Number 26 *of* 2018

Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018

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CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) (AMENDMENT) ACT 2018

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Number 26 *of* 2018

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) (AMENDMENT) ACT 2018

An Act to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to certain provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015[1] on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 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, and to provide for related matters. [14*th November*, 2018]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title, commencement and collective citation

1. (1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018.

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

(3) The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013 and this Act may be cited together as the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018.

Definitions

2. In this Act—

"Act of 2010" means Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;

"Act of 2013" means Criminal Justice Act 2013.

1 OJ No. L 141, 5.6.2015, p. 73

PART 2

AMENDMENT OF ACT OF 2010

Amendment of section 2 of Act of 2010

3. Section 2 of the Act of 2010 is amended—

(a) in subsection (1)—

(i) by the deletion of the definition of "Implementing Directive", and

(ii) by the insertion of the following definition before the definition of "Minister":

" '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;",

and

(b) by the substitution of the following subsection for subsection (2):

"(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.".

Amendment of section 24(1) of Act of 2010

4. Section 24(1) of the Act of 2010 is amended—

(a) by the insertion of the following definitions after the definition of "business relationship":

" '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[3] on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

'collective investment undertaking' means—

(a) an undertaking for collective investment in transferable securities authorised in accordance with the European Communities

2 OJ No. L 141, 5.6.2015, p. 73
3 OJ No. L 176, 27.6.2013, p. 1

(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;",

(b) by the insertion of the following definition after the definition of "competent authority":

" '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;",

(c) in the definition of "credit institution" by the substitution of the following paragraph for paragraph (a):

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

(d) by the insertion of the following definition after the definition of "designated person":

" 'Directive of 2009' means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009[4] on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);",

(e) by the insertion of the following definition after the definition of "EEA State":

4 OJ No. L 302, 17.11.2009, p. 32

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

(f) by the deletion of the definition of "Electronic Money Directive",

(g) by the substitution of the following definition for the definition of "financial institution":

" '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[5] 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),

5 OJ No. L 302, 18.11.2010, p. 1

(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) by the substitution of the following definition for the definition of "group":

" '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;",

(i) by the insertion of the following definition after the definition of "group":

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

(j) by the deletion of the definition of "Life Assurance Consolidation Directive",

(k) by the insertion of the following definitions after the definitions of "member":

" '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

6 OJ No. L 182, 29.6.2013, p. 19

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;",

(l) in the definition of "occasional transaction"—

(i) by the substitution of the following paragraph for paragraph (b):

"(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,",

(ii) by the insertion of the following paragraph after paragraph (b):

"(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",

and

(iii) in paragraph (c), by the substitution of "(a), (b) or (bb)" for "(a) or (b)",

(m) by the substitution of the following definition for the definition of "public body":

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

(n) by the deletion of the definition of "Recast Banking Consolidation Directive",

(o) by the substitution of the following definition for the definition of "regulated market":

" 'regulated market' means—

7 OJ No. L 141, 5.6.2015, p. 1

(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);",

(p) by the insertion of the following definition after the definition of "relevant professional adviser":

" '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;",

and

(q) by the insertion of the following definition after the definition of "transaction":

8 OJ No. L 173, 12.6.2014, p. 349
9 OJ No. L 173, 12.6.2014, p. 1
10 OJ No. L 345, 31.12.2003, p. 64
11 OJ No. L 390, 31.12.2004, p. 38

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

Amendment of section 25 of Act of 2010

5. Section 25 of the Act of 2010 is amended—

(a) in subsection (1)—

(i) by the substitution of the following paragraph for paragraph (d):

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

(ii) in paragraph (i)—

(I) by the insertion of "or by the person" after "to the person", and

(II) by the substitution of "€10,000" for "€15,000",

and

(b) by the insertion of the following subsection after subsection (1):

"(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).".

Beneficial owner in relation to bodies corporate

6. The Act of 2010 is amended by the substitution of the following for section 26:

"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.".

Amendment of section 27 of Act of 2010

7. Section 27 of the Act of 2010 is amended in paragraph (b) by the substitution of "controls" for "exercises control over the management of".

Amendment of section 28 of Act of 2010

8. Section 28 of the Act of 2010 is amended—

(a) by the deletion of subsection (1), and

(b) in subsection (2)—

(i) in paragraph (a), by the deletion of "at least 25 per cent of",

(ii) in paragraph (c), by the substitution of "the trust;" for "the trust.", and

(iii) by the insertion of the following paragraphs after paragraph (c):

"(d) the settlor;

(e) the trustee;

(f) the protector.".

Amendment of section 30 of Act of 2010

9. Section 30 of the Act of 2010 is amended—

(a) in subsection (1)—

(i) in paragraph (a), by the deletion of "at least 25 per cent of",

(ii) in paragraph (c)—

(I) by the deletion of "at least 25 per cent of", and

(II) by the substitution of "or arrangement," for "or arrangement.",

and

(iii) by the insertion of the following paragraph after paragraph (c):

"(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.",

and

(b) by the deletion of subsection (4).

Risk assessment by designated persons

10. The following Chapter is inserted after Chapter 1 of Part 4 of the Act of 2010:

"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).".

Amendment of section 33 of Act of 2010

11. Section 33 of the Act of 2010 is amended—

(a) in subsection (1), by the substitution of "subsection (2)" for "subsections (2) and, where applicable, (4),",

(b) in subsection (1)(d)(ii), by the substitution of "customer," for "customer.",

(c) by the insertion of the following paragraph after subsection (1)(d)(ii):

"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.",

(d) in subsection (2), by the insertion of ", in accordance with section 30B," after "The measures that shall be applied",

(e) by the insertion of the following subsection after subsection (2):

"(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).",

(f) by the deletion of subsection (4),

(g) in subsection (5), by the substitution of "subsection (2)" for "subsections (2) and, where applicable, (4)," in both places where it occurs,

(h) in subsection (6)—

(i) by the substitution of "a credit institution or financial institution may allow an account, including an account that permits transactions in transferable securities, to be opened with it" for "a credit institution may allow a bank account to be opened with it", and

(ii) by the substitution of "subsection (2)" for "subsections (2) and, where applicable, (4)",

(i) by the substitution of the following subsections for subsection (7):

"(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.",

(j) in subsection (8), by the substitution of—

(i) "Subject to subsection (8A), a designated person" for "A designated person", and

(ii) "subsection (2)" for "subsection (2) or (4)",

(k) by the insertion, after subsection (8) of the following:

"(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.",

(l) in subsection (9), by the substitution of "A designated person" for "Except as provided by section 34, a designated person", and

(m) by the deletion of subsection (10).

Electronic money derogation

12. The Act of 2010 is amended by the insertion of the following section after section 33:

"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 €250,

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

(i) €250, or

(ii) where the payment instrument cannot be used outside the State, €500,

(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, and

(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 €100.

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

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

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

Simplified customer due diligence

13. The Act of 2010 is amended by the insertion of the following section after section 34:

"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.".

Amendment of section 35 of Act of 2010

14. Section 35 of the Act of 2010 is amended—

(a) in subsection (2), by the substitution of "Subject to section 33(8A), a designated person" for "A designated person", and

(b) by the substitution of the following for subsection (3):

"(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.".

Examination of background and purpose of certain transactions

15. The Act of 2010 is amended by the insertion of the following section after section 36:

"36A. (1)A designated person shall, in accordance with policies and procedures adopted in accordance with section 54, 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.

(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).".

Amendment of section 37 of Act of 2010

16. (1) Section 37 of the Act of 2010 is amended—

(a) by the substitution of the following subsection for subsection (1):

"(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.",

(b) by the substitution of the following subsection for subsection (2):

"(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.",

(c) in subsection (3), by the insertion of ", or beneficiary" after "the customer",

(d) in subsection (4)—

(i) by the deletion of "residing in a place outside the State", and

(ii) by the substitution of the following paragraph for paragraph (c):

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

(e) in subsection (5), by the insertion of "or financial institution" after "a credit institution",

(f) in subsection (6), by the deletion of "residing in a place outside the State, and",

(g) by the insertion of the following subsection after subsection (6):

"(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.",

(h) in subsection (7), by the substitution of "subsections (4), (6) and (6A)" for "subsections (4) and (6)", and

(i) in the definition of "specified official" in subsection (10)—

(i) in paragraph (b), by the insertion of "or of a similar legislative body" after "a member of parliament",

(ii) by the insertion after paragraph (b) of the following paragraph:

"(bb) a member of the governing body of a political party;",

and

(iii) by the substitution for paragraph (e) of the following paragraphs:

"(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.".

Correspondent relationships with third-country respondent institutions

17. The Act of 2010 is amended by the substitution of the following section for section 38:

"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, 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).".

Enhanced customer due diligence - high-risk third countries

18. The Act of 2010 is amended by the insertion of the following section after section 38:

"38A. (1)Subject to subsection (2), a designated person shall apply measures, including enhanced monitoring of the business relationship, 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.

(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 customer due diligence in cases of heightened risk

19. The Act of 2010 is amended by the substitution of the following section for section 39:

"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).".

Amendment of section 40 of Act of 2010

20. Section 40 of the Act of 2010 is amended—

(a) in subsection (1)—

(i) in paragraph (b), by the substitution of "the Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI of that Directive" for "the Third Money Laundering Directive in accordance with Section 2 of Chapter V of that Directive,",

(ii) by the deletion of "or" after paragraph (b),

(iii) in paragraph (c)—

(I) by the substitution of "a place (other than a Member State) which is not a high-risk third country" for "a place designated under section 31",

(II) by the substitution of "the Fourth Money Laundering Directive" for "the Third Money Laundering Directive",

(III) in subparagraph (iii), by the substitution of "the place, or" for "the place.",

(iv) by the insertion of the following paragraph after paragraph (c):

"(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.",

(b) by the insertion of the following subsection after subsection (1):

"(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.",

and

(c) in subsection (4)(b), by the substitution of "the designated person is satisfied that the circumstances specified in paragraphs (a) to (c) of subsection (1A) exist, or" for "the designated person is satisfied,".

Functions of State Financial Intelligence Unit

21. Part 4 of the Act of 2010 is amended by the insertion of the following Chapter after Chapter 3:

"Chapter 3A

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.".

Amendment of section 42 of Act of 2010

22. Section 42 of the Act of 2010 is amended—

(a) in subsection (1), by the substitution of "FIU Ireland" for "the Garda Síochána",

(b) in subsection (7), by the substitution of "FIU Ireland" for "the Garda Síochána", and

(c) by the insertion of the following subsection after subsection (6):

"(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.".

Amendment of section 44 of Act of 2010

23. Section 44 of the Act of 2010 is amended by the deletion of "or 43" in both places where it occurs.

Amendment of section 51 of Act of 2010

24. Section 51 of the Act of 2010 is amended—

(a) by the substitution of the following subsection for subsection (2):

"(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,

(b) the disclosure was to a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution,

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

(d) 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, and

(e) both the institutions referred to in paragraph (d) were 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.",

and

(b) in subsection (3)(b), by the substitution of "or in a country other than a high-risk third country" for "or in a place designated under section 31".

Amendment of section 52(2)(c) of Act of 2010

25. Section 52(2)(c) of the Act of 2010 is amended by the substitution of "a country other than a high-risk third country" for "a place designated under section 31".

Internal policies, controls and procedures

26. The Act of 2010 is amended by the substitution of the following section for section 54:

"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.

(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), (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) and (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).".

Amendment of section 55 of Act of 2010

27. Section 55 of the Act of 2010 is amended—

(a) in subsection (1)(b), by the substitution of "correspondent relationship" for "correspondent banking relationship",

(b) in subsection (4) (amended by section 12(a) of the Act of 2013), by the substitution of "Subject to subsections (4A), (4B) and (4C), the documents and other records" for "The documents and other records",

(c) in subsection (4)(b), by the substitution of "correspondent relationship" for "correspondent banking relationship",

(d) by the insertion after subsection (4), of the following subsections:

"(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.",

and

(e) by the insertion of the following subsection after subsection (7A) (inserted by section 12(b) of the Act of 2013):

"(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.".

Amendment of section 56 of Act of 2010

28. Section 56 of the Act of 2010 is amended—

(a) in subsection (1), by the deletion of "credit institution or financial institution that is a",

(b) in subsection (1)(a), by the substitution of "5 years" for "6 years", and

(c) in subsection (2), by the substitution of "A designated person who" for "A credit institution or financial institution that".

Group-wide policies and procedures

29. The Act of 2010 is amended by the substitution of the following section for section 57:

"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

30. The Act of 2010 is amended by the insertion of the following section after section 57:

"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).".

Relationships between certain institutions and shell banks

31. The Act of 2010 is amended by the substitution of the following section for section 59:

"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.".

Amendment of section 62(1) of Act of 2010

32. Section 62(1) of the Act of 2010 is amended by the insertion of the following paragraph after paragraph (a):

"(aa) the Legal Services Regulatory Authority;".

Defence

33. The Act of 2010 is amended by the insertion of the following section after section 107:

"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.".

Obligation for certain designated persons to register with Central Bank of Ireland

34. The Act of 2010 is amended by the insertion of the following section after section 108:

"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), or who carries on the business of a cheque cashing office, 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 Éireann 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) The following particulars shall be entered into the Register in respect of each person registered who carries on the business of a cheque cashing office:

(a) the name of the person;

(b) the address of the registered office of the person;

(c) the addresses at which the business of a cheque cashing office is carried on.

(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) may be 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) The particulars entered in the Register pursuant to this section relating to a person who carries on the business of a cheque cashing office may be removed from the Register where that person ceases to carry on the business of a cheque cashing office 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).

(11) In this section 'Bank' means the Central Bank of Ireland.".

Managers and beneficial owners of private members' clubs - certificates of fitness

35. The Act of 2010 is amended by the insertion of the following sections after section 109:

"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 Éireann 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.".

Prescribed amounts under section 33AQ of Central Bank Act 1942 in respect of certain contraventions

36. The Act of 2010 is amended by the insertion of the following section after section 114:

"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.".

12 OJ No. L 182, 29.6.2013, p. 19

Amendment of Schedule 2 to Act of 2010

37. The Act of 2010 is amended by the substitution of the following Schedule for Schedule 2:

"SCHEDULE 2

Section 24

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

13 OJ No. L 176, 27.6.2013, p. 338
14 OJ No. L 319, 5.12.2007, p. 1

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 I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004[15] 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[16].".

List of factors which suggest potentially lower risk

38. The Act of 2010 is amended by the insertion of the following Schedule after Schedule 2:

"SCHEDULE 3

Section 34A

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

15 OJ No. L 145, 30.4.2004, p. 1
16 OJ No. L 176, 27.6.2013, p. 338

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:

(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.".

List of factors which suggest potentially higher risk

39. The Act of 2010 is amended by the insertion of the following schedule after Schedule 3 (inserted by *section 38*):

"SCHEDULE 4

Section 39

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.

(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;

(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.

(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.".

Repeals

40. The following are repealed:

(a) section 5 of the Act of 2013;

(b) sections 31, 32, 34, 36, 43 and 107 of the Act of 2010.

PART 3

CONSEQUENTIAL AMENDMENTS

Consequential amendments

41. (1) The Investor Compensation Act 1998 is amended—

(a) in section 30(1), in paragraph (vi) (amended by section 120(2) of the Act of 2010) of the definition of "net loss", and

(b) in section 35(3)(c) (amended by section 120(3) of the Act of 2010),

by the substitution of "Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015[17] 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" for "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) Regulation 64(2)(f) of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) is amended by the substitution of "Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015[18] 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" for "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".

17 OJ No. L 141, 5.6.2015, p. 73
18 OJ No. L 141, 5.6.2015, p. 73