International Comparative Legal Guides

Anti-Money Laundering 2021

A practical cross-border insight into anti-money laundering law

Fourth Edition

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (the "**CJA 2010**") contains the principal money laundering offences that exist in Irish law. These provisions criminalise money laundering occurring within Ireland, money laundering occurring outside of Ireland in certain circumstances, attempted money laundering, and the aiding, abetting, counselling or procuring of money laundering that occurs in Ireland from outside of Ireland.

Part 4 of the CJA 2010 also contains a number of other criminal offences. These attach criminal liability to the "tipping off" of persons who may be suspected of (or under investigation for) potential money laundering. There are also provisions which attach criminal liability to regulated financial service providers (and potentially their employees) who fail to report suspicious transactions to the relevant Irish authorities in accordance with the CJA 2010's requirements.

Note there are similar offences related to terrorist financing contained in the Criminal Justice (Terrorist Financing) Act 2005. The anti-terrorist financing regime in Ireland exists alongside the anti-money laundering ("**AML**") regime in Irish law.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

In order to be prosecuted for money laundering, the prosecution would have to prove the accused engaged in one of the following acts in relation to property that is the proceeds of criminal conduct: (i) concealing or disguising the true nature, source, location, disposition, movement; or ownership of the property, or any rights relating to the property; (ii) converting, transferring, handling, acquiring, possessing or using the property; or (iii) removing the property from, or bringing the property into, the State. In addition to engaging in these acts, it must be proven that the accused knew or believed (or was reckless as to whether or not) the property was the proceeds of crime.

Proceeds of criminal conduct means any property that is derived from or obtained through criminal conduct, whether directly or indirectly. Criminal conduct means any criminal offence, which includes tax evasion.

An attempt to commit this offence is also an offence.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Yes, both the principal money laundering and disclosure offences have extraterritorial application under the CJA 2010.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

An Garda Síochána, Ireland's national police force, is the state body responsible for the investigation of all crimes that may occur in Ireland, including money laundering criminal offences. Upon conclusion of an investigation by An Garda Síochána, a file will be prepared for the Office of the Director of Public Prosecutions (the "**DPP**"), a separate and independent state agency. The DPP has a statutory duty to enforce criminal law in the Irish courts and to direct and supervise public prosecutions more generally. The DPP ultimately decides whether or not to proceed with a prosecution in the courts following the conclusion of an investigation by An Garda Síochána.

1.5 Is there corporate criminal liability or only liability for natural persons?

Both forms of liability are possible.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

A person who commits any of the main money laundering offences contained in Part 2 of the CJA 2010 is liable: on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both); or on conviction on indictment, to an (unlimited) fine or imprisonment for a term not exceeding 14 years (or both).

1.7 What is the statute of limitations for money laundering crimes?

The prosecution of summary offences in Irish criminal law must typically commence within a six-month period of the alleged crime, but there is no statutory time limit preventing the prosecution of indicatable offences in Ireland after a certain period of time has elapsed. It is of course possible that a judge may

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decide not to hear a case if there is an excessively long delay in prosecuting an offence, but this is at the discretion of the individual judge.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

Enforcement is only at national level. Irish criminal law is adopted by the Irish national parliament for the entire country, and there are no parallel state or provincial criminal law codes. Furthermore, Ireland only has a single national police force, An Garda Síochána.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

The Criminal Assets Bureau ("**CAB**") is an independent statutory body with the power to use civil forfeiture to seize assets obtained through criminal means under the Proceeds of Crime Act, 1996, as amended. Proceeds of crime means any property obtained or received by or in connection with criminal conduct. CAB may also seize property that it reasonably suspects to be the proceeds of crime and detain it for a maximum of 22 days.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

None that we are aware of. In general, money laundering convictions in Ireland have been taken against criminals engaged in the principal money laundering offences, rather than the financial institutions who may have (inadvertently) facilitated the laundering of the proceeds of crime.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Criminal actions involving money laundering are resolved through the Irish judicial system. Separately, the Central Bank of Ireland (the "**Central Bank**") has wide-ranging powers to take enforcement action against Irish-regulated financial service providers who do not comply with the applicable provisions of the CJA 2010 which require them to have systems in place to identify and detect money laundering and terrorist financing more generally. Records of the fact and terms of settlement with the Central Bank are public.

2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The competent authority for securing compliance with AML requirements by financial institutions is the Central Bank. Different competent authorities are designated for certain professions. Where no competent authority is explicitly designated by legislation to a business, the Minister for Justice, Equality and Law Reform will act as its competent authority.

The AML obligations include the requirements to: carry out a business risk assessment to identify and assess the risks of money laundering and terrorist financing; carry out due diligence on customers to verify their identity; report suspicious transactions and transactions involving certain places; refrain from disclosing information that is likely to prejudice an investigation ("tipping off"); adopt internal policies, controls and procedures, including training, to prevent and detect the commission of money laundering and terrorist financing; and keep records evidencing the procedures applied.

There are also a number of special provisions applying to credit and financial institutions, including requirements to: have systems in place for the retrieval of information relating to business relationships; implement group-wide AML policies and procedures; refrain from setting up anonymous accounts for customers; and refrain from entering into a correspondent relationship with a shell bank.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

Under the CJA 2010, several professional bodies are designated as competent authorities in relation to members of their professions. Designated accountancy bodies are the competent authority for auditors, external accountants, tax advisers, trust or company service providers. The Law Society of Ireland is the competent authority for solicitors. Either the Law Library or the Legal Services Regulatory Authority will be the competent authority for barristers, depending on whether they are a member of the Law Library. The Property Services Regulatory Authority is the competent authority for property service providers.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

Yes. As set out above, a number of professional associations are prescribed by legislation as the competent authority for their members. Competent authorities are required to monitor persons within their authority, and secure the compliance of such persons with their AML requirements.

2.4 Are there requirements only at national level?

There are no subnational requirements. Irish national requirements are in line with EU legislation on AML and firms are required to comply with EU law. Financial institutions are required to comply with guidelines issued by the European Banking Authority ("**EBA**"), the European Securities and Markets Authority or the European Insurance and Occupational Pensions Authority.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? If so, are the criteria for examination publicly available?

As set out above, the Central Bank is responsible for monitoring financial institutions for compliance with AML requirements.

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Other competent authorities are assigned to different sectors. Where no competent authority is explicitly designated by legislation to a business, the Minister for Justice, Equality and Law Reform will act as its competent authority.

An Garda Síochána and the Director of Public Prosecutions will investigate and enforce any criminal sanctions. The Central Bank can also impose administrative sanctions for infringement of AML requirements.

A body called the Money Laundering Steering Committee, of which the Central Bank is a member, has issued a set of Guidance Notes (the "**Guidance Notes**"). The Guidance Notes do not have a statutory basis, although the Central Bank has stated that it will have regard to the Guidance Notes when assessing compliance with the CJA 2010. In September 2019, the Central Bank issued the Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

Yes, FIU Ireland is an office of An Garda Síochána, Ireland's national police force. FIU Ireland and the Irish Revenue Commissioner are responsible for analysing suspicious transaction reports made in compliance with AML requirements.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

There is no statute of limitations for enforcement actions brought by competent authorities.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

Failure to comply with regulatory/administrative AML requirements is a criminal offence. For example, failure to carry out the required AML business risk assessment is an offence which, if prosecuted on indictment, could result in a fine or imprisonment not exceeding five years (or both).

Financial institutions will also be subject to the Central Bank's administrative sanctions procedure. Enforcement under this procedure can result in fines of up to €10 million or 10% of turnover.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

The Central Bank may also impose the following sanctions:

- a caution or reprimand;
- a direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service;
- in the case of a financial service provider not authorised by the European Central Bank ("**ECB**") under the Single Supervisory Mechanism ("**SSM**") Regulation, suspension or revocation of its authorisation;
- in the case of a financial service provider authorised by the ECB under the SSM Regulation, the submission of a proposal to the ECB to suspend or withdraw its authorisation;
- if the financial service provider is a natural person, a direction disqualifying the person from being concerned in the management of a regulated financial service provider;
- if the financial service provider is found to be still committing the contravention, a direction ordering the financial service provider to cease committing the contravention; and
- a direction to pay to the Central Bank all or a specified part of the costs incurred by the Central Bank in holding the inquiry and in investigating the matter to which the inquiry relates.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Yes, criminal sanction is possible. For example, failure to comply with the requirement to carry out a business risk assessment is a criminal offence publishable on conviction of a fine and/or imprisonment of up to five years.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

The administrative sanction process and the process for appeal to the Irish Financial Services Appeals Tribunal are set out in the Central Bank Act 1942. The Central Bank has also published an Outline of the Administrative Sanctions Procedure, which is available on the Central Bank's website.

Outcomes of penalty actions by the Central Bank are public. Most administrative sanctions processes end in a settlement agreement between the Central Bank and the financial service provider, which is also published on its website.

We are not aware of any instance in which a financial institution has challenged AML penalty assessments in judicial or administrative proceedings.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.

Financial institutions that are subject to AML requirements include banks, insurers, providers of foreign exchange services, investment firms and insurance intermediaries.

Certain financial activities also bring firms within the scope of the AML requirements. These requirements include: deposit taking; lending; financial leasing; payment services; providing guarantees; trading in money market instruments, foreign exchange, financial futures and options, exchange and interest-rate instruments, and transferable securities; provision of services related to securities issues; providing advice on capital structure, industrial strategy and related questions and providing advice or services relating to mergers and the purchase of undertakings; money broking; portfolio management and advice; safekeeping and administration of securities; credit reference services; safe custody services; and issuing electronic money.

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Other businesses that must comply include trust or company service providers, property service providers, casinos, private members' clubs which carry on gambling activities and any person trading goods in cast where a transaction is of a total value of at least €10,000. Professional activities that are subject to AML requirements include auditors, external accountants, tax advisers and certain legal professionals.

The relevant obligations are set out in question 2.1 above.

3.2 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry?

The fifth EU Money Laundering Directive brings virtual asset service providers ("**VASPs**") within the scope of the AML requirements. The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 implements this into Irish law. VASPs are defined as firms that provide the following services: exchange between virtual assets and fiat currencies; exchange between one or more forms of virtual assets; transfer of virtual assets, that is to say, where a transaction is conducted on behalf of another person that moves a virtual asset from one virtual asset address or account to another; custodian wallet provider; and participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both. VASPs must register with the Central Bank and are subject to ongoing AML obligations.

3.3 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

Although not a legislative requirement, generally, a compliance programme will be imposed on financial institutions as a condition of their authorisation.

3.4 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

There are no specific requirements dealing with recordkeeping or reporting large currency transactions.

3.5 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

There is no such reporting requirement.

3.6 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

There is no such requirement.

3.7 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

The requirement to perform a customer risk assessment (distinct from the business risk assessment) applies in respect of all customers. The customer risk assessment must have regard to the business risk assessment, as well as the purpose of an account or relationship, the level of assets to be deposited, the size of transactions, the regularity of transactions or duration of the business relationship. Firms must identify customers and persons acting (or purporting to act) on behalf of the customer. This identification must be based on documents or information that it has reasonable grounds to believe are reliable. This exercise must also be carried out in relation to the beneficial owners of the customer.

Simplified customer due diligence ("**CDD**") may be applied where the customer presents a low risk. The basis for the decision to apply simplified CDD must be retained, and the relationship must be subject to ongoing monitoring to enable the detection of unusual or suspicious transactions.

Enhanced CDD must be applied where the customer presents a high money laundering risk. This includes customers established or residing in a high-risk third country. However, enhanced CDD does not apply to a customer that is a branch or majority-owned subsidiary of an EU-established entity that is compliant with that entity's group-wide policies and procedures. Enhanced CDD must also be applied to politically exposed persons ("**PEPs**").

The definition of "monitoring" now includes a requirement to keep customer's CDD up to date. There is also a requirement to conduct CDD at any time where the AML risk warrants its application, including a situation where the customer's circumstances have changed.

Firms are required to examine complex or unusually large transactions or unusual patterns and to apply enhanced monitoring accordingly.

3.8 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

Credit institutions and financial institutions are prohibited from entering into a correspondent relationship with a shell bank.

3.9 What is the criteria for reporting suspicious activity?

Suspicious transactions must be reported where a designated person knows, suspects or has reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing.

3.10 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

Disclosures within an undertaking or between different businesses in the same group are provided protection against being classed as "tipping off".

The EBA has issued guidelines on cooperation and information exchange between competent authorities supervising credit and financial institutions in the EU. Ireland complies with these guidelines.

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3.11 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

There is publicly available information accessible through the Companies Registration Office ("**CRO**"). However, companies are only required to file information about ownership annually and, therefore, the information may be out of date.

Information can also be obtained through the Central Register of Beneficial Ownership ("**RBO**"). The RBO is the central repository of statutory information required to be held by relevant entities in respect of the natural persons who are their beneficial owners/controllers, including details of the beneficial interests held by them.

The Central Bank also maintains a Beneficial Ownership Register for Certain Financial Vehicles ("**CFVs**"). Currently, the CFVs on the Register are: Irish Collective Asset-Management Vehicles; unit trusts; and credit unions. Two further CFV categories will be available on the register from 1 September 2021: Investment Limited Partnerships; and common contractual funds.

3.12 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions?

Payment service providers are required to ensure that a transfer of funds is accompanied by the following information on the payer: name of the payer; payer's payment account number; and the payer's address, official personal document number, customer identification number or date and place of birth. Payment service providers must ensure that a transfer of funds is also accompanied by the following information on the payee: name of the payee; and the payee's payment account number.

3.13 Is ownership of legal entities in the form of bearer shares permitted?

No, the concept of bearer instruments was prohibited in Irish company law by the Companies Act 2014.

3.14 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

Payment services providers must comply with additional requirements set out in payment services legislation.

3.15 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

There are no specific AML requirements applicable to such business sectors or geographic areas.

3.16 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

The European Commission has adopted an action plan designed to strengthen the EU's AML framework. The action plan builds on six pillars: effective implementation of existing rules; a single EU rulebook; EU-level supervision; a support and cooperation mechanism for FIUs; and better use of information to enforce criminal law and strengthen the international dimension of the EU AML framework. The action plan has not yet been implemented.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (No. 3) implements the fifth EU Money Laundering Directive in Ireland and was enacted this year.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

The most recent FATF evaluation rates Ireland as compliant, largely compliant or partially compliant in all 40 technical compliance categories. No category is rated as non-compliant.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

Ireland is subject to FATF evaluation. A full evaluation was carried out in 2017. The most recent follow-up report and technical compliance re-rating is dated November 2019.

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

Irish statutes and statutory instruments are available at http://www.irishstatutebook.ie in English. The Central Bank also provides guidance on its website in English.

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