



June 2013

Criminal Justice Act 2013

Background

The Criminal Justice Act, 2013 (“2013 Act”), which amends the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“the 2010 Act”) was signed into law on the 12th June 2013. Part 2 of the 2013 Act, which deals with the changes to the 2010 Act came into effect on the 14th June 2013 (with the exception of sections 5, 15 and 16). The amendments to the 2010 Act give rise to certain practical and technical improvements whilst also ensuring a closer alignment of Irish law with international standards. The 2013 Act (via Part 3) also provides for the cessation of mobile communications services in response to a serious threat.

■ Amendments to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“2010 Act”)

Customer Due Diligence

Section 33(1) of the 2010 Act, which deals with the requirement to complete customer due diligence prior to establishing the business relationship with the customer, has been amended whereby the person must consider whether they have reasonable grounds to suspect that the customer is involved in (or the service, transaction or product sought by the customer is for the purpose of) money laundering or terrorist financing.

Previously the designated person had to consider if there was reasonable grounds to believe that there is a real risk that the customer is involved in (or the service, transaction or product sought by the customer is for the purpose of) money laundering or terrorist

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financing.

Effectively the bar has been now lowered to reasonable grounds to suspect versus in the past it was reasonable grounds to believe that there is a real risk that the customer is involved in money laundering or terrorist financing

Simplified Due Diligence

The application of Simplified Due Diligence, under Section 34(1), of the 2010 Act, has been amended whereby the designated person is now required to take measures to satisfy itself that the customer is in fact a specified customer or specified product. In practice designated persons were already doing this, however it is now obligatory.

In addition if a designated person wishes to avail of the exemption under Section 36 of the 2010 Act whereby they are not required to establish the purpose of the business relationship, the designated person must now take measures to satisfy itself that the customer is in fact a specified customer or specified product.

PEP Obligations

Section 37 of the 2010 Act, which deals with non-domestic PEPs has been amended whereby the obligation to perform the source of wealth and source of fund checks and obtain senior management sign-off will now extend to existing business in addition to new business.

There is also a new obligation under Section 37 to monitor source of wealth and source of funds checks (as opposed to source of wealth or source of fund checks) for on-going transactions where the designated person considers this to be warranted by the risk of money laundering and terrorist financing.

Enhanced Customer Due Diligence

Section 39 of the 2010 Act, which deals with enhanced due diligence in cases of heightened risk, has been amended to require designated persons to apply additional customer due diligence measures where the designated person has reasonable grounds to believe that there is a higher risk of money laundering or terrorist financing. This was previously a discretionary requirement.

Internal Policies and Procedures

The requirement for internal policies and procedures, under Section 54(3) of the 2010 Act, has been amended whereby there is now a requirement to keep documents and information relating to customers up to date. In other words there is now an obligation to keep customer due diligence records up to date, however the legislation does not provide any guidance on how this will work in practice – such as will it be sufficient to review customer due diligence documentation once a year (every two years) or should it occur on a trigger event (e.g. when documentation such as a passport expires). Some guidance from the Central Bank on this matter would be useful to ensure

consistency of application of this new requirement.

Section 54(3) of the 2010 Act has also been amended to provide for additional measures to be taken to give effect to enhanced due diligence rules as well as steps to manage the risk of money laundering or terrorist financing, which may arise in technological developments, including the use of new products and new practices, and the manner in which services relating to such developments are delivered.

Record Retention

The record retention obligations, under Section 55 of the 2010 Act, have been amended whereby it is no longer mandatory to retain records in the State provided such records are capable of being reproduced in the State as soon as practicable.

Definition of ‘Occasional Transaction’

The definition of ‘Occasional Transaction’ has been amended so that it applies where the aggregate of the transaction is less than €15,000 in the following situations:

- Private members’ gaming clubs when an amount or value of €2,000 is reached; and
- Wire transfer funds within the meaning of Regulation (EC) No. 1781/2006 when an amount of €1,000 is reached.

There is also a technical amendment to clarify that the definition of “occasional transaction” applies when an amount of €15,000 is reached rather than exceeds €15,000. This is the amount that applies to the definition of “occasional transaction” in all cases other than for private members’ gaming clubs or wire transfer funds.

Directions to Comply with Obligations under Part 4

Section 71, which deals with “Directions to comply with obligations under Part 4”, has been amended to extend the powers of the State competent authority to include a power to direct a designated person or a class of designated persons to take specific actions or to establish specific processes or procedures that are reasonably necessary for compliance with any specified provision of this Part.

The scope of the offences has consequently been widened to account for the extended powers given to the State competent authority in relation to directions. More specifically, in the event of a designated person being found guilty of an offence which would not have been committed if the direction had been complied with, the court may take this failure to comply into account as an aggravating factor in determining the sentence to be imposed on the person for the offence.

Publication of Registers

Section 104 of the 2010 Act is amended to permit the Minister to publish a register of persons

holding a “trust and company service provider” authorisation in written, electronic or other form and a member of the public is entitled to obtain a copy of this register or details of an entry on this register on payment of a prescribed fee.

Section 109 of the 2010 Act is amended to permit the Minister to publish the register of persons directing private members’ clubs in written, electronic or other form and a member of the public is entitled to obtain a copy on payment of a prescribed fee. It also provides for the removal of the particulars entered in the register where the person ceases to be a person who effectively directs a private members’ club.

Order not to carry out a Service or Transaction

Where a judge of the District Court makes an application for an order to a designated person to not carry out a service or transaction, Section 17(4) of 2010 Act has been amended to include additional details on the application process. It provides that any application for an order under this section shall be made ex parte and shall be heard otherwise than in public in addition to being made to a judge of the District Court assigned to the district in which the order is proposed to be served.

Miscellaneous Amendments to the 2010 Act

The 2013 Act also provides for other miscellaneous amendments such as an amendment to section 84 of the 2010 Act, which deals with the authorisation of trust or company service providers, whereby any reference to the Minister shall be construed as a reference to the Central Bank of Ireland where the applicant for a trust and company service provider is by a subsidiary of a credit institution or a financial institution. Other practical amendments are made which include the renumbering of sections and the deletion of superfluous words.

Part 3 of the Criminal Justice Act 2013

Part 3 of the 2013 Act confers on the Minister the power to authorise the cessation of mobile communication in response to a serious threat within a specified geographical area for a limited period provided that all conditions are satisfied. The authorisation must be necessary and proportionate to its objectives. Part 3 sets out the process for applying for an authorisation and issuing a direction. The Gardaí must first make an application to the Minister. If authorisation is granted by the Minister, the Gardaí may then issue a direction to an undertaking. This Part 3 details the application process, the conditions that must be satisfied prior to authorisation, the conditions of the direction, the obligations of the licensed mobile communications service provider and other persons and the offences in the event of a failure to comply with a direction.

Conclusion

The amendments by the 2013 Act to the 2010 Act are broadly welcomed as they tighten the rules on customer due diligence by making some previously discretionary measures now mandatory and by ensuring closer alignment of Irish law with international standards.

The 2013 Act also makes provision in law for mobile phone networks to be shut down for a limited period in a limited area to prevent a serious threat. The conferral on the Minister of this power ensures that crime prevention keeps pace with advances in mobile technology.

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