




## Ireland – New Authorisation and AML/CTF Compliance Requirements for TCSPs

Posted on **08 April 2010** by **Peter Oakes**

In this Hot Topic I address the proposed Irish authorisation requirements for trust or company service providers.

### Trust or Company Service Providers

One of the new classes of persons to be subject to Ireland's Criminal Justice (Money Laundering & Terrorist Financing) Bill (the Bill) shall be trust or company service providers (TCSPs). A TCSP is defined in section 24 of the Bill as a person performing any of the following:

- Supported By:**
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- (a) forming companies or other bodies corporate;
  - (b) acting as a director or secretary of a company under an arrangement with a person other than the company;
  - (c) arranging for another person to act as a director or secretary of a company;
  - (d) acting, or arranging for a person to act, as a partner of a partnership;
  - (e) providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership;
  - (f) acting, or arranging for another person to act, as a trustee of a trust;
  - (g) acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

A person acting as TCSP shall be required to be authorised by the Minister of Justice (Minister) unless the person is excluded from the authorisation provision. A person who acts as a TCSP and who is not authorised commits an offence and faces a maximum penalty, where convicted of indictment, of an unlimited fine and imprisonment not exceeding 5 years or both (under section 87 the Bill).

The exclusion to authorisation arises where the TCSP is:

- (a) a member of a designated accountancy body;
- (b) a barrister or solicitor; or
- (c) a credit institution or financial institution (section 84 Bill).

It is important to note that exclusion from authorisation does not exclude the TCSP from complying with the anti-money laundering and counter-terrorist financing provisions in the Bill (which apply to all 'designated persons') including the usual obligations to perform appropriate customer due diligence (CDD), maintenance and retention of CDD and transaction records, reporting of suspicious transactions (where the designated person is suspicious, has actual knowledge or has reasonable grounds to suspect money laundering/terrorist financing), implementing risk-based internal controls (e.g. policies, procedures, training, risk assessments and compliance management), complying with directions from the Garda (Irish Police) and (of course) orders of the Courts together with senior management being potentially personally liable where the TCSP breaches the proposed law.

A TCSP which is required to be authorised by the Minister will be required to complete a prescribed form in which, amongst other details, the TCSP will:

- specify (under section 88 of the Bill) the name of;
- the proposed holder of the TCSP authorisation;
- where the proposed holder of authorisation is a body corporate, partnership or individual who proposes to carry on business as a TCSP as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be), and
- any person who is, or is proposed to be, a beneficial owner of the business.
- include any specified form of consent required to enable the Minister to access personal data held by third parties to determine whether or not the proposed holder and other persons (see list above) are fit and proper persons,
- contain such other information, and be accompanied by such documents, as the Minister requests, and
- be accompanied by the prescribed fee (if any).

The Minister may refuse an authorisation request. The details of grounds for such refusal are set out in section 89 of the Bill. Of particular interest are the following reasons why authorisation may be refused where the Minister on reasonable grounds is satisfied that: o Section 89(c) - information furnished by the applicant is false or misleading in a material manner.

- Section 89(d) -the fit and proper test is not met.
- Section 89(g) - the structure of proposed holder or its business is organised in such a manner that the proposed holder or the business is not capable of being regulated.

Sections 92 and 93 of the Bill deal with the renewal of authorisation of TCSPs. An authorisation (unless revoked) shall remain in place for a period of three years (section 91 of the Bill)

Once authorised a TCSP which fails to comply with a condition of its authorisation or any other prescribed requirement it is potentially liable, on conviction or indictment, to a fine of up to €100,000 (section 94 of the Bill). The same penalty applies where the TCSP does not take reasonable steps to ensure that its principal officers (or partners as the case may be) and/or its beneficial owners are fit and proper (section 95 of the Bill).

Other areas of note relating to the authorisation (and renewal thereof) process for TCSPs include:

- the Minister shall maintain a register of TCSP authorised under Chapter 8, Part 4 (section 104 of the Bill).
- the Minister may revoke authorisation (section 97 of the Bill)

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- appeals may be made by a TCSP in respect of (section 100 of the Bill):
- refusal to authorise;
- refusal to renew;
- imposition of a condition at either authorisation or renewal stage;
- amendments to authorisation;
- revocation of an authorisation; and /or
- service of a direction on holder of authorisation.

It is important for persons who consider themselves to be a TCSP and especially their senior management (including non-executive directors) - whether requiring authorisation or not - are familiar with the provisions of the Bill. This is because section 111 of the Bill provides that prosecution for offences under the Bill committed by a body corporate or a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body can be visited upon:

- for a body corporate - a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity.
- for unincorporated - a member of the management committee or controlling authority.

It would be interesting to canvas the thoughts of readers as to whether the reference to 'officer' in section 111 should be considered to include a reference to the nominated money laundering reporting/prevention officer.

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