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AML/CTF: New registration requirements

Firms providing certain services, which are already obliged to comply with anti-moneylaundering (AML) and counter-terrorist financing (CTF) obligations even though they are not authorised or licenced by the Central Bank, are required with effect from 26th November 2018 to register with the Central Bank by virtue of new legislation¹ passed to transpose the 4th Anti-Moneylaundering Directive into Irish law.

Schedule 2 Firms

The new requirement applies to firms (so-called "Schedule 2 Firms") which carry out any of the activities set out below:

- Lending including consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
- 2. Financial leasing.
- Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.
- 4. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 3.

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¹ Section 108A of the Criminal Justice (Money Laundering and Terrorist Financing), (Amendment) Act 2018

- 5. Guarantees and commitments.
- 6. Trading for own account or for account of customers in any of the following:
 - a. Money market instruments (cheques, bills, certificates of deposit, etc.)
 - b. Foreign exchange
 - c. Financial futures and options
 - d. Exchange and interest-rate instruments
 - e. Transferable securities.
- 7. Participation in securities issues and the provision of services relating to such issues.
- 8. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
- 9. Money broking.
- 10. Portfolio management and advice.
- 11. Safekeeping and administration of securities.
- 12. Safe custody services.
- 13. Issuing electronic money.

The new requirement to register with the Central Bank applies, for example, to SPVs undertaking lending or companies providing financial leasing. Arguably, the Central Bank will expect unregulated entities which purchased loans (but did not originate them) to register under the new legislation.

Exemptions

The obligation to register does not apply if the firm falls within any of the following three exemptions:

- 1. If the firm is one which only carries out Schedule 2 Activity 6 above (i.e. trading on own account), or
- 2. If the firm's customers (if any) are members of the same group as the firm, or
- 3. If cumulatively:
 - a. The firm's annual turnover is less than €70,000, and
 - b. The total of any single transaction, or serious of linked transactions in relation to the firm's Schedule 2 activities does not exceed €1,000, and
 - c. The firm's Schedule 2 activities do not exceed 5% of the firm's total turnover, and
 - d. The firm's Schedule 2 activities are directly related to and ancillary to the firm's main business activities, and
 - e. The firm only provides Schedule 2 activities to customers of their main business activities, rather than the public in general.

Post-registration Obligations

The new requirement brings Schedule 2 Firms which are not regulated, into closer engagement with the Central Bank, and increases regulatory focus on such entities.

Schedule 2 Firms which have registered must notify the Central Bank if:

- The firm begins to engage in additional Schedule 2 activities;
- The firm discontinues the Schedule 2 activities;
- There is a material change to existing Schedule 2 activities;
- There is a change in ownership of the firm (direct and/or indirect);
- There is a change in the legal or trading name of the firm;
- The firm's address changes;
- There is a change to the principal contact details of the firm.

Registration

To register, the firm must complete a Schedule 2 Registration Form for Anti-Money Laundering Purposes, which can be accessed here. The Central Bank has published Guidance for Completion of the Guidance (the "Guidance") to assist firms to complete the registration form.

In completing the form, the firm must provide information including a profile of its business, financial details such as its assets and turnover, Schedule 2 activities as a percentage of its overall activities, details of its group structure and its management structure. If the firm is a special purpose entity (SPE) it must complete the section and provide its unique identifier. An SPE is defined in the Guidance as a legal entity, with little or no physical presence and narrow, specific, and/or ring-fenced, objectives, such as the segregation of risks, assets and/or liabilities, or as a cash conduit.

Failure to register will constitute an offence and will be subject, on summary conviction, to a penalty (currently a maximum fine of €5,000) and/or a 12 month imprisonment term. On conviction on indictment, the penalty would be a fine and/or a 5 year imprisonment term.

Conclusion

A Schedule 2 firm which is are not authorised or licensed by the Central Bank must now register with the Central Bank and ensure that it has in place all of the systems and processes required to comply with applicable AML and CTF requirements. Such firms will now have to engage more closely with the Central Bank and will be subject to various ongoing notification requirements. These requirements are already in place with effect from 26th November, 2018 so firms which undertake Schedule 2 activities must immediately register with Central Bank and review their processes to ensure they comply with the required AML/CTF framework, if they have not already done so.

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