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## Irish Financial Regulator to be Given Tough New Powers to Supervise and Enforce Money Laundering Requirements

Posted on **04 January 2010** by **Peter Oakes**

The draft Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009, when implemented, will transpose the full requirements of the 3rd Money Laundering Directive (Directive 2005/60/EC) into Ireland. It is expected that the Bill will be passed into law in early 2010 – more than two years behind the EU transposition date of 15 December 2007.

The Bill was reviewed by a Select Committee of the Oireachtas (Irish Parliament) in December 2009. The review led to a number of amendments to the proposed Bill. The author will look at these amendments in coming 'Hot Topic' issues. For the purposes of this issue, we will take a brief look at the inspection powers provided to State competent authorities under the Bill. A 'State competent authority' means, under section 62(1) of the Bill, the Central Bank and Financial Services Authority of Ireland (CBFSAI), the Minister for Justice Equality and Law reform and any other competent authority prescribed to be a 'State competent authority'. To be prescribed a 'State competent authority' the competent authority must meet the requirements in section 62(2) of the Bill.

Whether a body is a State competent authority (SCA) or a competent authority is important in terms of its functions and powers. For example, although a competent authority must effectively monitor the designated persons for whom it is responsible and take measures that are reasonably necessary for the purposes of securing compliance by the designated persons (sec 63(1) Bill), a competent authority is not provided the same powers provided to a SCA (sec 66-72).

A SCA, such as the Financial Regulator (part of the CBFSAI), is empowered to:

- direct a designated person to provide information or documents (sec 67(1) Bill).
- direct a designated person to furnish explanations of any documents obtained under section 67 or removed by an authorised officer under section 77(sec 68 Bill).
- make 'cease and desist' type directions (sec 71 Bill)
- appoint an authorised officer(s) to carry out inspections under the Bill (sec 72 Bill). The authorised officers may:
  - enter any premises believed to be the business of a designated person (sec 75 Bill).
  - inspect the premises and documents thereat, including taking copies (sec 77 Bill).
  - request persons to answer questions (sec 77 Bill).
  - remove and retain documents (sec 77 Bill).
  - request assistance from those on the premises, including from those who operate data equipment (sec 77 Bill).
  - secure the premises (sec 77 Bill).
  - be accompanied by a member of the Garda (Irish police force) and other persons (sec 79 Bill).

The above is a summary of certain powers only of an authorised officer.

It should also be noted that the Financial Regulator (as well as other SCAs) may request information from public bodies, other regulators or representative bodies which authorise persons to do business. The information requested, however, must be of a type that is reasonably required by the SCA to perform its duties (sec 66 Bill).

*What happens if a person obstructs an authorised officer?*

Should a person refuse access to, or obstruct, the authorised officer he/she can apply to the District Court for a warrant to gain access and/or prevent the obstruction of his/her inspection (sec 78 Bill). Any person who, without reasonable excuse, is found to have obstructed, interfered with, or failed to have complied with a requirement or direction made by, an authorised officer, on conviction, may be fined up to €5,000 and be imprisoned for up to 1 year (sec 80 Bill). See also secs 67 and 68 Bill). Furthermore, section 111 of the Bill provides that, in certain circumstances (e.g. consent, connivance and willful neglect), the directors, managers, company secretary and officers of the designated person may be 'taken to have also committed the offence' and may be fined and imprisoned.

*Other penalties*

The penalties under the Bill are separate to the administrative sanction procedures available to the Financial Regulator where it proves that a designated person has, for example, breached internal policies and procedures requirements (see Part 4, Chapter 6) in the Bill. These types of breaches are defined as 'prescribed contraventions'. A prescribed contravention can be punished by, amongst other sanctions, a fine of up to €5million (in the case of body corporate) or €500,000 (in the case of an individual). Directors, officers and others concerned in the management of a body corporate may also be fined up to €500,000 for prescribed contraventions committed by their company.

The proposed Bill is a technical document. It goes further than that required by the 3rd EU Money Laundering Directive and imposes certain additional law enforcement powers deemed necessary by the Minister. Persons interested in the effect of the Bill should read its provisions and where necessary take appropriate advice.

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