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## Ireland – Irish Parliament Finally Passes New Law to Transpose the 3rd EU Directive

Posted on 04 May 2010 by Peter Oakes

It has finally happened. On Wednesday 28 April 2010 the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009 passed through the last stage of the Oireachtas (Irish National Parliament) when amendments made by Seánad Éireann (Irish the Senator/Upper House) published on 23 April were passed by Dáil Éireann (Irish House of Representatives/Lower House).

The Bill now journeys to the President (Mary McAleese) for signing into law. This should happen within 5 to 7 days of the Bill being passed. Therefore expect the Bill to become an Act of the Oireachtas around Thursday 6 May. Once enacted, the Act will apply to all persons who commit (and those that aid, abet, procure, counsel or otherwise assist) the offences of money laundering and/or terrorist financing. Furthermore, in order to help prevent the financial system (and the wider economy) from being used as a conduit for money laundering and/or terrorist financing, certain persons – being defined as designated persons – must comply with onerous CDD, reporting and internal control obligations. Special obligations apply to the senior management of a designated person including the implementation of a demonstrable robust risk-based approach to their employees' obligations.

As of today (Tuesday 4 May 2010) an official version of the Bill as passed by the Oireachtas is yet to be made public. The official version will be located on [www.gcc.ie](http://www.gcc.ie). Compliance Ireland has updated a good faith reproduction of the Bill (which shows the last series of amendments) at <http://www.complianceireland.com/Resources/IR3AMLBILL>.

Up until recently only two countries were listed on the European Commission's (EC) Financial Services Action Plan as not having notified the EC that they had transposed the 3rd EU Money Laundering Directive. These countries were Spain and Ireland (as at 19 March 2010 France had only notified the EC of partial compliance with the Directive). According to Spanish newspapers, Spain's parliament unanimously passed a law implementing the Directive on 24 April 2010. As of today, the EC has not updated its 'State of Play' of transposition of the Directive so it is unclear which of Ireland or Spain will be the last to notify the EC of transposition.

The Irish law comprises 5 Parts and 122 sections of law. Readers wishing to obtain an understanding of the new law should start at Part 4, Chapters 6 and 7 which set out both internal policies and procedures requirements and special provisions applying to banks and financial institutions. Thereafter I suggest readers focus upon Part 4, Chapters 2 to 5 (CDD, Reporting transactions and freezing off, then Chapter 8 (dealing with how designated persons will be monitored by their competent authorities/supervisors).

MLROs/MLPCs and Compliance Officers who find it difficult to get their senior management onside with the new requirements should point out section 111 in the offences provisions in Part 4, Chapter 9. Section 111 provides that where a company breaches a provision of the law, the prosecution can proceed against director, manager, secretary or other officer. The same applies in respect of a member of the management committee of an unincorporated body. This offence provision is in addition to the administrative sanction powers of the Irish Financial Regulator, which for the first time, will be given powers similar to that of the UK FSA and many other regulators to impose monetary fines and directions upon those they regulate (e.g. banks, insurers, investment firms, payment services firms, stockbrokers and certain classes of insurance brokers). It is understood that as many as 12 persons within the Irish Financial Regulator will be focused upon the supervision and enforcement of new anti-financial crime laws.

Unfortunately there is no easy way around the law other than reading it. I have recommended the above approach otherwise should you start reading from section 1, you are likely to be fast asleep before you turn the first page. Other areas worth noting as you read through the Bill (Act) are:

- A person can be prosecuted for a money laundering offence which takes place outside of Ireland (section 8).
- A person being prosecuted for a money laundering offence is presumed to have known or believed that property was the proceeds of criminal conduct (section 11).
- The Garda Síochána (Irish police) may give a direction to a designated person to do or abstain from performing an act. The District Court may also make an order requiring a designated person to do or abstain from performing an act. (Part 3).
- The requirement to report a transaction to the financial intelligence unit (FIU) applies where the designated person knows, suspects or has reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing. As one would expect, the same requirement applies to any agent, employee, partner, director or other officer of the designated person. However in Ireland this list of persons extends to a person engaged under a contract of service with a designated person. (NB: In Ireland the Garda Síochána is the FIU. However in Ireland, unlike other Member States, we must also file the same report with the Revenue Commissioner at the same time)

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