



Newsletter 08/2010: 22 March, 2010

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## Welcome Anti Money Laundering Special

This Newsletter is a special update for our subscribers on the Irish Anti Money Laundering regime.

The Newsletter covers the current state of play of the AML Bill as well as recent developments on the Guidance Notes that Designated Persons will use to demonstrate their compliance with the Bill in an operationally effective manner.

In overseas news, U.S. authorities have spelt out the minimum elements of an AML regime as part of a recent major enforcement action against Wachovia Bank.

Lastly, we are inviting people working in firms subject to the AML regime and in financial regulation to join the Money Laundering Reporting Officers discussion group maintained by [Compliance Ireland](#) on the LinkedIn networking site.

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## Financial Crime Criminal Justice (Money Laundering & Terrorist Financing) Bill

The Criminal Justice (Money Laundering & Terrorist Financing) Bill will reach Report Stage in Seanad Éireann (Irish Upper House of Parliament) on Tuesday 23 March 2010.

[Compliance Ireland](#) has full details of the timeline so far and the likely lead-in to implementation.

The Criminal Justice (Money Laundering & Terrorist Financing) Bill will reach Report Stage in Seanad Éireann (Irish Upper House of Parliament) on Tuesday 23 March, having concluded deliberations at both the Seanad's Committee Stage (11/03/2010) and Second Stage (02/03/2010).

Although difficult to state the exact date when the Bill will complete its passage through the Seanad, it is likely the Bill will be passed by the end of March or at the first opportunity in April. The latest copy of the Bill is available at <http://www.complianceireland.com/Resources.html#AMLBILL>

**Timeline:** [Compliance Ireland](#) has updated its timeline on the Bill which is available at <http://www.complianceireland.com/documents/Timeline-Criminal-Justice-Money-Laundering-Terrorist-Financing-Bill-2009.pdf>.

**Implementation Date:** It is expected that the Act will provide for a three month lead-in time to allow Designated Persons, who are currently Designated Bodies, a final opportunity to complete steps to bring their operations into compliance with the Act. It is not known whether the Act will provide for persons who do not currently fall under the definition of 'Designated Body' a longer period of implementation.

## European Commission Infringement Action against Ireland

The European Commission announced on 18 March 2010 that Ireland will be asked in a letter of formal notice for full information on our implementation of the third anti-money laundering Directive.

The speed of passage of the Bill is of critical importance to the Ministers for Finance and for Justice, as well as their respective departments, following news from the European Commission (18 March 2010) that Ireland (and Spain) will be asked in a letter of formal notice (under Article 260) for full information on our implementation of the third anti-money laundering Directive following a previous Court judgement on the matter.

See more at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/305&format=HTML&aged=0&language=EN&guiLanguage=en>.

See the current state of play of the third AML Directive (and all Financial Services Action Plan directives) at [http://ec.europa.eu/internal\\_market/finances/docs/actionplan/index/100301-transposition\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/actionplan/index/100301-transposition_en.pdf)

## Guidance Notes now available for comment

Section 107 of the AML Bill provides for the approval of guidelines which Designated Persons may adopt to implement the provisions of the Bill.

Core Guidance Notes are now available for comment.

Earlier this month the draft of the core guidance notes for Designated Persons were circulated by a handful of professional associations\* who collaborated on a set of suggested guidelines for the purposes of section 107 of the Bill. Sectoral guidance is currently being completed. **Compliance Ireland** has seen copies of the draft sectoral guidance and core guidance. The Financial Regulator has now received a draft copy of the core guidance and has published the guidance on its website. **Compliance Ireland** has posted a copy of the draft core guidance at <http://www.antimoneylaundering.ie/downloads/Draft-Core-Guidance-March-2010-for-FR-20100319.pdf>.

Other guidance is located at <http://www.antimoneylaundering.ie/GNDownload.html>.

**It is imperative for Designated Persons, especially those who are not members of a professional association body which collaborated on the guidance, to review and assess the impact of the draft guidance on their business immediately.** To this end, as of March 2010, the Financial Regulator has been asked to facilitate public comment on the latest (March 2010) draft of the Industry Drafting Group's (which is not the Money Laundering Steering Committee) *Core Guidance Notes* on the prevention of the use of the financial system for money laundering or terrorist financing. The draft guidance notes are subject to further change as the Bill nears the end of the legislative process.

Copies of sectoral guidance notes for public review and comment will be posted on the regulator's website and <http://www.antimoneylaundering.ie/GNDownload.html> when available.

Public comment on the draft notes is welcome and should be sent to both of the following email addresses: [brendan.nagle@financialregulator.ie](mailto:brendan.nagle@financialregulator.ie) and/or [brian.kelly@financialregulator.ie](mailto:brian.kelly@financialregulator.ie) (see also <http://www.financialregulator.ie/processes/anti-money-laundering/Pages/WhatsNew.aspx?ListID=39be8f14-7392-41d0-bf89-d74c6d8f99ee&ListItemID=3>).

[\*the Irish Banking Federation, Irish Funds Industry Association, Irish Insurance Federation, Irish League of Credit Unions and An Post]

## AML enforcement fine against Wachovia Bank

It was announced on 17 March 2010 that Wachovia Bank N.A., one of the largest banks in the United States, is to pay \$160 Million in forfeits and fines. Wachovia Bank also faces a deferred criminal prosecution for AML compliance programme failures.

It was announced on 17 March 2010 that Wachovia Bank N.A., one of the largest banks in the United States,

was to forfeit \$110 Million in proceeds from illicit narcotics sales laundered through it and pay a further \$50 Million fine to the US Treasury. In addition there is a deferred criminal prosecution for wilfully failing to maintain an effective anti-money laundering programme. According to court documents, Wachovia failed to effectively monitor more than \$420 Billion in financial transactions with Mexican currency exchange houses for potential money laundering activity.

In European terms, these currency houses would be classed as money remittance businesses or bureaux de change and would be classed as Designated Persons in the AML Bill.

Separately, in relation to business done with third-party payment processors, Wachovia failed to monitor high return rates for remotely-created cheques and report suspicious wire transfer activity.

The authorities set out what they expect to see as a minimum in an AML compliance programme and it is instructive to compare this against matching provisions in the new AML Bill:

- Provide internal policies, procedures and controls to guard against money laundering.
- Provide for an individual or individuals to co-ordinate and monitor day-to-day compliance with legal requirements.
- Provide for an ongoing employee training programme.
- Provide for independent testing for compliance conducted by bank personnel or an outside party.

## MLRO Discussion Group on LinkedIN.com

As part of our efforts to encourage discussion of the effect of the Bill and the draft guidance on Designated Persons (and designated bodies), **Compliance Ireland** has established and is facilitating the *Money Laundering Reporting Officers* discussion group on the LinkedIN networking site. The group has been running for a number of weeks now and has been discussing various aspects of the Bill in an open and reasoned manner.

We are now inviting persons employed in Designated Persons or regulators to join. There is already a good foundation of MLROs and regulators from Ireland and overseas participating in the group. The MLRO Group provides an opportunity for you to share your thoughts on financial crime issues with your peers, and equally read their thoughts, on a regular basis.

As part of our efforts to encourage discussion of the effect of the Bill and the draft guidance on Designated Persons (and designated bodies), **Compliance Ireland** has established and is facilitating the *Money Laundering Reporting Officers* Subgroup on LinkedIN. The group has been running for a number of weeks now and has been discussing various aspects of the Bill in an open and reasoned manner. This *MLRO Group* is a subgroup of the *Compliance Officer* LinkedIN Group. Current members are clients of **Compliance Ireland** and trusted industry contacts.

These groups are now open to other persons employed within Designated Persons (either resident in Ireland or with business interests in Ireland), especially governance, risk and compliance (GRC) staff (including in-house lawyers) and other staff with a direct and demonstrable interest in these areas. The group is also open to financial regulators from Ireland and abroad. The groups have been quite successful because of the continuing contribution of members who are GRC staff and regulators from Ireland and overseas.

If you wish to join please ensure you (a) meet the membership criteria and (b) you are prepared to share your thoughts on compliance and other regulatory issues on a regular basis before making a request at <http://www.linkedin.com/groupRegistration?gid=2693430>\*

The *AML/CTF Subgroup* (see <http://www.linkedin.com/groupRegistration?gid=2716712>) focuses on financial crime issues.

The *Solvency II LinkedIN Subgroup* (see <http://www.linkedin.com/groupRegistration?gid=2725882>) focuses upon issues under that directive.

The parent *Compliance Officer LinkedIN Group* deals with other compliance and regulatory matters. There are more than 100 members of the Compliance Officer Group of which a large number are members of the MLRO Group

\* Again please note that these groups are open to *employees of regulated financial firms and regulators*. Please note that we reserve the right to remove any person from the group without notice of reason. Third parties agree not to use the groups for a dominant purpose of soliciting members for commercial services.

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## Training Dates

### AML Training Course Dates announced

Our next full day **Anti-Money Laundering & Counter-Terrorist Financing** course takes place on **Thursday 25<sup>th</sup> March 2010**. See <http://www.complianceireland.com/AMLDubFls.html> for course details and booking.

**Compliance Ireland** has also announced additional dates for AML training in Quarter 2. Click through for further details.

**Compliance Ireland** has announced additional dates for AML training:

- Thursday 25th March 2010
- Thursday 29th April 2010
- Thursday 20th May 2010
- Thursday 10th June 2010
- Tuesday 29th June 2010

For full course details and booking, see <http://www.complianceireland.com/AMLDubFls.html>.

The course will cover all publicly available material from the Bill, to the **latest draft guidance notes**, best-practice international thinking and shall draw upon our unique facilitative training style and financial crime case studies (i.e. CDD and Suspicious Transaction Scenarios) which we have worked upon as well as broader examples.

The Bill requires Designated Persons to, if they have not done so already, adopt a demonstrable risk based approach to: Customer Due Diligence; identifying and reporting suspicious transaction; implementing internal controls; and fostering sound financial crime governance arrangements. These responsibilities start at the top with the Board of Directors, Senior Management and the MLRO being responsible and accountable for compliance.

It is no secret that new staff shall be deployed to the AML unit of the Financial Regulator and that the regulator will commence using its new AML investigative and enforcement powers once the Bill is passed. Financial Crime is not a theoretical matter. Recently the following cases have come to light demonstrating the practical effect of international AML obligations:

- Settlement by Wachovia Bank for \$160 Million for failing to have an adequate anti-money laundering programme,
- Arrest of Minister of State in Bahrain for questioning on money laundering charges,
- Arrest in UK of a police officer on money laundering charges,
- Jailing of a director of an Irish designated body,
- Recent regulatory sanctions by the UK FSA against directors and money laundering reporting officers,
- Prosecution of international gangs in Ireland on money laundering charges,
- Criminal prosecutions against UK solicitors and others for facilitating money laundering,
- Prosecutions in France against banks and their directors,
- Jailing of a US MLRO & Compliance Officer for money laundering.

Furthermore the recent arrest of a high profile former banker under section 4 of the Criminal Justice Act relating to financial irregularities should highlight in the minds of senior executives and directors that the Irish government and its prosecutorial arms are prepared to respond to allegations of financial crime.

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