AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ SCEIMHLITHEOIREACHTA) (LEASÚ), 2013

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) (AMENDMENT) BILL 2013

EXPLANATORY MEMORANDUM

Purpose of the Bill

The primary purpose of the Bill is to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in order to align certain provisions more closely with international standards and to amend certain provisions to reflect operational requirements.

Provisions of the Bill

Section 1 contains the definition relevant to the Bill and provides that ''Act of 2010'' means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Section 2 amends the definition of ''occasional transaction'' contained in section 24 (definitions) of the Act of 2010. The current definition provides that once a transaction or series of transactions exceeds €15,000 the obligations in the Act of 2010 such as Customer Due Diligence (CDD) apply. Section 2 provides that:

(*a*) the definition of ''occasional transaction'' in private members' gaming clubs applies when an amount or value of €2,000 is reached.

(*b*) the definition of ''occasional transaction'' will apply to wire transfer funds within the meaning of Regulation (EC) No. 1781/2006 when an amount of €1,000 is reached, CDD will also apply to beneficial owners.

(*c*) is a technical amendment to clarify that the definition of ''occasional transaction'' applies when an amount of €15,000 is reached, rather than over €15,000. This is the amount that applies to the definition of ''occasional transaction'' in all cases other than as specified in (*a*) or (*b*).

Section 3 amends section 33(1) of the Act of 2010 by substituting subsection (1)(*c*). Section 33 is contained in Chapter 3 of Part 4 of the Act of 2010 which deals with Customer Due Diligence (CDD). Section 33(1)(*a*)-(*d*) sets out the circumstances when the (general) CDD measures must be applied and section 33(2) sets out the CDD measures which must be taken. The amendment to section 33(1)(*c*) aligns the wording more closely to international standards. It provides that CDD applies prior to carrying out any service for the customer if the (designated) person has reasonable grounds to

suspect that the customer is involved in, or the service, transaction or product is for the purpose of money laundering or terrorist financing.

Section 4 amends section 34 of the Act of 2010 by substituting subsection (1). Section 34(1) provides that a designated person is not required to apply the measures specified in section 33(2)(CDD measures) if the customer or product is a specified customer or specified product (as defined in section 34). The monitoring provisions in section 35 still apply. Section 34(1) may not be applied in any of the circumstances specified in section 34(3), including where there is a suspicion of money laundering or terrorist financing under section 33(1)(*c*) or where there are reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained for CDD identification and verification (section 33(1)(*d*)). Section 4 of the Bill amends and substitutes section 34(1) so that it is explicit that a designated person must take the necessary measures to establish and satisfy itself that a customer or product is a specified customer or specified product. This is a simplified CDD provision and is related to section 5 which amends section 36.

Section 5 amends section 36 of the Act of 2010 by substituting subsection (1). Section 36(1) provides that a designated person is not required to comply with section 35(1) (obtaining information on the purpose and intended nature of a business relationship with a customer) if the customer or product is a specified customer or specified product (as defined in section 34). The monitoring provisions in section 35 still apply. Section 36(1) may not be applied in any of the circumstances specified in section 36(2), including where there is a suspicion of money laundering or terrorist financing under section 33(1)(*c*) or where there are reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained for CDD identification and verification (section 33(1)(*d*)). Section 5 of the Bill amends and substitutes section 36(1) so that it is explicit that a designated person must take the necessary measures to establish and satisfy itself that a customer or product is a specified customer or specified product. This is a simplified CDD provision and is related to section 4 which amends section 34.

Section 6 amends section 37 of the Act of 2010 by substituting subsection (4). Section 37 provides that enhanced CDD measures must be taken in respect of customers who are Politically Exposed Person's (PEP's) (as defined in the section). Section 6 of the Bill amends and substitutes section 37(4) to provide that such measures must also be applied to an existing customer who subsequently becomes a PEP. It also provides that enhanced ongoing monitoring must be applied to a business relationship with a customer who is a PEP. This is in line with international standards.

Section 7 amends section 39 of the Act of 2010 by substituting the section. Section 39 provides that a designated person may apply additional CDD measures to a customer or beneficial owner if there is a higher risk of money laundering or terrorist financing. Section 7 of the Bill replaces this with a mandatory requirement to apply additional CDD measures where the designated person has reasonable grounds to believe that there is a higher risk of money laundering or terrorist financing. This is in line with international standards. This is an enhanced CDD provision and is related to section 8 which amends section 54 (internal policies and procedures and training).

Section 8 amends section 54 of the Act of 2010 by the insertion of additional paragraphs (*c*), (*d*) and (*e*) in subsection (3). Section 54 sets out the obligations on a designated person to adopt policies and

procedures to prevent and detect the commission of money laundering and terrorist financing. Subsection (3) sets out specific matters which must be included in such policies and procedures. Section 8 of the Bill specifies additional matters which must be included in such policies and procedures. This is in line with international standards.

Paragraph (*c*) deals with measures in relation to keeping customers' CDD documents and information up to date.

Paragraph (*d*) deals with enhanced CDD measures and the circumstances in which they are to be taken. This is related to section 7 which amends section 39 of the Act of 2010.

Paragraph (*e*) deals with the measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and practices.

Section 9 amends section 71 of the Act of 2010 by substituting the section. Section 71 provides that a State competent authority may by notice in writing direct a designated person for whom it is a competent authority to discontinue or refrain from specified conduct that the State competent authority is of the opinion would constitute a breach of a provision in Part 4 of the Act. Section 9 of the Bill amends and substitutes section 71 to provide that a State competent authority may also issue written directions to a relevant designated person to take specific actions or establish specific processes or procedures that in the opinion of the State competent authority are reasonably necessary for the purposes of complying with a specified provision in Part 4 of the Act.

Section 10 provides for the short title of the Bill, collective citation and its commencement.

An Roinn Dlí agus Cirt agus Comhionannais,
Eanáir, 2013.

Wt. —. 622. 1/13. Clondalkin. (34896). Gr. 30-15.