include for example, whether:

- The customer has been introduced from other parts of the same financial group and if so,
  - The extent that the Firm can rely on this introduction as reassurance that the customer will not expose the Firm to excessive ML/TF risk; and
  - The extent that the Firm has taken measures to satisfy itself that the group entity applies CDD measures equivalent to EEA standards in line with Section 57 of the CJA 2010;

- The customer has been introduced from a third party, for example a bank that is not part of the same group. In such instances, whether that third party is a financial institution or their main business activity is unrelated to financial service provision;

- Where the customer has been introduced by a third party, the extent of the measures that the Firm has undertaken to be satisfied that:

  - The third party applies CDD measures and keeps records equivalent to EEA standards and that it is supervised for compliance with comparable AML/CFT obligations in line with Section 40 (1) of the CJA 2010;

  - The third party will provide, immediately upon request, relevant copies of identification and verification data, among others in line with Section 40 (4) (b) of the CJA 2010; and
  - The quality of the third party's CDD measures is such that it can be relied upon.

4.7.3 Use of Intermediaries

Risk factors that Firms should consider when assessing the risk associated with the use of intermediaries, include for example, whether the intermediary is:

- A regulated person subject to AML obligations that are consistent with those of the 4AMLD;

- Subject to effective AML supervision and there are no indications that the intermediary's level of compliance with applicable AML legislation or regulation is inadequate, for example because the intermediary has been sanctioned for breaches of AML/CFT obligations;

- Involved on an ongoing basis in the conduct of business and whether this affects the Firm's knowledge of the customer and ongoing risk management;

- Based in a jurisdiction associated with higher ML/TF risk. Where an intermediary is based in a high risk third country that the European Commission has identified as having strategic deficiencies, Firms should not rely on that intermediary. Reliance may be placed on an intermediary where it is a branch or majority-owned subsidiary of another Firm established in the EU, and the Firm is confident that the intermediary fully complies with group-wide policies and procedures.

4.8 Assessing ML/TF risk

Firms should take a holistic view of the ML/TF risk factors they have identified that, together, will determine the level of ML/TF risk associated with a business relationship or transaction.

4.8.1 Weighting Risk Factors

As part of this assessment, Firms should consider whether to weight risk factors differently depending on their relative importance.

When weighting risk factors, Firms should make an informed judgment about the relevance of different risk factors in the context of a business relationship or transaction.

The weight given to each of these factors is likely to vary from product to product and customer to customer (or category of customer) and from one Firm to another. When weighting risk factors Firms should ensure that:

- Weighting is not unduly influenced by just one factor;
- Economic or profit considerations do not influence the risk rating;
- Weighting does not lead to a situation where it is impossible for any business relationship to be classified as high risk;
- Situations identified by 4AMLD or national legislation as always presenting a high money laundering risk cannot be over-ruled by the Firm's weighting, for example a correspondent relationship with a Firm outside of the EEA must apply enhanced customer due diligence; and
- Firms are able to override any automatically generated risk scores where necessary. The rationale for the decision to override such scores should be governed and documented appropriately.

Where Firms use automated IT systems to allocate overall risk scores to categorise business relationships or transactions and does not develop these in house, rather purchases them from an external provider, they should ensure that:

- The Firm fully understands the risk rating methodology and how it combines risk factors to achieve an overall risk score;
- The methodology used meets the Firm's risk assessment requirements and legislative obligations; and
- The Firm is able to satisfy itself that the scores allocated are accurate and reflect the Firm's understanding of ML/TF risk.

4.8.2 Categorising Business Relationships and Occasional Transactions

Following their risk assessment, Firms should categorise their business relationships and occasional transactions according to the perceived level of ML/TF risk.

Firms should decide on the most appropriate way to categorise risk[11]. This will depend on the nature and size of the Firm's business and the types of ML/TF risk to which it is exposed.

The steps Firms take to identify and assess ML/TF risk across their business should be proportionate to the nature and size of each Firm.

[11]For example Firms may categories risk as high, medium and low, or variations of the similar ratings

4.8.3 Monitoring and Review of Risk Assessment

Section 30A.(4) of the CJA 2010 provides that a Firm:

"*…. shall keep the business risk assessment, and any related documents, up to date in accordance with its internal policies, controls and procedures…*"

Firms should keep their Business Risk Assessment and assessments of the ML/TF risk associated with individual business relationships and occasional transactions as well as of the underlying factors under review to ensure their assessment of ML/TF risk remains up to date and relevant. Where the Firm is aware that a new risk has emerged, or an existing one has increased, this should be reflected in Business Risk Assessment as soon as possible.

Firms should assess information obtained as part of their ongoing monitoring of a business relationship and consider whether this affects the risk assessment.

4.8.4 Emerging ML/TF risks

Firms should ensure that they have systems and controls in place to identify emerging ML/TF risks and that they can assess these risks and, where appropriate, incorporate them into their individual and Business Risk Assessments in a timely manner.

Examples of systems and controls Firms should put in place to identify emerging risks include:

- Processes to ensure that internal information is reviewed regularly to identify trends and emerging issues;

- Processes to ensure that the Firm regularly reviews relevant information from sources such as:

    - The Irish National Risk Assessment;
    - The European Commission's Supra-national Risk Assessment;
    - National Risk Assessment of the jurisdiction(s) in which the Firm operates or customers of a Firm are located;
    - Communications issued by FIU Ireland;
    - Guidance, circulars and other communication from the Central Bank and other relevant regulatory bodies ;
    - Information obtained as part of the initial CDD process;
    - The Firm's own knowledge and expertise;
    - Information from industry bodies;
    - Information from international standard setting bodies such as Mutual Evaluation Reports (MERs) or thematic reviews;
    - Changes to terror alerts and sanctions regimes as soon as they occur, for example by regularly reviewing terror alerts and looking for sanctions regime updates;
    - Information from international institutions and standard setting bodies relevant to ML/TF risks (e.g. UN, IMF, Basel, FATF); and

- Other credible and reliable sources that can be accessed individually or through commercially available databases or tools that are determined necessary by a Firm on a risk-sensitive basis;

- Processes to capture and review information on risks relating to new products;

- Engagement with other industry representatives, competent authorities and FIU (e.g. round tables, conferences and training providers), and processes to feed back any findings to relevant staff[12]; and

- Establishing a culture of information sharing and strong ethics within the Firm.

4.8.5 Updating of ML/TF Risk Assessment

Firms should put in place systems and controls to ensure their individual and Business Risk Assessments remain up to date. Examples include:

- Setting a timeline on which the next risk assessment update will take place, to ensure changing, new or emerging risks are included in risk assessments. Where the Firm is aware that a new risk has emerged, or an existing one has increased, this should be reflected in risk assessments as soon as possible;

- Carefully recording issues throughout the year that could have a bearing on risk assessments, such as:

  - Internal suspicious transaction reports;
  - Compliance failures and intelligence from front office staff; or
  - Any findings from internal/external audit reports;

Like the original risk assessments, any update to a risk assessment and adjustment of accompanying CDD measures should be documented, proportionate and commensurate to the ML/TF risk.

[12] Reference to staff includes officers/volunteers, depending on the type of financial institution

5. Customer Due Diligence

5.1 Application of Risk Assessment

Section 30B.(1) of the CJA 2010 requires Firms to identify and assess the ML/TF risk in relation to a customer or particular transaction in order to determine the level of customer due diligence required under Sections 33 and 35 of the CJA 2010 .

In carrying out the determination, Section 30B.(1) of the CJA 2010 requires Firms to have regard to:

"(a) the relevant business risk assessment,

(b) the matters specified in Section 30A(2),

(c) any relevant risk variables, including at least the following:

(i) the purpose of an account or relationship;

(ii) the level of assets to be deposited by a customer or the size of transactions undertaken;

(iii) the regularity of transactions or duration of the business relationship;

(iv) any additional prescribed risk variable,

(d) the presence of any factor specified in Schedule 3 or prescribed under Section 34A suggesting potentially lower risk,

(e) the presence of any factor specified in Schedule 4, and

(f) any additional prescribed factor suggesting potentially higher risk"

Firms should document their determination under Section 30B.(1) of the CJA 2010 in writing and retain the determination in accordance with the Firm's record keeping policies and procedures. Where a Firm does not document their determination under Section 30B. (1) of the CJA 2010, the Central Bank may direct them to do so. A Firm, which fails to document a determination in accordance with a direction of the Central Bank under Section 30B. (2) of the CJA 2010, commits an offence and is liable to criminal prosecution.

5.2 Customer Due Diligence (CDD)

Sections 33 to 39 of the CJA 2010 provide the CDD measures which a Firm must take in order to comply with its obligations in respect of identifying and verifying customers, persons purporting to act on behalf of customers and beneficial owners.

In accordance with Section 33(1) of the CJA 2010, Firms are required to identify and verify customers and where applicable, beneficial owner(s):

- prior to the establishment of a business relationship with a customer;
- prior to carrying out an occasional transaction or service for a customer;
- prior to carrying out any service for a customer, if, having regard to the circumstances, the Firm has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of ML/TF;
- prior to carrying out any service for a customer where the Firm has reasonable grounds to doubt the veracity or adequacy of documents; and
- at any time, including where the relevant circumstances of a customer have changed

The level of CDD measures, which a Firm is required to apply under Sections 33 to 39 of the CJA 2010 depends upon the nature of the relationship between the Firm and its customer, the type of business conducted and the perceived ML/TF risks arising.

Section 33(5) of the CJA 2010 allows a Firm to identify and verify the identity of a customer during the establishment of a business relationship in circumstances where the Firm believes there is no real risk of ML/TF. However, per Section 33(6) of the CJA 2010, while the account may be opened prior to CDD being complete, transactions may not be carried out by or on behalf of the customer or beneficial owner until CDD is complete.

Section 33(8)(a) of the CJA 2010 prohibits Firms that are unable to identify and verify a customer due to the failure of that customer to provide the necessary documentation or information, from providing any service or carrying out any transactions sought by that customer while the documentation or information required remains outstanding.

Section 33(8)(b) of the CJA 2010 provides that Firms must separately and distinctly take action to discontinue the business relationship with the customer in such circumstances.

The Central Bank has not included prescriptive / definitive examples of documentation that it considers would satisfy customer identification and verification requirements. Firms, in applying a risk-based approach, should maintain their own lists of documents which they will accept, in satisfaction of this obligation and in accordance with relevant national and international laws and standards and taking into account other obligations such as financial inclusion and data protection. Such lists should be subject to review, to ensure that they remain current and appropriate, taking into account, among other things, a Firm's evolving processes and adoption of new technology.

CDD involves more than just verifying the identity of a customer. Firms should collect and assess all relevant information in order to ensure that the Firm:

- Knows its customers, persons purporting[13] to act on behalf of customers and their beneficial owners, where applicable;
- Knows what it should expect from doing business with them; and
- Is alert to any potential ML/TF risks arising from the relationship.

Firms should consider the following steps when conducting CDD measures in relation to new and existing customers, products or services. The list is non-exhaustive and it is for each Firm to demonstrate its compliance with the obligations set out under the CJA 2010.

- Where CDD is completed during the establishment of the business relationship, the policies and procedures should specify the defined timeframe in which CDD must be completed. The duration of this defined timeframe should minimise the risk of being unable to contact the customer or return the funds to the original source, should there be a requirement to discontinue the business relationship;

- Where the Firm has reasonable grounds to doubt the adequacy and veracity of CDD documentation and information held on file for a customer.

- Ensuring that contractual arrangements for new customers adhere to the statutory obligations as prescribed by Section 33 (8) (a) and (b) of the CJA 2010. In relation to the circumstances that would result in the discontinuance of the business relationship and the subsequent effect of such discontinuance, customers should be advised or notified in advance as part of the on-boarding process; and

- Implement processes that allows the Firm to return funds directly to the source from which they came, where appropriate. Firms should exercise caution when considering the means of doing this, so as not to appear to convert or legitimise such funds. Firms should also consider whether there is any cause for suspicion of ML/TF in circumstances where CDD is not forthcoming, and ensure suspicious transaction reporting obligations are fulfilled as required. It is important that at all times, Firms act in the best interest of the customer (or prospective customer), while protecting the integrity of the financial system by preventing it being used for money laundering or

[13] Persons acting on behalf of the customer may include Power of Attorney cases, Executor/Administrator, Ward of court, vulnerable customer who has a third party acting on their behalf via formal authorisation

financing terrorism, while exhausting all possible avenues before taking any actions that might disadvantage a customer.

5.2.1 Documentation and Information

Evidence of identity can take a number of forms. Firms should set out in their policies and procedures the documents and information which they are willing to accept and the circumstances under which they are willing to accept them in order to identify and verify the identity of a customer[14].

Firms should retain records evidencing identity in either paper or electronic format.

5.2.2 Beneficial Ownership

Section 33(2)(b) of the CJA 2010 requires Firms to:

- identify any beneficial owner(s) connected with a customer or service; and
- take measures reasonably warranted due to the ML/TF risk to verify the beneficial owner's identity

to the extent necessary to ensure that the Firm has reasonable grounds to be satisfied that the Firm knows who the beneficial owner is and in the case of certain legal structures, to understand the ownership and control structure of the entity or arrangement concerned.

With regard to Section 33(2)(b) of the CJA 2010, Firms should:

- Compile documented assessments determining scenarios where beneficial ownership may be a factor with regard to the provision of products and services offered by the Firm[15]; and

- Assess and document:
    - the degree of verification required regarding the beneficial owners depending on the associated ML/TF risk attaching to such beneficial owners; and
    - the procedures to be applied in these circumstances.

Firms should note that there is an obligation to identify all beneficial owners. In addition, Firms are required to verify the identity of beneficial owners by taking those measures reasonably warranted by a risk based approach following an assessment of the ML/TF risks presented by the customer.

[14] Where appropriate, Firms should also document their approach to accepting alternative documentation to support financial inclusion.

[15] an example of this could be accounts held by minors

5.2.3 Establishment of a Business Relationship

Section 33(1)(a) of the CJA 2010 requires Firms to to identify and verify the identity of a customer or beneficial owner prior to establishing a business relationship with the customer.

However, Section 33(5) of the CJA 2010 allows Firms to identify and verify the identity of a customer or beneficial owner during the establishment of a business relationship, where a Firm reasonably believes that:

(a) Verifying the identity of the customer or beneficial owner(as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business; and

(b) There is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing".

In such circumstances, Firms must take reasonable steps to verify the identity of the customer or beneficial owner as soon as practicable.

Section 33(6) of the CJA 2010 allows for circumstances where an account may opened prior to CDD being complete, however, transactions may not be carried out by or on behalf of the customer or beneficial owner until CDD is complete.

Where Firms avail of the provisions of Section 33(5) of the CJA 2010, they should document and retain their reasons for doing so. Where they are unable to take reasonable steps to verify the identity of the customer or beneficial owner, Firms should be aware of their obligations under Section 33(8) of the CJA 2010 in this regard.

5.2.4 Purpose and Nature of the Business Relationship

Section 35(1) of the CJA 2010, requires Firms to obtain information reasonably warranted by the ML/TF risk on the purpose and intended nature of the business relationship with a customer prior to the establishment of the relationship.

Firms are required to obtain sufficient information about their customers in order to adequately monitor their activity and transactions and to satisfy themselves that the account is operating in line with the intended purpose.

Firms should identify the most appropriate information necessary to satisfy their obligations under Section 35(1) of the CJA 2010. Depending on the type of customer, the information might include, for example:

- Information concerning the customer's or beneficial owner's business or occupation/employment;
- Information on the types of financial products or services which the customer is looking for;
- Establishing the source of funds in relation to the customer's anticipated pattern of transactions;
- Establishing the source of wealth of the customer (particularly for high risk customers);
- Copies of the customer's most recent financial statements;
- Establishing any relationships between signatories and customers;
- Any relevant information pertaining to related third parties and their relationships with / to an account for example, beneficiaries; or
- The anticipated level and nature of the activity that is to be undertaken through the business relationship, which may include the number, size and frequency of transactions that are likely to pass through the account.

While Firms are obliged under Section 35(1) of the CJA 2010 to obtain information on the purpose and nature of the business relationship at the outset of the relationship, the reliability of this profile should increase over time as the Firm learns more about the customer, their use of products/accounts and the financial activities and services that they require.

Firms should ensure they review any known information on the customer and monitor their transactions/activity, in order to ensure they understand the potentially changing purpose and nature of the business relationship.

5.2.5 Use of Innovative Solutions

Firms should note that the CJA 2010 is technology neutral with regard to the sources which a Firm can use in order to comply with its CDD obligations under the CJA 2010.

Where a Firm utilises such innovative or so called "RegTech" solutions (collectively referred to here as 'RegTech solution') to assist with their AML/CFT obligations the Firm should:

- fully understand the impact the RegTech solution has on the Firm's regulatory compliance;
- ensure that the RegTech solution can achieve compliance for the Firm with its relevant AML/CFT obligations when the RegTech solution goes live;
- ensure that the RegTech solution is capable of being audited by an independent third party; and
- undertake a compliance risk assessment of the RegTech solution on an annual basis either independently of, or incorporated into, the Firm's annual AML/CFT risk assessment.

Firms remain responsible at all times for ensuring that the utilisation of the RegTech solution complies with the Firm's regulatory obligations. Firms utilising such RegTech solutions should also have regard to the Joint Committee of the ESAs *Opinion on the use of innovative solutions by credit and financial institutions* when complying with their CDD obligations[16].

16 http://www.eba.europa.eu/documents/10180/2100770/Opinion+on+the+use+of+innovative+solutions+by+credit+and+financial+institutions+in+the+customer+due+diligence+process+%28JC-2017-81%29.pdf

5.2.6 Reliance on Other Parties to carry out CDD

Section 40(3) of the CJA 2010, provides that Firms can rely on certain relevant third parties ("Third Party" or "Third Parties") as set out under Section 40 subsections (1) (a) to (d) of the CJA 2010 to complete CDD measures required under Section 33 or 35(1) of the CJA 2010.

Section 40(4) of the CJA 2010 provides that Firms may rely on a Third Party to apply the measures under Section 33 or 35(1) of the CJA 2010 only if:

- there is an arrangement in place between the Firm and the Third Party confirming that the Third Party accepts being relied upon; and
- the Firm is satisfied, that the Third Party is a person that is supervised or monitored for compliance with the requirements specified under 4AMLD, or requirements equivalent to those under 4AMLD, and on the basis of the arrangement, the Third Party will forward to the Firm, as soon as practicable after a request from the Firm, any CDD documents or information obtained.

Section 40(5) of the CJA 2010 provides that Firms that rely on a Third Party to apply measures under Section 33 or 35(1) of the CJA 2010 remain liable for any failure to apply the measure.

When placing reliance on Third Parties to undertake CDD, Firms should ensure that:

- The arrangement should have clear provisions in respect of obligations between the Firm and the Third Party, where the Third Party has formally consented to being relied upon and the Firm is satisfied, that the Third Party is a person that is supervised or monitored for compliance with the requirements specified under 4AMLD, or requirements equivalent to those under 4AMLD, and on the basis of the arrangement, the Third Party will provide the Firm with the underlying CDD documentation or information, in a timely manner upon request. In the absence of such an arrangement, the provisions of Section 40(4) of the CJA 2010 do not apply and the Firm should itself carry out the necessary CDD;
- The signed agreement should have clear contractual terms in respect of the obligations of the Third Party to obtain and maintain the necessary records, and to provide the Firm with CDD documentation or information upon request. The signed agreement should not contain any conditional language, whether explicit or implied, which may result in the inability of the Third Party to provide the underlying CDD documentation or information upon request. Examples of such conditional language include (but are

not limited to) terms such as 'to the extent permissible by law', 'subject to regulatory request' etc.;

- The Firm's policies and procedures set out an approach with regard to the identification, assessment, selection and monitoring of Third Party relationships, including the frequency of testing performed on such Third Parties;

- The Firm only relies on the Third Party to carry out CDD measures required by Section 33 and 35(1) of the CJA 2010. Firms may not rely on the Third Party to fulfil the on-going monitoring requirements, which they are obliged to conduct as warranted by the risk of their underlying customers, as prescribed by Section 35(3) of the CJA 2010. Firms should note that they cannot rely on the third party to perform the EDD measures or provide Senior Management approval. However, the relevant third party may provide assistance to the Firm in gathering the necessary documentation or information to establish the source of wealth and source of funds;

- The Firm conducts regular assurance testing to ensure documentation can be retrieved without undue delay, and that the quality of the underlying documents obtained is sufficient; and

- The Firm ensures that it has fully satisfied itself that, in placing such reliance, it can meet its obligations under the CJA 2010 prior to placing reliance upon a Third Party based in jurisdictions known for banking secrecy or similarly restrictive legislation.

Firms should note that placing reliance on a Third Party in accordance with Section 40(3) of the CJA 2010 does not include a situation where a Firm has appointed another entity to apply the necessary measures as an outsourcing service provider, intermediary, or an agent of the Firm. In such cases, the outsourced service provider, intermediary, or agent may actually obtain the appropriate verification evidence in respect of the customer but the Firm remains responsible for ensuring compliance with the obligations contained with the CJA 2010.

See also Section 5.6.1.C of the Guidelines regarding Third Party Reliance for PEPs.

5.3 Ongoing Monitoring

Section 35(3) of the CJA 2010, requires Firms to monitor any business relationship that it has with a customer to the extent reasonably warranted by the risk of ML/TF.

Section 54 of the CJA 2010 requires Firms to adopt internal policies, controls and procedures in relation to their business, to prevent and detect the commission of ML/TF. In particular, Section 54(3) of the CJA 2010 requires Firms to adopt internal policies, controls and procedures dealing with a number of matters, including:

- the monitoring of transactions and business relationships;
- the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the Firm has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing; and
- measures to be taken to keep documents and information relating to risk assessments by the Firm up to date.

When assessing CDD obligations in relation to the on-going monitoring of customers, Firms should ensure that they have effective and appropriate on-going monitoring policies and procedures that are in place, in operation and adhered to by all staff. Such policies and procedures should include at a minimum:

- Full review and consideration of all trigger events associated with their customers. Clear examples of trigger events[17] that are understood by staff and targeted training should be provided for staff on how to identify possible trigger events and interpret these. Trigger events should also be reviewed on a regular basis by the Firm and examples revised where appropriate;

- A well-documented and well-established monitoring programme, which is demonstrative of a risk-based approach, where high-risk customers are reviewed on a frequent basis;

- Periodic reviews of customers, the frequency of which is commensurate with the level of ML/TF risk posed by the customer. Firms should also ensure that staff are provided with specific training on how to undertake a periodic review;

[17] Definitive lists of trigger events may lead to complacency within the Firm, as staff may not be open to suspicious activity outside of the listed triggers. Rather Firms should list examples of trigger events which should provoke staff to 'think outside the box'.

- Reassessment and, if applicable, re-categorisation of customers upon material updates to CDD information and/or other records gathered through a trigger event or periodic review;

- Re-categorisation of customers as high risk subject to Senior Management approval and the completion of Enhanced Due Diligence[18] before a decision is taken to continue the relationship;

- Screening undertaken of all customers to identify new and on-going PEP relationships. The frequency of such screening should to be determined by the Firm, commensurate with the Firm's Business Risk Assessment;

- Clear instruction for staff regarding the action required where appropriate CDD documentation or information is not held on file. Such instruction should include the steps that may be taken to locate or obtain such documentation or information[19]; and

- Proactive utilisation of customer contact as an opportunity to update CDD information.

5.3.1 Monitoring Complex or Unusual Transactions

Section 36A.(1) CJA 2010, requires Firms to, in accordance with their adopted policies and procedures examine the background and purpose of all complex or unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose

Section 36A.(2) CJA 2010 requires Firms to increase the degree and nature of monitoring of a business relationship in order to determine whether transactions referred to in Section 36A.(1) appear suspicious.

Firms should attempt to establish the rationale for changes in behaviour and take appropriate measures, for example conducting additional due diligence or if warranted, submitting a suspicious transaction report to FIU Ireland and the Revenue Commissioners.

See also Section 5.8 of the Guidelines below regarding complex or unusual transactions

[18] Enhanced Due Diligence is discussed further in section 5.5 of the Guidelines

[19] Where it is necessary to write to customers to seek relevant documentation or information, such communications must clearly detail what is being requested and why, as well as the potential consequences for the customer of failure to provide such documentation or information, as specified in Section 33(8) of the CJA 2010 which are discussed in further detail in section 4.11 below.

5.4 Simplified Due Diligence (SDD)

Firms can no longer avail of the exemptions previously contained in Section 34 and 36 of the CJA 2010, as these sections have been repealed. A new section 34 (A) of the CJA 2010 has been introduced.

Section 34A(1) of the CJA 2010 provides that Firms may take SDD measures to such extent and at such times as is reasonably warranted by the lower ML/TF risk in relation to a business relationship or transaction where the Firm :

- *"(a) identifies in the relevant business risk assessment an area of lower risk into which the relationship or transaction falls; and*
- *(b) considers that the relationship or transaction presents a lower degree of risk".*

Section 34A(2) of the CJA 2010 provides that prior to applying the measures under Section 34A (1) of the CJA 2010, Firms are required to conduct appropriate testing to satisfy themselves that the customer, business relationship or transaction qualifies for the simplified treatment,

Section 34A(3) of the CJA 2010 provides that where a Firm has applied SDD measures in accordance with Section 34A(1) of the CJA 2010, it is required to:

- *"(a) keep a record of the reasons for its determination and the evidence on which it was based; and*
- *(b) carry out sufficient monitoring of the transactions and business relationships to enable the [Firm] to detect unusual or suspicious transactions."*

5.4.1 SDD measures which Firms may apply to Business Relationships or Transactions

Firms should identify the most appropriate SDD measures to apply to business relationships or transactions in accordance with their policies and procedures. SDD measures which Firms may apply, include but are not limited to:

- Adjusting the timing of CDD where the product or transaction sought has features that limit its use for ML/TF purposes, for example by:
    - Verifying the customer's or beneficial owner's identity during the establishment of the business relationship; or
    - Setting defined thresholds or reasonable time limits, above or after which the identity of the customers or beneficial owners must be verified. In such circumstances, Firms should make sure that:
        - This does not result in a de facto exemption from CDD;

- They have systems or processes[20] in place to detect when the threshold or time limit has been reached; and
- They do not defer CDD or delay obtaining relevant information about the customer where applicable legislation, for example FTR or provisions in national legislation, require that this information be obtained at the outset;

- Adjusting the quantity of information obtained for identification, verification or monitoring purposes, for example by:
  - Verifying identity on the basis of information obtained from one reliable, credible and independent document or data source only; or
  - Assuming the nature and purpose of the business relationship because the product is designed for one particular use only, such as a company pension scheme;
- Adjusting the quality or source of information obtained for identification, verification or monitoring purposes, for example by:
  - Accepting information obtained from the customer rather than an independent source when verifying the beneficial owner's identity (note that this is not permitted in relation to the verification of the customer's identity);
  - Relying on the source of funds to meet some of the CDD requirements, where the risk associated with all aspects of the relationship is very low, for example where the funds are state benefit payments;
  - Adjusting the frequency of CDD updates and reviews of the business relationship, depending on the level of risk associated with that customer ; or
  - Adjusting the frequency and intensity of transaction monitoring, for example by monitoring transactions above a certain threshold only. Where Firms choose to do this, they should ensure that the threshold is set at a reasonable level and that they have systems in place to identify linked transactions that, together, would exceed that threshold.

When applying SDD measures, Firms should obtain sufficient information to enable them to be reasonably satisfied that their assessment that the ML/TF risk associated with the relationship is low is justified. Firms should obtain sufficient information about the nature of the business relationship to identify any unusual or suspicious transactions. Firms should note that SDD does not exempt it from reporting suspicious transactions to the FIU Ireland and the Revenue Commissioners.

[20] Such systems and processes may be manual or automated in nature.

If Firms adjust the amount, timing or type of each or all of the SDD measures undertaken, then such adjustment should be commensurate with the low level of ML/TF risk, which the Firms have identified.

5.5 Enhanced Customer Due Diligence (EDD)

Sections 37 to 39 of the CJA 2010 prescribes a number of circumstances in which Firms are required to apply EDD measures, including the following:

- Where the customer, or the customer's beneficial owner, is a politically exposed person (PEP);
- Where a Firm enters into a correspondent relationship with a respondent institution from a non-EEA state;
- Where a Firm deals with a customer (whether a natural person or legal entity) established in high-risk third countries; and
- To a business relationship or transaction that they have identified as presenting a higher degree of risk.

Firms should also apply risk proportionate levels of EDD measures in those situations where it is commensurate to the ML/TF risk they have identified. In circumstances in which a Firm has determined that customers or business scenarios present a higher ML/TF risk, EDD measures should be applied. For example:

- Firms should ascertain whether they have obtained adequate information regarding the customer and the customer's business in the context of the service they are providing to the customer, to form a basis for a reliable and comprehensive assessment of the risks arising.

  If the information is not adequate, Firms should seek additional documentation, which may include, for example:
  - Establishing a customer's source of wealth / source of funds; and/or
  - Additional information regarding the customer and/or service, including additional CDD information in any case where the Firm has doubts about the veracity or adequacy of information previously obtained.

- Firms should apply an enhanced level of ongoing monitoring to their business with the customer, as appropriate to their assessment of the ML/TF risk arising from the business with that customer. Firms should review the level of that monitoring on a regular basis to ensure that it remains risk-appropriate.

Firms should apply EDD measures in higher risk situations to manage and mitigate those risks appropriately. EDD measures cannot be substituted for CDD measures but must be applied in addition to CDD measures.

5.6 EDD in relation to Politically Exposed Persons (PEPs)

Section 37 of the CJA 2010 requires the identification of PEPs and the application of EDD measures to PEPs.

The 2018 amendments to the CJA 2010 broadened the application of the PEP regime to include all PEPs, irrespective of residency, including PEPs from Ireland.

Individuals who have or have had, a high political profile, or hold or have held, public office, can pose a higher money laundering risk to Firms as their position may make them vulnerable to corruption. This risk, and therefore EDD requirements for PEPs, also extends to members of their immediate families and to known close associates.

Firms should note that PEP status itself is intended to apply higher vigilance to certain individuals and put those individuals that are customers or beneficial owners into a higher risk category. It is not intended to suggest that such individuals are involved in suspicious activity.

Section 37 of the CJA 2010 provides a definition of persons who are classified as PEPs and the steps which Firms must undertake to determine whether any of the following are PEPs, immediate family members of a PEP or a close associates of a PEP:

- a customer or beneficial owner connected with the customer or service concerned; or
- a beneficiary of a life assurance policy or other investment related assurance policy; or
- a beneficial owner of the beneficiary.

Firms are required to undertake the steps:

- prior to the establishment of a business relationship;
- prior to carrying out an occasional transaction, or
- prior to the pay out of a life assurance policy or the assignment, in whole or in part, of such a policy.

The steps to be taken by Firms under Section 37 of the CJA 2010 should reflect the level of risk that the customer or beneficial owner is involved in money laundering or terrorist financing.

In demonstrating compliance with the obligations set out under Section 37 of the CJA 2010, Firms should undertake the measures outlined in Sections 5.6.1 to 5.6.4 below.

5.6.1 Policies and Procedures in relation to PEPs

A. PEP Identification

Firms should put appropriate policies and procedures in place to determine:

- If a customer or beneficial owner is a PEP at on boarding; or
- If a customer becomes a PEP during the course of the business relationship with the Firm.

Firms should note that new and existing customers may not initially meet the definition of a PEP, but may subsequently become one during the course of a business relationship with the Firm. On this basis, Firms should undertake regular and on-going screening of their customer base and the customers' beneficial owners (where relevant), to ensure that they have identified all PEPs. The frequency of PEP screening should be determined by Firms commensurate with their Business Risk Assessment.

B. Management of PEPS

Firms' policies and procedures should address how any PEP relationships identified will be managed by the Firm including:

- Application of EDD measures to PEPs, including determining Source of Wealth and Source of Funds;
- Obtaining Senior Management Approval; and
- Enhanced on-going monitoring measures.

C. Reliance on Third Parties in relation to PEPs

Firms should also have appropriate policies and procedures in place in instances where the Firm is relying upon a Third Party to perform the due diligence measures on customers and beneficial owners. The policies and procedures should set out the steps to be taken by the Firm when the Third Party has identified a new PEP relationship.

Firms should note that they cannot rely on the Third Party to perform the EDD measures or provide Senior Management approval. However, the Third Party may provide assistance to the Firm in gathering the necessary documentation or information to establish the source of wealth and source of funds.

See also Section 5.2.6 of the Guidelines regarding reliance on Third Parties.

5.6.2 Senior Management Approval of PEPs

Section 37(4)(a) of the CJA 2010 requires Firms to ensure that approval is obtained from Senior Management before a business relationship is established or continued with a PEP.

Firms should put appropriate policies and procedures in place clearly setting out;

- The reporting and escalation of PEP relationships to Senior Management;
- The timelines for obtaining Senior Management sign-off; and
- The level of seniority required in order to approve a PEP relationship.

The Firm must allocate responsibility for the approval of PEP relationships, and must ensure that the approval of a PEP relationship is conducted by individuals who are appropriately skilled and empowered, and this process is subject to appropriate oversight. Firms should determine the level of seniority for sign-off by the level of increased ML/TF risk associated with the business relationship. The Senior Manager approving a PEP business relationship should have sufficient seniority and oversight to take informed decisions on issues that directly impact the Firm's ML/TF risk profile.

When considering whether to approve a PEP relationship, Firms should take into consideration;

- The level of ML/TF risk that the Firm would be exposed to if it entered into that business relationship; and
- What resources the Firm would require in order to mitigate the risk effectively.

Where Firms are considering whether to enter into, or to continue to carry on a business relationship with a PEP, they should ensure that:

- the matter is discussed at senior management level;
- the corresponding ML/TF risks are acknowledged; and
- the decision reached is documented.

5.6.3 Source of Wealth / Source of Funds of PEPs

Section 37(4)(b) of the CJA 2010 requires Firms determine the source of wealth and funds for the following transactions in relation to PEPs

"(i) transactions the subject of any business relationship with the customer that are carried out with the customer or in respect of which a service is sought, or

(ii) any occasional transaction that the designated person carries out with, for or on behalf of the customer or that the [Firm] assists the customer to carry out."

Firms should take adequate measures to establish the source of wealth and source of funds which are to be used in the business relationship in order to satisfy themselves that they do not handle the proceeds of corruption or other criminal activity.

The measures which Firms should take to establish a PEP's source of wealth and source of funds will depend on the degree of risk associated with the business relationship. Firms should verify the source of wealth and the source of funds based on reliable and independent data, documents or information.

When determining the source of wealth and source of funds, the Firms should, at least consider:

- The activities that have generated the total net worth of the customer (that is, the activities that produced the customer's funds and property); and
- The origin and the means of transfer for funds that are involved in the transaction (for example, their occupation, business activities, proceeds of sale, corporate dividends).

5.6.4 Enhanced On-going monitoring of PEPs

Section 37(4)(c) of the CJA 2010 requires Firms to apply enhanced monitoring of the business relationship with PEPs.

This is in addition to the monitoring required under Section 35(3) of the CJA 2010 in order to identify any unusual transactions by PEPs.

Firms should regularly review the information they hold on PEP customers and their beneficial owners (where relevant) to ensure that any new or emerging information that could affect the risk assessment is identified in a timely fashion. The frequency of ongoing monitoring should be determined by the Firm commensurate with the higher risk associated with the PEP relationship.

5.7 EDD in Relation to Correspondent Relationships

Section 38 of the CJA 2010 sets out the EDD requirements Firms are required to undertake in relation to correspondent relationships with another credit institution or financial institution, where the respondent institution is situated in a non-Member State.

The 2018 amendments to the CJA 2010 broadens the concept of correspondent banking relationships to correspondent relationships. Correspondent relationships include correspondent relationships between credit institutions and between credit and financial institutions, including relationships established for securities transactions or funds transfers. Correspondent relationships also applies to relationships where there may be

no underlying third party customer for example relationships between and among credit and financial institutions acting on a principal-to-principal basis.

Where a correspondent institution processes and executes transactions on behalf of customers of a respondent institution, the correspondent institution often faces a heightened level of ML/TF risk due to the correspondent institution not having a direct relationship with the customer of the respondent institution.

Reference to correspondent relationships in this section shall have the meaning given to it under the CJA 2010.

A correspondent institution's policies and procedures should adequately address all of its obligations as set out under Section 38 of the CJA 2010.

Firms may also find this section useful in respect of correspondent relationships within Member States. A Firm may apply differing levels of CDD to such correspondent relationships in accordance with the Firms' own risk assessment.

5.7.1 Risk Assessment of Correspondent Relationships

Section 38 (1) (a) to (f) of the CJA 2010 provides that the correspondent institution shall not enter into a correspondent relationship unless, prior to commencing the relationship, the correspondent institution:

(a) "has gathered sufficient information about the respondent institution to understand fully the nature of the business of the respondent institution,

(b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the respondent institution, and the quality of supervision or monitoring of the operation of the respondent institution in the place, are sound,

(c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the respondent institution, that those controls are sound.

(d) has ensured that approval has been obtained from the senior management of the institution,

(e) has documented the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent relationship and, in particular –

(i) the responsibilities of the institution arising under this Part, and

(ii) any responsibilities of the respondent institution arising under requirements equivalent to those specified in the Fourth Money Laundering Directive,

and

(f) in the case of a proposal that customers of the respondent institution have direct access to a payable-through account held with the institution in the name of the respondent institution, is satisfied on reasonable grounds that the respondent institution –

(i) has identified and verified the identity of those customers, and is able to provide to the institution, upon request, the documents (whether or not in electronic form) or information used by the institution to identify and verify the identity of those customers,

(ii) has applied measures equivalent to the measure referred to in section 35(1) in relation to those customers, and

(iii) is applying measures equivalent to the measure referred to in section 35(3) in relation to those customers.

Correspondent institutions should perform risk assessments of all correspondent relationships. The risk assessment of the respondent institution should take into account a number of risk factors including but not limited to:

- The jurisdiction in which the respondent institution is incorporated in and the AML / CFT regulatory regime which the respondent institution is subject to;
- The ownership and management structure of the respondent institution, including any role performed by or influenced by beneficial owners or PEPs;
- The business purpose of the relationship;
- Operations and transaction volumes;
- The correspondent institution's customer base;
- The quality of the respondent institution's AML/CFT systems and controls; and
- Any negative information known about the respondent institution or its affiliates.

The conclusion of the risk assessment should determine the appropriate risk rating attaching to a particular respondent institution and drive the level of EDD applied and the frequency of relationship review.

5.7.2 Senior Management Approval of Respondent Relationships

Section 38(1)(d) of the CJA 2010 requires the senior management of the correspondent institution to approve correspondent relationships

The correspondent institution should be able to evidence that appropriate consideration has been given to maintain or exit a particular correspondent relationship. Correspondent institutions should document and retain all approvals by Senior Management for all new correspondent relationships and reviews of existing correspondent relationships (see 5.6.2 in relation to senior management approval for PEPs).

5.7.3 Responsibilities of each Party regarding Respondent Relationships

Section 38(1)(e) of the CJA 2010 requires the correspondent institution to document …

"*the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent relationship and, in*

particular—

(i) the responsibilities of the institution arising under this Part, and
(ii) any responsibilities of the respondent institution arising under requirements equivalent to those specified in the AMLD4."

Correspondent institutions should have policies and procedures in place which ensure that the respective responsibilities of the correspondent institution and respondent institution in applying AML/CFT controls is documented, prior to the establishment of the correspondent relationship.

5.7.4 Correspondent Relationships in connection with Shell Banks

Correspondent institutions should have policies and procedures in place which ensure that:

- The correspondent institution does not enter into a correspondent relationship with a respondent institution that is a shell bank; or
- The respondent institution, with whom it has entered into a correspondent relationship, does not have a relationship with a shell bank.

5.7.5 Liaison with Respondent Institutions

Correspondent institutions should appoint a member of Senior Management, the Compliance Officer, or the MLRO to:

- Liaise with and discuss any potential AML/CFT issues with the respondent institution;
- Obtain the necessary CDD information; and
- If necessary, conduct an onsite visit to the respondent institution's offices as part of the correspondent institution's CDD measures.

5.7.6 Screening of Respondent Institutions

Correspondent institutions should regularly screen respondent institutions, their controllers, beneficial owners and any other connected persons, to identify for PEP connections or persons, or affiliated or subsidiary entities subject to financial sanctions.

5.7.7 Information Requirements for Correspondent Relationships

Correspondent institutions should ensure that sufficient information is obtained on all respondent relationships and particularly for any respondent relationship where EDD is applied. Information obtained for a respondent institution may include, but is not limited to, the following:

- Jurisdiction where the respondent institution is located (Member State v Non Member State);
- Ownership/control structure (e.g. publicly listed entity);
- Structure and experience of the Board of Directors/Executive management;
- Information from respondent's web-site and respondent's latest annual return;
- Reputation of Respondent institution and regulatory status;
- Respondent's AML/CFT controls.

5.7.8 Ongoing monitoring of Correspondent Relationships

The respondent institution is in effect a customer of the correspondent institution and as such, as required under Section 35 of the CJA 2010, the correspondent institution must apply on-going monitoring measures pursuant to the level of ML/TF risk presented by the correspondent relationship.

Correspondent institutions should perform periodic reviews on a regular basis, with higher risk correspondent relationships reviewed more frequently, but at least on an annual basis. In addition, the following non-transactional trigger events should be considered:

- Material change in ownership and/or management structure;
- Re-classification of the jurisdiction where the respondent institution is located;
- Identification of a PEP relationship;
- Identification of adverse media on the respondent institution.
- Correspondent institutions should conduct transaction monitoring on the respondent institution and the associated underlying transactions.

5.7.9 Unusual Transactions in Correspondent Relationships

Correspondent institutions should put in place adequate policies and procedures to detect unusual transactions or patterns of transactions. The following examples are illustrative of possible suspicious transactional respondent activity:

- Transactions involving higher risk countries vulnerable to Money Laundering and/or Terrorist Financing;
- Transactions with those respondent institutions already identify as higher risk;
- Large (volume or value) transaction activity involving monetary instruments (e.g. money orders, bank drafts), especially involving instruments that are sequentially numbered;
- Transaction activity that appears unusual in the context of the relationship with the respondent institution;
- Transactions involving shell corporations;
- Transactions that are larger or smaller than the correspondent institution would normally expect based on its knowledge of the respondent institution, the business relationship and the risk profile of the respondent institution.

5.8 EDD in relation to Complex or Unusual Transactions

36A. (1) of the CJA 2010 requires Firms to, in accordance with their adopted policies and procedures, examine the background and purpose of all complex or unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose.

36A. (2) of the CJA 2010 requires Firms to increase the degree and nature of monitoring of a business relationship in order to determine whether transactions referred to in subsection (1) appear suspicious.

Firms should put in place adequate policies and procedures to identify unusual transactions or patterns of transactions. Examples may include transactions or patterns of transactions that are:

- Larger than the Firm would normally expect based on its knowledge of the customer, the business relationship or the category to which the customer belongs;
- Of an unusual or unexpected pattern compared with the customer's normal activity or the pattern of transactions associated with similar customers, products or services; or
- Very complex compared with other similar transactions associated with similar customer types, products, or services; and the Firm is not aware of an economic rationale or lawful purpose or doubts the veracity of the information it has been given.

Where Firms detect unusual transactions or patterns of transactions, they should apply EDD measures sufficient to help the Firm determine whether these transactions give rise to suspicion. Such EDD measures should at least include:

- Taking reasonable and adequate measures to understand the background and purpose of these transactions, for example by establishing the source and destination of the funds or finding out more about the customer's business to ascertain the likelihood of the customer making such transactions; and
- Monitoring the business relationship and subsequent transactions more frequently and with greater attention to detail. A Firm may decide to monitor individual transactions where this is commensurate to the risk it has identified.

See also Section 5.3.1 of the Guidelines regarding the monitoring of large or unusual transactions.

5.9 EDD in relation to High-Risk Third Countries and other High-Risk Situations

Section 38A. (1) of the CJA 2010 requires Firms to apply measures, including enhanced monitoring of the business relationship, to manage and mitigate the ML/TF risk when dealing with a customer established or residing in a high-risk third country.

Section 39.(1) of the CJA 2010 requires Firms to apply measures to manage and mitigate the ML/TF risk to a business relationship or transaction that presents a higher degree of risk.

When dealing with customers based or located in a high-risk third country and in all other high-risk situations, Firms should take an informed decision about which EDD measures are appropriate for each high-risk situation.

Firms should apply appropriate EDD, including the extent of the additional information sought and of the increased monitoring carried out, based on the reason(s) why the transaction or a business relationship was classified as high risk.

Firms should decide what EDD measures they deem appropriate. For example, in certain high-risk situations a Firm may deem it appropriate to focus on enhanced ongoing monitoring during the course of the business relationship as opposed to applying other or additional EDD measures. Below is a non-exhaustive list of EDD measures which a Firm may decide to take in order to mitigate the ML/TF risk.

- Seeking information about the customer's or beneficial owner's identity, or the customer's ownership and control structure, in order to be satisfied that the risk associated with the relationship is well understood. This may include obtaining and assessing information about the customer's or beneficial owner's reputation and assessing any negative allegations against the customer or beneficial owner. Examples include:
    - Information about family members and close business partners;
    - Information about the customer's or beneficial owner's past and present business activities; and
    - Adverse media searches;
- Seeking information about the intended nature of the business relationship to ascertain that the nature and purpose of the business relationship is legitimate and to help Firms obtain a more complete customer risk profile. This may include obtaining information on:
    - The number, size and frequency of transactions that are likely to pass through the account, to enable the Firm to spot deviations that might give rise to suspicion (in some cases, requesting evidence may be appropriate);

- Why the customer is looking for a specific product or service, in particular where it is unclear why the customer's needs cannot be met better in another way, or in a different jurisdiction;
- The destination of funds;
- The nature of the customer's or beneficial owner's business, to enable the Firm to better understand the likely nature of the business relationship;

- Increasing the quality of information obtained for CDD purposes to confirm the customer's or beneficial owner's identity including either:
  - Requiring the first payment to be carried out through an account verifiably in the customer's name with a bank subject to CDD standards that are not less robust than those set out in Chapter II of 4AMLD; or
  - Establishing that the customer's wealth and the funds that are used in the business relationship are not the proceeds of criminal activity and that the source of wealth and source of funds are consistent with the Firm's knowledge of the customer and the nature of the business relationship. In some cases, where the risk associated with the relationship is particularly high, verifying the source of wealth and the source of funds may be the only adequate risk mitigation tool. The source of funds or source of wealth may be verified, inter alia, by reference to VAT and income tax returns, copies of audited accounts, pay slips, property registration or independent media reports;
- Increasing the frequency of reviews to be satisfied that the Firm continues to be able to manage the risk associated with the individual business relationship, or conclude that the relationship no longer corresponds to the Firm's risk appetite or to help identify any transactions that require further review. Examples include:
  - Increasing the frequency of reviews of the business relationship to ascertain whether the customer's risk profile has changed and whether the risk remains manageable;
  - Obtaining the approval of Senior Management to commence or continue the business relationship to ensure that Senior Management are aware of the risk their Firm is exposed to and can take an informed decision about the extent to which the Firm is equipped to manage that risk;
  - Reviewing the business relationship on a more regular basis to ensure any changes to the customer's risk profile are identified, assessed and where necessary, acted upon; or
- Conducting more frequent or in-depth transaction monitoring to identify any unusual or unexpected transactions that might give rise to suspicion of ML/TF. This may include establishing the destination of funds or ascertaining the reason for certain transactions.

6. Governance

6.1 Governance

The attitude and culture embedded within a Firm is of critical importance in the fight against money laundering and terrorist financing. A positive culture recognises the important public interest aspect of a Firm's role in the fight against ML/TF. This includes having an approach to AML/CFT compliance that considers the legislative obligations as only the starting point. Firms should engage with the Central Bank in a positive, transparent way and should be proactive in bringing matters to the attention of the Central Bank.

Insufficient or absent AML/CFT risk management, governance, policies, controls and procedures exposes Firms to significant risks, including not only financial but also reputational, operational and compliance risks.

Firms should ensure that the ML/TF risk management measures adopted by the Firm are risk-based and proportionate, informed by the firm's Business Risk Assessment of its ML/TF risk exposure and in compliance with the CJA 2010.

6.2 Role and Responsibilities of Senior Management

The Senior Management of Firms, including the Board of Directors (the 'Board') (or its equivalent), have responsibility for managing the identified ML/TF risks by demonstrating active engagement in the Firms' approach to effectively mitigating such risks.

Firms should put appropriate AML/CFT structures in place that are proportionate and reflect the nature, scale and complexities of the Firm's activities.

Firms should ensure that the AML/CFT role and responsibilities of Senior Management is clearly defined and documented. Similarly the roles and responsibilities of other relevant key functions within the Firm, such as the MLRO, the Risk Officer (where relevant), the Compliance Officer (where relevant) and internal audit (where relevant), should also be clearly defined and documented with regard to AML/CFT activities within the Firm.

6.2.1 Governance and Oversight

Firms should ensure that there is appropriate governance and oversight with regard to its compliance with obligations under the CJA 2010. For example, Firms should ensure for:

- Business Risk Assessments:
  - Senior Management has reviewed and approved the methodology used for undertaking the Firm's Business Risk Assessment.
  - Senior Management has reviewed and approved the Firm's Business Risk Assessment at least on an annual basis to ensure that it is aware of the ML/TF risks facing the Firm and that the corresponding AML/CFT measures which the Firm has in place are appropriate for the level of ML/TF risk identified.

- Policies and Procedures
  - Senior Management has reviewed and approved all policies and procedures, and material updates to same.

- Reporting Lines:
  - Appropriate reporting lines are in place to facilitate the escalation of AML/CFT issues from the MLRO for discussion at Senior Management level.

- Senior Management Meetings:
  - AML/CFT issues appear as an agenda item at regular intervals at Senior Management meeting(s) and that the corresponding minutes reflect the level of discussion and outcomes, which took place concerning any Management Information (MI) provided by the MLRO or any particular AML/CFT/FS issues requiring discussion by the Senior Management.
  - The MLRO delivers a report to Senior Management at least on an annual basis and that a detailed discussion on its content takes place with a corresponding minute to reflect the level of discussion.

- AML/CFT Resourcing
  - The Firm's AML/CFT function is adequately resourced (both in terms of staff and systems) commensurate with the level of ML/TF risk faced by the Firm.
  - Reviews are undertaken on a regular and timely basis to consider whether the Firm has the appropriate staff numbers, the correct skill-set and whether staff have access to adequate systems and other resources to effectively perform their role as it relates to AML/CFT issues.

Firms should ensure that appropriate evidence of discussions at Senior Management meetings and/or approvals concerning AML/CFT issues are recorded and retained in accordance with the Firm's record retention policy.

Firms should also ensure that appropriate evidence is retained in accordance with its record retention policy regarding the Firm's obligations in relation to:

- Politically Exposed Persons (PEPs):
  - Retention of Senior Management approvals of all new PEP relationships which a Firm enters into or where the PEP status of a customer subsequently changes during the course of a relationship with a Firm as required under Section 37 of the CJA 2010.

- Correspondent Relationships:
  - Retention of senior management approvals of all new correspondent relationships, or the continuance of a correspondent relationship as required under Section 38 of the CJA 2010. Firms should also be in a position to evidence that appropriate consideration has been given as to whether to maintain or exit a correspondent relationship.

6.3 Roles and Responsibilities of the MLRO

Firms should ensure that the person appointed as MLRO:

- Has sufficient and appropriate AML/CFT knowledge and expertise;
- Has the autonomy, authority and influence within the Firm to allow them to discharge their duties effectively;
- Is capable of providing effective challenge within the Firm on AML/CFT matters when necessary;
- Has the capabilities, capacity and experience to oversee the identification and assessment of suspicious transactions and to report/liaise with the relevant authorities where necessary in relation to such transactions;
- Keeps up to date with current and emerging ML/TF trends and issues in the industry and understands how such issues may impact the Firm;
- Has access to adequate resources and information to allow them to discharge their duties effectively; and
- Is readily accessible to staff on AML/CFT matters.

Where an MLRO has not been appointed by the Firm, the Central Bank may, under Section 54 (8) of the CJA 2010, direct the Firm to do so.

6.3.1 MLRO Reporting to Senior Management

Firms should ensure that there is effective reporting and escalation on AML/CFT matters by the MLRO to Senior Management. Such reporting should include at least:

- The production of, or receipt and review of, regular and timely Management Information ("MI") to the Senior Management regarding the AML/CFT activities at the Firm. Such MI should be sufficiently detailed to ensure that Senior Management is able to make timely, informed and appropriate decisions on AML/CFT matters;
- The production of a report ("MLRO Report") on the Firm's AML/CFT activities. The MLRO Report should , inter alia;
    - Be produced, or reviewed and agreed, by the MLRO at least on an annual basis;
    - Be presented by the MLRO to Senior Management in a timely manner;
    - Be proportionate to the nature, scale and complexities of the Firm's activities;
    - Provide comment upon the effectiveness of the Firm's AML/CFT systems and controls; and
    - Include recommendations, as appropriate, for improvement in the management of the Firm's ML/TF risk.

6.4 Three Lines of Defence Model

Where Firms have implemented a "three lines of defence" model in order to manage and oversee a Firm's ML/TF risk[21], they should ensure that:

- There is adequate and effective co-ordination between the front line business unit, risk, compliance and internal audit, or equivalent within the Firm, to ensure robust and well-structured oversight, as well as effective co-ordination of resources to manage overlap in areas of review;
- The second and third line work plans are prepared using a risk-based approach, with all risks/controls, including AML/CFT, reviewed on a periodic basis;
- Relevant Senior Management and governance committees are involved in the planning of the scheduled reviews and in the closing of findings;
- Testing for specific AML/CFT controls, as well as the overall framework, should be conducted on a regular basis commensurate with the risk;
- Effective systems should be used to track and monitor issues to resolution; and
- Risk, compliance and internal audit units are independent and adequately resourced with staff knowledgeable of AML/CFT.

6.5 External Audit

When selecting external auditors, Firms should include consideration of the potential candidate's cognisance of and ability to assess AML/CFT requirements as part of the selection process.

6.6 Policies and Procedures

Section 54 of the CJA 2010 sets out the obligations of Firms in respect of the adoption of policies and procedures and training, the areas to be covered and the responsibilities of Senior Management in order to prevent and detect the commission of money laundering and terrorist financing.

When developing AML/CFT policies and procedures, Firms should inter alia:

- Maintain a detailed documented suite of AML/CFT policies, which are:
  - supplemented by guidance and supporting procedures;
  - accurately reflect operational practices; and
  - fully demonstrate consideration of and compliance with all legal and regulatory requirements;
- Have a clearly defined process in place for the formal review at least annually of the policies and procedures at appropriate levels, with approval where changes are material;

[21] Where this is warranted based upon the nature, scale and complexity of the Firm's business

- Review and update policies and procedures in a timely manner in response to events or emerging risks[22]; and ensure that such updates are communicated to relevant staff on a timely basis;
- Ensure that policies and procedures are readily available to all staff and are fully implemented and adhered to by all staff;
- Ensure that policies and procedures are subject to review and testing; and
- Ensure that Senior Management have reviewed and approved all policies and any material updates to same

6.6.1 Group wide policies and procedures

Section 57 of the CJA 2010 sets out the obligation to implement group-wide policies and procedures where a Firm is part of a group.

Section 57 of the CJA 2010 also applies to those Firms who operate a branch, majority-owned subsidiary or establishment outside of the State.

Where applicable, Firms should ensure that they comply with their obligations and the ESA's final draft regulatory technical standards (RTS) relating to group-wide policies and procedures in third countries.

Such RTS specify how Firms should manage ML/TF risks at group level[23] where they have branches or majority-owned subsidiaries based outside the EEA whose laws do not permit the application of group-wide policies and procedures on anti-money laundering and countering the financing of terrorism.

[22] Firms should use version controls for updates to policies and procedures

[23] https://www.eba.europa.eu/documents/10180/2054088/Joint+draft+RTS+on+the+implementation+of+group+wide+AMLCFT+policies+in+third+countries+%28JC+2017+25%29.pdf

7. Reporting of Suspicious Transactions

7.1 Requirement to Report

Suspicious Transactions Reports (STRs) play a pivotal role in the fight against money laundering and terrorist financing. Information provided on STRs assist An Garda Síochána and the Revenue Commissioners (the authorities) in their investigations, resulting in the disruption of criminal and terrorist activities, and can ultimately result in prosecution and imprisonment. STRs also provide authorities with valuable market intelligence on trends and typologies.

Section 42(1) of the CJA 2010, provides that:

"A [Firm] who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a [Firm], that another person has been or is engaged in an offence of money laundering or terrorist financing, shall report to FIU Ireland and the Revenue Commissioners that knowledge or suspicion or those reasonable grounds."

7.2 Identifying suspicious transactions

When assessing potential suspicious transactions, Firms should consider attempted transactions, as well as completed transactions.

In addition, Firms should note that there is no minimum monetary threshold for reporting and no amount should be considered too low for suspicion. This is particularly important when considering potential terrorist financing transactions which often involve very small amounts of money.

Firms should consider their specific products, services and customers when making a determination of suspicion, as what might be considered suspicious for one product, service or customer may not be for another. The following is a non-exhaustive list of examples of what might raise suspicions:

- Transactions or a series of transactions that appear to be unnecessarily complex, making it difficult to identify the beneficial owner or that do not appear to make economic sense;
- Transaction activities (in terms of both amount and volume) that do not appear to be in line with the expected level of activity for the customer and/or are inconsistent with the customer's previous activity;
- Transactions in excess of a customer's stated income;

- Large unexplained cash lodgements;
- Loan repayments inconsistent with a customer's stated income, or early repayment of a loan followed by an application for another loan;
- Requests for third party payments. For example, this might include a third party making a payment into a customer's account to pay off a loan, to fund an investment or policy, or to fund a savings account;
- Transactions involving high-risk jurisdictions*, particularly in circumstances where there is no obvious basis or rationale for doing so;
- Refusal to provide customer due diligence documentation or providing what appears to be forged documentation.

*The 2018 Act has removed the obligation on designated persons to automatically report any service or transaction connected with a high-risk jurisdiction to An Garda Síochána and the Revenue Commissioners.

7.3 Timing of Suspicious Transaction Reports ('STRs')

Section 42(2) of the CJA 2010 requires Firms to make an STR …"*as soon as practicable* …"

'As soon as practicable' means when the Firm acquires that knowledge, forms a suspicion, or acquires those reasonable grounds to suspect money laundering or terrorist financing. This may be before the execution of a transaction, or at the same time as the execution of a transaction, or after a transaction has occurred, depending on the nature of the knowledge, suspicion or reasonable grounds. In all cases, the Firm should immediately file an STR once a determination of knowledge, a suspicion or reasonable grounds to suspect, money laundering or terrorist financing, has been made.

The Firm may need to conduct further analysis and assessment in order to make its determination. Any such analysis and assessment should be conducted without delay, however as soon as the Firm has established knowledge, a suspicion or reasonable grounds to suspect, it should immediately file an STR.

7.4 Internal Reporting of Suspicious Transactions

Under Section 44 of the CJA 2010, Firms may allow for the reporting of STRs by way of an internal reporting procedure.

In relation to the identification and escalation of internal reports, Firms should ensure that:

- Operational procedures for staff on filing an internal report ('internal reporting procedures') are adequately documented and that the internal reporting procedure captures all suspicious transaction reporting requirements as prescribed under the CJA 2010. For example the internal reporting procedures should include at least:
  - All required steps for the reporting of suspicions from staff to the MLRO, or any other person(s) charged under the Firm's internal reporting process with investigating suspicions, and from the MLRO to the authorities;
  - The timeframes for escalation of suspicious transactions from when a staff member first identifies a suspicious transaction to when it is raised;
  - Formal acknowledgement by the Firm's MLRO or any other person(s) charged under the Firm's internal reporting process with investigating suspicions raised internally by staff; and
  - Information with regard to 'Tipping-off' so as to ensure that staff are aware of their obligations under the CJA 2010, the penalties for the offence of Tipping Off and that they exercise caution after the filing of an STR[24];

- AML/CFT training provided to staff includes details on the Firm's internal reporting procedure as well as details on the reporting of suspicions to the authorities;

- There are no discrepancies between internal reporting procedures as documented and operational practices. For example, where the Firm's internal reporting procedure states that suspicions are to be escalated using an internal reporting form then the raising of suspicions should not be conducted verbally;

- Where a Firm utilises a transaction monitoring system (TMS), there is regular review of the correlation between alerts generated from the TMS and the reporting of suspicious transactions to the authorities;

- Where a suspicion has been escalated for further assessment and review, the Firm's records provide sufficient detail of the assessment and adjudication giving rise to the decision to discount the suspicion or to make a report to the authorities. For example:
  - The circumstances that gave rise to the suspicion;
  - The assessment or additional analysis that took place; and
  - The rationale for discounting the suspicion or the basis for making a report to the authorities.

- Sufficient information is retained in order to record the reported suspicion, and support the Firm's determination of whether to discount the suspicion, or to proceed and file the STR with the authorities.

[24] Please also see section 7.7 below on 'Tipping-off' below.

7.5 Making Suspicious Transaction Reports

Section 42 of the CJA 2010, provides that reports in relation to money laundering and terrorist financing suspicions should be made to FIU Ireland and to the Revenue Commissioners.

STRs submitted to FIU Ireland[25] should be made via the goAML application[26]. Firms should ensure that they are registered with goAML as STRs cannot be submitted via goAML unless the Firm has previously registered.

The Revenue Commissioners will accept a printed copy of the STR submitted on goAML which should be posted to the relevant address.

Firms should ensure that STRs submitted to the authorities are sufficiently detailed to assist the authorities in their investigations. Examples of a poor quality STR that may not assist authorities include instances where:

- customer details are not given;
- out of date information is provided;
- details on dates and amounts of transactions are not included; or
- reasons for suspicion are not outlined.

[25] which is part of the Garda National Economic Crime Bureau

[26] The goAML application is an electronic application which provides FIU Ireland with a central reception point for receiving, processing and analysing STRs

7.6 Tipping Off

Section 49 of the CJA 2010 provides for two separate but related offences where the Firm (including a representative of a Firm) knows or suspects on the basis of information learned in the course of carrying on business as a Firm:

- that a report has been, or is required to be, made under Chapter 4 of the CJA 2010, the Firm shall not make any disclosure that is likely to prejudice an investigation that may be conducted following the making of a report under Chapter 4; and

- that an investigation is being contemplated or is being carried out into whether an offence of money laundering or terrorist financing has been committed, the Firm shall not make any disclosure that is likely to prejudice the investigation.

Sections 50 to 53 of the CJA 2010 provides for a number of defences for an offence under Section 49 of the CJA 2010 in relation to a disclosure.

Where a Firm or a representative of the Firm[27] requests additional information from a customer in relation to a transaction, activity or service, which would not be in keeping with the Firm's expectation for that customer, then as long as such requests have been conducted in a careful and considered manner they should not give rise to an offence under Section 49 of the CJA 2010.

Firms should include details on the offence of 'Tipping-off', the need for staff to exercise caution and the penalties for the offence within the Firm's AML/CFT policies and procedures.

Firms should include as part of their AML/CFT training to all staff, advice around the treatment of unusual transactions and the additional due diligence measures, which should be taken by staff without committing the offence of 'Tipping-off'.

[27] A representative of a Firm includes or any person acting, or purporting to act on behalf of the Firm including any agent, employee, partner, director or other officer of the Firm ("representative of the Firm")

8. Training

8.1 AML/CFT Training

Section 54(6) of the CJA 2010 requires Firms to ensure that

"…persons involved in the conduct of the [Firm's] business are—

(a) instructed on the law relating to money laundering and terrorist financing, and

(b) provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified."

Having well trained staff who are alert to ML/TF risks is a critically important control for Firms in the detection and prevention of money laundering and terrorist financing.

Firms should ensure that all employees, directors and agents are aware of the risks of money laundering and terrorist financing relevant to the business, the applicable legislation and their obligations and responsibilities under the legislation.

Firms should provide appropriate and sufficient training which is tailored to the nature, scale and complexity of the Firm and which is proportionate to the level of ML/TF risk faced by the Firm.

Firms should ensure that all employees, directors and agents:

- Are trained in relation to the Firm's AML/CFT policy, which should be drafted in clear and unambiguous language;
- Are trained in the Firm's procedures in order that they can recognise and address potential instances of money laundering or terrorist financing;
- Are made aware of the Firm's internal reporting procedures in respect of STRs and the identity and responsibilities of the Firm's MLRO; and
- Understand their own individual obligations under the CJA 2010 as well as those of the Firm.

8.2 Role Specific and Tailored Training

In addition, Firms should provide AML/CFT training which is specific to the role carried out by the member of staff. For example, front line staff who interact with customers and perform transactions and services should be provided with AML/CFT training relevant to the performance of that role.

Firms should also provide enhanced AML/CFT training tailored to the specific needs of staff who perform key AML/CFT and FS roles within the Firm, for example the Firm's MLRO or Senior Management responsible for AML/CFT oversight.

Firms should provide staff with ongoing training, especially where a staff member changes role and they may encounter different ML/TF risks to that of their previous role.

8.3 Frequency of training

Firms should ensure that AML/CFT training is provided to all new recruits upon joining the Firm in a timely manner and to all staff at least on an annual basis thereafter.

Staff in customer facing roles, with responsibilities relating to AML/CFT procedures or controls, should receive AML/CFT training prior to interacting with customers.

Firms should consider the outcomes of their own Business Risk Assessments and whether the frequency and content of AML/CFT training provided is adequate for levels of ML/TF risks faced by the Firm.

Firms exposed to a higher level of ML/TF risk or who have a greater exposure to constantly evolving ML/TF risks should provide training at more frequent and regular intervals if necessary.

8.4 Training Governance

Firms should ensure Senior Management's oversight and responsibility for:

- The Firm's compliance with its requirements in respect of staff AML/CFT training under the CJA 2010;
- The establishment and maintenance of effective training arrangements which reflect the Firm's Risk Based Approach to AML/CFT; and
- Ensuring that training content is reviewed and updated on a regular basis to ensure that it remains relevant to the Firm and providing assurance to this effect.

8.5 Training of Outsource Service Providers

Where Firms have outsourced an AML/CFT function, they should ensure that all staff at the outsource service provider performing AML/CFT activities on behalf of the Firm have been appropriately trained on:

- The ML/TF risks relevant to the Firm;

- The applicable AML/CFT legislation; and
- Their obligations and responsibilities under the applicable AML/CFT legislation.

Firms should ensure that relevant staff in the outsourced entity are aware of the Firm's internal reporting procedures in respect of Suspicious Transaction Reporting (STR) and the identity and responsibilities of the Firm's MLRO.

8.6 Training Channels

Firms should decide the most appropriate method or methods they wish to use in order to provide AML/CFT training to staff, senior management and agents. For example, Firms may decide to use a number of different channels such as online or e-learning modules, classroom training or video presentations in order to fulfil their obligations under the CJA 2010.

8.7 Training Records

Firms should keep a comprehensive record of:

- all staff, senior management and agents who have received AML/CFT training;
- the type of AML/CFT training provided; and
- the date on which the AML/CFT training was provided.

8.8 Training Assessment

Firms should ensure that the AML/CFT training provided includes an assessment or examination during the training session, which should be passed by all participants in order for the AML/CFT training to be recorded as completed. If the training does not contain an assessment or examination, Firms must be in a position to demonstrate effectiveness of training and staff understanding in relation to same.

8.9 Management Information on Training

Firms should ensure that senior management is provided with timely MI including, information on training, training completion and training pass rates.

Firms should ensure that senior management take appropriate remediation action where there are concerns in relation to training issues. Metrics in relation to the Firm's training should be circulated to relevant senior management for Management Information purposes.

9. Record Keeping

9.1 Obligation to retain records

Adequate record keeping is critically important to the preservation of the audit trail which in turn can assist with any investigation into money laundering or terrorist financing. Effective record keeping allows Firms to demonstrate to the Central Bank the steps which they have taken to comply with their obligations under the CJA 2010.

Firms should ensure that their AML/CFT policy and procedures contain sufficient detail of their record keeping obligations under the CJA 2010. The adequacy and detail of records kept by a Firm should be reflective of the nature, scale and complexity of the Firm.

Firms should also ensure that all staff including agents and outsourced service providers adhere to the Firm's procedures on record keeping.

9.2 Records a Firm should retain

Firms are required to retain records in relation to the following:

- Business Risk Assessments (under Section 30A. of the CJA 2010);
- Customer Information (under Section 55 (1) of the CJA 2010); and
- Transactions (under Section 55 (3) of the CJA 2010).

Firms should also retain records inter alia in relation to the following:

- Internal and external Suspicious Transaction Reports;
- Investigations and suspicious transaction reports;
- Reliance on Third Parties to undertake CDD;
- Minutes of Senior Management meetings;
- Training; and
- Ongoing monitoring.

9.2 1 Business Risk Assessments

Firms should document and record their Business Risk Assessments, as well as any changes made to Business Risk Assessments as part of a Firm's review and monitoring process, to ensure that they can demonstrate that their Business Risk Assessments and associated risk management measures are adequate.

9.2.2 Customer Information

Firms should keep adequate records, including:

- All documentation and information obtained for the purposes of identifying and verifying a customer, person(s) authorised to act on behalf of the customer and any beneficial owners;
- All customer risk assessments;
- Copies of all additional documentation and information obtained, where EDD measures have been applied to a customer of the Firm;
- Evidence of any sample testing of CDD files, which the Firm has undertaken as part of its assurance testing process; and
- Copies of documentation and information obtained as part of the Firm's ongoing monitoring process.

9.2.3 Transactions

Firms should be cognisant of the importance of the obligations under Section 55 of the CJA 2010 to retain copies of all transactions carried out for or on behalf of a customer during the business relationship with the Firm for their own internal audit purposes as well as any possible investigations by law enforcement.

9.2.4 Internal and External Suspicious Transaction Reports

Firms should keep sufficient records in relation to suspicious transactions, including:

- The circumstances that gave rise to the suspicion;
- Any additional monitoring/assessment that was undertaken;
- Whether the suspicion was reported/not reported, and
- Rationale for reporting or not reporting to FIU Ireland and the Revenue Commissioners.

Firms should retain copies of all documentation and information used as part of any internal assessment into a customer following on from the filing of an internal STR by a staff member of the Firm.

Firms should retain records to provide evidence and the justification behind their decision whether or not to file an STR with FIU Ireland and the Revenue Commissioners. In this regard, Firms should also retain copies of the supporting documentation and information which assisted them in reaching their decision.

9.2.5 Reliance on Third Parties to Undertake CDD

Firms should ensure, when placing reliance on third parties to undertake CDD, that there is a written arrangement in place between the Firm and the third party provider with clear contractual terms in respect of the obligations of the third party to obtain and maintain the necessary records, and to provide the Firm with CDD documentation or information as requested.

9.2.6 Minutes of Senior Management Meetings

Firms should retain all records of discussions and decisions made at senior management level in relation to:

- How the requirements of the CJA 2010 were assessed and implemented; and
- Any AML/CFT issues as they arise on an on-going basis.

9.2.7 Training

Firms should retain records of all AML/CFT training provided to staff during a given year. Information should include:

- The dates on which AML/CFT training was provided to staff;
- Attendance and sign-in sheets (where relevant) of who received the AML/CFT training;
- The nature and content of the AML/CFT training provided; and
- Results of the assessment and examination during the training session.

9.2.8 Ongoing Monitoring

Firms should retain records to verify and evidence the on-going monitoring conducted by the Firm, including the monitoring of transactions, the results of such monitoring and decisions taken on foot of on-going monitoring.

9.3 Assurance Testing of Record Retention

Firms should perform assurance testing at appropriate intervals to ensure the quality and legibility of documents held and that records are being retained and/or destroyed in line with the Firms' policy and the relevant legislative provisions.

Section 55(7A) of the CJA 2010 provides that

"The records required to be kept by a [Firm] under this section may be kept outside the State provided that the [Firm] ensures that those records are produced in the State to—

(a) a member of the Garda Síochána,

(b) an authorised officer appointed under Section 72,

(c) a relevant authorised officer within the meaning of Section 103, or

(d) a person to whom the designated person is required to produce such records in relation to his or her business, trade or profession,

as soon as practicable after the records concerned are requested, or

where the obligation to produce the records arises under an order of a court made under Section 63 of the Criminal Justice Act 1994, within the period which applies to such production under the court order concerned"

Where identification records are held outside of the State, it is the responsibility of the firm to ensure that the records available meet the necessary requirements under the CJA 2010.

Firms should be aware that no secrecy or data protection legislation should restrict access to the records either by the Firm on request, or by An Garda Síochána under court order or relevant mutual assistance procedures. If it is found that such restrictions exist, copies of the underlying records of identity should, wherever possible, be sought and retained within the State.

Firms should take account of the scope of AML/CFT legislation in other countries, and should ensure that records kept in other countries that are needed by the Firm to comply with Irish legislation are retained for the required period.

10. International Financial Sanctions

10.1 Financial Sanctions Framework

Sanctions are an instrument of a diplomatic or economic nature which seeks to bring about a change in activities or policies, such as violations of international law or human rights or policies that do not respect the rule of law or democratic principles.

Financial sanctions emanate from the EU and the United Nations ('UN') and are contained in sanctions lists.

EU Sanctions Regulations carry the following legal obligations:

- Prohibit making funds available, directly or indirectly to or for the benefit of individuals or entities listed on an EU Sanctions List
- Prohibit specific trade / financial transactions with certain countries
- Freeze all funds and economic resources of persons and entities on sanctions lists
- Report to the relevant competent authority (the Central Bank of Ireland) in respect of financial sanctions true hits[28] and any freezing of accounts or transactions

10.1.1 UN Sanctions

The UN imposes financial sanctions and requires Member States to implement them through Resolutions passed by the UN Security Council. Up to date information on UN Financial Sanctions can be found on the UN website:

https://www.un.org/sc/suborg/en/sanctions/information

The consolidated UN Sanctions Committees list relating to terrorism can be found at the following link:

https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list

10.1.2 EU Sanctions

The EU implements financial sanctions imposed by the UN. It does this through EU regulations, which have direct legal effect in Ireland and all EU Member States. The EU can also impose its own financial sanctions, sometimes referred to as 'EU autonomous' sanctions. These are also implemented through regulations that have direct effect in Ireland and EU Member States. Up to date information on EU Financial Sanctions can be found on the EU website:

https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en

The consolidated list of EU sanctions can be found at the following link:

[28] Where Firms are satisfied that the person/Firm has been listed as a sanctioned person/entity pursuant to applicable EU Financial Sanctions Legislation

https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en

The Central Bank website also includes up to date information on EU financial sanctions with links to the most up to date EU financial sanctions list for searching purposes. It also includes recent updates to the EU financial sanctions list.

https://www.centralbank.ie/regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/countering-the-financing-of-terrorism

10.2 Role of the Central Bank

The Central Bank is one of three competent authorities with responsibilities in relation to financial sanctions in Ireland.

The other Irish competent authorities are the Department of Business, Enterprise and Innovation and the Department of Foreign Affairs and Trade.

True sanctions hits should be reported to the Central Bank using the following email address – sanctions@centralbank.ie

The Central Bank is obliged to report financial sanctions true hits to the European Commission and FIU Ireland.

10.3 Financial Sanctions Obligations on Firms

There is a legal obligation to comply with EU Council Regulations relating to financial sanctions as soon as they are adopted.

Once a person or entity has been sanctioned under EU Financial Sanctions, there is a legal obligation not to transfer funds or make funds or economic resources available, directly or indirectly, to that person or entity.

In the event that a match or a 'hit' occurs against a sanctioned individual or entity, Firms must immediately freeze the account and/or stop the transaction and immediately report the hit to the Central Bank along with other relevant information. In certain circumstances, Firms can make a transfer to a sanctioned individual or entity if a prior authorisation is received or notification is given to a competent authority.

All persons must supply any information related to suspected financial sanctions breaches to the Central Bank pursuant to the relevant EU Council Regulations.

10.3.1 Financial Sanctions Governance

Firms should ensure that Senior Management are fully aware of the Firm's obligations in the area of financial sanctions. It should also be clear, who at the Firm has responsibility

for financial sanctions. This individual should be of sufficient seniority in order to discharge the Firm's responsibilities.

10.3.2 Financial Sanctions Risk Assessment

Firms should ensure the Business Risk Assessment takes into account their obligations under financial sanctions regulations. In particular, Firms should pay particular attention to the risk factors outlined in section 4 of the Guidelines.

10.3.3 Screening Customers against Sanctions Lists

Firms should have effective screening systems appropriate to the nature, size and risk of their business.

Screening new and existing customers and payments against the relevant and up to date EU and UN lists helps ensure that Firms will not breach the sanctions regulations. Customer screening should take place at the time of customer take-on and at regular intervals thereafter.

10.3.4 Matches and escalation

Where a customer's name matches a person on the relevant lists, Firms should take steps to identify whether a name match is real or if it is a 'false positive' (for example; a customer has the same or similar name but is not the same person).

Firms should have procedures that look at a range of identifier information such as name, date of birth, address or other customer data.

Firms should have clear escalation procedures in place to be followed in the event of a positive match.

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4.9 Matheson Webinar on AML developments – 30 March 2021

On 30 March 2021, Matheson held a webinar entitled "AML - what's changed - what's proposed?" discussing recent developments in AML, including the transposition of the 5MLD and the EBA guidelines on ML / TF risk factors. We were joined by **Tommy Hannafin, Head of the Anti-Money Laundering Division at the Central Bank of Ireland** who provided great insight into the regulator's perspective. Below is a summary of Mr Hannafin's contribution to the webinar.

AML/CFT in the Central Bank

Mr Hannafin explained the role of the Central Bank as the competent authority and supervisor of AML/CFT. He stressed that since the introduction of CJA 2010, the Central Bank has observed "*significant improvements in firms' compliance with their AML/CFT obligations and an increased understanding by firms as to the important role that they play in this arena*".

However, he explained that the Central Bank continues to identify control deficiencies in AML/CFT frameworks such as in:

- risk assessments;
- Governance and oversight;
- Customer Due Diligence processes; and
- Suspicious Transaction Reporting.

Mr Hannafin went on to explain that the foundation stones of an effective AML/CFT framework are:

- an appropriate culture; and
- a comprehensive ML/TF risk assessment.

Culture:

In respect of culture, he explained that same should go beyond mere compliance. He identified that an AML/CFT framework which does this:

- is fit for purpose on an ongoing basis, and
- keeps its AML/CFT framework under review.

Risk Assessment process:

Mr Hannafin also elaborated on the role of the Risk Assessment Framework, confirming that same is not a one off exercise as risks can change. He flagged some of the weaknesses which the Central Bank has observed in such frameworks. Some of these observations include:

- Risk Assessments not reviewed regularly to ensure ongoing appropriateness of the risk assessment;
- Using a generic risk assessment that does not adequately reflect the firm's specific risks;
- Using group risk assessments which do not reflect the risks of the individual firm; and
- Using outsourced arrangements for undertaking the risk assessment. He flagged that while the Central Bank has no issue with outsourcing the risk assessment, the firm needs to meet the usual requirements.

European AML Developments:

Mr Hannafin provided a comprehensive update on the status of AML/CFT developments at a European level flagging a number of matters.

The first was the European Commission's AML Action Plan which is expected to be finalised in the coming months. He Explained that while it is not yet clear as to what the final plan will be "*there is no doubt that whatever it contains will be ambitious and will be a significant challenge to achieve however, it is beholden on all of us involved in the fight against money-laundering and terrorist financing to be brave and ambitious in order to deliver for society as a whole.*"

Mr Hannafin went on to elaborate on two particular areas of the Action Plan in more detail:

- a reinforced single-rulebook; and
- a single European supervisor

On the single rulebook, he explained that while the current EU AML rules are far-reaching and comprehensive in nature, their effectiveness is impacted due to a fragmented approach adopted by Member States. He explained that there would be many benefits from the a single rulebook (which would be directly applicable through regulation) such as a level playing field to businesses that operate across the Union.

On the single supervisor. He confirmed that the Central Bank is supportive of the creation of an EU-level AML/CFT supervisor but believe it alone, will not necessarily improve the fight against ML/TF. He outlined how the national AML Supervisors must continue to play a key role in the new supervisory framework.

Mr Hannafin then spoke about the consolidation of the AML/CFT mandates of all three European supervisory authorities within the EBA in 2019 and highlighted the EBA's strategy in coordinating AML/CFT policy developments across the EU through the establishment of a permanent AML/CFT Standing Committee (AMLSC). He advised that Derville Rowland (Director General) and Seana Cunningham (director of AML and Enforcement) represent the Central Bank at the AMLSC.

Irish developments:

Mr Hannafin then moved his attention to Irish developments in the AML/CFT space beginning with recent transposition of the 5th Anti-Money Laundering Directive.

He advised that the transposition will result in some changes, the most significant of which is the extension of the AML/CFT obligations to entities that are providing or intending to provide certain Virtual Asset Services. He detailed the information recently published on the Central Bank website in respect of VASPs. He explained that "*in 2021, we will focus on assessing the AML/CFT frameworks of these firms to ensure that they are minimising their ML/TF risk. As these firms bring a very different business model to those traditionally supervised by the Central Bank, we are cognisant that they may bring different ML/TF risks and we will work closely with them to ensure that any such risks are identified and mitigated.*"

He also outlined some of the other changes which the legislation introduces including:

- the granting of a general right of access by members of the public to the beneficial ownership information on corporate entities;
- a requirement on Member States to put in place centralised measures to allow for the retrieval of information on natural or legal persons controlling bank accounts;
- a requirement for obliged entities (designated persons under Irish law) to apply enhanced customer due diligence (ECDD) measures when dealing with business relationships or transactions involving high-risk third countries;
- explicit recognition of information obtained through electronic identification means)or any secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities; and
- a lowering of the financial threshold for prepaid instruments such as e-money and pre-paid cards from €250 to €150 at which point certain customer due diligence measures need to be applied.

Additionally, he confirmed that in light of the changes from the transposition of 5AMLD the Central Bank will, where relevant, update and republish its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector.

Specific Central Bank Change:

Of particular note, was Mr Hannafin's update on the Central Bank's intention to issue the Risk Evaluation Questionnaire (REQ) to all firms on an annual basis to facilitate more in-depth analysis of the risks in the financial services sector. He explained that the information required by the REQ is information which is readily available to firms and stressed that the Central Bank expects firms to apply quality control to the completion of the REQ. Failure to do so will be view by the Central Bank " *as an indicator of weaknesses in the AML/CFT frameworks of the submitting firm, as the inability to provide accurate data suggests a lack of understanding of your AML/CFT obligations, the non-existence of relevant ML/TF data to your firm or both.*". He indicated that the instruction will issue in early May. Please click here to view the REQ template.

5 EUROPE

5.1 Sixth Money Laundering Directive

The Sixth Money Laundering Directive (EU) 2018 / 1673 ("**6MLD**") was published on 12 November 2018 and establishes minimum rules for criminal liability for money laundering by:

- harmonising the definitions of money laundering and the predicate offences;
- imposing minimum sanctions; and
- extending criminal liability to legal persons.

Member states had until 3 December 2020 to transpose the 6MLD into national law, however, in accordance with Recital 23 of the 6MLD, Ireland and the UK "are not taking part in the adoption of this Directive and are not bound by it or subject to its application". The 6MLD has been adopted under Article 83 of Treaty on the Functioning of the EU ("**TFEU**"). Article 83 falls into Title V of the TFEU which deals with home and justice affairs. Under Protocol 21 of the TFEU, Ireland has opted out of all laws made under Title V and for this reason, Ireland is not obliged to transpose the 6MLD into national law. In contrast, the 4MLD and 5MLD were adopted under Article 114 TFEU, which is in Title VII and relates to the regulation of the EU's internal market. As Ireland has no opt out from that part of the TFEU, it had no discretion in terms of the transposition of those earlier directives.

5.2 EBA Guidelines on Money Laundering and Risk Factors

Articles 17 and 18(4) of 4MLD require the ESAs to issue guidelines to support firms and national competent authorities ("**NCAs**") in taking steps to identify and assess the risk of ML/TF.

On the strength of this, on 26 June 2017, the ESAs released Guidance on Money Laundering and Terrorist Financing Risk- "The Risk Factor Guidelines" ("**The Guidelines**") which set out what firms should consider when assessing the ML/TF risk associated with a business relationship or occasional transactions. The Guidelines came into effect on 26 June 2018.

On 1 March 2021, following public consultation, the EBA published its final revised guidelines on ML/TF risk factors ("**Revised Guidelines**"). The Revised Guidelines take into account changes to the EU AML/CFT legal framework since the Guidelines were first published and address new ML/TF risks, including those identified by the EBA's implementation reviews. The Guidelines will be repealed and replaced with the Revised Guidelines.

The Revised Guidelines are addressed to both financial institutions and supervisory authorities. In relation to supervision, the Revised Guidelines note that where evidence suggests that divergent supervisory approaches continue to exist, more effective and consistent supervisory approaches must be developed to support competent authorities' AML/CFT supervision efforts when assessing the adequacy of firms' risk assessments and AML/CFT policies and procedures.

For financial institutions, the Revised Guidelines:

- set out the factors that firms should consider when assessing the ML/TF risk associated with a business relationship or occasional transaction;
- provide guidance on how financial institutions can adjust their CDD measures to mitigate the ML/TF risk they have identified so as to make them more appropriate and proportionate;
- strengthens the requirements on individual and business-wide risk assessments and CDD measures;
- include new guidance on the identification of beneficial owners, the use of innovative solutions to identify and verify customers' identities, and how financial institutions should comply with legal provisions on enhanced CDD related to high-risk third countries;
- include new sectoral guidelines for crowdfunding platforms, corporate finance, account information service providers and payment initiation services providers and currency exchanges offices; and
- provide more details on TF risk factors.

Next steps

The Revised Guidelines are due to be translated into the official EU languages and published on the EBA website and will apply three months after publication in all EU official languages. The deadline for NCA's to report whether they comply with the guidelines will be two months after the publication of the translations.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

5.3 Commission Report assessing whether Member States have duly identified and made subject to the obligations of the 4MLD in respect of all trusts and similar legal arrangements governed under their laws

In September 2020, the Commission published a report to the European Parliament and the Council assessing whether Member States have duly identified and made subject to the obligations of the 4MLD, all trusts and similar arrangements governed under their laws (the "**Trust Report**").

In light of the Panama Papers and Lux Leaks scandals, the EU has taken steps to ensure the transparency of beneficial ownership of legal entities and arrangements, including legal arrangements governed under Member States' law or custom that have a structure or functions similar to trusts.

Article 31 of 4MLD requires trustees or persons holding an equivalent position in a similar legal arrangement to meet certain requirements.

The 4MLD also obliges Member States to establish effective, proportionate and dissuasive measures or sanctions for breaches of the relevant requirements.

Considering the variety of trusts and legal arrangements used within the EU, Article 31(10) of 4MLD provides that Member States must identify those legal arrangements that have a structure or functions similar to trusts, and notify to the Commission the categories, characteristics, names and, where applicable, legal basis of such arrangements. The Commission must publish these notifications in the Official Journal of the EU.

Article 31(10) of the 4MLD also requires the Commission to assess whether Member States have duly notified and made subject to the obligations of the Directive, trusts and similar arrangements governed under their law.

A first list of Member States' notifications was published on 24 October 2019, and was reviewed twice, with the most recent list published on 27 April 2020. This third list forms the basis of the analysis in the Trust Report.

According to the Trust Report, sixteen Member States[8] indicated that no trusts or similar legal arrangements are governed by their laws. The remaining other Member States notified trusts or similar legal arrangements governed by their laws, as follows:

- Three Member States[9] (including Ireland) and the United Kingdom notified that trusts are governed under their legal systems, and three additional Member States[10] notified that trusts are recognised in their territory based on the provisions of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.
- Seven Member States[11] notified similar arrangements governed under their national law.
- Two Member States[12] notified legal arrangements that are not expressly regulated in their national law, but are based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine. For the purpose of transposing Article 31 of the 4MLD, Germany explicitly mentioned the above arrangements in its AML law.

The Trust Report highlights that a wide range of arrangements show similarities with the common law trust in line with the conditions of Article 31 of 4AMLD.

The Trust Report concludes that there is no conclusive analysis in the international AML/CFT community of what constitutes a similar legal arrangement to a trust. The Trust Report notes that "*an absence of a common approach to the identification of arrangements similar to trusts does not ensure legal certainty and a level playing field, and might leave loopholes that allow little known arrangements to be used in money laundering schemes, as has been the case with legal entities.*" In addressing this issue, the Commission will consider forming an informal working group to identify common, objective and consistent criteria for the identification of the relevant legal arrangements governed under their law.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

8. Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden
9. Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden
10. Italy, Luxembourg and the Netherlands
11. Czechia, France, Hungary, Italy, Luxembourg, Romania and the Netherlands.
12. Germany and Italy

5.4 Commission's New AML Action Plan

In May 2020, the Commission published its Action Plan for a new single EU AML System ("**Action Plan**"). The Action Plan sets out measures that the Commission would take over the 12 months following its release, to better enforce, supervise and coordinate the EU's rules on combating ML/TF. On 10 July 2020, the European Parliament passed a resolution on the Action Plan and highlighted the most pressing changes needed to achieve an efficient EU framework.

The Action Plan is built on 6 pillars:

Effective application of EU rules	A single EU rulebook	EU-level supervision	A coordination and support mechanism for Member State FIUs	Enforcing EU-level criminal law provisions & information exchange	A stronger EU in the world
The EBA as EU single supervisor to make full use of its new powers to tackle ML/TF.	A single EU rulebook to prevent diverging interpretations of the rules lead to loopholes in the system, which can be exploited by criminals.	An EU wide AML supervisory system.	A coordination mechanism for FIUs.	The future Financial Crime Centre at Europol and European Commission guidance on the role of public private partnerships to clarify and enhance data sharing.	A new methodology to deal with third countries that have strategic deficiencies in their AML/CTF regimes.

The Commission's aim for the Action Plan is to close loopholes and weaknesses within the current AML / CTF regime. Under the current regime, individual Member States can adopt national level AML / CFT rules, however, this has resulted in a fragmented approach across the EU. The proposed single EU rule book under Pillar 2, aims to reduce the fragmentation and harmonise AML / CFT rules across the EU. Similarly for supervision under pillar 3, the Commission intends to allocate some supervisory responsibilities at an EU-level to harmonise the supervisory approach to AML / CFT across the EU.

On the same date, the Commission also launched a consultation on the Action Plan which sought feedback on the Action Plan. The consultation closed on 26 August 2020. In July 2020, Derville Rowland, Director General, Financial Conduct at the Central Bank, responded to the Public Consultation on the Action Plan. The letter[13] advises that the Central Bank is supportive of the initiative to further harmonise and strengthen the EU's AML/CFT Framework however, it does raise a flag of caution in respect of a number of matters including :

- the importance of Member States continuing to be able to introduce their own AM L/CFT requirements;
- that any centralisation of supervision should be hybrid in nature as National Competent Authorities are best placed to understand the AML/CFT risks of their individual Member State and;
- that the Commission should put in place a robust authorisation/registration regime for VASPs that is consistent with the FATF Standards, and that the additional categories of VASPs identified by FATF should become obliged entities.

The new legislative proposal on the Action Plan is expected in 2021.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

5.5 EBA Opinion on money laundering and terrorist financing risks across the EU

On 3 March 2021 the EBA published its biennial Opinion on risks of ML/TF affecting the EU's financial sector. Article 6(5) of 4MLD requires the EBA to issue an Opinion on such risks sector every two years. This is the third Opinion, with the last having been published in 2019.

The Opinion identifies risks to which credit and financial institutions are exposed, as well as cross sectoral ML/TF risks including risks associated with virtual currencies, FinTech, RegTech solutions, weaknesses in firms' CFT systems and controls, de-risking, crowdfunding, divergent supervisory practices and frameworks and more broadly, the worldwide COVID-19 pandemic. The Opinion then sets out proposals and recommendations to competent authorities on the risks identified. The EBA also carried out an assessment of how the ML/TF risks have evolved since the last Opinion.

The EBA notes that the COVID-19 pandemic illustrates how new ML/TF risks can emerge unexpectedly and that can impact firms' ability to ensure adequate AML/CFT compliance, and competent authorities' ability to ensure the ongoing supervision of firms in the current context of restrictions on movement. The COVID-19 pandemic has led to a dramatic increase in the need for remote on-boarding of customers. To that end, the Commission has invited the EBA to draft guidelines on the key elements related to customer remote on-boarding and reliance on CDD processes carried out by third parties. It is expected that these guidelines will be published for consultation by the end of 2021.

As a complement to this Opinion, the EBA has developed an interactive tool on the ML/TF risks covered in the Opinion. The interactive tool is available here.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

5.6 Revised List of High-Risk Third Countries

In light of the changes brought in by the 4MLD and the 2021 Act, a revised list of high risk third countries has been entered into force by the European Commission by way of Delegated Regulation (EU) 2020/855 (the "Delegated Regulation"). This has been in effect since 1 October 2020. The Regulation, in addition to other measures, will go to further the EU's aim of eradicating money laundering and terrorist financing. Obliged entities are required to apply enhanced due diligence procedures in dealings with individuals and entities which originate from these listed high risk third countries

A number of countries will remain on the list as before while some countries have been removed. The EU have added a number of countries to the list which have strategic deficiencies in their AML / CFT regimes.

Exisiting	Newly-listed	Removed
Iraq	The Bahamas	Bosnia-Herzegovina
Afghanistan	Barbados	Ethiopia
Vanuatu	Botswana	Guyana
Pakistan	Ghana	Lao People's Democratic Republic
Syria	Jamaica	Sri Lanka
Yemen	Mauritius	Tunisia
Uganda	Mongolia	
Trinidad and Tobago	Myanmar	
Iran	Nicaragua	
North Korea	Panama	
	Zimbabwe	
	Cambodia	

Further to the above changes, the European Commission have introduced a methodology to identify High Risk Third Countries which may pose a threat to the EU's financial system. The methodology is part of the Action Plan for a Comprehensive EU Policy on Preventing Money Laundering and Terrorist Financing. The aim of this is to ensure greater cooperation with the listing process of the FATF.

6 INTERNATIONAL

6.1 FATF Guidance for applying a Risk-Based Approach to AML/CFT Supervision

On 4 March 2021 FATF published Guidance for applying a Risk-Based Approach to AML/CFT Supervision. The Guidance is non-binding, however, it aims to explain how supervisors should apply a risk-based approach to their activities in line with the FATF Standards.

The guidance is composed of three parts:

Part 1 The high-level guidance on risk-based supervision, which explains how supervisors should assess the risks their supervised sectors face and prioritise their activities, in line with the FATF Standards' risk-based approach.

Part 2 Strategies to address common challenges in risk-based supervision & jurisdictional examples, including examples of strategies for supervising non-financial businesses and professions and VASPs.

Part 3 Country examples from across the global network, of supervision of the financial sector, VASPs and other private sector entities.

The Guidance encourages countries to move away from a 'tick-box' approach to AML / CFT and apply a risk-based approach. It aims to be general in nature and therefore does not advocate for any specific institutional framework for supervision or seek to identify or address specific sectoral risks. It acknowledges that the measures used to apply risk-based supervision and enforcement should be tailored to each jurisdiction's context.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the beginning of the Toolkit.

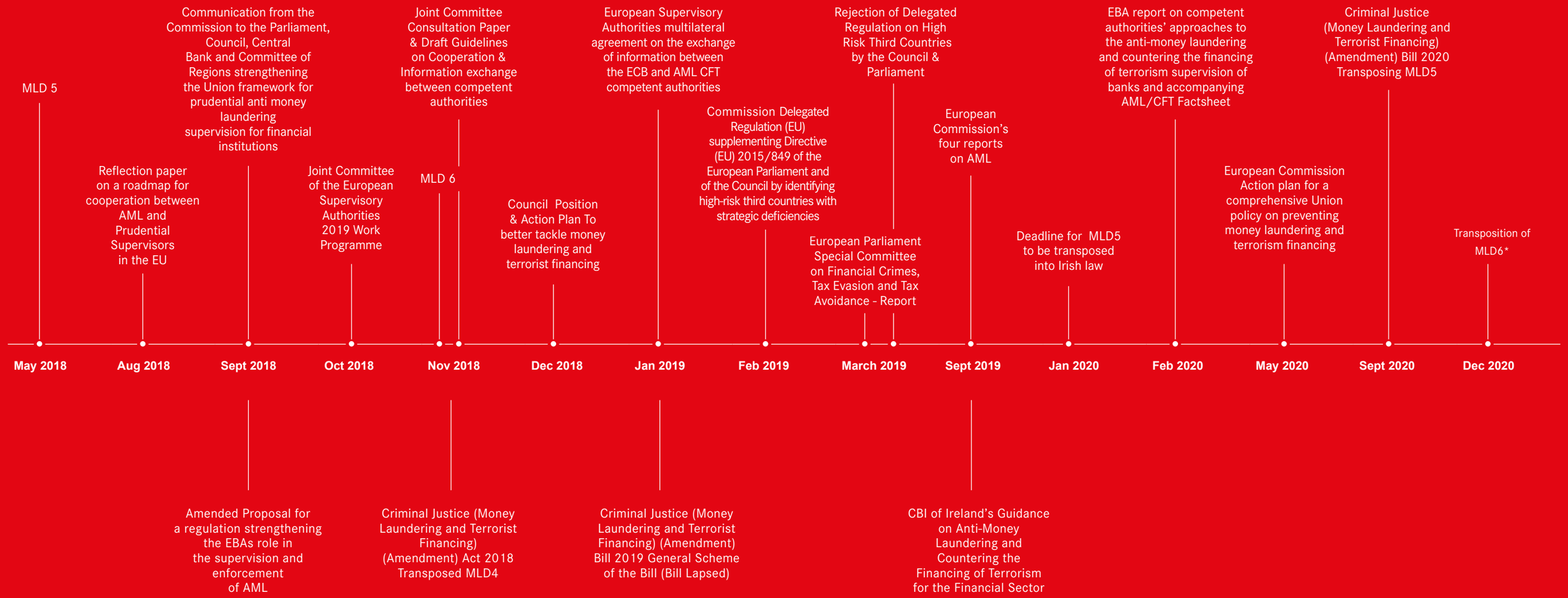
7 HOW MATHESON CAN HELP

We provide a number of services to assist clients in the area of AML, including:

- Designing and revising AML policies, procedures and business-wide risk assessments to ensure they align with the requirements of the 2010 Act and relevant regulatory guidance;
- Gap analysis work in order to assess whether existing AML frameworks comply with the 2010 Act and relevant regualtory inspections;
- Assisting firms undergoing or preparing for AML inspections from the Central Bank of Ireland;
- Delivering bespoke AML/CTF training delivery to boards and staff in regulated firms in a wide range of industry sectors;
- Assisting VASPs seeking to register with the Central Bank
- Advising on whether Section 108A applies to your business and if so, assisting with registration applications to the Central Bank as required.
- Providing opinions as to whether innovative technological solutions can be used to discharge your firm's AML obligations under the 2010 Act.

Should you require further information in relation to the material contained in this Toolkit, please get in touch with a member of the team at the contact information above or your usual Matheson contact. Full details of Matheson's Financial Institutions group together with further updates, articles and briefing notes written by members of these teams, can be accessed at www.matheson.com

8 THE CONTINUING EVOLUTION OF AML – A TIMELINE



* Please note however, in accordance with Recital 23 of the MLD6, Ireland and the United Kingdom "*are not taking part in the adoption of this Directive and are not bound by it or subject to its application*".

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