

**GENERAL SCHEME
OF A
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING)
(AMENDMENT) BILL**

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HEAD 1: SHORT TITLE, COLLECTIVE CITATION AND COMMENCEMENT

Provide that –

- (1) This Bill may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2016.
- (2) The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013 and this Bill may be cited together as the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2016.
- (3) This Bill shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

NOTES:

Subhead (1) is a standard provision to provide for the Short title of the Bill.

Subhead (2) provides for the collective citation for the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, Part 2 of the Criminal Justice Act 2013 and the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2016.

Subhead (3) provides for the Minister to make commencement order(s) in relation to the date(s) on which provisions in the Bill will be introduced.

HEAD 2 : INTERPRETATION

Provide that –

In this Bill –

(1) “Act of 2010” means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

(2) “Act of 2013” means the Criminal Justice Act 2013.

HEAD 3: AMENDMENT OF SECTION 2 OF ACT OF 2010

Provide that section 2 of the Act of 2010 is amended–

(1) By the insertion of the following definition in subsection (1):

“Fourth Money Laundering Directive’ means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.¹”

(2) By the substitution of the following for subsection (2):

“(2) A word or expression used in this Act and also used in the Fourth Money Laundering Directive has, unless the contrary intention appears, the same meaning in this Act as in that Directive.”

Notes

Subhead (1) inserts a definition of the Fourth Money Laundering Directive into the Act. This expression is used in the substituted subsection (2) as well as elsewhere in the Heads.

Subhead (2) incorporates definitions from the Directive into the Heads.

¹ OJ L 141,5.6.2015,p.73

HEAD 4: ANTI-MONEY LAUNDERING STEERING COMMITTEE

Insertion of new Part 1A in Act of 2010

Provide that the Act of 2010 is amended by the insertion of the following Part after Part 1:

“PART 1A

5A. Anti-Money Laundering Steering Committee

As soon as may be after the commencement of this Head, the Minister for Finance shall establish a committee to be known as the Anti-Money Laundering Steering Committee, and in this Act referred to as the “AMLSC”, to coordinate action to assess and mitigate risks relating to money laundering and terrorist financing arising at national level.

5B. Membership of AMLSC

(1) The AMLSC shall consist of—

(a) a chairperson, and

(b) such number of ordinary members as the Minister for Finance may determine,

each of whom shall be appointed by the Minister for Finance to be a member of the AMLSC.

(2) The Minister for Finance shall appoint an officer of the Minister for Finance to be the chairperson of the AMLSC.

(3) The ordinary members of the AMLSC shall include the following:

(a) one or more officers of the Minister for Justice and Equality nominated by that Minister;

(b) one or more officers of the Minister for Jobs, Enterprise and Innovation nominated by that Minister;

(c) one or more members of An Garda Síochána nominated by the Commissioner of An Garda Síochána;

(d) one or more officers of the Director of Public Prosecutions nominated by the Director of Public Prosecutions;

(e) one or more officers of the Revenue Commissioners nominated by the Commissioners;

(f) one or more bureau officers (within the meaning of the Criminal Assets Bureau Act 1996) or members of staff of the Criminal Assets Bureau nominated by the Chief Bureau Officer (within the meaning of that Act);

(g) persons nominated by such other body or bodies as the Minister for Finance considers appropriate, if any.

(4) The Central Bank of Ireland may nominate one or more of its employees to attend meetings of the AMLSC and to assist the AMLSC in the performance of its functions.

(5) The AMLSC may act notwithstanding one or more than one vacancy among its membership.

(6) The Minister for Finance may at any time dissolve the AMLSC.

5C. National risk assessment

(1) The AMLSC shall undertake an assessment at national level in order to identify, understand and assess the money laundering and terrorist financing risks which arise at national level (in this Act referred to as a “national risk assessment”), which shall be reviewed and updated on a periodic basis, taking into account relevant national and international factors which indicate such a review is appropriate.

(2) The assessment carried out by the AMLSC and any subsequent updates shall be referred to the Departments of Finance and Justice and Equality for consultation and publication.

(3) The AMLSC shall inform all competent authorities of the publication of the national risk assessment and of any reviews and updates.

(4) The AMLSC may issue information which is considered relevant to all designated persons or of relevance to a class of designated persons or to a competent authority.

Note

The purpose of this Head is to establish on a statutory basis the interdepartmental Anti Money Laundering Steering Committee and require it to carry out a national risk assessment. It reflects the existing (non-legislative) arrangements. This is in line with Article 7 of the Directive and FATF recommendation 2, requiring a coordination mechanism that is responsible for national AML/CFT policies.

HEAD 5: AMENDMENT OF SECTION 6 OF ACT OF 2010

Provide that –

Section 6 of the Act of 2010 is amended in the definition of “criminal conduct” —

- (a) In paragraph (a), by the deletion of “or”,
- (b) In paragraph (b), by the substitution of “in the State, or” for “in the State;”
- (c) By the insertion after paragraph (b) of the following:

“(c) conduct occurring in a place outside the State that would constitute an offence under [the relevant sections of the proposed Criminal Justice (Corruption Offences) Bill] were it to occur in the State where the offence concerns an inducement to, or reward for, is otherwise on account of a foreign official (as defined in the said Bill) doing an act in relation to his or her office;”

Notes

The purpose of this Head is to provide for Article 7 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

HEAD 6 – DEFINITIONS

Provide that section 24(1) of the Act of 2010 (as amended by section 4 of the Criminal Justice Act 2013) is amended–

(1) By the substitution of the following for the definition of “credit institution”:

“credit institution” means –

- (a) A credit institution within the meaning of Article 4(1) of the Capital Requirements Regulation, or
- (b) An Post in respect of any activity that it carries out, whether as principal or agent, that would render it, or a principal for whom it is an agent, a credit institution as a result of the application of *paragraph (a)*;

(2) By the insertion after paragraph (c) of the definition of “customer” of:

- (d) in relation to a Fund Service Provider, means the underlying investor in the fund

(3) By the substitution of the following for the definition of “financial institution”:

“financial institution” means-

- (a) An undertaking that carries out one or more of the activities listed in points 2 to 12, 14 and 15 of Annex I to the Capital Requirements Directive (the text of which is set out for convenience of reference in *Schedule 2*) or foreign exchange services, but does not include an undertaking-
 - (i) that does not carry out any of the activities listed in those points other than one or more of the activities listed in point 7, and
 - (ii) whose only customers (if any) are members of the same group as the undertaking,
- (b) an insurance undertaking within the meaning of Article 13(1) of the Solvency II Directive in so far as it carries out life assurance activities in accordance with that Directive,
- (c) a person, other than a person falling within Article 2 of the Markets in Financial Instruments Directive, whose regular occupation or business is –
 - (i) the provision to other persons of an investment service, within the meaning of that Directive, or

- (ii) the performance of an investment activity within the meaning of that Directive,
- (d) an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act),
- (e) a collective investment undertaking that markets or otherwise offers its units or shares,
- (f) an insurance intermediary within the meaning of the Insurance Mediation Directive (other than a tied insurance intermediary within the meaning of that Directive) that provides life assurance or other investment-related services, or
- (g) An Post, in respect of any activity it carries out, whether as principal or agent
 - (i) that would render it, or a principal for whom it is an agent, a financial institution as a result of the application of any of the foregoing paragraphs,
 - (ii) that is listed in point 1 of Annex 1 to the Capital Requirements Directive, or
 - (iii) that would render it, or a principal for whom it is an agent, an investment business firm within the meaning of the Investment Intermediaries Act 1995 (other than a non-life insurance intermediary within the meaning of that Act) if section 2(6) of that Act did not apply;

(4) By the substitution of the following for the definition of “group”:

“group” means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of the Accounting Directive.

(5) By the substitution In paragraph (b) of the definition of “occasional transaction” of “(within the meaning of Regulation (EU) No. 2015/847²)” for “(within the meaning of Regulation (EC) No. 1781/2006)”.

(6) By the insertion after paragraph (b) of the definition of “occasional transaction” of:

² OJ L141, 5.6.2015,p.1

(bb) in a case where the designated person concerned is a person referred to in section 25(1)(i), that the amount concerned –

- (i) paid to the designated person by the customer, or
- (ii) paid to the customer by the designated person,

is in aggregate not less than €10,000.

(7) By the substitution of the following for the definition of “regulated market”:

“regulated market” means-

- (a) a regulated financial market within the meaning of point 14 of Article 4(1) of the Markets in Financial Instruments Directive that is in an EEA State and is included in any list published by the European Commission (including any list on the Commission’s website), and in force, under Article 47 of the Markets in Financial Instruments Directive.
- (b) a regulated financial market in a place other than an EEA State, being a place that imposes, on companies whose securities are admitted to trading on the market, disclosure requirements consistent with legislation, or
- (c) a prescribed regulated financial market.

(8) By the deletion of the following definitions:

- (a) “Life Assurance Consolidation Directive”.
- (b) “Recast Banking Consolidation Directive”

(9) By the insertion of the following definitions:

“Accounting Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.³

³ OJ L 182, 29.6.2013, p.19

“Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC⁴

“Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012⁵

“collective investment undertaking” means—

- (a) an undertaking for collective investment in transferable securities authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities⁶ (as amended),
- (b) an alternative investment fund within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁷,
- (c) a management company authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities⁸,
or
- (d) an alternative investment fund manager within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives

⁴ OJ L 176, 27.6.2013, p.338

⁵ OJ L 176, 27.6.2013,p.1

⁶ OJ L 302, 17.11.2009, p. 32

⁷ OJ L 174, 1.7.2011, p. 1

⁸ OJ L 302, 17.11.2009, p. 32

2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁹;

‘correspondent relationship’ means—

- (a) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services, or
- (b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;

“electronic money” means electronic money within the meaning of Article 2 of the Electronic Money Directive.

“enhanced customer due diligence” means taking additional measures to those set out in *Head 13* to verify the identity of the customer or beneficial owner and obtaining additional information on the nature of the business relationship;

“enhanced monitoring” means an intensification in the degree and nature of monitoring of the business relationship.

“European Supervisory Authorities (ESAs)” means the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

“monitoring” means conducting ongoing monitoring of the business relationship with the customer by:

- (a) Scrutinising transactions undertaken during the relationship in order to determine if the transactions are consistent with the designated person’s

⁹ OJ L 174, 1.7.2011, p. 1

knowledge of the customer, the customer's business and the risk assessment, including where necessary, the source of wealth or of funds for those transactions.

- (b) Ensuring that documents, data and information on customers are kept up to date in accordance with the measures provided for in *Head 30*.

“National Risk Assessment” means an assessment undertaken at national level by the AMLSC in order to identify, understand and assess the money laundering and terrorist financing risks which arise.

“Risk factors” means variables that, either on their own or in combination, may increase or decrease the risk of money laundering or terrorist financing in a business relationship or occasional transaction.

“Solvency II Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.¹⁰

“Transferable securities” means transferable securities within the meaning of the Markets in Financial Instruments Directive.

Notes

This Head provides for relevant definitions in line with Article 3 and CDD and risk provisions.

The purpose of *subhead (1)* is to amend the definition of “Credit Institution”.

The purpose of *subhead (2)* is to provide that CDD is carried out on the investor in a fund, i.e. as a customer of the Fund Service Provider.

The purpose of *subhead (3)* is to amend the definition of “Financial Institution”. Para (c) is based on MIFID and is the same as the definition in the Act of 2010 (as is the

¹⁰ OJ L335, 17.12.2009,p.1

definition for the Directive). This will be repealed by MIFID II (Article 94 and Annex III to Directive 2014/65/EU).

The purpose of *subhead (4)* is to amend the definition of “group”. The definition included is based on Article 3(15) of the 4th Directive applying Directive 2013/34/EU.

The purpose of *Subhead (5)* is to provide for Article 11 of the 4th Money Laundering Directive in respect of the up to date 2015 reference for the Funds Transfer Regulation which was included in the 2010 Act by section 4 Criminal Justice Act 2013.

The purpose of *subhead (6)* is to amend the definition of “occasional transaction” in respect of “high value goods dealers”. As the threshold has been reduced for this category to €10,000 (Article 2(3)(e)) but stays at €15,000 for the other groups this amendment will clarify the situation. It also provides for the fact that it relates to both payments made or received in cash. Head 7 is also relevant.

The purpose of *subhead (7)* is to amend the definition of “regulated market”. The definition is by reference to the Markets in Financial Instruments Directive. This will be repealed by MIFID II.

The purpose of *subhead (8)* is to delete the definitions of “Life Assurance Consolidation Directive” and “Recast Banking Consolidation Directive”.

The purpose of *Subhead (9)* is to provide for relevant “financial” definitions and definitions relevant to the application of the CDD measures and the risk based approach.

The ESAs were established by Regulations (EU) No 1093/2010, 1094/2010 & 1095/2010 of the European Parliament and the Council of 24 November, 2010. Articles 17, 18(4) and 48(10) of the 4th Money Laundering Directive provide for guidelines to be issued by the ESAs on simplified and enhanced due diligence and on the risk based approach to supervision in respect of credit and financial institutions. The ESAs are in the process of completing these guidelines.

The following financial definitions in the 2010 Act will remain in place:

“Electronic Money Directive”

“Insurance Mediation Directive” – new Directive is due to be transposed by 23

February 2018

“Markets in Financial Instruments Directive”

“payment service”

“Payment Services Directive”

HEAD 7 – DESIGNATED PERSONS – AMENDMENT OF SECTION 25 OF ACT OF 2010

Provide that Section 25 of the Act of 2010 is amended –

(1) In subsection (1) by the substitution of the following for paragraph (i):

“any person trading in goods, but only in respect of transactions involving payments, to the person or by the person in cash, of a total of at least €10,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other), or”

NOTES:

The purpose of this Head is to provide for Article 2(1)(3)(e) and Article 11 (c). Article 2 specifies the classes of obliged entities (designated persons) that the obligations in the Fourth Money Laundering Directive apply to. Article 2(1)(3)(e) replaces the same Article in the Third Directive in respect of “high value goods dealers” but reduces the threshold from €15,000 to €10,000 and now also extends it to both payments made or received in cash whether in one transaction or linked transactions. In addition, Article 11 (which replaces Article 7 of the Third Directive) now contains a provision in relation to when CDD must be applied in relation to high value dealers.

HEAD 8: AMENDMENT OF SECTION 5 OF ACT OF 2013 (SECTION 25 OF ACT OF 2010)

Provide that section 5 of the Act of 2013 (which amended section 25(1) of the Act of 2010) is amended by –

- (1) The substitution of “professional” for all references to “practitioner”.

NOTES:

This is a technical amendment.

HEAD 9 – ENHANCED CDD – HIGH-RISK THIRD COUNTRIES

Provide that sections 31 & 32 of the Act of 2010 are substituted by the following –

- (1) In this Act, “high-risk third country” means a place that is identified by the European Commission in delegated acts adopted pursuant to Article 9 and Article 64 of the Fourth Money Laundering Directive.
- (2) A designated person shall apply enhanced customer due diligence measures and enhanced monitoring where the customer or beneficial owner concerned is established or resident in a high-risk third country.
- (3) *Subhead (2)* shall not apply where a branch or subsidiary of a designated person, that is incorporated in the State, is located in a high-risk third country and that branch or subsidiary is in compliance with the group-wide policies and procedures provided for in *Head 33*.
- (4) Where *subhead (3)* applies, a designated person shall—
 - (a) identify and assess the risk of money laundering or terrorist financing in that place,
 - (b) ensure that a branch or subsidiary referred to in *subhead (3)* applies customer due diligence measures to the extent reasonably warranted by the risk of money laundering or terrorist financing, and
 - (c) apply *subhead (2)* where the designated person has reasonable grounds to believe that there is a higher risk of money laundering or terrorist financing.
- (5) A designated person who fails to comply with this Head commits an offence and is liable –
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or

- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Notes

The purpose of this Head is to provide for Article 18(1) of the 4th Directive and FATF Recommendation 19. Article 9 provides that the Commission shall be empowered to adopt delegated acts in accordance with Article 64 to identify high-risk third countries. Article 64 sets out the power and conditions for the Commission to adopt delegated acts. This will replace sections 31 & 32 of the 2010 Act.

Subhead (1) provides that a place identified by the Commission in delegated acts adopted pursuant to Article 9 and Article 64 of the Fourth Money Laundering Directive is a high-risk third country.

Subhead (2) provides that a designated person must apply enhanced CDD and enhanced monitoring where the customer or beneficial owner is from a high-risk third country.

Subheads (3) & (4) provide for the second paragraph of Article 18(1) which states that enhanced CDD need not be invoked automatically by branches or subsidiaries in high-risk third countries, where they comply with the group-wide policies and procedures set out in Article 45.

HEAD 10 – SUBSTITUTION OF CHAPTER 3 OF PART 4 OF ACT OF 2010

Provide that –

- (1) Sections 33 – 36, Chapter 3 of Part 4 of the Act of 2010 are substituted by
Heads 11-19

HEAD 11 – RISK

Provide that –

- (1) A designated person shall conduct a risk assessment to identify and assess the risks of money laundering or terrorist financing which may arise in its business activities and services based on the following risk factors:
 - (a) the type of customer,
 - (b) the products and services it provides,
 - (c) the countries or geographical areas in which the designated person operates,
 - (d) the transaction and delivery channels it uses, and
 - (e) such other factors as the designated person considers relevant.

- (2) A designated person shall conduct a risk assessment to identify and assess the risks of money laundering or terrorist financing which are associated with a business relationship or occasional transaction taking into account the risk factors specified in *subhead (1)* and the following risk variables:
 - (a) the purpose of an account or relationship,
 - (b) the level of assets to be deposited by a customer or the size of transactions undertaken,
 - (c) the duration of the business relationship, and
 - (d) such other variables as the designated person considers relevant.

- (3) In conducting a risk assessment, a designated person shall also have regard to:
 - (a) information identified in the National Risk Assessment which is of relevance to all designated persons or of relevance to a particular class of designated person.
 - (b) Any guidance on risk issued by the relevant competent authority to the designated person.
 - (c) Guidelines issued by the ESAs where the designated person is a credit or financial institution.

- (4) A risk assessment in relation to a designated person's business activities and services provided for under *subhead (1)* shall be approved by senior management.
- (5) A designated person shall review its risk assessments in accordance with the procedures set out in *Head 30* (policies and procedures).
- (6) A designated person shall keep records and information in relation to such risk assessments in accordance with *Head 30* (policies and procedures), unless otherwise directed by the Competent Authority and on request provide such risk assessments to the Competent Authority.
- (7) The Minister may prescribe additional risk factors or risk variables for the purposes of *subheads (1) & (2)* respectively, if the Minister is satisfied that such risk factors or risk variables are appropriate to conducting a risk assessment of money laundering or terrorist financing.
- (8) The Minister may, in any regulations made under *subhead (7)* prescribe risk factors or risk variables for a particular class or classes of designated person as the Minister considers appropriate having regard to the risks of money laundering or terrorist financing.

Notes

The purpose of this Head is to provide for risk assessments by designated persons in accordance with Article 8 of the 4th Directive and FATF Recommendation 1.

Subhead (1) risk factors (a) –(d) are based on Article 8 of the Directive and FATF Recommendation 1. *Subhead (1)* applies to a business wide risk assessment with *subhead (2)* applying to individual business relationship assessments.

Subhead (2) risk variables – this is based on Article 13(3) and Annex I of the 4th Directive and FATF Recommendation 10.

Subhead (3) provides that a designated person must have regard to:

- the national risk assessment.
- Any guidance on risk issued by the relevant competent authority.
- Guidelines issued by the ESAs for credit and financial institutions.

Subhead (4) provides that a business wide risk assessment under *subhead (1)* shall be approved by senior management.

Subhead (5) provides that a designated person shall review its risk assessments in accordance with the procedures set out in *Head 30* (policies and procedures).

Subhead (6) provides for designated persons to keep records and information in relation to risk assessments in accordance with *Head 30* dealing with policies and procedures unless otherwise directed by the Competent Authority.

Subheads (7) & (8) provide for regulation making powers in relation to risk factors and risk variables.

HEAD 12 – WHEN CDD MEASURES MUST BE TAKEN

Provide that -

(1) A designated person shall apply the measures specified in *Head 13(1) and (2)* in relation to a customer of the designated person—

(a) prior to establishing a business relationship with the customer,

(b) prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

(c) prior to carrying out any service for the customer, if, having regard to the factors set out in *Head 11*, the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing,

(d) prior to carrying out any service for the customer if—

(i) the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form), or information that the person has previously obtained for the purpose of verifying the identity of the customer, whether obtained under this section or [section 32](#) of the [Criminal Justice Act 1994](#) (“the 1994 Act”) or section 33 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“the 2010 Act”) prior to their repeal by this Bill or under any administrative arrangements that the person may have applied before [section 32](#) of the 1994 Act operated in relation to the person, and

(ii) the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer,

and

(e) at appropriate times as reasonably warranted by the risk of money laundering or terrorist financing, including at times when the relevant circumstances of a customer change.

(2) A designated person shall apply the measures specified in Head 13(4) in relation to a customer of the designated person—

(a) prior to the establishment of the business relationship, and

(b) at appropriate times as reasonably warranted by the risk of money laundering and terrorist financing, including at times when the relevant circumstances of a customer change.

Notes

The purpose of this Head is to provide for Articles 11 & 14(1) of the 4th Directive and FATF recommendation 10. This Head is based on section 33(1) of the 2010 Act (as amended). Section 33(1)(c)(i)-(vi) has not been included, due to the risk assessment provided for in Head 11. A new subhead (1)(e) has been inserted in relation to the CDD measures for existing customers.

Subhead (2) provides for Article 13(1)(c) in relation to obtaining information on a business relationship (similar to section 35(1) of the 2010 Act). It also provides for existing customers in line with Article 14(5).

HEAD 13 - CDD MEASURES TO BE TAKEN

Provide that -

(1) The measures that shall be applied by a designated person under *Head 12* are as follows:

(a) identifying the customer, and verifying the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including—

(i) documents from a government source (whether or not a State government source), or

(ii) any prescribed class of documents, or any prescribed combination of classes of documents;

(b) identifying any beneficial owner connected with the customer or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—

(i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is, and

(ii) in the case of a legal entity or legal arrangement of a kind referred to in [section 26, 27, 28 or 30] to understand the ownership and control structure of the entity or arrangement concerned.

(2) A designated person shall also apply the measures in *subhead (1)* to a person who is acting on behalf of the customer. A designated person shall also verify that the person is so authorised to act on behalf of the customer.

(3)A designated person shall monitor dealings with a customer with whom it has a business relationship to the extent reasonably warranted by the risk of money laundering or terrorist financing.

(4)A designated person shall obtain information reasonably warranted by the risk of money laundering or terrorist financing on the purpose and intended nature of a business relationship with a customer.

(5)Nothing in *subhead (1)(a)(i)* or *(ii)* limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

(6)The Minister may prescribe a class of documents, or a combination of classes of documents, for the purposes of *Subhead (1)(a)(ii)*, only if the Minister is satisfied that the class or combination of documents would be adequate to verify the identity of customers of designated persons.

(7)For the purposes of *Subhead (1)(a)(ii)*, the Minister may prescribe different classes of documents, or combinations of classes of documents, for different kinds of designated persons, customers, transactions, services or risks of money laundering or terrorist financing.

(8)The designated person shall have regard to the assessment of risks under *Head 11(1) and (2)* in determining the extent of measures to be applied under *subheads (1) to (4)*.

Notes

The purpose of this Head is to provide for elements of Article 13 of the 4th Directive and FATF Recommendation 10.

Subhead (1) is based on section 33(2) of the 2010 Act.

Subhead (2) provides for identification and verification of an individual purporting to act on behalf of a customer.

Subhead (3) which deals with the obligation to monitor is based on section 35(3) of the 2010 Act but modified due to the inclusion of a definition for “monitoring” in *Head 6*.

Subhead (4) which provides for obtaining information on the business relationship is based on section 35(1) of the 2010 Act. See also *Head 12*.

Subhead (5) is based on section 33(3) of the 2010 Act.

Subheads (6)&(7) are based on section 33(11) & (12) of the 2010 Act.

Article 13(2) (& FATF Recommendation 10) provides that designated persons may determine the extent of CDD measures on a risk sensitive basis. *Subhead (8)* provides that a designated person shall have regard to the risk assessment conducted under *Head 11* in determining this.

HEAD 14 – EXCEPTIONS FOR LATER VERIFICATION

Provide that -

(1) Notwithstanding *Head 12(1)(a)*, a designated person may verify the identity of a customer or beneficial owner, in accordance with *Head 13(1)* during the establishment of a business relationship with the customer if the designated person has reasonable grounds to believe that—

(a) verifying the identity of the customer or beneficial owner (as the case may be) prior to the establishment of the relationship would interrupt the normal conduct of business, and

(b) there is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing,

but the designated person shall take reasonable steps to verify the identity of the customer or beneficial owner, in accordance with *Head 13* as soon as practicable.

(2) Notwithstanding *Head 12(1)(a)*, a credit institution or financial institution may allow an account, [including an account that permits transactions in transferable securities,] to be opened with it by a customer before verifying the identity of the customer or a beneficial owner, in accordance with *Head 13(1)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before carrying out that verification.

(3) Notwithstanding *Head 12(1)(a)*, a designated person may verify the identity of a beneficiary under a life or other investment-related assurance policy, in accordance with *Head 13(1)*, after the business relationship concerned has been established, but the designated person shall carry out that verification before –

(a) the policy is paid out, or

- (b) the beneficiary exercises any other right vested under the policy.
- (4) For the purposes of *subhead (3)*, when a beneficiary has been identified (or designated) a designated person shall apply the following measures –
- (a) For a beneficiary that is identified as a specific individual or legal entity or legal arrangement obtain the name of the person.
 - (b) For a beneficiary designated by characteristics, class or other means obtain sufficient information to satisfy the designated person that it will be able to establish the identity of the beneficiary at the time of the payout.
- (5) For the purposes of *subhead (3)*, where life or other investment-related assurance products are assigned, in whole or in part, to a third party, credit institutions and financial institutions that are aware of such assignment shall identify, at the time of assignment, the beneficial owner of the assigned product. For the purposes of this *subhead* the beneficial owner of the assigned product means the natural person, legal person or legal arrangement that receives for its own benefit the value of the policy assigned.
- (6) Notwithstanding *Head 12(1)(a)*, where the identity or identities of a beneficiary or beneficiaries to a discretionary trust or similar legal arrangement are not immediately discernible, being designated by particular characteristics or class, a designated person shall obtain sufficient information concerning the possible beneficiary or beneficiaries to satisfy the designated person that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the ultimate beneficiary of its vested rights.

Notes

The purpose of this Head is to provide for Articles 13(5) and (6), 14(2) & (3) of the 4th Directive and FATF Recommendation 10. The Head is based on section 33(5), (6) & (7) of the 2010 Act.

Subhead (1) is based on section 33(5) and provides for Article 14(2).

Subhead (2) is based on section 33(6) with changes in line with Article 14(3) of the 4th Directive.

Subheads (3)&(4) are based on section 33(7) with changes in line with Article 13(5).

Subheads (5)&(6) also provide for Article 13(5) & (6).

HEAD 15 – WHEN CDD NOT APPLIED

Provide that -

(1) A designated person who is unable to apply the measures specified in *Head 13(1)* or *(2)* or obtain information under *Head 13(4)* in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information required under that *Head*—

(a) shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified,

(b) shall discontinue the business relationship (if any) with the customer,

and

(c) shall consider making a report to the Garda Síochána and the Revenue Commissioners in accordance with section 42.

Notes

This Head provides for Article 14(4) of the 4th Directive and FATF Recommendation 10. The Head is based on section 33(8) and section 35(1) & (2) of the 2010 Act.

HEAD 16 – SIMPLIFIED CDD – general

Provide that -

- (1) A designated person may apply simplified customer due diligence measures where, having assessed:
- (a) the risk factors in *Head 11(1)*, and taken into account the lower risk factors set out in *Schedule 3*, and
 - (b) the risk variables in *Head 11(2)*,

it is satisfied that the business relationship or transaction presents a lower risk of money laundering or terrorist financing.

- (2) In *subhead (1)*, applying simplified customer due diligence measures means taking the measures specified in *Head 13* in such manner, to such extent and at such times as is reasonably warranted by the lower risk of money laundering or terrorist financing.

(3) The Minister may by order amend *Schedule 3* by the addition to that Schedule of a lower risk factor if the Minister is satisfied that such risk factor is appropriate to conducting a risk assessment of money laundering or terrorist financing.

- (4) The Minister may, in any order made under *subhead (3)*, specify that such risk factors apply for a particular class or classes of designated persons as the Minister considers appropriate having regard to the risks of money laundering or terrorist financing.

(5) A designated person shall not apply *subhead (1)* in any of the following circumstances:

- (a) The customer concerned is from a high-risk third country;
- (b) *Head 12(1)(c)* or *(d)* applies;
- (c) The designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned under *Head 21 (PEPS)*.

(6) A designated person shall record in writing where it applies simplified customer due diligence measures and its reasons for doing so.

Notes

The purpose of this Head is to provide for the simplified CDD provisions in Article 15 of the 4th Directive by reference to the risk factors set out in *Schedule 3* which is based on Annex II of the Directive and FATF Recommendation 10.

Subheads (3) & (4) provide for the making of orders in relation to risk factors.

Subhead (5) is based on section 34(3) of the 2010 Act and specifies situations when simplified CDD may not be used.

Subhead (6) requires designated persons to record the reasons for having applied simplified customer due diligence.

HEAD 17– ELECTRONIC MONEY – DEROGATION - ARTICLE 12

Provide that –

- (1) A designated person is not required to apply the measures specified in Head 13(1), (2) and (4) where an electronic money payment instrument is issued, where the designated person has conducted a risk assessment in accordance with Head 11 and has reasonable grounds to believe that there is a lower risk of money laundering, and where-
 - (a) the payment instrument concerned-
 - (i) is not reloadable, or
 - (ii) has a maximum monthly payment transactions limit not exceeding €250 where the instrument cannot be used outside of the State,
 - (b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €250,
 - (c) the payment instrument concerned is used exclusively to purchase goods and services,
 - (d) the payment instrument concerned cannot be funded with anonymous electronic money,
 - (e) the issuer of the payment instrument concerned carries out sufficient monitoring of the transactions or business relationship concerned to enable the detection of unusual or suspicious transactions, and
 - (f) the transaction concerned is not a redemption in cash or cash withdrawal of the monetary value of the electronic money of an amount exceeding €100.

- (2) A designated person shall not apply subhead (1) in any of the following circumstances:
 - (a) The customer concerned is from a high-risk third country;
 - (b) Head 12(1)(c) or (d) applies;
 - (c) The designated person is required to apply measures, in relation to the customer or beneficial owner (if any) concerned under Head 21 (PEPS).

Notes

The purpose of this Head is to transpose Article 12 of the Directive. The exemption for e-money is currently set out in section 34(7)(d) of the 2010 Act.

Subhead (1), paragraphs (a) to (e) provide for Article 12(1) and paragraph (f) of subhead (1) provides for Article 12(2). Subhead (1) provides that the exemption from CDD (except for monitoring) applies where there is a low risk.

Subhead (2) sets out the circumstances where the exemption cannot be availed of.

HEAD 18 – ENHANCED CDD - general

Provide that –

- (1) A designated person shall apply customer due diligence measures and enhanced monitoring where, having assessed:
 - (a) the risk factors in *Head 11(1)*, and taken into account the higher risk factors set out in *Schedule 4*, and
 - (b) the risk variables in *Head 11(2)*,it is satisfied that the business relationship or transaction presents a higher risk of money laundering or terrorist financing.
- (2) The Minister may by order amend *Schedule 4* by the addition to that Schedule of a higher risk factor if the Minister is satisfied that such risk factor is appropriate to conducting a risk assessment of money laundering or terrorist financing.
- (3) The Minister may, in any order made under *subhead (2)*, specify that such risk factors apply for a particular class or classes of designated persons as the Minister considers appropriate having regard to the risks of money laundering or terrorist financing.
- (4) Section 39 of the Act of 2010 is repealed.

Notes

The purpose of this Head is to provide for the general enhanced CDD provisions in Article 18(1) of the 4th Directive and Article 18(3) by reference to the risk factors set out in Schedule 4 which is based on Annex III of the Directive and FATF Recommendation 10.

Subheads (2)&(3) provide for order making powers in relation to risk factors.

Subhead (4) provides for the repeal of section 39.

HEAD 19 – ENHANCED CDD – complex large transactions

Provide that –

- (1) A designated person shall, in accordance with the policies and procedures provided for in *Head 30* examine the background and purpose of all complex, unusual large transactions and all unusual patterns of transactions that have no apparent economic or visible lawful purpose. Where the designated person has reasonable grounds to believe/regard that the transaction/activity is particularly likely, by its nature to be related to money laundering or terrorist financing, it shall apply enhanced CDD measures including enhanced monitoring of the transactions/business relationship.

Notes

The purpose of this Head is to provide for Article 18(2). Head 30 is also relevant.

HEAD 20: OFFENCE PROVISION FOR HEADS 11-19

Provide that –

- (1) A designated person who fails to comply with a provision in Heads 11-19 commits an offence and is liable –
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

HEAD 21: POLITICALLY EXPOSED PERSONS – AMENDMENT OF SECTION 37 OF ACT OF 2010

Provide that section 37 of the Act of 2010 (as amended by section 9 of the Criminal Justice Act 2013) is amended by –

(1) The deletion of “residing in a place outside the State” in subsections (1), (4) & (6).

(2) In subsection (4) by the substitution of the following for paragraph (c):

“apply enhanced monitoring of the business relationship with the customer (including monitoring of the source of wealth and funds) that the designated person considers to be warranted by the risk of money laundering or terrorist financing. “

(3) Insert after subsection (6) –

(6A) If a designated person knows or has reasonable grounds to believe that a beneficiary of a life or other investment-related assurance policy, or a beneficial owner connected with the customer or service concerned, is a politically exposed person or an immediate family member or a close associate of a politically exposed person, it shall apply the following measures on or before the time of the payout or at the time of assignment, in whole or in part, of the policy:

(a) Inform senior management before payout of policy proceeds.

(b) Conduct enhanced scrutiny of the business relationship with the policy holder.

(4) In subsection (7) substitute “subsections (4), (6) and (6A)” for “subsections (4) and (6)”.

(5) In subsection (10) in the definition of “specified official”:

(a) Substitute in paragraph (b) “a member of parliament “ with “a member of parliament or of a similar legislative body”.

(b) Insert after paragraph (b):

“(bb) members of the governing bodies of political parties”

(c) Insert after paragraph (e):

“(f) directors, deputy directors and members of the board or equivalent function of an international organisation.”

NOTES:

The purpose of this Head is to provide for amendments required to section 37 of the 2010 Act (amended by section 9 Criminal Justice Act 2013) arising from Articles 3, 20, 21, 22 & 23 of the 4th Money Laundering Directive. The Head also gives effect to FATF Recommendation 12.

Subhead (1) provides for the deletion in section 37 of all references to “residing in a place outside the State”.

Subhead (2) provides for the substitution of subsection (4)(c) which was inserted in the 2010 Act by section 9 Criminal Justice Act 2013. As this refers to additional measures by reference to section 35(3) which is being replaced – see *Head 13(3)*. it is necessary to provide a new wording for this subsection.

Subhead (3) provides for Article 21 in relation to PEPs who are beneficiaries of life or other investment related assurance policies and the measures that a designated person must put in place.

Subhead (4) amends subsection (7) which provides for the circumstances in which a designated person is deemed to know that another person is a PEP so that it also applies to some of the new subheads.

Subhead (5) amends the definition of specified official in subsection (10) in line with the categories of officials provided for in Article 3(9) of the Directive.

**HEAD 22 – ENHANCED CDD – CORRESPONDENT RELATIONSHIPS -
AMENDMENT OF SECTION 38 OF ACT OF 2010**

Provide that –

Section 38 of the Act of 2010 is amended by –

- (1) The substitution of “credit institution and financial institution” for all references to “credit institution”.
- (2) In subsection (1), by the substitution of “correspondent relationship” for “correspondent banking relationship”.
- (3) In subsection (1)(e)(ii) by the substitution of “the Fourth Money Laundering Directive,” for “the Third Money Laundering Directive,”
- (4) In subsection (1)(f)(ii) by the substitution of “Head 13(4)” for “section 35(1)”.
- (5) In subsection (1)(f)(iii) by the substitution of “Head 13(3)” for “section 35(3)”.

NOTES:

The purpose of this Head is to provide for Article 19 of the 4th Money Laundering Directive which applies to both credit and financial institutions. *Subheads (4) & (5)* provide for references to section 35(1) & 35(3) (now contained in *Head 13*).

HEAD 23: AMENDMENT TO SECTION 40 OF THE ACT OF 2010 – THIRD PARTY RELIANCE

Provide that Section 40 of the Act of 2010 is amended by–

- (1) In subsection (1)(b) the substitution of “Fourth Money Laundering Directive, in accordance with Section 2 of Chapter VI” for “Third Money Laundering Directive, in accordance with Section 2 of Chapter V.”
- (2) In subsection (1)(c) the substitution of “A person who carries on business in a place other than a Member State which is not a high-risk third country and who is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Fourth Money Laundering Directive” for “a person who carries on business in a place designated under *Section 31*, is supervised or monitored in the place for compliance with requirements equivalent to those specified in the Third Money Laundering Directive”.
- (3) The substitution of “*Head 13 CDD Measures to be taken (subheads(1) & (4))*” for all references to “*section 33 or 35(1)*”.
- (4) The insertion of the following subsection after subsection (7):

“(8) The obligations in Section 40(3),(4)&(5) do not apply to a designated person incorporated in the State which is part of a group to which *Head 33 (Group Wide Policies and Procedures)* applies, where –

 - (a) The relevant third party is part of the same group
 - (b) The group applies customer due diligence and record keeping measures and policies and procedures to prevent and detect the commission of money laundering and terrorist financing in accordance with the Fourth Money Laundering Directive or requirements equivalent to those specified in the Fourth Money Laundering Directive, and
 - (c) Supervision and monitoring of the group is carried out in the State by the competent authority for the designated person, or

(d) Supervision and monitoring of the branch or subsidiary is carried out in the State by the relevant competent authority.

Notes;

The purpose of this Head is to provide for Articles 25-29 and FATF Recommendation 17.

Subhead(1) provides for an amendment to section 40(1)(b) to replace the reference to the 3rd Directive with the 4th Directive.

Subhead (2) provides for the amendment to the cross-reference to section 31 in section 40(1)(c).

Subhead (3) provides for the replacement of all references to section 33 or 35(1) which are being replaced by *Head 13 CDD measures to be taken (subheads (1) & (4))*.

Subhead (4) provides for Article 28 which provides that the obligations under Articles 26 or 27 may be considered as being complied with for a designated person which is part of a group and where certain conditions are met.

HEAD 24: AMENDMENT OF SECTION 42 OF ACT OF 2010

Provide that –

Section 42 of the Act of 2010 is amended –

(1) By the insertion after subsection (6) of the following subsection:

(6A) A designated person who has made a report under this section shall, if requested by the Garda Síochána or the Revenue Commissioners, provide additional information relevant to the report.

NOTES:

The purpose of this Head is to make it explicit that An Garda Síochána or the Revenue Commissioners may request additional relevant information from the designated person after a Suspicious Transaction Report has been made. This is in line with Article 32(3) of the 4th Money Laundering Directive.

HEAD 25: EXCHANGE OF INFORMATION BETWEEN FIU AND RELEVANT BODIES

Provide that the following section is inserted in Chapter 4 of Part 4 of the Act of 2010 –

- (1) A member of the Garda Síochána may request information, including personal data (within the meaning of the Data Protection Act 1988), from a “relevant body”, for the purpose of the performance of the functions of an FIU under the Fourth Money Laundering Directive and shall, when making such a request, give reasons for the making of the request.
- (2) The requested relevant body will produce or provide access to such information [notwithstanding any prohibition or restriction upon disclosure of information].
- (3) For the purposes of this section “relevant body” means a Department of State, body or authority which may be prescribed by the Minister for the purposes of this *Head* after consultation and agreement with such other Minister of the Government (if any) as appears to him or her to be appropriate having regard to the functions of that other Minister of the Government.
- (4) A specified relevant body may request information from the Garda Síochána where it has reasonable grounds to suspect that there is a risk that a customer or a designated person is involved in or a service or transaction sought by a customer or provided by a designated person is related to money laundering, terrorist financing or associated predicate offences. Such a request shall be accompanied by:
 - (a) A brief statement of the facts
 - (b) The reason for requesting the information.
 - (c) How the information will be used.

- (5) Information obtained by the Garda Síochána in connection with the exercise of its functions shall only be disclosed to a relevant body if a member of the Garda Síochána is satisfied that it is necessary and:
- (a) Its disclosure is for the purpose of preventing, detecting or investigating a money laundering, terrorist financing or an associated predicate offence.
 - (b) Its disclosure is relevant to the purposes for which it was requested.
 - (c) Disclosure of the information will not adversely affect a criminal investigation taking place.
- (6) A member of the Garda Síochána may grant a request under subhead (4) in full or in part and may impose restrictions and conditions on the use of the information granted.
- (7) A member of the Garda Síochána may refuse a request under subhead (4) (and without stating the reasons for such refusal).
- (8) Where a relevant body is granted access to the information requested under subhead (4) it will only use the information for the purposes for which it was requested.
- (9) Where a relevant body is granted access to the information requested under subhead (4) it will (if requested) inform the Garda Síochána of the outcome of any related investigation or proceedings.
- (10) The Garda Síochána may
- (a) analyse information relevant to the prevention, detection and combatting of money laundering, and
 - (b) disseminate the results of that analysis and information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or terrorist financing.

NOTES:

The purpose of this Head is to provide for provisions in Article 32. It specifically provides that An Garda Síochána may request information from relevant bodies where there is a risk of money laundering or terrorist financing. It also provides that certain of those relevant bodies may request information from An Garda Síochána where there is a risk of money laundering or terrorist financing.

Subhead (3) provides that the bodies with which information may be shared are to be prescribed by the Minister.

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HEAD 26: INTERNATIONAL CO-OPERATION – Co-operation between FIUs – definitions

Provide that the following section is inserted in Chapter 4 of Part 4 of the Act of 2010 –

- (1) “Financial Intelligence Unit (FIU)” means—
 - (a) in relation to a Member State, a body which has been notified to the European Commission under Article 32 of the Fourth Money Laundering Directive, or
 - (b) a body which is a member of the Egmont Group.
- (2) The “Egmont Group” means the group of financial intelligence units known by that name.
- (3) “Requested FIU” means an FIU to which the Garda Síochána has made a request for information referred to in *Head 27*.
- (4) “Requesting FIU” means an FIU which has made a request for information to the Garda Síochána referred to in *Head 28*.

NOTES:

Head 26 provides for definitions in relation to FIUs for the purposes of sharing information and co-operation internationally as per Articles 51-57.

At EU level co-operation arrangements include the FIU Platform and FIU.net. At a wider international level there is the Egmont Group which operates within the FATF Member States.

HEAD 27: INTERNATIONAL CO-OPERATION – Co-operation between FIUs - Requests from An Garda Síochána to another Member State

Provide that the following section is inserted in Chapter 4 of Part 4 of the Act of 2010 –

- (1) The Garda Síochána may request an FIU to supply financial intelligence and other related information in order to prevent, detect or investigate an [money laundering or terrorist financing] offence or where there are reasonable grounds to suspect that there is a risk of money laundering or terrorist financing. Such a request shall be accompanied by:
 - (a) A brief statement of the facts.
 - (b) The reason for requesting the information.
 - (c) How the information will be used.

- (2) Information received by the Garda Síochána under *subhead (1)* may only be used for the purposes for which it was sought or provided and in accordance with any restrictions and conditions imposed by the “requested FIU”, unless *subhead (3)* applies.

- (3) The Garda Síochána may request the “requested FIU” either in the initial request or at a later time to inform it whether the information received may be given to other persons including a “relevant body”.

- (4) The Garda Síochána shall not provide access to this information to another person or use it for reasons other than those specified in a request under *subhead (2)* without the prior approval of the “requested FIU”.

- (5) The Garda Síochána shall ensure that the security and confidentiality of information is maintained and protected through the use of appropriate procedures and secure and reliable channels or mechanisms of exchange.

NOTES:

The Head provides for procedure for dealing with requests from An Garda Síochána to other States in accordance with Articles 51 – 57.

HEAD 28: INTERNATIONAL CO-OPERATION – Co-operation between FIUs - Requests from an FIU in another Member State to An Garda Síochána

Provide that the following section is inserted in Chapter 4 of Part 4 of the Act of 2010 –

- (1) An FIU may request the Garda Síochána to supply financial intelligence and other related information where it has reasonable grounds to suspect that there is a risk of money laundering or terrorist financing. Such a request shall be accompanied by:
 - (a) A brief statement of the facts.
 - (b) The reason for requesting the information.
 - (c) How the information will be used.

- (2) A member of the Garda Síochána may grant a request under subhead (1) unless:
 - (a) Disclosure of the information would adversely affect a criminal investigation or criminal proceedings taking place, or
 - (b) Disclosure of the information would be disproportionate to the legitimate interests of a person or would otherwise not be in accordance with fundamental principles of national law.

- (3) Where a requesting FIU is granted access to the information the Garda Síochána shall impose the following restrictions and conditions on the use of the information granted:
 - (a) That the information is only used for the purposes for which it was requested.
 - (b) The prior consent of the Garda Síochána is obtained if the information is to be used for reasons other than those specified in the request.
 - (c) That measures are taken to ensure that such information is not accessible to any other person.

- (4) Where a requesting FIU has requested consent to disseminate the information to competent authorities in its State, the Garda Síochána shall refuse that consent where—
- (a) The dissemination would fall beyond the scope of application of [this Act];
 - (b) Disclosure of the information would adversely affect a criminal investigation or criminal proceedings taking place;
 - (c) Disclosure of the information would be disproportionate to the legitimate interests of a person or would otherwise not be in accordance with fundamental principles of national law.
- (5) The Garda Síochána shall ensure that the security and confidentiality of Information is maintained and protected through the use of appropriate procedures and secure and reliable channels or mechanisms of exchange.
- (6) The Garda Síochána may provide information under this Head to an FIU, other than where a request is made, where there are reasonable grounds to suspect that the provision of that information is necessary having regard to the risk of money laundering or terrorist financing.

NOTES:

Head 28 provides for requests from another FIU to An Garda Síochána in accordance with Articles 51-57

HEAD 29: AMENDMENT OF CHAPTER 5 OF THE ACT OF 2010 - TIPPING OFF BY DESIGNATED PERSONS

Provide for the following amendments in Chapter 5 –

- (1) In section 51(2) of the Act of 2010 by insertion of “or a subsidiary or a branch of a credit institution or financial institution” after “a credit institution or financial institution” in paragraphs (a) and (b).
- (2) In section 51(2)(c) by the substitution of “ “or is not a high-risk third country under *Head 9*,” for “or a place designated under *section 31*,”
- (3) By the insertion after section 51(2)(d) of :
 - (e) The branches and subsidiaries are in compliance with the Group Wide Policies and Procedures in *Head 33*.
- (4) In section 51(3) by the substitution of “ “or is not a high-risk third country under *Head 9*,” for “or a place designated under *section 31*,”
- (5) By the insertion after section 51(3) of the following:

“(4) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure, both—

 - (a) the person making the disclosure, or on whose behalf the disclosure was made, and
 - (b) the person to which it was made, belonged to the same group.”
- (6) In section 52(2)(c) by the substitution of “ “or is not a high-risk third country,” for “or a place designated under *section 31*,”

NOTES:

The purpose of this Head is to provide for Article 39 (Prohibition of Disclosure) in the 4th Money Laundering Directive. Chapter 5, sections 49-53 of the 2010 Act already cover most of the obligations in Article 39.

Subhead (5) provides for a defence to disclosure in accordance with Article 45(8), - Head 33(2).

HEAD 30 – INTERNAL POLICIES, CONTROLS AND PROCEDURES

Provide that section 54 of the Act of 2010 (as amended by section 11 of the Criminal Justice Act 2013) is substituted by -

- (1) A designated person shall adopt internal policies, controls and procedures in relation to its business to prevent and detect the commission of money laundering and terrorist financing.
- (2) In particular, a designated person shall adopt internal policies, controls and procedures to be followed by persons involved in the conduct of the designated person's obligations under this *Part*.
- (3) A designated person incorporated in the State that is part of a group shall adopt internal policies, controls and procedures to be followed by its branches and subsidiaries located in a place outside the State.
- (4) The provisions in *subhead (3)* shall include policies and procedures for sharing information within the group subject to the protection of personal data (within the meaning of the Data Protection Acts 1988 & 2003).
- (5) The internal policies, controls and procedures shall be approved by senior management and kept under review, in particular when there are changes to the business profile or risk profile of the designated person.
- (6) The internal policies, controls and procedures shall include policies, controls and procedures dealing with -
 - (a) Risk assessment - the identification, assessment, mitigation and management of risk factors for money laundering or terrorist financing and the review of such mechanisms.
 - (b) Customer due diligence measures.
 - (c) Monitoring of transactions and business relationships.
 - (d) The identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or

visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature to be related to money laundering or terrorist financing.

- (e) Measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity.
 - (f) Measures to be taken to prevent risks which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered.
 - (g) Reporting procedures.
 - (h) Record keeping procedures.
 - (i) Measures to be taken to keep documents and information relating to the customers of that designated person up to date.
 - (j) Measures to be taken to keep documents and information relating to the risk assessments of that designated person up to date.
 - (k) Internal systems and controls (*to identify emerging risks, keep assessments up to date*)
 - (l) the monitoring and management of compliance with, and the internal communication of these policies and procedures.
 - (m) Internal reporting of breaches of this Act, if directed in writing by the competent authority.
- (7) In preparing internal policies, controls and procedures under this *Head*, the designated person shall have regard to any guidelines on preparing, implementing and reviewing such policies and procedures which are issued by its relevant Competent Authority.
- (8) A designated person shall ensure that the persons involved in the conduct of designated person's business are –
- (a) Instructed on the law relating to money laundering and terrorist financing, and

- (b) Provided with ongoing training on identifying a transaction or other activity that may be related to money laundering or terrorist financing, and on how to proceed once such a transaction or activity is identified.
- (9) A designated person shall appoint a compliance officer, if directed in writing by the competent authority.
- (10) A designated person shall appoint a member of senior management with primary responsibility for the implementation and management of anti-money laundering measures (as provided for in legislation), if directed in writing by the competent authority.
- (11) A designated person shall undertake an independent audit function to test the internal policies, controls and procedures outlined in this *Head*, if directed in writing by the competent authority.
- (12) A reference in this *Head* to persons involved in the conduct of a designated person's business includes a reference to directors and other officers, and employees, of the designated person.
- (13) The obligations imposed on a designated person under this *Head* do not apply to a designated person who is an employee of another designated person.
- (14) *Subheads (8), (9), (10) & (11)* do not apply to a designated person who is an individual and carries on business alone as a designated person.
- (15) A designated person who fails to comply with this *Head* commits an offence and is liable –
- (c) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or
 - (d) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

NOTES

The purpose of this *Head* which will replace section 54 of the Act of 2010 is to set out the policies and procedures required in the context of Articles 8 & 46 of the 4th Directive and FATF recommendation 18.

Subhead (1) is similar to section 54(1)

Subhead (2) replicates the chapeau of section 54(2).

Subheads (3)&(4) relate to designated persons part of a group including branches and subsidiaries.

Subhead (5) provides for the approval of the internal policies, controls and procedures by senior management and for such policies to be kept under review.

Subhead (6)(a) provides for internal policies, controls and procedures in relation to risk assessments and review of these.

Subhead (6)(d) deals with complex or large transactions currently provided for in *section 54(3)(a)*.

Subhead (6)(e) deals with transactions/products that favour anonymity currently provided for in *section 54(3)(b)*.

Subhead (6)(f) deals with measures to be taken to prevent risks arising from technological developments currently provided for in *section 54(3)(e)*.

Subhead (6)(i) provides for measures to be taken to keep documents and information in relation to customers up to date. This is currently provided for in *section 54(3)(c)*.

Subhead (6)(j) provides for measures to keep documents/information in relation to risk assessments up to date.

Subhead (6)(m) provides for procedures to be put in place for the reporting internally of suspected breaches of the Act, where directed by the competent authority. This is to provide for Article 61(3) of the Directive.

Subhead (7) provides for a designated person to have regard to any guidelines prepared by its Competent Authority.

Subhead (8) is based on section 54(6) and imposes a requirement to instruct and train employees.

Subhead (9) provides for the appointment of a compliance officer, if directed in writing by the competent authority.

Subhead (10) provides for the appointment/identification of the member of senior management responsible for the implementation of AML policies, controls, etc., if directed in writing by the competent authority.

Subhead (11) provides for a designated person to undertake an independent audit of the policies and procedures, if directed in writing by the competent authority.

Subhead (12) is based on *section 54(7)*.

Subhead (13) is based on *section 54(12)*.

Subhead (14) is based on *section 54(10)* and provides that subheads (8), (9), (10) & (11) do not apply to a designated person who is an individual/sole trader.

HEAD 31 - RECORD KEEPING - AMENDMENT OF SECTION 55 OF ACT OF 2010

Provide that –

Section 55 of the Act of 2010 (as amended by section 12 of the Criminal Justice Act 2013) is amended –

- (1) In subsections (1) and (4)(b), by the substitution of “correspondent relationship” for “correspondent banking relationship”,
- (2) In subsection (4) by the substitution of “Subject to subsections (4A), (4B) & (4C), the documents and other records referred to in *subsections (1) to (3)* shall be retained by the designated person for a maximum period of 5 years after –“for “The documents and other records referred to in *subsections (1) to (3)* shall be retained by the designated person for a period of not less than 5 years after – “
- (3) By the insertion, after subsection (4), of the following subsection:

“(4A) The documents and other records shall be retained by a designated person for additional periods up to a maximum of 5 years, from the expiration of the period provided for in subsection (4), provided that such period of retention does not in total exceed 10 years, where -

- (a) A member of the Garda Síochána not below the rank of [Sergeant] directs a designated person to retain documents and other records relating to a business relationship or an occasional transaction, for an additional specified period(s) if -
 - (i) the member is satisfied that such documents or records are required for the purposes of an investigation related to money laundering or terrorist financing,

or

- (ii) a decision whether or not to institute proceedings against a person for an offence of money laundering or terrorist financing has not been taken and the documents or records are likely to be required for the prosecution of an offence of money laundering or terrorist financing.

(4B) A direction given by a member of the Garda Síochána (not below the rank of Sergeant) under subsection (4A) shall be for a maximum period of 5 years.

(4C) A direction given by a member of the Garda Síochána not below the rank of [Sergeant] ceases to have effect if none of the circumstances in section (4A) continue to apply. A member of the Garda Síochána shall, as soon as practicable, inform the designated person to whom the direction was made of the fact that the direction has ceased to have effect.

(4D) Where on 25 June 2015 proceedings for an offence relating to money laundering or terrorist financing have been instituted, a designated person shall retain for a maximum period of 10 years such documents and records which are relevant to –

- (a) Use as evidence in such proceedings
- (b) For disclosure to, or use by, a defendant in such proceedings, or
- (c) To support the admissibility of any evidence on which the prosecution may seek to rely on such proceedings.

(4E) Nothing in this section shall prohibit the retention of a record which is authorised by any other enactment or is otherwise authorised by law (or by an order of a court).

NOTES:

The purpose of this Head is to provide for Article 40 of the 4th Money Laundering Directive and FATF recommendation 11.

HEAD 32 - AMENDMENT OF SECTION 56 OF ACT OF 2010

Provide that section 56 of the Act of 2010 is amended by –

- (1) In section 56(1) of the Act of 2010 to delete “credit or financial institution that is”.
- (2) In Section 56(1)(a) of the Act of 2010 to delete “6” and substitute “5”.
- (3) In section 56(2) of the Act of 2010 to delete “credit institution or financial institution” and substitute “designated person.”

NOTES:

The purpose of this Head is to amend section 56 of the Act of 2010 which currently provides that credit and financial institutions must have systems in place to respond to enquiries from An Garda Síochána as to whether it has had a business relationship with a person. Article 42 of the 4th EU Money Laundering Directive has extended this obligation to all designated persons and specifies a period of 5 years. The Head applies the obligation to all designated persons.

HEAD 33: AMENDMENT TO SECTION 57 OF THE ACT OF 2010 - GROUP WIDE POLICIES AND PROCEDURES

Provide that section 57 of the Act of 2010 is amended by the substitution of the following –

- (1) A designated person incorporated in the State which is part of a group shall adopt and apply group-wide policies and procedures for sharing information within the group, subject to the protection of personal data (within the meaning of the Data Protection Acts 1998 & 2003), for the purposes of customer due diligence and to prevent and detect the commission of money laundering and terrorist financing.
- (2) A report in relation to a suspicious transaction made under section 42 shall be shared within the group unless otherwise instructed by the Garda Síochána [or the Revenue Commissioners].
- (3) A designated person shall ensure that any branch or subsidiary that is in a Member State or a place other than a Member State adopts and applies the group-wide policies and procedures referred to in *subhead (1)*.
- (4) Group-wide policies and procedures shall be approved by senior management.
- (5) A designated person incorporated in the State that operates a branch, subsidiary or establishment in another Member State shall ensure that the branch, subsidiary or establishment complies with the requirements applied in that Member State in relation to the Fourth Money Laundering Directive.
- (6) A designated person incorporated in the State shall ensure that any branch or subsidiary, in a place other than a Member State, applies requirements equivalent to those provided for in the Fourth Money Laundering Directive and applied in the State, unless *subhead (7)* applies.

(7) If the place concerned does not permit the application of requirements equivalent to those provided for in the Fourth Money Laundering Directive and applied in the State, the designated person shall-

- (a) inform the competent authority for the designated person,
- (b) apply additional measures which are permitted in that State to deal with the risk of money laundering or terrorist financing,
- (c) apply measures, determined in consultation with the competent authority, to deal with the risk of money laundering or terrorist financing arising from the absence of those requirements.

(8) A designated person who fails to comply with a provision in this Head commits an offence and is liable –

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

NOTES:

The purpose of this Head is to provide for elements of Article 45 and FATF Recommendation 18 (in relation to foreign branches and subsidiaries). It applies to all designated persons, whereas section 57 of the 2010 Act which it will replace applies only to credit or financial institutions.

Subhead (1) in line with Article 45 provides that a designated person which is part of a group shall adopt and apply group-wide policies and procedures for sharing information within the group (subject to the protection of personal data) for the purposes of CDD and to prevent and detect money laundering and terrorist financing.

Subhead (2) provides for Article 45(8) and the obligation to share information on STRs within the group.

Subhead (3) provides that such policies and procedures shall be adopted and applied to any branch or subsidiary in accordance with Article 45(1).

Subhead (4) provides that such policies and procedures shall be approved by senior management.

Subhead (5) provides for Article 45(2) and requires a designated person to ensure that a *branch/subsidiary/establishment* operating in another Member State complies with the requirements of that Member State in relation to the 4th Money Laundering Directive.

Subhead (6) provides for Article 45(3) and requires a designated person to ensure that a branch or subsidiary in a third country applies requirements equivalent to those in the 4th Money Laundering Directive and applied in the State unless *subhead (7)* applies.

Subhead (7) provides for Article 45(5) which requires that where a third country's law does not permit the application of policies and procedures under Article 45(1) additional specified measures must be taken.

HEAD 34– ENHANCED CDD – CORRESPONDENT RELATIONSHIP WITH A SHELL BANK – AMENDMENT OF SECTION 59 OF ACT OF 2010

Provide that section 59 of the Act of 2010 is amended by –

- (1) The substitution of “credit institution or financial institution” for all references to “credit institution”.
- (2) The substitution of “correspondent relationship” for all references to “correspondent banking relationship”

NOTES:

The purpose of this Head is to provide for Article 24 of the 4th Money Laundering Directive which is based on Article 13(5) of the 3rd Money Laundering Directive. Article 24 now provides that this applies to both credit and financial institutions, whereas previously it applied just to credit institutions.

HEAD 35: MEANING OF STATE COMPETENT AUTHORITY – AMENDMENT OF SECTION 62 OF ACT OF 2010

Provide that section 62 of the Act of 2010 is amended in subsection (1) -

(1) by the insertion of the following paragraph after paragraph (a):
“(aa) the Legal Services Regulatory Authority”.

NOTES:

Section 60(2)(d) of the Act of 2010 was amended by section 214 of the Legal Services Regulation Act 2015 to provide that the Legal Services Regulatory Authority is the competent authority for barristers who are not members of the Law Library. The purpose of this Head is to include a reference to the Legal Services Regulatory Authority in section 62 of the Act of 2010 which specifies competent authorities who are also State competent authorities.

HEAD 36 – DEFENCE

Provide that section 107 of the Act of 2010 is substituted by –

It is a defence to an offence under this Part for the defendant to prove that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

NOTES

The purpose of this Head is to provide for a defence of reasonable steps and due diligence which may be used in a criminal prosecution.

HEAD 37

Replace Schedule 2 with:

SCHEDULE 2

ANNEX I TO DIRECTIVE 2013/36/EU of the European Parliament and of the Council¹¹

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.
2. Lending including inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Payment services as defined in Article 4(3) of Directive 2007/64/EC.¹²
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in any of the following:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.

¹¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338)

¹² Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (OJ L 319, 5.12.2007, p.1)

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.¹³

¹³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004,p.1 as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006,p.60).

HEAD 38

Provide that the following Schedules are inserted after Schedule 2:

SCHEDULE 3 – LOWER RISK

- (1) Customer risk factors:
 - (a) Public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership
 - (b) Public administrations or enterprises
 - (c) Customers that are resident in geographical areas of lower risk as set out in (3) (*Directive*)

- (2) Product, service, transaction or delivery channel risk factors:
 - (a) Life insurance policies for which the premium is low
 - (b) Insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral
 - (c) A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme
 - (d) Financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes
 - (e) Products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money)

- (3) Geographical risk factors:
 - (a) Member States
 - (b) Third countries having effective AML/CFT systems
 - (c) Third countries identified by credible sources as having a low level of corruption or other criminal activity
 - (d) Third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports,

have requirements to combat money laundering and terrorist financing consistent with the revised FATF recommendations and effectively implement these requirements.

SCHEDULE 4 – HIGHER RISK

(1) Customer risk factors:

- (a) The business relationship is conducted in unusual circumstances
- (b) Customers that are resident in geographical areas of higher risk as set out in (3)
- (c) Non-resident customers
- (d) Legal persons or arrangements that are personal asset-holding vehicles
- (e) Companies that have nominee shareholders or shares in bearer form
- (f) Businesses that are cash intensive
- (g) The ownership structure of the company appears unusual or excessively complex given the nature of the company's business.

(2) Product, service, transaction or delivery channel risk factors:

- (a) Private banking
- (b) Products or transactions that might favour anonymity
- (c) Non-face-to-face business relationships or transactions
- (d) Payment received from unknown or unassociated third parties
- (e) New products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products

(3) Geographical risk factors:

- (a) Countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports as not having effective AML/CFT systems
- (b) Countries identified by credible sources as having significant levels of corruption or other criminal activity
- (c) Countries subject to sanctions, embargos or similar measures issued by organisations such as (*for example*) the United Nations
- (d) Countries (*or geographical areas*) providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

