

Matheson

April 2021

AML Toolkit



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Introduction

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

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

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

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

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

- (1) we have prepared a consolidated version of the 2010 Act reflecting the changes to same brought about by the 2021 Act¹. This can be viewed as **a clean document**. We have also included **a marked up version** which enables you to see, at a glance, the changes to the impacted sections since the 2018 Act;
- (2) we have included a “Highlights” document which details some of the key changes brought about by the **2018 Act** and the **2021 Act**, which Matheson believes our clients should be aware of;
- (3) we take a more in depth look into **Section 108A** and Schedule 2 Firms and what it means for our heretofore unregulated clients - the registration process, the obligations which must be met along with an analysis on same; we have also included the CBI Schedule 2 Registration Guidance for Anti-Money Laundering;
- (4) we provide an **analysis** of the finalised **Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector as released on 6 September 2019**;
- (5) we provide an overview of the recent European and International developments in ML / TF;
- (6) finally, we include **Matheson’s AML Timeline** which highlights the key developments in the recent past as well as anticipated developments on the horizon in the AML space.

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

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

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

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CONSOLIDATED VERSION OF THE 2010 ACT

Insert clean version of consolidation here

MARKED-UP VERSION OF THE 2010 ACT INCORPORATING THE CHANGES BROUGHT ABOUT BY THE 2021 ACT

Insert mark-up version of the consolidation here



4 IRELAND

4.1 Highlights of the 2021 Act

4.1.1 Introduction

As explained in the Introduction to this Toolkit, the 2021 Act, which amends the 2010 Act transposes the 5MLD into Irish law was signed by the President of Ireland on 18 March 2021 and commenced on 23 April 2021².

The 2021 Act largely reflects the legislative outline set out previously, in the 2019 [General Scheme](#), with some changes (e.g., the scheme proposed legislative provisions to support the Criminal Assets Bureau and An Garda Síochána in the administration of their AML/CFT functions by improving their access to bank records in electronic form).

4.1.2 Key Amendments

The 2021 Act effects a number of key changes to Irish AML/CFT law, including the following:

(a) New designated persons in scope

The 2021 Act extends the scope of ‘designated persons’ to include additional categories of businesses including virtual asset service providers (“**VASPs**”), letting agents and high-value art dealers. Please find further information on the [VASP regime](#) below at 4.2.

(b) New obligations on designated persons

The 2021 Act introduces new obligations on ‘designated persons’ to ascertain that information concerning the beneficial ownership of a customer has been entered in the relevant beneficial ownership register, before establishing a business relationship with a customer to which beneficial ownership regulations apply (such as a company or a trust). A designated person must not engage in that business relationship until the relevant information is obtained. By way of derogation however, a financial institution is permitted to open an account ahead of obtaining such information but cannot allow any transactions on that account.

(c) CDD on e-money instruments

The 2021 Act lowers the value threshold for conducting customer due diligence (“**CDD**”) on e-money instruments from €250 to €150. The existing prohibition on setting up anonymous passbooks applicable to financial and credit institutions has been amended to include safe-deposit boxes.

(d) Enhanced CDD for customers in high-risk countries

The 2021 Act introduces enhanced CDD measures for customers in high-risk third countries. Such measures involve obtaining “*additional information*” (as defined) on the customer, beneficial owner(s), their sources of wealth, the intended nature of the business relationship, and completed or intended transactions.

² S.I. No. 188 of 2021. All sections other than section 8 came into effect on 23 April 2021. Section 8 came into effect on 24 April 2021.

(e) Politically Exposed Persons

The 2021 Act amends the existing politically exposed person (“**PEP**”) requirements, including broadening the scope of the definition of PEP to include “*any individual performing a prescribed function*”. Under the 2021 Act, the Minister for Justice and Equality, with the consent of the Minister for Finance, is empowered to issue guidelines to competent authorities in respect of the functions in the State considered to be “*prominent public functions*”.³

(f) FIU to provide ‘timely feedback’ to designated persons

The 2021 Act provides that the Financial Intelligence Unit shall provide timely feedback to a designated person who is required to make a report on the effectiveness of and follow-up to reports made.

4.1.3 Elements of 5MLD yet to be transposed

While the 2021 Act transposes the majority of 5MLD into Irish law, there are provisions of the Directive which have yet to be transposed. These include:

(a) A Central Register for Express Trusts

5MLD places an obligation on Member States to create a publicly available central register of beneficial ownership for express trusts (irrespective of whether it generates tax consequences) whose trustees are resident in Ireland or which are otherwise administered in Ireland. The establishment of a central register for express trusts will require the introduction of a separate statutory instrument by the Department of Finance.

(b) A Central Register of Bank Accounts

5MLD requires Member States to put in place by national centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification of any natural or legal persons holding or controlling payments accounts, bank accounts and safety deposit boxes. It is expected that the Department of Finance will introduce legislative amendments to give effect to this provision in due course.

4.1.4 VASPs

Of particular note, in respect of the amendments brought about by the 2021 Act, are the provisions which bring VASPs within the scope of Ireland’s AML regime for the first time and also creates a bespoke regulatory framework for such firms. These changes, including the definition of “Virtual Asset Service Provider” used in the 2021 Act, go further than the minimum requirements of 5MLD and seek to bring Irish law on VASPs into line with the [FATF Recommendations on the regulation of VASPs](#) first published in June 2019.

The 2021 Act introduces a number of new definitions into the existing AML regime, such as:

- (1) **Virtual Asset**, meaning a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, but does not include digital representations of fiat currencies, securities or other financial assets;
- (2) **Virtual Asset Service Provider**, meaning a person who, by way of business, carries out one or more of the following activities for, or on behalf of, another person:
 - exchange between virtual assets and fiat currencies;
 - exchange between one or more forms of virtual assets;
 - transfer of virtual assets, that is to say, conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
 - custodian wallet provider; and/or
 - participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset or both;

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

³ These guidelines have yet to be published, as at the date of writing.

- (3) **Custodian Wallet Provider**, meaning an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.

Section 25 of the 2021 Act inserts a Section 106E into the 2010 Act, requiring firms providing services relating to virtual assets to register with the Central Bank of Ireland (“**Central Bank**”) for AML purposes in order to carry on such activities. This will mean that the VASP will be subject to the same AML requirements as other designated persons.

4.1.4.1 Registration as a VASP

Section 106F of the 2021 Act provides that a firm carrying out virtual asset services immediately prior to the enactment of the provisions, will be taken to be registered to carry on such services until the Central Bank is in a position to grant / refuse an application to register the firm, provided that the firm seeks registration for AML purposes no later than 3 months following the enactment of these provisions. This allows existing firms providing virtual asset services to continue to provide these services following the commencement of the 2021 Act into law, without any business interruption, up until the point of the Central Bank’s acceptance of its registration.

The 2021 Act also outlines the factors the Central Bank may consider in deciding to refuse a firm’s registration application. These include a failure to satisfy the Central Bank:

- of the firms’ ability to comply with its obligations as a designated person;
- the firm will have in place sufficient resources and procedures to carry on business as a virtual asset service provider; and
- the firm can manage and mitigate the risks of engaging in activities that involve the use of anonymity enhancing technologies or mechanisms that obfuscate the identity of the sender, recipient, holder or beneficial owner of a virtual asset.

Furthermore, a registered firm providing virtual asset services will be required to include a regulatory disclosure statement in all of its advertisements for services, stating that the holder of the registration is registered and supervised by the Central Bank for AML and CFT purposes only.

4.1.4.2 Who does the registration requirement apply to?

Section 106E of the 2021 Act extends the registration obligation to “all persons carrying on business” as a VASP. Interestingly, the 2021 Act does not make any express exception for firms that may already be authorised by the Central Bank under other legislative frameworks (for example as e-money institutions or payment institutions).

On 16 March 2021, the Central Bank published the [details of the new process for firms to apply for registration with the Central Bank](#). Firms providing virtual asset services will be required to register with the Central Bank for AML/CFT purposes only, in accordance with the 2021 Act and the Central Bank’s supervision remit in respect of AML/CFT compliance by such firms will commence from the date on which the 2021 Act takes effect. To assist firms in preparing for registration, the Central Bank has provided a sample VASP Registration Form. Although the Registration Form is not in final form at the time of writing, firms applying for AML/CFT registration with the Central Bank are likely to be required to submit the Registration Form together with supporting documentation including:

- a copy of the applicant firm’s AML/CFT policies, procedures and risk assessment;
- particulars of all direct and indirect ownership and management in the applicant firm;
- individual questionnaires to assess the fitness and probity of all individuals who are proposed to hold pre-approved control functions in the firm;
- a business plan setting out the firm’s proposed activities, transaction flows, projections and any outsourcing arrangements envisaged;
- details of the firm’s proposed organisational structure, AML/CFT reporting lines and staffing arrangements; and
- details of the firm’s AML/CTF training plan.

If a firm that is currently authorised by the Central Bank for prudential and/or conduct of business services is providing, or plans to provide, virtual asset services, this firm is obliged to register with the Central Bank in relation to these activities. Firms providing virtual asset services will be “*designated persons*” for the purposes of the 2010 Act and will be required to comply with the AML/CFT obligations contained under Part 4 of the 2010 Act.

4.1.4.3 Other relevant developments

The 2021 Act comes at a time of other significant regulatory developments for crypto-asset service providers in the European Union (the “**EU**”). In September 2020, the Commission published its proposal for the establishment of an EU-level regime for crypto-assets, the Market in Crypto-Assets Regulation (“**MiCA**”). MiCA will seek to bring all crypto-assets within the remit of EU financial services regulation for the first time. This regime will likely involve the creation of a more formal authorisation process for unregulated subsidiaries that are providing virtual asset services, and importantly, enable the passporting of these rights across the EEA. It is therefore likely that many firms requiring registration as a VASP under Irish law will eventually either be required to, or seek to, obtain an authorisation under the more useful MiCA framework once it is finalised at EU level in the future. For more details on the MiCA, please see Matheson’s Insight [here](#).

4.2 Highlights of the 2018 Act

4.2.1 Introduction

The **2018 Act**⁴ was commenced with effect from 26 November 2018 transposing the 4MLD into Irish Law (see our update on 4MLD [here](#))⁵.

The 2018 Act adopts a more pronounced risk-based approach that requires businesses to have the appropriate policies and procedures in place to determine the risks attaching to each customer or transaction, on a case-by-case basis. The key practical change is that tailoring the control environment to each business is more important than ever to demonstrate legislative and regulatory compliance.

Below are some of the key amendments which we believe clients need to be aware of.

4.2.2 Key Amendments

4.2.2.1 Risk Assessment

Chapter 1 A of the 2010 Act requires that a business risk assessment is carried out by a Designated Person of the risk of money laundering and terrorist financing (“**ML/TF**”) inherent in carrying on that business, and also requires the application of such a risk assessment in the context of carrying out CDD.

The business risk assessment must include factors such as customer base, products and services, geographic risk, transactions and delivery channels. It must also take account of the details of the **National Risk Assessment** for Ireland, and any guidance issued by the Central Bank and any guidelines issued by the relevant European Supervisory Authorities⁶ (“**ESAs**”), depending on the industry in question.

A business risk assessment must be approved by senior management, documented, kept up to date and records must be available to the Central Bank on request. Failure to comply with Chapter 1 A is a criminal offence punishable by an unlimited fine and up to 5 years in prison.

4.2.2.2 Customer Due Diligence

Risk Assessment

The requirement to perform a customer risk assessment (distinct from the business risk assessment) now applies in respect of all customers. The customer risk assessment must have regard to the business risk assessment, as well as the purpose of an account or relationship, the level of assets to be deposited, the size of transactions, the regularity of transactions or duration of the business relationship. Additionally, **Schedule 3** of the 2010 Act sets out a non-exhaustive list of factors that may indicate a lower financing ML/TF risk. Conversely, **Schedule 4** sets out a list of factors that may indicate a higher ML/TF risk.

Simplified CDD

In accordance with the risk-based approach of the 4MLD, simplified CDD may be applied where the customer presents a low risk of ML/TF. The basis for the decision to apply simplified CDD must be retained and the relationship must be subject to ongoing monitoring to enable the detection of unusual or suspicious transactions.

Enhanced CDD

Enhanced CDD must be applied where the customer presents a high risk of ML/TF. This includes customers established or residing in a high-risk third country. However, enhanced CDD does not apply to a customer that is a branch or majority owned subsidiary of an EU established entity that is compliant with that entity's group-wide

4 Section 32 in respect of the Legal Services Regulatory Authority, as the competent authority for solicitors and barristers, has not yet been commenced. On 16 July 2020, the European Court of Justice (the “**ECJ**”) ordered Ireland to pay a fine of €2 million to the Commission, due to Ireland's failure to fully transpose MLD4 on time.

5 This link is to the most up to date NRA as at the time of publication of this document, firms should ensure that this is still appropriate, if relying on this link into the future.

6 The ESAs includes the European Banking Authority (“**EBA**”), the European Securities and Markets Authority (“**ESMA**”) and the European Insurance and Occupational Pensions Authority (“**EIOPA**”).

policies and procedures adopted in accordance with 4MLD. Enhanced CDD must also be applied to politically PEPs, regardless of residence (ie, Irish-based PEPs are no longer exempt).

Failure to comply with enhanced CDD requirements is now a criminal offence punishable by an unlimited fine and up to five years in prison.

Monitoring

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

Complex Transactions and Unusual Transactions

The 2018 Act includes a requirement to examine complex or unusually large transactions or unusual patterns and to apply enhanced monitoring accordingly.

4.2.2.3 Policies and Procedures

The topics which must be addressed by policies and procedures are now more extensive including: the identification, assessment and management of risk factors; CDD measures; monitoring transactions and business relationships; reporting; record keeping measures; systems to identify emerging risks; and monitoring and managing the internal communication of such policies. Regard must also be had to any **guidelines issued by the Central Bank**.

Once again, policies and procedures must be approved by senior management and kept under review.

4.2.2.4 Registers of Beneficial Ownership

The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (“**the Prior Regulations**”) requires that most Irish companies must gather information on individuals who are their underlying beneficial owners. The European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 imposes similar obligations on Irish trusts.

On 26 March 2019, the Department of Finance published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 which came into force on 22 March 2019. The 2019 Regulations operate to repeal, restate and expand the scope of the Prior Regulations⁷.

The obligation on such corporate and other legal entities to gather information and to establish and maintain a beneficial ownership register remains (a “**Beneficial Ownership Register**”). However, the 2019 Regulations also require that, such entities must also file their beneficial ownership details on a central beneficial ownership register (the “**Central Register**”). This requirement came into operation on 22 June 2019.

The Irish corporates and other legal entities which were in scope under the Prior Regulations are the entities falling within the scope of the 2019 Regulations and are called “relevant entities”. Irish companies continue to be excluded from the scope of the 2019 Regulations if they are listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU or are already subject to equivalent international standards which ensure transparency of ownership information. Irish incorporated subsidiaries of listed companies are not exempt.

The 2019 Regulations were themselves modified by the European Union (Modification of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (the “**2020 Regulations**”). The 2020 Regulations oblige the Central Bank to establish a central beneficial ownership register for certain kinds of regulated financial service providers established in Ireland.

The Central Bank has a dedicated area on its **website** containing:

- general information on the register;
- FAQs in relation to the register and how entities can submit the required information; and
- secure return upload facility for entities submitting their information.

7. See Matheson’s update on The Central Register of Beneficial Ownership – It’s Time for Corporates to Get Ready.

Currently, the entities contained on the Central Register maintained by the Central Bank are:

- Irish Collective Asset-Management Vehicles (“ICAVs”)
- Unit Trusts
- Credit Unions

Investment Limited Partnerships and Common Contractual Funds will be added to the Central Register from 1 September 2021.

4.2.3 **Enforcement**

The Financial Intelligence Unit of the Garda Síochána is referred to as ‘FIU Ireland’ within the 2018 Act and has been empowered to carry out all the obligations of an EU Financial Intelligence Unit under 4MLD. This change grants formal recognition to the unit of An Garda Síochána which carries out this role. FIU Ireland will have access to national central registers of beneficial ownership, and has gained new powers to request information from “any person” including Competent Authorities (ie, regulatory bodies) and the Revenue Commissioners. FIU Ireland has also been empowered to share information with other EU Fills.

4.2.4 **European Union (Money Laundering and Terrorist Financing) Regulations 2019**

The **European Union (Money Laundering and Terrorist Financing) Regulations 2019** (the “**2019 Regulations**”) entered into force on 18 November 2019, amending the 2010 Act to give further effect in Irish law to 4MLD.

Whistleblowing

The 2019 Regulations amend the 2010 Act by inserting a section 54(6A) into the 2010 Act, which provides that a “designated person” within the meaning of the Act shall have in place appropriate procedures for their employees (or individuals in a comparable position) to report a contravention of the 2010 Act internally, through a specific, independent and anonymous channel. Said procedures should be proportionate to the nature and size of the designated person concerned. Section 54 (6A) of the 2019 Regulations transposes Article 61(3) of 4MLD into Irish law.

Failure to comply with the new section 54(6A) carries a fine and/or up to five years in prison, following a conviction on indictment.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

4.3 Schedule 2 Firms

Introduction

The commencement of **Section 108A** of the 2010 Act, which transposed the 4MLD into Irish law, on 26 November 2018, introduced a statutory requirement that obliges many firms, providing otherwise unregulated financial services in Ireland, to register with the Central Bank for AML purposes.

While the 2010 Act has always applied to unregulated financial service providers, the introduction of Section 108A was intended to close a gap in the 2010 Act, whereby unregulated financial services firms were not, ever required to register with a competent authority such as the Central Bank about their AML compliance and / or provide legal declarations confirming that they were in fact observing the requirements of 2010 Act.

In high level terms, the obligation to register with the Central Bank under Section 108A may extend to any legal or natural person:

- (a) that falls within the revised definition of a “financial institution” under the 2010 Act; or
- (b) who carries on the business of a “cheque cashing office”.

However, there are certain exemptions from the obligation to register (discussed in greater detail below) that may be relevant.

What Kind of Activities will trigger the Requirement to Register under Section 108A of 2010 Act?

The definition of ‘financial institution’ in the 2010 Act has been expanded by cross referring to certain activities listed in numbers 2 to 12, 14 and 15 of **Schedule 2** of 2010 Act. The activities in Schedule 2 that can trigger the registration requirement under Section 108A can be found here.

If a firm offers any of the above services and is not otherwise authorised or licenced to carry on business by the Central Bank, it will need to register with the Central Bank as a ‘Schedule 2 firm’ under Section 108A of 2010 Act.

What Does this Mean in Practice?

Many of the activities listed in Schedule 2 would ordinarily require an authorisation under existing Irish financial services law and so the Section 108A registration obligations do not apply to firms that are already regulated by the Central Bank. However, because some of the activities listed above are not currently, in and of themselves, regulated activities under Irish law, Section 108A is likely to have a significant impact on certain types of financial service firms that have not required any regulatory authorisation from the CBI to date. Firms who lend only to SMEs, or who provide financial leasing or factoring services to SMEs, are just two examples of the types of unregulated financial service providers operating in the Irish marketplace that will be caught by Section 108A.

A failure to register with the Central Bank under Section 108A when required to do so is an offence. A conviction on indictment may be punished by an unlimited fine or imprisonment not exceeding 5 years (or both).

Are there any other Exemptions from the Obligation to Register under Section 108A?

The main exemption is that if a firm is already authorised by or registered with the Central Bank under existing Irish financial services law then they do not need to re-register under Section 108A.

There is also an exemption for firms who only trade on own account in certain types of financial instruments and whose only customers (if any) are members of the same group as that firm.

Finally, there is also a “de minimis” exemption for firms which provide Schedule 2 activities on a very small scale and in a manner which is ancillary to its main business activity. There are quite a number of criteria that need to be cumulatively satisfied in order to rely on this particular exemption and this exemption is likely to be difficult to avail of in practical terms, as a result.

What Does Registration Involve?

The registration process is relatively straightforward and involves the completion of an **excel**-based spreadsheet with details on the firm, its business model and financial position, etc. This is then submitted by email to the

Central Bank. SPVs must also disclose whether they have Section 110 status under the Taxes Consolidation Act 1997 and / or any other reporting obligations to the Central Bank. Further, the Central Bank has released a Schedule 2 registration Guidance. This can be found [here](#).

Importantly, the form requires two directors of the firm to declare that it has an appropriate AML control framework in place to ensure it can comply with the requirements of 2010 Act.

Once registered, the firm's details will be recorded in a register maintained by the Central Bank. To date the Central Bank has not published this register on its website, as is commonly the case for other types of regulatory authorisations.

Repeat registration is not required and firms are only required to contact the Central Bank by email to update their registration if any material events occur. [See the list of post-registration changes here](#).

Commentary

Since November 2018, Schedule 2 Firms have been under a legal obligation to register with the Central Bank for AML purposes and confirm that their business observes the requirements of 2010 Act. In practice, in order to provide the confirmations required by the registration form, firms need to ensure that they (to the extent they are not already in place) have robust AML policies and procedures in place. Compliance with these requirements should not be approached from a "good is good enough" or a "nearly compliant" point of view. Full compliance is what is required by the Central Bank.

Although the registration process under Section 108A is relatively straightforward, unregulated firms must be conscious that they will need to continuously monitor and enhance the systems and controls they use to combat the risk of money laundering and terrorist financing in their business. This is a significant compliance challenge for any business, regardless of their size or scale.

AML compliance amongst regulated financial service providers has been a key focus for the Central Bank's Enforcement Division in recent years and some [record fines](#) have been levied on regulated firms who have been found to have inadequate policies and procedures in place.

Next Steps

Firms should consider whether they can rely on one of the exemptions above and if not, prepare to register with the Central Bank under Section 108A as soon as possible. As part of this, they must review their AML policies and procedures to ensure they are in keeping with the requirements of the 2010 Act and update where necessary.

4.4 **Schedule 2 Firms - Dear CEO Letter issued December 2020**

On 16 December 2020, the Central Bank issued a “Dear CEO” letter (the “**Letter**”) to Schedule 2 Firms highlighting its concerns with low levels of compliance with AML obligations. The Letter also sets out the Central Bank’s findings from its supervisory engagements with firms in accordance with Part 4 of the 2010 Act, which includes conducting inspections and holding ad hoc meetings with registered firms, as well as the Central Bank’s expectations in this regard. The Central Bank’s expectations addressed to Schedule 2 firms are, in our experience, entirely consistent with the regulator’s approach to AML / CTF compliance in other sectors and for compliance professionals with responsibility for AML / CTF nothing contained in the Letter will be a surprise.

Board Oversight and Governance

As with many “Dear CEO” letters, the Central Bank’s first observation was addressed to boards. This is particularly relevant for the SPVs which were the focus of the Central Bank’s review given that these vehicles have no staff so it falls on the boards to ensure compliance. Firms are expected to ensure that AML / CTF is a regular agenda item at board meetings, and ensure a framework is in place to identify and adopt updates in the relevant legislation for ongoing compliance.

It is not mandatory for a Schedule 2 firm to appoint a Money Laundering Reporting Officer but it is considered to be best practice. If appointed, they (or their equivalent who has been clearly allocated AML responsibilities by the firm) should actively report to the Board on a frequent basis. It is recommended that this would include on relevant outsourced arrangements, where the Board does not have direct oversight, and the firm must be able to evidence that they are monitoring the progress of management action points arising from these arrangements. It may be that contracts with service providers will need to be revised to provide the support necessary to meet the applicable AML / CTF obligations.

Risk Assessments

Where a firm relies on a third party, or another entity within a group of companies, to carry out its AML/CTF business wide risk assessment on its behalf, it must relate to risks and controls associated with the firm specifically, rather than focus on those of the wider group. The objective should be a focussed risk assessment not a generic one. This risk assessment should be refreshed annually, and approval by the board must be formally evidenced.

Policies and Procedures

Firms must ensure to have documented AML / CTF policy and procedures in place, that are tailored to the specific business activities and associated risk factors of the firm, and which are consistent with Irish legislative requirements. Similar to the point on risk assessments, this finding comes from the Central Bank’s finding too many firms using “cookie cutter” precedents derived from group with not enough adapted to the specific circumstances of the Schedule 2 firm itself.

Customer Due Diligence (“CDD”)

Firms must consider the identity of their customers and must conduct appropriate due diligence in accordance with the level of risk involved with their customers. The Letter noted that many firms were inconsistent in determining who were their customers. This comment seemed particularly focussed on firms that raise capital from investors through loan notes and then subsequently lend that capital to third party borrowers as part of an investment strategy. There are broad obligations in Section 54 of the 2010 Act to prevent and detect money laundering and terrorist financing but the detailed due diligence obligations in section 33 only apply to customers. It is critical for firms to correctly distinguish between customers and others in order to correctly understand their obligations under the 2010.

Politically Exposed Persons (“PEPs”) and Financial Sanctions (“FS”)

Firms should ensure that the policies and procedures are in place to identify and escalate PEP and FS alerts, including the process and appropriate reporting lines to be followed. Where screening tools are relied upon, firms

should ensure appropriate oversight and ongoing assurance testing and monitoring is in place to ensure they are fit for purpose. Suspicious Transaction Reporting (“STR”) Firms should ensure their policies and procedures include details for the escalation of suspicions, including the personnel to whom suspicions should be raised / reported. If AML responsibilities are outsourced to third parties, the firm should ensure the third party is subject to the appropriate level of oversight. The level of STRs being made by the firm should be regularly reported to the Board of Directors.

Training

Training materials should be tailored to the business of the firm and be reflective of the standards and practices the firm should be exhibiting to meet its obligations. These materials should be kept up-to-date and in line with Irish legislative requirements.

Conclusion

The focus of the Central Bank’s guidance and expectations in the Letter centres around Irish SPVs, who have registered as Schedule 2 firms and have failed to put in place bespoke AML policies and procedures, an AML business-wide risk assessment, or relevant tailored outsourcing agreements for AML. Firms using generic, ‘off the shelf,’ policies and outsourcing agreements fail to take into account the specific business activities and risk factors faced by the firm, and will face Central Bank scrutiny in the event of any investigation conducted following registration as a Schedule 2 firm. These firms should carefully take time to design more tailored AML compliance arrangements prior to registration with the Central Bank, and ensure these arrangements are updated and under constant review. For SPVs the support of third party service providers will undoubtedly be critical in enabling boards to demonstrate compliance in a way which meets the expectations of the Central Bank.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

4.5 **Guidance for Completion of the Schedule 2 Anti-Money Laundering Registration Form May 2019**
Insert Guidance for Completion of the Schedule 2 Anti-Money Laundering Registration Form May 2019

4.6 Central Bank Suspicious Transaction Reports

The 2010 Act requires designated persons to monitor customer transactions to identify suspicious transactions. The level of monitoring carried out is on a risk basis and therefore increased monitoring is required for more complex transactions.

Suspicious transaction reports (“**STRs**”) should be made to the FIU and to the Office of the Revenue Commissioners (“**Revenue**”).

Since September 2020, STRs must be submitted to Revenue using Revenue’s Online Service (“**ROS**”) only. To submit an STR online, the designated person must first register for the ROS service and obtain a digital certificate and then register for STR Reporting and request a sub user certificate for all Money Laundering Reporting Officers (“**MLROs**”).

Section 54 of the 2010 Act requires a designated person to adopt policies and procedures to prevent and detect the commission of ML/TF. The Central Bank has noted its expectation that as part of this requirement, all designated persons are registered with ROS.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

4.7 New Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector

Introduction

The enactment of the 2018 Act necessitated the Central Bank to issue **Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector** (“**AML Guidelines**”) in September 2019.

The AML Guidelines supersede the previous “Core Guidelines” last issued by the Department of Finance in 2012 and supplement **Part 4** of the 2010 Act and assist firms in better understanding their obligations under the 4MLD, transposed through the 2018 Act.

Speaking at the launch of the AML Guidelines, Derville Rowland, Director General, Financial Conduct at the Central Bank, provided an insight into the purpose of the AML Guidelines:

“The purpose of the guidelines we are launching this morning is to help firms to understand their obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 which was updated last year when the Fourth EU Anti-Money Laundering Directive was transposed in to Irish law.

Our message to firms today is that they must adopt a risk-based approach to fulfilling their obligations and ensure that their controls, policies and procedures are fit for purpose, up-to-date, tested, and kept under constant review and scrutiny”

Commentary

CDD

It is notable that the AML Guidelines are much more high level (and therefore far less detailed) than the previous Core Guidelines on the subject of CDD. In particular, there is no longer a prescriptive list of acceptable CDD documentation, firms should instead maintain their own lists of documents which they will accept for the purposes of CDD.

The rationale given by the Central Bank for this approach is that it wants the AML Guidelines to keep pace with “technological developments” and not to be overly reliant on “checklist” approaches to CDD. This is consistent with the general move towards a more holistic, risk based approach under the reforms introduced by 4MLD.

It must also be borne in mind that the EBA has published **revised guidelines** on CDD which are sector-specific.

Business risk assessments

There is some helpful guidance in the AML Guidelines on the business-wide risk assessments firms are expected to carry out under the provisions contained in Section 30A of the 2010 Act. A business-wide risk assessment should assist firms to understand where they are exposed and which areas they should prioritise to combat ML / TF.

Firms should rely on their business-wide risk assessment of the risks inherent in their business to in turn inform their risk-based approach to the identification and verification of an individual customer. This in turn should drive the level and extent of due diligence appropriate to that customer.

Governance and record-keeping

The chapters in the AML Guidelines on governance and record-keeping are quite helpful in that they concisely summarise the Central Bank’s main expectations in these two areas where the 2010 Act is not particularly detailed. As a result, these are two areas where firms regularly fall down during onsite AML inspections. The guidance in the AML Guidelines will give firms a better overview of what the Central Bank requires in practice, and this should ensure fewer cases of enforcement action due to AML deficiencies.

Training

The AML Guidelines state that all employees, directors and agents of a firm must be trained in relation to the firm's AML and CFT policy. Further, firms must provide training which is specific to the AML/CFT role that a member of staff is engaged in.

The AML Guidelines have been amended in relation to training assessments. The Guidelines state that *"Firms should ensure that the AML/CFT training provided includes an assessment or examination during the training session, which should be passed by all participants in order for the AML/CFT training to be recorded as completed. If the training does not contain an assessment or examination, Firms must be in a position to demonstrate effectiveness of training and staff understanding in relation to same."* This suggests that firms should carry out some assessment of those participating in its AML/CFT training programme.

PEPs

The AML Guidelines have been updated in relation to PEPs. The AML Guidelines now require firms to allocate responsibility for the approval of PEP relationships. The AML Guidelines state that a firm must ensure that: *"the approval of a PEP relationship is conducted by individuals who are appropriately skilled and empowered"*. This process must be subject to appropriate oversight.

Source of wealth and source of funds of PEPs

Further, the AML Guidelines provide that: *"firms should verify the source of wealth and the source of funds based on reliable and independent data, documents or information."* This differs from the draft Guidelines where independent verification was necessary only where a "particularly high" money laundering or terrorist financing risk could be attributed to a PEP relationship.

Topics which require further guidance

While the Central Bank has made the AML Guidelines more succinct in order to encourage the move towards a risk based approach to AML, there are still certain topics where it would be helpful if the Central Bank articulated its regulatory expectations, including:

- the types of AML due diligence that should be carried out whenever a firm is proposing to acquire a portfolio of business from another regulated financial service provider;
- the obligations that apply to EEA branches of Irish authorised firms (e.g. in terms of the degree of management oversight by the Irish firm, and clear guidance as to which authorities branches should file suspicious transaction reports to); and
- further detail on what it expects in local and group-wide policies and procedures.

The Central Bank has confirmed its AML Guidelines are a "live" document and will be amended from time to time in future. Both Seana Cunnigham and Tommy Hannfin of the Central Bank have indicated that the AML Guidelines will be updated in light of the 2021 Act. It will be interesting to see to what extent, if any, they also look to update them to have regard to the EBA Revised Guidelines.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

4.8 **Central Bank Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector September 2019**

Insert Central Bank Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector September 2019

4.9 Matheson Webinar on AML developments – 30 March 2021

On 30 March 2021, Matheson held a webinar entitled “AML – what’s changed – what’s proposed?” discussing recent developments in AML, including the transposition of the 5MLD and the EBA guidelines on ML / TF risk factors. We were joined by **Tommy Hannafin, Head of the Anti-Money Laundering Division at the Central Bank of Ireland** who provided great insight into the regulator’s perspective. Below is a summary of Mr Hannafin’s contribution to the webinar.

AML/CFT in the Central Bank

Mr Hannafin explained the role of the Central Bank as the competent authority and supervisor of AML/CFT. He stressed that since the introduction of CJA 2010, the Central Bank has observed “*significant improvements in firms’ compliance with their AML/CFT obligations and an increased understanding by firms as to the important role that they play in this arena*”.

However, he explained that the Central Bank continues to identify control deficiencies in AML/CFT frameworks such as in:

- risk assessments;
- Governance and oversight;
- Customer Due Diligence processes; and
- Suspicious Transaction Reporting.

Mr Hannafin went on to explain that the foundation stones of an effective AML/CFT framework are:

- an appropriate culture; and
- a comprehensive ML/TF risk assessment.

Culture:

In respect of culture, he explained that same should go beyond mere compliance. He identified that an AML/CFT framework which does this:

- is fit for purpose on an ongoing basis, and
- keeps its AML/CFT framework under review.

Risk Assessment process:

Mr Hannafin also elaborated on the role of the Risk Assessment Framework, confirming that same is not a one off exercise as risks can change. He flagged some of the weaknesses which the Central Bank has observed in such frameworks. Some of these observations include:

- Risk Assessments not reviewed regularly to ensure ongoing appropriateness of the risk assessment;
- Using a generic risk assessment that does not adequately reflect the firm’s specific risks;
- Using group risk assessments which do not reflect the risks of the individual firm; and
- Using outsourced arrangements for undertaking the risk assessment. He flagged that while the Central Bank has no issue with outsourcing the risk assessment, the firm needs to meet the usual requirements.

European AML Developments:

Mr Hannafin provided a comprehensive update on the status of AML/CFT developments at a European level flagging a number of matters.

The first was the European Commission’s AML Action Plan which is expected to be finalised in the coming months. He explained that while it is not yet clear as to what the final plan will be “*there is no doubt that whatever it contains will be ambitious and will be a significant challenge to achieve however, it is beholden on all of us involved in the fight against money-laundering and terrorist financing to be brave and ambitious in order to deliver for society as a whole.*”

Mr Hannafin went on to elaborate on two particular areas of the Action Plan in more detail:

- a reinforced single-rulebook; and
- a single European supervisor

On the single rulebook, he explained that while the current EU AML rules are far-reaching and comprehensive in nature, their effectiveness is impacted due to a fragmented approach adopted by Member States. He explained that there would be many benefits from the a single rulebook (which would be directly applicable through regulation) such as a level playing field to businesses that operate across the Union.

On the single supervisor. He confirmed that the Central Bank is supportive of the creation of an EU-level AML/CFT supervisor but believe it alone, will not necessarily improve the fight against ML/TF. He outlined how the national AML Supervisors must continue to play a key role in the new supervisory framework.

Mr Hannafin then spoke about the consolidation of the AML/CFT mandates of all three European supervisory authorities within the EBA in 2019 and highlighted the EBA's strategy in coordinating AML/CFT policy developments across the EU through the establishment of a permanent AML/CFT Standing Committee (AMLSC). He advised that Derville Rowland (Director General) and Seana Cunningham (director of AML and Enforcement) represent the Central Bank at the AMLSC.

Irish developments:

Mr Hannafin then moved his attention to Irish developments in the AML/CFT space beginning with recent transposition of the 5th Anti-Money Laundering Directive.

He advised that the transposition will result in some changes, the most significant of which is the extension of the AML/CFT obligations to entities that are providing or intending to provide certain Virtual Asset Services. He detailed the information recently published on the Central Bank website in respect of VASPs. He explained that *"in 2021, we will focus on assessing the AML/CFT frameworks of these firms to ensure that they are minimising their ML/TF risk. As these firms bring a very different business model to those traditionally supervised by the Central Bank, we are cognisant that they may bring different ML/TF risks and we will work closely with them to ensure that any such risks are identified and mitigated."*

He also outlined some of the other changes which the legislation introduces including:

- the granting of a general right of access by members of the public to the beneficial ownership information on corporate entities;
- a requirement on Member States to put in place centralised measures to allow for the retrieval of information on natural or legal persons controlling bank accounts;
- a requirement for obliged entities (designated persons under Irish law) to apply enhanced customer due diligence (ECDD) measures when dealing with business relationships or transactions involving high-risk third countries;
- explicit recognition of information obtained through electronic identification means) or any secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities; and
- a lowering of the financial threshold for prepaid instruments such as e-money and pre-paid cards from €250 to €150 at which point certain customer due diligence measures need to be applied.

Additionally, he confirmed that in light of the changes from the transposition of 5AMLD the Central Bank will, where relevant, update and republish its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector.

Specific Central Bank Change:

Of particular note, was Mr Hannafin's update on the Central Bank's intention to issue the Risk Evaluation Questionnaire (REQ) to all firms on an annual basis to facilitate more in-depth analysis of the risks in the financial services sector. He explained that the information required by the REQ is information which is readily available to firms and stressed that the Central Bank expects firms to apply quality control to the completion of the REQ. Failure to do so will be view by the Central Bank "*as an indicator of weaknesses in the AML/CFT frameworks of the submitting firm, as the inability to provide accurate data suggests a lack of understanding of your AML/CFT obligations, the non-existence of relevant ML/TF data to your firm or both.*". He indicated that the instruction will issue in early May. Please click [here](#) to view the REQ template.



5

EUROPE

5.1 Sixth Money Laundering Directive

The **Sixth Money Laundering Directive (EU) 2018 / 1673** (“**6MLD**”) was published on 12 November 2018 and establishes minimum rules for criminal liability for money laundering by:

- harmonising the definitions of money laundering and the predicate offences;
- imposing minimum sanctions; and
- extending criminal liability to legal persons.

Member states had until 3 December 2020 to transpose the 6MLD into national law, however, in accordance with Recital 23 of the 6MLD, Ireland and the UK “are not taking part in the adoption of this Directive and are not bound by it or subject to its application”. The 6MLD has been adopted under Article 83 of Treaty on the Functioning of the EU (“**TFEU**”). Article 83 falls into Title V of the TFEU which deals with home and justice affairs. Under Protocol 21 of the TFEU, Ireland has opted out of all laws made under Title V and for this reason, Ireland is not obliged to transpose the 6MLD into national law. In contrast, the 4MLD and 5MLD were adopted under Article 114 TFEU, which is in Title VII and relates to the regulation of the EU’s internal market. As Ireland has no opt out from that part of the TFEU, it had no discretion in terms of the transposition of those earlier directives.

5.2 EBA Guidelines on Money Laundering and Risk Factors

Articles 17 and 18(4) of 4MLD require the ESAs to issue guidelines to support firms and national competent authorities (“**NCA**s”) in taking steps to identify and assess the risk of ML/TF.

On the strength of this, on 26 June 2017, the ESAs released Guidance on Money Laundering and Terrorist Financing Risk- “The Risk Factor Guidelines” (“**The Guidelines**”) which set out what firms should consider when assessing the ML/TF risk associated with a business relationship or occasional transactions. The Guidelines came into effect on 26 June 2018.

On 1 March 2021, following public consultation, the EBA published its **final revised guidelines on ML/TF risk factors** (“**Revised Guidelines**”). The Revised Guidelines take into account changes to the EU AML/CFT legal framework since the Guidelines were first published and address new ML/TF risks, including those identified by the EBA’s implementation reviews. The Guidelines will be repealed and replaced with the Revised Guidelines.

The Revised Guidelines are addressed to both financial institutions and supervisory authorities. In relation to supervision, the Revised Guidelines note that where evidence suggests that divergent supervisory approaches continue to exist, more effective and consistent supervisory approaches must be developed to support competent authorities’ AML/CFT supervision efforts when assessing the adequacy of firms’ risk assessments and AML/CFT policies and procedures.

For financial institutions, the Revised Guidelines:

- set out the factors that firms should consider when assessing the ML/TF risk associated with a business relationship or occasional transaction;
- provide guidance on how financial institutions can adjust their CDD measures to mitigate the ML/TF risk they have identified so as to make them more appropriate and proportionate;
- strengthens the requirements on individual and business-wide risk assessments and CDD measures;
- include new guidance on the identification of beneficial owners, the use of innovative solutions to identify and verify customers’ identities, and how financial institutions should comply with legal provisions on enhanced CDD related to high-risk third countries;
- include new sectoral guidelines for crowdfunding platforms, corporate finance, account information service providers and payment initiation services providers and currency exchanges offices; and
- provide more details on TF risk factors.

Next steps

The Revised Guidelines are due to be translated into the official EU languages and published on the EBA website and will apply three months after publication in all EU official languages. The deadline for NCA’s to report whether they comply with the guidelines will be two months after the publication of the translations.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

5.3 Commission Report assessing whether Member States have duly identified and made subject to the obligations of the 4MLD in respect of all trusts and similar legal arrangements governed under their laws

In September 2020, the Commission published a [report](#) to the European Parliament and the Council assessing whether Member States have duly identified and made subject to the obligations of the 4MLD, all trusts and similar arrangements governed under their laws (the “**Trust Report**”).

In light of the Panama Papers and Lux Leaks scandals, the EU has taken steps to ensure the transparency of beneficial ownership of legal entities and arrangements, including legal arrangements governed under Member States’ law or custom that have a structure or functions similar to trusts.

Article 31 of 4MLD requires trustees or persons holding an equivalent position in a similar legal arrangement to meet certain requirements.

The 4MLD also obliges Member States to establish effective, proportionate and dissuasive measures or sanctions for breaches of the relevant requirements.

Considering the variety of trusts and legal arrangements used within the EU, Article 31(10) of 4MLD provides that Member States must identify those legal arrangements that have a structure or functions similar to trusts, and notify to the Commission the categories, characteristics, names and, where applicable, legal basis of such arrangements. The Commission must publish these notifications in the Official Journal of the EU.

Article 31(10) of the 4MLD also requires the Commission to assess whether Member States have duly notified and made subject to the obligations of the Directive, trusts and similar arrangements governed under their law.

A first list of Member States’ notifications was published on 24 October 2019, and was reviewed twice, with the most recent list published on 27 April 2020. This third list forms the basis of the analysis in the Trust Report.

According to the Trust Report, sixteen Member States⁸ indicated that no trusts or similar legal arrangements are governed by their laws. The remaining other Member States notified trusts or similar legal arrangements governed by their laws, as follows:

- Three Member States⁹ (including Ireland) and the United Kingdom notified that trusts are governed under their legal systems, and three additional Member States¹⁰ notified that trusts are recognised in their territory based on the provisions of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.
- Seven Member States¹¹ notified similar arrangements governed under their national law.
- Two Member States¹² notified legal arrangements that are not expressly regulated in their national law, but are based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine. For the purpose of transposing Article 31 of the 4MLD, Germany explicitly mentioned the above arrangements in its AML law.

The Trust Report highlights that a wide range of arrangements show similarities with the common law trust in line with the conditions of Article 31 of 4MLD.

The Trust Report concludes that there is no conclusive analysis in the international AML/CFT community of what constitutes a similar legal arrangement to a trust. The Trust Report notes that “*an absence of a common approach to the identification of arrangements similar to trusts does not ensure legal certainty and a level playing field, and might leave loopholes that allow little known arrangements to be used in money laundering schemes, as has been the case with legal entities.*” In addressing this issue, the Commission will consider forming an informal working group to identify common, objective and consistent criteria for the identification of the relevant legal arrangements governed under their law.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the [beginning](#) of the Toolkit.

8. Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden

9. Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Portugal, Spain, Slovakia, Slovenia and Sweden

10. Italy, Luxembourg and the Netherlands

11. Czechia, France, Hungary, Italy, Luxembourg, Romania and the Netherlands.

12. Germany and Italy

5.4 Commission's New AML Action Plan

In May 2020, the Commission published its **Action Plan** for a new single EU AML System ("Action Plan"). The Action Plan sets out measures that the Commission would take over the 12 months following its release, to better enforce, supervise and coordinate the EU's rules on combating ML/TF. On 10 July 2020, the European Parliament passed a resolution on the Action Plan and highlighted the most pressing changes needed to achieve an efficient EU framework.

The Action Plan is built on 6 pillars:

Effective application of EU rules	A single EU rulebook	EU-level supervision	A coordination and support mechanism for Member State FIUs	Enforcing EU-level criminal law provisions & information exchange	A stronger EU in the world
The EBA as EU single supervisor to make full use of its new powers to tackle ML/TF.	A single EU rulebook to prevent diverging interpretations of the rules lead to loopholes in the system, which can be exploited by criminals.	An EU wide AML supervisory system.	A coordination mechanism for FIUs.	The future Financial Crime Centre at Europol and European Commission guidance on the role of public private partnerships to clarify and enhance data sharing.	A new methodology to deal with third countries that have strategic deficiencies in their AML/CTF regimes.

The Commission's aim for the Action Plan is to close loopholes and weaknesses within the current AML / CTF regime. Under the current regime, individual Member States can adopt national level AML / CFT rules, however, this has resulted in a fragmented approach across the EU. The proposed single EU rule book under Pillar 2, aims to reduce the fragmentation and harmonise AML / CFT rules across the EU. Similarly for supervision under pillar 3, the Commission intends to allocate some supervisory responsibilities at an EU-level to harmonise the supervisory approach to AML / CFT across the EU.

On the same date, the Commission also launched a consultation on the Action Plan which sought feedback on the Action Plan. The consultation closed on 26 August 2020. In July 2020, Derville Rowland, Director General, Financial Conduct at the Central Bank, responded to the Public Consultation on the Action Plan. The letter¹³ advises that the Central Bank is supportive of the initiative to further harmonise and strengthen the EU's AML/ CFT Framework however, it does raise a flag of caution in respect of a number of matters including :

- the importance of Member States continuing to be able to introduce their own AM L/CFT requirements;
- that any centralisation of supervision should be hybrid in nature as National Competent Authorities are best placed to understand the AML/CFT risks of their individual Member State and;
- that the Commission should put in place a robust authorisation/registration regime for VASPs that is consistent with the FATF Standards, and that the additional categories of VASPs identified by FATF should become obliged entities.

The new legislative proposal on the Action Plan is expected in 2021.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.

5.5 EBA Opinion on money laundering and terrorist financing risks across the EU

On 3 March 2021 the EBA published its biennial [Opinion](#) on risks of ML/TF affecting the EU's financial sector. Article 6(5) of 4MLD requires the EBA to issue an Opinion on such risks sector every two years. This is the third Opinion, with the last having been published in 2019.

The Opinion identifies risks to which credit and financial institutions are exposed, as well as cross sectoral ML/TF risks including risks associated with virtual currencies, FinTech, RegTech solutions, weaknesses in firms' CFT systems and controls, de-risking, crowdfunding, divergent supervisory practices and frameworks and more broadly, the worldwide COVID-19 pandemic. The Opinion then sets out proposals and recommendations to competent authorities on the risks identified. The EBA also carried out an assessment of how the ML/TF risks have evolved since the last Opinion.

The EBA notes that the COVID-19 pandemic illustrates how new ML/TF risks can emerge unexpectedly and that can impact firms' ability to ensure adequate AML/CFT compliance, and competent authorities' ability to ensure the ongoing supervision of firms in the current context of restrictions on movement. The COVID-19 pandemic has led to a dramatic increase in the need for remote on-boarding of customers. To that end, the Commission has invited the EBA to draft guidelines on the key elements related to customer remote on-boarding and reliance on CDD processes carried out by third parties. It is expected that these guidelines will be published for consultation by the end of 2021.

As a complement to this Opinion, the EBA has developed an interactive tool on the ML/TF risks covered in the Opinion. The interactive tool is available [here](#).

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the [beginning](#) of the Toolkit.

5.6 Revised List of High-Risk Third Countries

In light of the changes brought in by the 4MLD and the 2021 Act, a revised list of high risk third countries has been entered into force by the European Commission by way of [Delegated Regulation \(EU\) 2020/855](#) (the “Delegated Regulation”). This has been in effect since 1 October 2020. The Regulation, in addition to other measures, will go to further the EU’s aim of eradicating money laundering and terrorist financing. Obligated entities are required to apply enhanced due diligence procedures in dealings with individuals and entities which originate from these listed high risk third countries

A number of countries will remain on the list as before while some countries have been removed. The EU have added a number of countries to the list which have strategic deficiencies in their AML / CFT regimes.

Existing	Newly-listed	Removed
Iraq	The Bahamas	Bosnia-Herzegovina
Afghanistan	Barbados	Ethiopia
Vanuatu	Botswana	Guyana
Pakistan	Ghana	Lao People’s Democratic Republic
Syria	Jamaica	Sri Lanka
Yemen	Mauritius	Tunisia
Uganda	Mongolia	
Trinidad and Tobago	Myanmar	
Iran	Nicaragua	
North Korea	Panama	
	Zimbabwe	
	Cambodia	

Further to the above changes, the European Commission have introduced a methodology to identify High Risk Third Countries which may pose a threat to the EU’s financial system. The methodology is part of the Action Plan for a Comprehensive EU Policy on Preventing Money Laundering and Terrorist Financing. The aim of this is to ensure greater cooperation with the listing process of the FATF.



6 INTERNATIONAL

6.1 FATF Guidance for applying a Risk-Based Approach to AML/CFT Supervision

On 4 March 2021 FATF published **Guidance** for applying a Risk-Based Approach to AML/CFT Supervision. The Guidance is non-binding, however, it aims to explain how supervisors should apply a risk-based approach to their activities in line with the FATF Standards.

The guidance is composed of three parts:

- Part 1** The high-level guidance on risk-based supervision, which explains how supervisors should assess the risks their supervised sectors face and prioritise their activities, in line with the FATF Standards' risk-based approach.
- Part 2** Strategies to address common challenges in risk-based supervision & jurisdictional examples, including examples of strategies for supervising non-financial businesses and professions and VASPs.
- Part 3** Country examples from across the global network, of supervision of the financial sector, VASPs and other private sector entities.

The Guidance encourages countries to move away from a 'tick-box' approach to AML / CFT and apply a risk-based approach. It aims to be general in nature and therefore does not advocate for any specific institutional framework for supervision or seek to identify or address specific sectoral risks. It acknowledges that the measures used to apply risk-based supervision and enforcement should be tailored to each jurisdiction's context.

Should you require further information in relation to any of the above please get in touch with your usual Matheson contact or any of the contacts listed at the **beginning** of the Toolkit.



7

HOW MATHESON CAN HELP

We provide a number of services to assist clients in the area of AML, including:

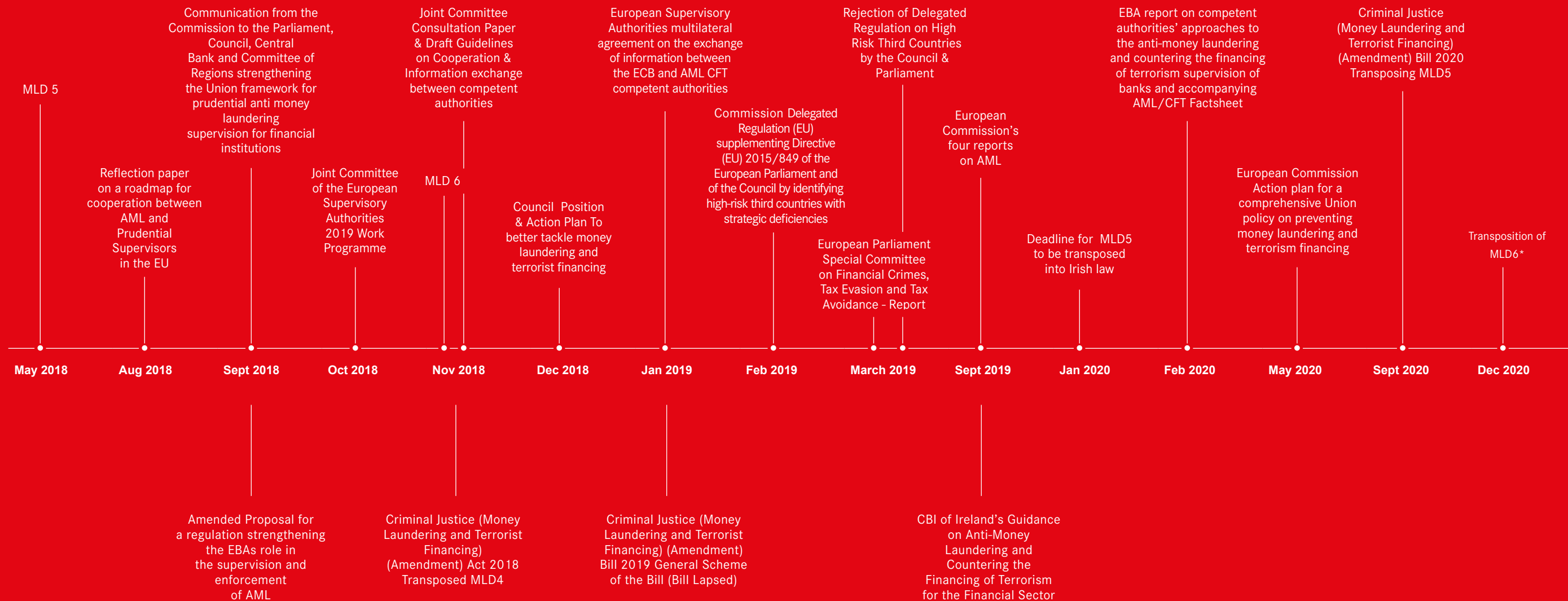
- Designing and revising AML policies, procedures and business-wide risk assessments to ensure they align with the requirements of the 2010 Act and relevant regulatory guidance;
- Gap analysis work in order to assess whether existing AML frameworks comply with the 2010 Act and relevant regulatory inspections;
- Assisting firms undergoing or preparing for AML inspections from the Central Bank of Ireland;
- Delivering bespoke AML/CTF training delivery to boards and staff in regulated firms in a wide range of industry sectors;
- Assisting VASPs seeking to register with the Central Bank
- Advising on whether Section 108A applies to your business and if so, assisting with registration applications to the Central Bank as required.
- Providing opinions as to whether innovative technological solutions can be used to discharge your firm's AML obligations under the 2010 Act.

Should you require further information in relation to the material contained in this Toolkit, please get in touch with a member of the team at the [contact information above](#) or your usual Matheson contact. Full details of Matheson's Financial Institutions group together with further updates, articles and briefing notes written by members of these teams, can be accessed at www.matheson.com

This material is provided for general information purposes only and does not purport to cover every aspect of the themes and subject matter discussed, nor is it intended to provide, and does not constitute or comprise, legal or any other advice on any particular matter. For detailed and specific professional advice, please contact any member of our Financial Institutions Group.



8 THE CONTINUING EVOLUTION OF AML – A TIMELINE



* Please note however, in accordance with Recital 23 of the MLD6, Ireland and the United Kingdom "are not taking part in the adoption of this Directive and are not bound by it or subject to its application".



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