



The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

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29 March 2017

General scheme of a Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill

Dear Brendan,

The Consultative Committee of Accountancy Bodies in Ireland (CCAB-I) welcomes the opportunity to provide our comments in relation to the general scheme of a Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill ("the Heads of Bill") which outlines the intention of government in relation to the transposition of the Directive (EU) 2015/489 on the prevention of the use of the financial system for the purposes of money

laundering or terrorist financing (4AMLD). CCAB-I represents the following prescribed accountancy bodies in Ireland:

- Institute of Chartered Accountants in Ireland (“Chartered Accountants Ireland”)
- Association of Chartered Certified Accountants (“ACCA”)
- Chartered Institute of Management Accountants (“CIMA”)
- Institute of Certified Public Accountants (“CPA”)

As you are aware, CCAB-I has long supported the inclusion of reasonable measures in Irish law to combat money laundering and terrorist financing and we look forward to continued engagement with the Departments of Finance and Justice and Equality over the coming months as you work towards the transposition of 4AMLD into Irish law. Similarly we look forward to continued communication with you, both directly and through fora such as the Private Sector Consultative Forum and the proposed anti-money laundering Supervisors Forum, as we develop guidance to support CCAB-I members in their compliance with the revised legislation. Our key observations in relation to the Heads of Bill are set out below.

1. Provisions to allow obliged entities to mitigate risk through group structures to include network firms of accountants

CCAB-I considers it important that there is specific provision for the inclusion of network firms of accountants in the context of the exemptions set out in Head 9(3), Head 23(4) and Head 29(5) and the obligations in Heads 30 and 33. Accounting practices commonly operate through “networks” of firms across jurisdictions and the definition of “branch” in anti-money laundering legislation should extend to include these “network firms”. Recognition of this fact is already included in section 51(3)(c) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

It is important, for the avoidance of any doubt, to specifically include within the provisions noted above a definition of a network firm in relation to accounting and auditing practices which is consistent with that which is set out in S.I. 312 of 2016, and the Heads of the Companies (Statutory Audit) Bill 2017, as follows:

“network”, in relation to a statutory auditor or audit firm, means the larger structure:

(a) which is aimed at cooperation and to which the statutory auditor or audit firm belongs, and

(b) either—

(i) the clear objective of which is profit or cost-sharing, or

(ii) which shares—

(I) common ownership, control or management,

(II) common quality control policies and procedures,

(III) a common business strategy, or

(IV) the use of a common brand-name or a significant part of professional resources;”

2. Domestic Politically Exposed Persons (“PEPs”)

We note that the Heads of Bill extend the definition of PEPs in the existing AML legislation to include domestic PEPs and therefore extend the requirements in relation to customer due diligence which must be performed by obliged entities in regard to such domestic PEPs. We note that this provision is in line with 4AMLD. We consider it will be important that the transposing legislation, and if necessary appropriate guidance, provides clarity to obliged entities as to whom the definition applies in an Irish context. In particular it will be important to clarify at which level of involvement in politics an individual will fall to be included within the definition of domestic PEP. Is it intended that the definition of domestic PEP will apply at national (i.e Oireachtas member) level or at local government level?

3. Intention of definition at Head 21(5)(c)

We note that Head 21(5)(c) includes within the definition in the context of PEPs, “*directors, deputy directors and members of the board or equivalent function of an international organisation*”. We are unclear as to whom this applies. It would be helpful to include a definition of “international organisation” in the legislation.

4. Trusts

We note that there are currently indications at a European level that the “tax consequences” element of the definition of trusts required to collate beneficial ownership information may be removed. We would welcome such a development given the likely challenges posed in interpreting “tax consequences” as set out in our response, in March 2016, to your consultation regarding Member State discretions in the 4AMLD.

5. Proposals to maximise reporting effectiveness

As you are aware, CCAB-I believes that the transposition of the 4AMLD into Irish law provides an opportunity to revisit some issues which arise with regard to the existing AML regime in Ireland. We would again like to highlight the following two particularly important issues:

- The range of reporting obligations imposed on accountants and auditors;
- Reports which have little intelligence value.

Reporting obligations:

There is a complex range of reporting requirements imposed on certain designated persons in Irish law. There is significant overlap in terms of the reporting obligations imposed by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in relation to money laundering offences, section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and section 1079 of the Taxes Consolidation Act 1997. Further whistleblowing obligations, in the case of auditors, are contained in the Companies Act 2014.

In particular, the offences captured under section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001 will commonly give rise to criminal proceeds and therefore also fall to be reported under the AML regime. There are however inherent inconsistencies in these legislative requirements which make them difficult for those subject to them to navigate. Specifically, there are inconsistencies in relation to the threshold of proof/certainty triggering the reporting of an offence and the confidentiality requirements in relation to reporting. CCAB-I believes the overlap also gives rise to unnecessary duplicate reporting with the resultant additional costs both on the profession and on the authorities receiving such reports, as well as a risk of inadvertently ‘tipping-off’. We would also query the value, at this stage, of retaining the duty under section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001, given the duty to report suspicion of money laundering and believe you should consider its repeal or at least harmonising that section with the proposed reporting obligations under the revised AML legislation. For example, the Bill provides an opportunity to amend the wording used in section 59 to define the threshold at which a duty to report arises, which at present states:

“Where the accounts of a firm, or as the case may be any information or document mentioned in subsection (1)(b), indicate that

(a) An offence under this Act (other than sections 8, 12 to 15, 49(1) and 52(8)) may have been committed by the firm concerned, or

(b) Such an offence may have been committed in relation to its affairs by a partner in the firm or, in the case of a corporate or unincorporated body, by a director, manager, secretary or other employee thereof, or by the self-employed individual concerned,

The relevant person shall, notwithstanding any professional obligations of privilege or confidentiality, report that fact to a member of the Garda Síochána”

to use wording identical with section 42 of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, which states:

“A designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing shall report to the Garda Síochána that knowledge or suspicion on those reasonable grounds.”

We also suggest that consideration is given to introducing a ‘reasonable excuse’ clause in section 59 to provide a basis for exempting auditors and accountants from the duty to report

under that section when a report is also made under AML legislation. We remind you in this context of the helpful “reasonable excuse” provision at section 19 of the Criminal Justice Act 2011. Specifically, a reasonable excuse for not making a report under section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001 could be that a report of the same matter has been made to the Garda Síochána by the relevant person pursuant to section 42 of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Definition of money laundering offences and reports with limited intelligence value

The definition of money laundering as set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 means that a broad range of offences fall to be reported regardless of whether any information of intelligence value is known about the source or destination of the funds or about the identities of the parties involved in the offence. This places undue strain on the resources of both the obliged entities to report such offences and the law enforcement agencies receiving such reports.

While CCAB-I strongly supports all efforts to effectively combat money laundering and terrorist financing we believe there is merit in developing a practical framework within the AML regime which excludes money laundering offences where the designated person cannot reasonably be expected to possess and does not possess information on either the perpetrator of the offence, or on the likely whereabouts of the proceeds as is the case currently in the UK AML regime. In that regard we refer you to the UK legislation at section 330(3A) of Proceeds of Crime Act 2002 as amended by section 104 of the Serious Organised Crime and Police Act 2005.

6. Guidance

We, at CCAB-I, are conscious of the challenges ahead for the accounting and auditing profession in relation to the implementation of the revised AML regime with the imminent transposition of 4AMLD in Ireland. In that regard, we intend to commence work on updating our AML guidance for members of CCAB-I in the coming months. We hope to continue to engage in open dialogue with you and colleagues as we develop revised AML guidance which is consistent with the changes to AML legislation in Ireland as well as with the approach to implementation taken by other obliged entities under the AML legislation to the

extent appropriate. We welcome the establishment of a Supervisors Forum and look forward to continuing to engage with the Private Sector Consultative Forum.

Conclusion

As we have consistently observed, CCAB-I recognises 4AMLD as an important piece of legislation which has the potential to enhance the robustness of efforts to prevent the illicit use of the financial system to conceal the proceeds of criminal conduct or terrorist financing activities across the European Union. We are pleased to have had an opportunity to provide you with the above written comments on the Heads of Bill and to have met with you and colleagues in recent weeks to discuss these comments. We look forward to continued engagement as the process of the transposition of 4AMLD into Irish law continues. If you have any queries on our comments above or wish to discuss further these, or any other issues with regard to the impact of the AML regime on the accounting and auditing profession, please contact Karen Flannery of Chartered Accountants Ireland at 01-637 7389 or by email to karen.flannery@charteredaccountants.ie.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Kenny', with a stylized flourish at the end.

Mark Kenny

On behalf of the Consultative Committee of Accountancy Bodies - Ireland