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Ireland: Update on Transposition of 3rd Directive and PEP Test

Posted on **01 March 2010** by **Peter Oakes**

The transposition of Ireland's international obligation to implement the 3rd EU Money Laundering Directive (Directive) continues, although slowly, through the Oireachtas (Ireland's Parliament). The Bill, known as the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009 (Bill), was passed by Dáil Éireann (Irish Lower House) on 17 February 2010. It is now with the Seanad Éireann (Irish Upper House) and is scheduled for consideration at Second Stage tomorrow (Tuesday 2 March). It is expected that the Bill will have a swift passage through the Seanad and hopefully will pass into law by the end of March. Word on the street is that the Government would like to have the law passed before St Patrick's Day (17 March 2010). Although the Irish use any excuse to raise a pint of Guinness, I don't expect the pre-St Patrick Day's passing of the Bill to be such an occasion. In any event it will take a truckload of the black stuff to wash this Bill down. The current edition (as of today) is located at <http://www.complianceireland.com/Resources.html#AMLBILL>.

PEP - issue of cohabitant and extension of test to include beneficial owner

I'll write more Hot Topics on the Bill in the coming weeks. However one point to raise now is that of the treatment of politically exposed persons (PEP). In a previous Hot Topic issue I wrote about Ireland extending the PEP test to include cohabitants of family members (see http://www.kyc360.com/hot_topic/show/64). Although "it ain't over 'til the fat lady sings" (i.e. until the Bill is passed into law) some semblance of intelligent thought has been applied to the Bill in this area. The new draft Bill has removed 'cohabitants' of PEPs and of their children from the list of persons upon whom the PEP test is to be applied. The definition of "immediate family member" in the Irish Bill more closely follows the definition in the Directive except that the Irish Government may prescribe other persons (i.e. family members) as being "immediate family members" if it so wishes.

Another interesting aspect to the Irish Bill, in its current form, is that "designated persons" (i.e. those required to take anti-money laundering and counter-terrorist financing policies and procedures) will be required to "take steps to determine whether or not a customer, or a beneficial owner [my underlining] connected with the customer or services concerned ... residing in a place outside of [Ireland], is a politically exposed person or an immediate family member or a close associate of, a politically exposed person." (see section 37 of the Bill).

The proposed section 37 requires, rather strangely, that the designated person is to determine whether a beneficial owner connected with the customer or service is a PEP, an immediate family member or a close associate of a PEP. It strikes me that the Irish definition may be circular. The Directive requires designated persons "to determine whether the customer is a politically exposed person ..." etc (see Article 13(4)(a) of the Bill).

Implementation Date

Assuming the Bill is signed into law on or near 31 March 2010, the next issue for Ireland to consider will be the implementation date. Ireland is already under pressure from (including issuing of infringement proceedings by) the European Commission to implement the law which should have been transposed by December 2007. Whether the Commission will entertain Ireland providing designated persons with a three month lead-in time is yet to be seen. However it is understood that most submissions to the Government on the Bill called for a three month lead-in time to allow designated persons to implement any necessary changes. Others have, it is understood, asked for a six month, and longer, lead-in time.

Assuming the Bill is signed into law on 31 March 2010 and the Government allows for a three month lead-in time, designated persons (at least those already covered by the 2nd Directive standards) will be operating under the new law no later than Thursday 1 July 2010.

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