



**An Bille um Cheartas Coiriúil (Sciúradh Airgid agus Maoiniú
Sceimhlitheoireachta) (Leasú), 2020**

**Criminal Justice (Money Laundering and Terrorist Financing) (Amendment)
Bill 2020**

Mar a leasaíodh sa Roghchoiste um Dlí agus Ceart

As amended in the Select Committee on Justice



**AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ
SCEIMHLITHEOIREACHTA) (LEASÚ), 2020
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING)
(AMENDMENT) BILL 2020**

*Mar a leasaíodh sa Roghchoiste um Dlí agus Ceart
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ACTS REFERRED TO

Central Bank (Supervision and Enforcement) Act 2013 (No. 26)
Central Bank Act 1942 (No. 22)
Central Bank Reform Act 2010 (No. 23)
Charities Act 2009 (No. 6)
Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 (No. 26)
Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No. 6)
Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018
European Communities Act 1972 (No. 27)
European Parliament Elections Act 1997 (No. 2)
Partnership Act 1890 (53 & 54 Vict., c.39)
Property Services (Regulation) Act 2011 (No. 40)
Taxes Consolidation Act 1997 (No. 39)



**AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ
SCEIMHLITHEOIREACHTA) (LEASÚ), 2020
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING)
(AMENDMENT) BILL 2020**

Bill

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entitled

An Act to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU; and to provide for related matters. 10

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act— 15
- “Act of 2010” means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;
- “Act of 2018” means the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018;
- “Regulations of 2019” means the European Union (Money Laundering and Terrorist Financing) Regulations 2019 (S.I. No. 578 of 2019). 20

Amendment of section 2 of Act of 2010

2. Section 2 (amended by section 3 of the Act of 2018) of the Act of 2010 is amended—
- (a) in subsection (1), by the insertion of the following definition before the definition of “Minister”: 25
- “ ‘Fifth Money Laundering Directive’ means Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU;”, 30

and

¹ OJ No. L 156, 19.6.2018, p. 43

(b) by the insertion of the following subsection after subsection (2):

“(3) In this Act a reference to an Appeal Tribunal shall be construed as a reference to the Appeal Tribunal established under section 101A (inserted by *section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020*).”

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Amendment of section 3 of Act of 2010

3. Section 3 of the Act of 2010 is amended—

(a) in subsection (1), by the insertion, after “Act”, of “(other than section 106ZC (inserted by the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020*))”, and

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(b) in subsection (2), by the insertion, after “Minister”, of “(or, in the case of regulations under section 106ZC, the Minister for Finance)”.

Amendment of section 24 of Act of 2010

4. Section 24 (amended by section 4 of the Act of 2018) of the Act of 2010 is amended, in subsection (1)—

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(a) in the definition of “ ‘financial institution’ ”—

(i) in subparagraph (iii) of paragraph (g), by the substitution of “if section 2(6) of that Act did not apply,” for “if section 2(6) of that Act did not apply;”, and

(ii) by the insertion of the following paragraph after paragraph (g):

“(h) a virtual asset service provider;”,

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(b) by the substitution of the following definition for the definition of “property service provider”:

“(c) ‘property service provider’ means a person who provides a property service within the meaning of the Property Services (Regulation) Act 2011;”,

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and

(c) by the insertion of the following definitions:

“ ‘custodian wallet provider’ means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies;

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‘Electronic Identification Regulation’ means Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014² on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

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‘virtual asset’ means a digital representation of value that can be digitally traded or transferred and can be used for payment or

investment purposes but does not include digital representations of fiat currencies, securities or other financial assets;

‘virtual asset service provider’ means a person who by way of business carries out one or more of the following activities for, or on behalf of, another person: 5

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of virtual assets, that is to say, conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another; 10
- (d) custodian wallet provider;
- (e) participation in, and provision of, financial services related to an issuer’s offer or sale of a virtual asset or both;

but does not include a designated person that is not a financial or credit institution and that provides virtual asset services in an incidental manner and is subject to supervision by a national competent authority, other than the Bank;” 15

Amendment of section 25 of Act of 2010

5. Section 25 (amended by section 5 of the Act of 2018) of the Act of 2010 is amended in subsection (1)— 20

(a) in paragraph (c), by the substitution of “, tax adviser or any other person whose principal business or professional activity is to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters” for “or tax adviser”,

(b) by the substitution of the following paragraph for paragraph (f): 25

“(f) a property service provider including a property service provider acting as an intermediary in the letting of immovable property, but only in respect of transactions for which the monthly rent amounts to a total of at least €10,000,”,

(c) in paragraph (i), by the deletion of “or” where it lastly occurs, and 30

(d) by the insertion of the following paragraphs after paragraph (i):

“(ia) a virtual asset service provider,

(ib) a person trading or acting as an intermediary in the trade of works of art (including when carried out by an art gallery or an auction house) but only in respect of transactions of a total value 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), 35

(ic) a person storing, trading or acting as an intermediary in the trade of works of art when this is carried out in a free port but only in respect of transactions of a total value of at least €10,000 (whether 40

in one transaction or as a series of transactions that are or appear to be linked to each other), or”.

Amendment of section 33 of Act of 2010

6. Section 33 (amended by section 11 of the Act of 2018) of the Act of 2010 is amended—

(a) in subsection (1)—

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(i) in paragraph (e), by the substitution of “application, or” for “application.”, and

(ii) by the insertion of the following paragraph after paragraph (e):

“(f) at any time where the designated person is obliged by virtue of any enactment or rule of law, including the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. No. 549 of 2012), to contact a customer for the purposes of reviewing any relevant information relating to the beneficial owner connected with the customer.”,

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and

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(b) in subsection (2)—

(i) in paragraph (a)—

(I) in subparagraph (i), by the deletion of “or” where it lastly occurs, and

(II) by the insertion of the following subparagraph after subparagraph (i):

“(ia) information from relevant trust services as specified in the Electronic Identification Regulation, or”,

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and

(ii) in paragraph (b)—

(I) in subparagraph (i), by the deletion of “and”,

(II) in subparagraph (ii), by the substitution of “concerned, and” for “concerned.”, and

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(III) by the insertion of the following subparagraph after subparagraph (ii):

“(iii) where the beneficial owner is the senior managing official referred to in Article 3(6)(a)(ii) of the Fourth Money Laundering Directive, a designated person shall take the necessary measures to verify the identity of that person and shall keep records of the actions taken to verify the person’s identity including any difficulties encountered in the verification process.”.

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Amendment of section 33A of Act of 2010

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7. Section 33A (inserted by section 12 of the Act of 2018) of the Act of 2010 is amended—

(a) in subsection (1)—

- (i) by the substitution of “subsection (2), (2A) or (2B)” for “subsection (2) or (2A)”,
- (ii) in subparagraph (ii) of paragraph (a), by the substitution of “€150” for “€250”,
- (iii) by the substitution of the following paragraph for paragraph (b): 5
 - “(b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €150,”,
- (iv) in paragraph (e), by the deletion of “and”,
- (v) in paragraph (f), by the substitution of “€50, and” for “€100.”, and
- (vi) by the insertion of the following paragraph after paragraph (f): 10
 - “(g) the transaction concerned is not a remote payment transaction (within the meaning of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015³ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) 15
No. 1093/2010, and repealing Directive 2007/64/EC) of an amount exceeding €50.”,

and

- (b) by the insertion of the following subsections after subsection (2):
 - “(3) A credit institution or financial institution acting as an acquirer shall 20
not accept a payment carried out with an anonymous prepaid card issued in a state other than a Member State unless the payment instrument concerned complies with the requirements of subsections (1) and (2).
 - (4) A person who fails to comply with subsection (3) commits an offence 25
and is liable—
 - (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.”. 30

Amendment of section 35 of Act of 2010

- 8.** Section 35 (amended by section 14 of the Act of 2018) of the Act of 2010 is amended by the insertion of the following subsections after subsection (3):

“(3A) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial 35
Ownership of Trusts) Regulations 2019 (S.I. No. 16 of 2019) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register.

- (3B) Notwithstanding subsection (3A), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that the information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register in accordance with subsection (3A) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information. 5
- (3C) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019) (modified by the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles Regulations 2020) (S.I. No. 233 of 2020) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts. 10 15 20
- (3D) Notwithstanding subsection (3C), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts in accordance with subsection (3C) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.”. 25 30

Amendment of section 36A of Act of 2010

9. Section 36A (inserted by section 15 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (1): 35
- “(1) A designated person shall, as far as possible, in accordance with policies and procedures adopted in accordance with section 54, examine the background and purpose of all transactions that—
- (a) are complex,
 - (b) are unusually large, 40
 - (c) are conducted in an unusual pattern, or
 - (d) do not have an apparent economic or lawful purpose.”.

Amendment of section 37 of Act of 2010

10. Section 37 (amended by section 16 of the Act of 2018) of the Act of 2010 is amended—

(a) by the insertion of the following subsection after subsection (4):

“(4A) A designated person shall continue to apply the measures referred to in subsection (4) to a politically exposed person for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons.”,

(b) in the definition of “politically exposed person” in subsection (10), by—

(i) the substitution of “any of the following individuals” for “either of the following individuals”, and

(ii) by the insertion of the following paragraph after paragraph (b):

“(c) any individual performing a prescribed function;”,

and

(c) by the insertion of the following subsection after subsection (11):

“(12) The Minister may, with the consent of the Minister for Finance, issue guidelines to the competent authorities in respect of functions in the State that may be considered to be prominent public functions and each competent authority shall have regard to any such guidelines.”.

Amendment of section 38 of Act of 2010 20

11. Section 38 (amended by section 17 of the Act of 2018) of the Act of 2010 is amended, in subsection (1), by the insertion of “involving the execution of payments” after “correspondent relationship”.

Amendment of section 38A of Act of 2010

12. Section 38A (inserted by section 18 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (1):

“(1) Subject to subsection (2), a designated person shall apply the following measures to manage and mitigate the risk of money laundering and terrorist financing additional to those specified in this chapter, when dealing with a customer established or residing in a high-risk third country:

(a) obtaining additional information on the customer and on the beneficial owner;

(b) obtaining additional information on the intended nature of the business relationship;

(c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;

- (d) obtaining information on the reasons for the intended or performed transactions;
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;
- (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.”. 5

Amendment of section 40 of Act of 2010

13. Section 40 (amended by section 20 of the Act of 2018) of the Act of 2010 is amended, in paragraph (b) of subsection (4), by the insertion of “including any information from relevant trust services as set out in the Electronic Identification Regulation” after “customer”. 10

Amendment of section 42 of Act of 2010

14. Section 42 (amended by section 22 of the Act of 2018) of the Act of 2010 is amended by the insertion of the following subsection after subsection (10): 15
- “(11) FIU Ireland shall, where practicable, provide timely feedback to a designated person who is required to make a report under this section on the effectiveness of any follow-up to reports made to it under this section.”.

Amendment of section 51 of Act of 2010

15. Section 51 (amended by section 24 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (2): 20
- “(2) 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— 25
- (a) the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, and 30
 - (b) the disclosure was to—
 - (i) a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or 35
 - (ii) a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures

adopted in accordance with section 54, or, as the case may be, Article 45 of the Fourth Money Laundering Directive.”.

Amendment of section 55 of Act of 2010

16. Section 55 (amended by section 27 of the Act of 2018) of the Act of 2010 is amended, in subsection (2), by the insertion of “(including information from relevant trust services as set out in the Electronic Identification Regulation)” after “customers”. 5

Amendment of section 58 of Act of 2010

17. Section 58 of the Act of 2010 is amended by the substitution of “anonymous passbook or safe-deposit box” for “anonymous passbook” in each place that it occurs.

Amendment of section 60 of Act of 2010

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18. Section 60 (amended by section 15 of the Central Bank Reform Act 2010) of the Act of 2010 is amended in subsection (2)—

(a) by the substitution of the following paragraphs for paragraph (d):

“(d) in the case of a designated person who is a barrister, the Legal Services Regulatory Authority;

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(da) in the case of a designated person that is a property services provider, the Property Services Regulatory Authority;”

and

(b) in paragraph (e), by the substitution of “, (d) or (da)” for “or (d)”.

Amendment of section 63B of Act of 2010

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19. Section 63B (inserted by the Regulations of 2019) of the Act of 2010 is amended by the insertion of the following subsection after subsection (2):

“(2A) Co-operation with Member State competent authorities under this section by a competent authority may include the sharing of information which the competent authority is not prevented from disclosing by the law of the State and the provision of assistance shall not be refused on the basis that:

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(a) the request for the sharing of information or the provision of assistance is also considered to involve tax matters;

(b) the law of the State requires the competent authority to maintain secrecy or confidentiality except in those cases where the relevant information that is sought is protected by legal privilege;

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(c) there is an inquiry, investigation or proceeding underway in the State, unless the sharing of such information or the provision of assistance would impede the inquiry, investigation or proceeding;

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or

- (d) the nature or status of the requesting competent authority is different from that of the competent authority of whom the request is made.”.

Amendment of section 63D of Act of 2010

- 20. Section 63D (inserted by the Regulations of 2019) of the Act of 2010 is amended, in paragraph (c) of subsection (1), by the substitution of “including standards of confidentiality and data protection and standards addressing conflicts of interest” for “including standards of confidentiality and data protection”. 5

Reporting breaches to competent authority

- 21. The Act of 2010 is amended by the insertion of the following section after section 63D: 10
 - “63E.(1) Each competent authority shall establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of this Act.
 - (2) Each competent authority shall provide one or more secure communication channels for persons reporting the matters referred to in subsection (1). 15
 - (3) Each competent authority shall ensure that the channels of communication referred to in subsection (2) can also be used by persons to report any threats or retaliatory or hostile actions they are subjected to for reporting suspected breaches of this Act.”. 20

Amendment of section 65 of Act of 2010

- 22. Section 65 of the Act of 2010 is amended by—
 - (a) the designation of that section as subsection (1), and
 - (b) the insertion of the following subsection:
 - “(2) Where a competent authority is not a State competent authority, each annual report published by the authority shall include information regarding the measures taken by the authority to monitor compliance by designated persons with the provisions of this Part.”. 25

Amendment of section 84 of Act of 2010

- 23. Section 84 of the Act of 2010 is amended, in subsection (1), by the deletion of the definition of “Appeal Tribunal”. 30

Appeal Tribunal

- 24. The Act of 2010 is amended—
 - (a) by the repeal of section 101, and
 - (b) by the insertion of the following section after section 101: 35

- “101A. (1) On the commencement of *section 24* of the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020* there shall stand established a tribunal which shall be known as the Appeal Tribunal to consider and determine appeals made pursuant to this Act.
- (2) The Appeal Tribunal shall be independent in the exercise of its functions under this Act and shall regulate its own procedures. 5
- (3) The Appeal Tribunal may sit in divisions of itself to consider appeals.
- (4) The Appeal Tribunal shall consist of a chairperson and such number of ordinary members as the Minister considers necessary from time to time for the efficient discharge of its functions. 10
- (5) The chairperson and the ordinary members of the Appeal Tribunal shall be appointed by the Minister and the appointment shall be subject to such terms and conditions, including terms and conditions relating to remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure and Reform. 15
- (6) Each member of the Appeal Tribunal shall be a practising barrister or solicitor of not less than 10 years’ practice.
- (7) The term of office of a member of the Appeal Tribunal shall be 5 years and a member of the Appeal Tribunal shall be eligible for re-appointment as such member for a second term not exceeding 5 years. 20
- (8) A member of the Appeal Tribunal may at any time resign his or her office as such member by giving notice in writing to the Minister and the resignation shall take effect on and from the date of receipt of the notice.
- (9) A member of the Appeal Tribunal may be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister, the member has become incapable through ill-health or otherwise of effectively performing the functions of the Appeal Tribunal. 25
- (10) If a member of the Appeal Tribunal dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Appeal Tribunal to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Appeal Tribunal who occasioned the vacancy and shall hold office for the remainder of the term of office for which his or her predecessor was appointed. 30
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- (11) Where a member of the Appeal Tribunal is—
- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, 40

- (d) elected or co-opted as a member of a local authority,
 - (e) appointed to judicial office, or
 - (f) appointed Attorney General,
- he or she shall thereupon cease to be a member of the Tribunal.”.

Virtual asset service providers 5

25. The Act of 2010 is amended, in Part 4, by the insertion of the following Chapter after Chapter 9:

“Chapter 9A

Virtual Asset Service Providers

Interpretation 10

106A. In this Chapter—

‘Act of 1942’ means the Central Bank Act 1942;

‘Bank’ means the Central Bank of Ireland;

‘FATF’ means the Financial Action Task Force on Money Laundering and Countering the Financing of Terrorism established by the Paris G7 Summit of 1989; 15

‘prescribed’ means prescribed by regulations made by the Bank;

‘principal officer’ means—

(a) in relation to a body corporate, any person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity, or 20

(b) in relation to a partnership—

(i) any person who is a partner in, or a manager or other similar officer of, the partnership or any person purporting to act in such a capacity, and 25

(ii) in a case where a partner of the partnership is a body corporate, any person who is a director, manager, secretary or other similar officer of such a partner or any person purporting to act in such a capacity;

‘registration’ means a registration granted by the Bank under this Chapter to permit a person to carry on business as a virtual asset service provider and, if such a permission is amended under this Chapter, means the registration as amended. 30

Fit and proper person

106B. For the purposes of this Chapter, a person is not a fit and proper person if any of the following apply: 35

(a) the person has been convicted of any of the following offences:

- (i) money laundering;
- (ii) terrorist financing;
- (iii) an offence involving fraud, dishonesty or breach of trust;
- (iv) an offence in respect of conduct in a place other than the State that would constitute an offence of a kind referred to in subparagraph (i), (ii) or (iii) if the conduct occurred in the State; 5
- (b) in a case where the person is an individual, the person is under 18 years of age;
- (c) the person—
 - (i) has suspended payments due to the person’s creditors, 10
 - (ii) is unable to meet other obligations to the person’s creditors, or
 - (iii) is an individual who is an undischarged bankrupt;
- (d) the person is otherwise not a fit and proper person.

Registrations held by partnerships

- 106C.**(1) A reference in a relevant document to a holder or proposed holder of a registration includes, in a case where the holder or proposed holder is a partnership, a reference to each partner of the partnership unless otherwise specified. 15
- (2) A reference in subsection (1) to a relevant document is a reference to any of the following: 20
- (a) this Chapter;
 - (b) a regulation made for the purposes of this Chapter;
 - (c) a registration or condition of a registration;
 - (d) any notice or direction given under this Chapter;
 - (e) any determination under this Chapter. 25
- (3) Without prejudice to the generality of subsection (1) or section 111, where any requirement is imposed by or under this Chapter on the holder of a registration, and failure to comply with the requirement is an offence, each partner of a partnership (being a partnership that is the holder of a registration) who contravenes the requirement is liable 30 for the offence.

Scope of Bank’s supervision – performance of certain functions

- 106D.**(1) The functions conferred on the Bank under—
- (a) Parts II, IIIC, VIIA, VIIIA and IX of the Act of 1942,
 - (b) Parts 3 and 4 of the Central Bank Reform Act 2010, and 35
 - (c) Parts 2, 3, 7 and 9 of the Central Bank (Supervision and Enforcement) Act 2013,

shall, in addition to being performable for the purposes to which those provisions relate, be performable for the purposes of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.	
(2) The Minister, where he or she considers it appropriate to do so and following consultation with the Bank, may make regulations conferring additional functions connected with the functions conferred by or under any enactment on the Bank for the purpose of ensuring compliance with the Fourth Money Laundering Directive, the Fifth Money Laundering Directive and the Recommendations of FATF.	5 10
(3) Regulations under subsection (2) may provide for such additional functions as may be necessary for the more effective implementation of Recommendations made from time to time by FATF to address and mitigate the risks related to money laundering and terrorist financing.	
Obligation on virtual asset service providers to register with Bank	15
106E. (1) A person shall not carry on business as a virtual asset service provider, claim to be a virtual asset service provider or represent that the person is a virtual asset service provider unless the person is registered with the Bank under this Chapter.	
(2) A person who contravenes subsection (1) commits an offence and is liable—	20
(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 not exceeding €500,000 or imprisonment for a term not exceeding 5 years or both.	25
Transitional provision for existing virtual asset service providers	
106F. (1) Notwithstanding section 106E, a person carrying on business as a virtual asset service provider immediately before the coming into operation of this Chapter, is taken to be registered to carry on business as a virtual asset service provider until the Bank has granted or refused an application to register the person, provided that the person applies to the Bank under section 106G for registration, no later than 3 months after that section comes into operation.	30
(2) Where a person is taken to be registered to carry on business as a virtual asset service provider under subsection (1), the Bank may do either or both of the following:	35
(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of virtual asset service providers;	
(b) direct that person not to carry on business as a virtual asset service provider for such period (not exceeding 3 months) as is specified in the direction.	40

- (3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Application for registration

- 106G.**(1) An individual, body corporate or partnership may apply to the Bank to be registered under this section. 5
- (2) An application for registration under this section shall—
- (a) be in a form provided or specified by the Bank,
 - (b) specify the name of—
 - (i) the applicant, 10
 - (ii) in a case where the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be), and
 - (iii) any person who is, or is proposed to be, a beneficial owner of the applicant, 15
 - (c) specify the address at which the business of a virtual asset service provider is proposed to be carried on,
 - (d) contain such other information, and be accompanied by such documents, as the Bank may reasonably request including, for the purposes of the Bank assessing whether persons referred to in paragraph (b) can comply with the provisions of Part 4 and are fit and proper persons, such information and documents as the Bank may reasonably require relating to the steps taken by the applicant to ensure that those persons are fit and proper persons and the process of verification carried out by the applicant for the purposes of so ensuring, and 20
 - (e) be accompanied by such fees as are payable in accordance with section 32E of the Act of 1942 in respect of the performance by the Bank of its functions under the Act of 2010. 25
- (3) For the purposes of assessing whether a beneficial owner is a fit and proper person, the Bank may request the person by notice in writing to attend before a specified officer or employee of the Bank for interview. 30
- (4) Nothing in this section or any notice given by the Bank under this section requires a person— 35
- (a) to produce to the Bank a document that the person could not have been compelled to produce to a court,
 - (b) to give to the Bank information that the person could not have been compelled to give to a court, or
 - (c) to answer a question (either in writing or at interview) that the person could not have been compelled to answer in a court. 40

- (5) The Bank may, by written notice given to an applicant, require the applicant to provide, within the period of not less than 14 days specified in the notice, such additional information and documents as are reasonably necessary to enable the Bank to determine the application for registration. 5

Grant and refusal of applications for registration

106H.(1) The Bank may refuse an application for registration under section 106G only if—

- (a) the application does not comply with the requirements of section 106G, 10
- (b) the applicant does not provide any additional documents or information in accordance with a notice given under section 106G,
- (c) the Bank has reasonable grounds to be satisfied that information given to the Bank by the applicant in connection with the application is false or misleading in any material particular, 15
- (d) the Bank has reasonable grounds to be satisfied that any of the following persons, is not a fit and proper person:
 - (i) the applicant;
 - (ii) in a case in which the applicant is a body corporate or partnership, any principal officer of the body corporate or partnership (as the case may be); 20
 - (iii) any person who is, or is proposed to be, a beneficial owner of the applicant,
- (e) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with the obligations imposed on the applicant under this Chapter, or as a designated person under this Part, 25
- (f) the applicant has failed to satisfy the Bank that the applicant's business risk assessment, policies and procedures are adequate or fit for purpose,
- (g) the applicant has failed to satisfy the Bank that it has in place the resources, procedures and arrangements for the provision of the business of a virtual asset service provider and the performance of activities, taking into account the nature, scale and complexity of its business and all the obligations that the provider has to comply with as a designated person under this Act, 30 35
- (h) the applicant has failed to satisfy the Bank that the applicant would, if registered, comply with each of the following:
 - (i) any conditions that the Bank would have imposed on the registration concerned, if the Bank had granted the application;
 - (ii) any prescribed requirements referred to in section 106M, 40

- (i) the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated under this Chapter, or as a designated person under this Part, to the satisfaction of the Bank,
 - (j) where the applicant fails to demonstrate, where applicable, that it can manage and mitigate the risks of engaging in activities that involve the use of anonymity-enhancing technologies or mechanisms and other technologies that obfuscate the identity of the sender, recipient, holder or beneficial owner of a virtual asset, 5
 - (k) in a case where the applicant is a body corporate, the body corporate is being wound up, 10
 - (l) in a case where the applicant is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890 or otherwise,
 - (m) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State, 15
20
 - (n) in a case where the applicant is a subsidiary of a body corporate has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State, or 25
 - (o) there are objective and demonstrable grounds for believing that the management body of the applicant may pose a threat to its sound and prudent management and to the adequate consideration of its clients and the integrity of the market. 30
- (2) If the Bank proposes to refuse an application, the Bank shall serve on the applicant a notice in writing—
- (a) specifying the grounds on which the Bank proposes to refuse the application, and 35
 - (b) informing the applicant that the applicant may, within 21 days after the service of the notice, make written representations to the Bank showing why the Bank should grant the application.
- (3) Not later than 21 days after a notice is served on an applicant under subsection (2), the applicant may make written representations to the Bank showing why the Bank should grant the application. 40

- (4) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with subsection (3).
- (5) As soon as practicable after refusing an application, the Bank shall serve a written notice of the refusal on the applicant including a statement setting out the grounds on which the Bank has refused the application. 5
- (6) A decision of the Bank to refuse an application under section 106G is an appealable decision for the purposes of Part VIIA of the Act of 1942. 10
- (7) If the Bank does not refuse the application, it shall grant it and, on granting the application, the Bank shall—
 - (a) record the appropriate particulars of the applicant in the register of persons permitted by the Bank to carry on business as a virtual asset service provider, and 15
 - (b) issue the applicant with a registration that permits the applicant to carry on business as a virtual asset service provider.

Bank may impose conditions when granting an application for registration

- 106I.** (1) In granting an application for registration under this Chapter, the Bank may impose on the holder of the registration any conditions that the Bank considers necessary for the proper and orderly regulation of the holder’s business as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing. 20
- (2) The Bank shall specify any such conditions in the registration granted to the holder or in one or more documents annexed to that registration. 25
- (3) If, under this section, the Bank imposes any conditions on a registration, the Bank shall serve on the holder of the registration, together with the registration, a written notice of the imposition of the conditions that includes a statement setting out the grounds on which the Bank has imposed the conditions. 30
- (4) A decision of the Bank to register a person subject to conditions under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Terms of registration

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- 106J.**(1) A registration comes into force on the day on which the registration is granted, or, if a later date is specified in the registration, on that later date, whether or not an appeal against any conditions of registration is made under section 106I.
- (2) A registration remains in force, unless sooner revoked under this Chapter from the date on which it comes into force. 40

Bank may amend registration

- 106K.**(1) The Bank may amend a registration granted under this Chapter by varying, replacing or revoking any conditions or by adding a new condition if the Bank considers that the variation, replacement, revocation or addition is necessary for the proper and orderly regulation of the business of the holder of the registration as a virtual asset service provider and, in particular, for preventing the business from being used to carry out money laundering or terrorist financing. 5
- (2) If the Bank proposes to amend a registration under this section, the Bank shall serve on the holder of the registration, a notice in writing informing the holder of the Bank's intention to amend the registration. 10
- (3) The notice shall—
- (a) specify the proposed amendment, and
 - (b) inform the holder of the registration that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not make that amendment. 15
- (4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not amend the registration. 20
- (5) The Bank may amend a registration only after having considered any representations to the Bank made in accordance with subsection (4) showing why the Bank should not amend the registration.
- (6) The Bank shall serve written notice of any amendment of a registration on the holder of the registration including a statement setting out the grounds on which the Bank has amended the registration. 25
- (7) A decision of the Bank to amend a registration granted under this Chapter is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (8) The amendment of a registration under this section takes effect from the date of the notice of amendment or, if a later date is specified in the notice, from that date, whether or not an appeal against the amendment is made under this section. 30

Regulatory disclosure statement

- 106L.**(1) Subject to subsection (2), the holder of a registration shall include a statement (in this section referred to as a 'regulatory disclosure statement') in the prescribed form in all advertisements for its services stating that the holder of the registration is registered and supervised by the Bank for anti-money laundering and countering the financing of terrorism purposes only. 35 40
- (2) For the purposes of this section, the Bank may prescribe the form of the regulatory disclosure statement including its size and colour and

font type and the manner in which the disclosure statement shall be displayed.

- (3) In this section ‘advertisement’ means any form of commercial communication which is intended to publicise or otherwise promote the holder of a registration in relation to the provision by the holder of virtual asset services. 5

Offence to fail to comply with conditions or prescribed requirements

106M.(1) The holder of a registration commits an offence if the holder fails to comply with—

- (a) any condition of the registration, or 10
(b) any prescribed requirements.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to a class C fine, or
(b) on conviction on indictment, to a fine not exceeding €100,000.

(3) The Bank may prescribe requirements for the purposes of subsection (1)(b) only if the Bank is satisfied that it is necessary to do so for the proper and orderly regulation of the business of virtual asset service providers and, in particular, for preventing such businesses from being used to carry out money laundering or terrorist financing. 15

Holder of registration to ensure that beneficial owners are fit and proper persons 20

106N.(1) The holder of a registration shall take reasonable steps to ascertain that any person who is a beneficial owner of the virtual asset service provider concerned is a fit and proper person.

(2) A person who contravenes subsection (1) commits an offence. 25

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction, to a class C fine, or
(b) on conviction on indictment, to a fine not exceeding €100,000.

Revocation of registration by Bank on application of holder

106O.The Bank shall revoke a registration on the application of the holder of the registration, but only if satisfied that the holder of the registration has fully complied with each of the following: 30

- (a) any conditions of the registration;
(b) any prescribed requirements referred to in section 106M;
(c) section 106N; 35
(d) section 106Q;
(e) section 106Y,

and if satisfied that the persons in management positions have complied

with their obligations to be fit and proper persons.

Revocation of registration other than on application of holder

- 106P.** (1) The Bank may revoke a registration under this Chapter only if the Bank has reasonable grounds to be satisfied of any of the following:
- (a) the holder of the registration has not commenced carrying on business as a virtual asset service provider within 12 months after the date on which the registration was granted; 5
 - (b) the holder of the registration has not carried on such a business within the immediately preceding 6 months;
 - (c) the registration was obtained by means of a false or misleading representation; 10
 - (d) any of the following persons is not a fit and proper person:
 - (i) the holder of the registration;
 - (ii) in a case where the holder of the registration is a body corporate, a partnership or an individual carrying on business as a virtual asset service provider, any principal officer of the body corporate or partnership (as the case may be); 15
 - (iii) any person who is a beneficial owner of the business concerned;
 - (e) the holder of the registration has contravened or is contravening the obligations imposed on virtual asset service providers, as designated persons, under this Part; 20
 - (f) the holder of the registration has failed to satisfy the Bank that its business risk assessment, policies and procedures are adequate or fit for purpose;
 - (g) the virtual asset service provider has contravened or is contravening any of the following: 25
 - (i) a condition of the registration;
 - (ii) a specified requirement referred to in section 106M;
 - (iii) section 106N;
 - (iv) section 106Q; 30
 - (v) section 106Y;
 - (h) the holder of the registration is so structured, or the business of the holder is so organised, that the holder is not capable of being regulated under this Chapter or as a designated person under this Part; 35
 - (i) in a case where the holder of the registration is a body corporate, the body corporate is being wound up;
 - (j) in a case where the holder of the registration is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or

because of the operation of a provision of the Partnership Act 1890 or otherwise;

- (k) in a case where any person referred to in paragraph (d) has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the person to carry on business as a virtual asset service provider in the other Member State; 5
- (l) in a case where the holder of the registration is a subsidiary of a body corporate that has been registered to carry on business as a virtual asset service provider in another Member State, and an authority of the other Member State, that performs functions similar to those of the Bank under this Chapter, has terminated the permission of the body corporate to carry on business as a virtual asset service provider in the other Member State. 10 15
- (2) If the Bank proposes to revoke a registration under this section, the Bank shall serve on the holder of the registration a notice in writing informing the holder of the Bank's intention to revoke the registration.
- (3) The notice shall— 20
 - (a) specify the grounds on which the Bank proposes to revoke the registration, and
 - (b) inform the holder that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the Bank should not revoke the registration. 25
- (4) Not later than 21 days after a notice is served under subsection (2) on the holder of a registration, the holder may make written representations to the Bank showing why the Bank should not revoke the registration.
- (5) The Bank may revoke the registration only after having considered any representations made by the holder of a registration in accordance with subsection (4). 30
- (6) As soon as practicable after revoking a registration under this section, the Bank shall serve written notice of the revocation on the person who was the holder of a registration including a statement setting out the reasons for revoking the registration. 35
- (7) A decision of the Bank to revoke a registration under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (8) The revocation of a registration under this section takes effect from the date of the notice of revocation or, if a later date is specified in the notice, from that date, whether or not an appeal against the revocation is made under this section. 40

Direction not to carry out business other than as directed

- 106Q.**(1) If the Bank reasonably believes that there may be grounds for revoking a registration under section 106P, the Bank may serve on the holder of the registration a direction in writing prohibiting the holder from carrying on business as a virtual asset service provider other than in accordance with conditions specified by the Bank in the direction. 5
- (2) The Bank shall include in a direction under this section a statement—
- (a) setting out the reasons for giving the direction,
 - (b) specifying the period during which the direction is to remain in force, and 10
 - (c) specifying the conditions with which the holder of the registration is required to comply.
- (3) A decision of the Bank to give a direction under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (4) The Bank may, by notice in writing served on the holder of the registration concerned, amend or revoke a direction given under this section. 15
- (5) Without prejudice to the generality of subsection (3), the Bank may, by notice in writing given to the holder of the registration concerned, extend the period during which a direction remains in force by a further period or periods not exceeding 6 months. 20
- (6) A direction under this section takes effect from date on which it is given or, if a later date is specified in the direction, from that date, whether or not an appeal against the direction is made under this section. 25
- (7) A direction under this section ceases to have effect—
- (a) at the end of the period, not exceeding 6 months, specified in the direction, or if the period is extended under subsection (4), at the end of the extended period, or
 - (b) on the revocation of the holder’s registration under this Chapter, 30
whichever occurs first.
- (8) A person who contravenes a direction given under this section, or fails to comply with a condition contained in the direction, commits an offence.
- (9) A person who commits an offence under this section is liable— 35
- (a) on summary conviction, to a class A fine, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

Bank to publish notice of revocation

106R. As soon as is practicable after revoking a registration under section 106O 40

or 106P, the Bank shall publish in *Iris Oifigiúil* a notice giving particulars of the revocation.

Register of Virtual Asset Service Providers

- 106S.**(1) The Bank shall establish and maintain a register (to be known as ‘the Register of Virtual Asset Service Providers’ and in this Act referred to as ‘the Register’) of persons registered under this Chapter to carry on business as a virtual asset service provider containing— 5
- (a) the name and the address of the principal place of business of each person registered to carry on business as a virtual asset service provider, 10
 - (b) such other information as may be prescribed.
- (2) The Register may be in book form, electronic form or such other form as the Bank may determine and may be maintained in an electronic, mechanical or other non-written form only if it is capable of being reproduced in a written form. 15
- (3) The Bank shall publish a register in written, electronic or other form and a member of the public is entitled to obtain a copy of the Register or of an entry in the Register on payment of such reasonable copying charges as may be prescribed (if any) under section 32E of the Act of 1942 for the purposes of this section. 20
- (4) The holder of a registration to which an entry in the Register relates, shall as soon as practicable after the holder becomes aware of any error in the entry, or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Bank of the error, or change in circumstances, as the case may be. 25
- (5) In any legal proceedings, a certificate purporting to be signed by the Bank and stating that a person—
- (a) is recorded in the Register as the holder of a registration;
 - (b) is not recorded in the Register as the holder of a registration;
 - (c) was recorded in the Register as being, at a specified date or during a specified period, the holder of a registration; or 30
 - (d) was not recorded in the Register as being, at a specified date or during a specified period, the holder of a registration,
- is evidence of the matter referred to in paragraph (a), (b), (c) or (d) (as the case may be), and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown. 35
- (6) The Bank may prescribe particulars for the purposes of subsection (1) (b) or section 106T only if satisfied that those particulars reasonably relate to the business of virtual asset service providers or to the regulation of the business of virtual asset service providers under this Chapter. 40

Restriction on acquisition of beneficial interest in holders of registrations

- 106T.**(1) A proposed acquirer shall not, directly or indirectly, acquire a beneficial interest in the holder of a registration without the prior approval of the Bank in writing of the intended size of the interest.
- (2) A notification under subsection (1) shall include sufficient information to enable the Bank to consider the proposed acquisition according to the nature of the proposed acquirer and the proposed acquisition, and in particular shall include information on who the proposed acquirers are, the persons to be responsible for their management (where applicable), how the proposed acquisition is to be financed and the structure of the resulting group.
- (3) In assessing a proposed acquisition, the Bank shall—
- (a) have regard to the likely influence of the proposed acquirer on the holder of the registration concerned, and
- (b) appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
- (i) the reputation of the proposed acquirer;
- (ii) the reputation and experience of the individuals who will direct the business of the holder of the registration concerned as a result of the proposed acquisition;
- (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged by the holder of the registration concerned;
- (iv) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.
- (4) If, on completing the assessment of a proposed acquisition, the Bank decides to oppose it, the Bank will inform the proposed acquirer concerned in writing and give reasons for that decision and the proposed acquirer shall not complete the proposed acquisition.
- (5) If a proposed acquirer purports to complete a proposed acquisition in contravention of subsection (4)—
- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
- (b) any exercise of powers based on the purported acquisition of the interest concerned is void.
- (6) A decision by the Bank to oppose a proposed acquisition is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (7) In this section—

‘proposed acquirer’ means a person who proposes to acquire or increase a beneficial interest in the holder of a registration and includes a group of persons acting in concert to acquire such an interest;

‘proposed acquisition’ means the proposed acquisition of a beneficial interest in the holder of a registration. 5

Powers of Bank in relation to beneficial owners

- 106U.**(1) Where the Bank has reason to believe that a person who is a beneficial owner of the business of the holder of a registration is exercising an influence on the direction of the affairs of the holder of the registration which is, or is likely to be, prejudicial to the compliance by the holder concerned with any obligations under this Act, the Bank shall, subject to subsection (2), notify the person that it so believes, and direct the person in writing to take specified measures to bring that influence to an end within a specified period. 10 15
- (2) Before issuing a direction to a person under subsection (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification. 20
- (3) A direction issued under subsection (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.
- (4) Where the Bank is of the opinion that a direction under subsection (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following: 25
- (a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the holder of the registration concerned and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the holder of the registration from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank; 30
- (b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the holder of the registration concerned; 35
- (c) an order requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the holder of the registration concerned within a period specified by the Court; 40
- (d) such other order as the Court considers appropriate.
- (5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it

is desirable, the whole or any part of proceedings before it may be heard otherwise than in public.

(6) In this section ‘Court’ means the High Court.

Obligation on holder of registration to report certain suspicions to Bank

106V. If at any time the holder of a registration suspects on reasonable grounds that any person who is a beneficial owner of the holder of the registration is not a fit and proper person, it shall notify the suspicion in writing to the Bank together with particulars setting out the basis for the suspicion. 5

Provision of information by Garda Síochána as to whether or not person is fit and proper person 10

106W.(1) The Bank may request the Commissioner of the Garda Síochána to provide any information that is required to assist the Bank in determining, for the purposes of this Chapter, whether or not any of the following persons is a fit and proper person:

(a) the holder or proposed holder of a registration; 15

(b) in a case where the holder or proposed holder of a registration is a body corporate, a partnership or an individual carrying on, or proposing to carry on, business as a virtual asset service provider as a partner in a partnership, any principal officer of the body corporate or partnership (as the case may be); 20

(c) any person who is a beneficial owner of the business of the holder or proposed holder of the registration concerned.

(2) Notwithstanding any other enactment or rule of law, the Commissioner of the Garda Síochána shall provide the Bank with information in accordance with a request of the Bank under this section. 25

Bank’s power to make regulations

106X.(1) The Bank may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Chapter, regulations under this Chapter may contain such incidental, supplementary and consequential provisions as appear to the Bank to be necessary or expedient for the purposes of the regulations. 30

(3) Every regulation made by the Bank under this Chapter shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 35

Holders of registrations to retain certain records 40

106Y.(1) The holder of a registration shall—

- (a) retain at an office or other premises in the State such records as may be specified by the Bank, and
 - (b) notify the Bank in writing of the address of any office or other premises where those records are retained.
- (2) The requirement imposed by subsection (1) is in addition to, and not in substitution for, any other requirements imposed under any other enactment or rule of law with respect to the retention of records by the holder of a registration, including the requirements specified in section 55. 5
- (3) The holder of a registration shall retain the records referred to in subsection (1) for a period of not less than 6 years after— 10
- (a) in the case of a record made in relation to a customer of the virtual asset service provider, the last dealing with the customer, or
 - (b) in any other case, the record is made.
- (4) The holder of a registration may keep the records referred to in subsection (1) wholly or partly in an electronic, mechanical or other non-written form only if they are capable of being reproduced in a written form. 15
- (5) The obligations that are imposed on the holder of a registration under this section, continue to apply to a person who has been the holder of a registration, but has ceased to hold a registration or to carry on business as a virtual asset service provider. 20
- (6) A requirement that the holder of a registration that is a body corporate, retain any record under this section, applies to any body corporate that is a successor to, or a continuation of, the body corporate. 25
- (7) The Bank may prescribe requirements relating to the retention of records referred to in this section of a body corporate that is wound up or a partnership that is dissolved.
- (8) A person who fails to comply with this section commits an offence and is liable— 30
- (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.”.

Designation of Classes of Express Trust, etc. for Certain Purposes

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26. The Act of 2010 is amended, in Part 4, by the insertion of the following Chapter after Chapter 9A (inserted by *section 25*):

“Chapter 9B

*Designation of Classes of Express Trust (and Matters Related to Such Trusts)
for Certain Purposes*

Purpose of Chapter

106Z. (1) The purpose of this Chapter is to make provision for the meaning that certain words or expressions shall have in regulations that are made, on or after the commencement of *section 28 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020*, under section 3 of the European Communities Act 1972, for the purpose of giving effect to Article 31 of the Fourth Money Laundering Directive. 5 10

(2) Nothing in this Chapter applies to the construction of a word or expression used in another Chapter of this Part.

Operation and interpretation (Chapter 9B)

106ZA. (1) Where the relevant regulations specify that, with respect to a particular word or expression, the designated meaning in the Act of 2010 shall apply then the meaning as hereafter provided in this Chapter shall apply with respect to that word or expression. 15

(2) A reference in this Chapter to a definition being ‘designated’ with respect to a particular word or expression is a reference to the definition (with respect to the particular word or expression) being designated for the purposes of the relevant regulations. 20

(3) In this Chapter—

‘Act of 1997’ means the Taxes Consolidation Act 1997;

‘relevant regulations’ means the regulations referred to in section 106Z(1). 25

(4) In this Chapter, a reference to the Fourth Money Laundering Directive is a reference to that Directive as amended by the Fifth Money Laundering Directive.

Power to prescribe certain matters 30

106ZB. The Minister for Finance may by regulations provide for any matter referred to in this Chapter as prescribed or to be prescribed.

Relevant trust – designated meaning

106ZC. (1) The following definition is designated with respect to ‘relevant trust’:

‘relevant trust’ means an express trust established by deed or other declaration in writing and any other arrangement or class of arrangements as may be prescribed but does not include an excluded arrangement. 35

(2) For the purposes of the definition, designated by subsection (1), with respect to ‘relevant trust’, ‘excluded arrangement’ means an arrangement of the following kind: 40

- (a) an occupational pension scheme that is an approved scheme pursuant to Chapter 1 of Part 30 of the Act of 1997;
 - (b) an approved retirement fund within the meaning of Chapter 2 of Part 30 of the Act of 1997;
 - (c) a profit sharing scheme or employee share ownership trust approved pursuant to Part 17 of the Act of 1997; 5
 - (d) a trust for restricted shares within the meaning of section 128D of the Act of 1997;
 - (e) the Haemophilia HIV Trust which was established by deed dated the 22nd day of November 1989, made between the Minister for Health, of the one part and certain other persons, of the other part; 10
 - (f) a unit trust within the meaning of the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (S.I. No. 233 of 2020), the beneficial ownership of which, by virtue of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019), is required to be registered in the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts; 15 20
 - (g) such other arrangement or class of arrangements as may be prescribed.
- (3) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be an excluded arrangement for the purpose of subsection (2)(g), where he or she is satisfied that such arrangement or class of arrangements is not an express trust or similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters— 25 30
- (a) the low risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to:
 - (i) the legal structure of such arrangement or class of arrangements; 35
 - (ii) any supervision or regulation of such arrangement or class of arrangements under any enactment,

and
 - (b) the non-application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements. 40

- (4) For the purpose of ensuring the uniform application of European Union law between Member States, the Minister for Finance may prescribe any arrangement or class of arrangements to be a relevant trust for the purpose of the definition, designated by subsection (1), with respect to ‘relevant trust’ where he or she is satisfied that such arrangement or class of arrangements is an express trust or a similar legal arrangement within the meaning of the Fourth Money Laundering Directive, taking into consideration such information as is available to him or her on the following matters— 5
- (a) the risk of money laundering or terrorist financing presented by such arrangement or class of arrangements having regard, in particular, to: 10
- (i) the legal structure of such arrangement or class of arrangements;
- (ii) the absence of, or any limitations in, the supervision or regulation of such arrangement or class of arrangements under any enactment, 15
- and
- (b) the application of Article 31 of the Fourth Money Laundering Directive to arrangements in other Member States having comparable purposes and structures to such arrangement or class of arrangements. 20

Beneficial owner in relation to relevant trusts – designated meaning

- 106ZD.**(1) Subject to subsections (5) to (7), the following definition is designated with respect to ‘beneficial owner’ (in relation to a relevant trust): 25
- ‘beneficial owner’, in relation to a relevant trust, means any of the following:
- (a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the interest is defeasible, in the capital of the relevant trust property; 30
- (b) in the case of a relevant trust other than one that is set up or operates entirely for the benefit of individuals referred to in paragraph (a), the class of individuals in whose interest the trust is set up or operates;
- (c) any individual who has control over the relevant trust; 35
- (d) the settlor;
- (e) the trustee;
- (f) the protector.
- (2) For the purposes of the definition, designated by subsection (1), with respect to ‘beneficial owner’ (in relation to a relevant trust), subsections (3) to (7) shall apply; the relevant regulations may, for convenience of reference, set out any of the provisions of this section 40

(whether those that precede or follow this subsection) notwithstanding the application (provided for by section 106ZA(1)) of those provisions to those regulations.

- (3) Except as provided by subsection (5), in this section ‘control’, in relation to a relevant trust, means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument concerned or by law to do any of the following: 5
- (a) dispose of, advance, lend, invest, pay or apply the trust property;
 - (b) vary the relevant trust; 10
 - (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
 - (d) appoint or remove trustees;
 - (e) direct, withhold consent to or veto the exercise of any power referred to in paragraphs (a) to (d). 15
- (4) For the purposes of the definition of ‘control’ in subsection (3), an individual does not have control solely as a result of the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are at least 18 years of age, have full capacity and (taken together) are absolutely entitled to the property to which the trust applies. 20
- (5) Notwithstanding subsection (1), ‘beneficial owner’, in relation to a relevant trust established for the purpose of holding any assets of an approved body of persons established for, and existing for, the sole purpose of promoting amateur games or amateur sports within the meaning of section 235 of the Act of 1997, means the trustees, the committee or other governing body of the club or association, and any other individual who has control over the relevant trust. 25
- (6) Notwithstanding subsection (1), ‘beneficial owner’, in relation to a relevant trust that is a charitable trust within the meaning of section 2 of the Charities Act 2009, means the trustees and the committee or other governing body of the charitable trust, and any other individual who has control over the charitable trust. 30
- (7) Notwithstanding subsection (1), ‘beneficial owner’, in relation to an estate— 35
- (a) of a deceased person in the course of administration, and
 - (b) in relation to which there is provision for a relevant trust for one or more beneficiaries,
- means the executor or administrator of the estate, and no other person, for the period in which the estate is being administered.”. 40

Amendment of Schedule 3 to Act of 2010

27. Paragraph 3 of Schedule 3 (inserted by section 38 of the Act of 2018) to the Act of 2010 is amended by the substitution of “Geographical risk factors - registration, establishment, residence in:” for “Geographical risk factors:”.

Amendment of Schedule 4 to Act of 2010

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28. Schedule 4 (inserted by section 39 of the Act of 2018) to the Act of 2010 is amended—

(a) in paragraph (1)—

(i) in subparagraph (g) by the substitution of “business;” for “business.”, and

(ii) by the insertion of the following subparagraph after subparagraph (g):

“(h) the customer is a third country national who applies for residence rights or citizenship in the State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the State.”,

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and

(b) in paragraph (2)—

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(i) by the substitution of the following for subparagraph (c):

“(c) non face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;”,

20

(ii) in subparagraph (e), by the substitution of “products;” for “products.”, and

(iii) by the insertion of the following after subparagraph (e):

“(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.”.

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Amendment of section 33AK of Central Bank Act 1942

29. Section 33AK of the Central Bank Act 1942 is amended, in subsection (10), in the definition of ‘supervisory EU legal acts’— 30

(a) in paragraph (ah), by the substitution of ‘12 December 2017⁴,’ for ‘12 December 2017;’, and

(b) by the insertion of the following paragraph after paragraph (ah):

‘(ai) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015⁵ on the prevention of the use of the

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4 OJ No. L 345, 27.12.2017, p.1

5 OJ No. L 141, 5.6.2015, p.73

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, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018⁶;

Short title, commencement and collective citation

30. (1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020. 10
- (2) This Act 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 provisions.
- (3) The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 and this Act may be cited together as the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2020. 15

6 OJ No. L156, 19.6.2018, p.43

An Bille um Cheartas Coiriúil (Sciúradh
Airgid agus Maoiniú Sceimhlitheoireachta)
(Leasú), 2020

BILLE

(mar a leasaíodh sa Roghchoiste um Dlí agus Ceart)

dá ngairtear

Acht do leasú an Achta um Cheartas Coiriúil (Sciúradh Airgid agus Maoiniú Sceimhlitheoireachta), 2010 chun éifeacht a thabhairt do Threoir (AE) 2018/843 ó Pharlaimint na hEorpa agus ón gComhairle an 30 Bealtaine 2018 lena leasaítear Treoir (AE) 2015/849 maidir le cosc a chur le húsáid an chórais airgeadais chun críoch sciúrtha airgid nó maoinithe sceimhlitheoireachta, agus lena leasaítear Treoracha 2009/138/CE agus 2013/36/AE; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ordaíodh ag an Roghchoiste a chlóbhualadh,

19 Samhain, 2020

Criminal Justice (Money Laundering and
Terrorist Financing) (Amendment) Bill 2020

BILL

(as amended in the Select Committee on Justice)

entitled

An Act to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU; and to provide for related matters.

Ordered by the Select Committee to be printed,

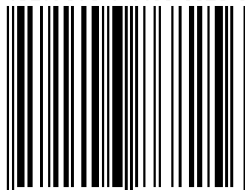
19th November, 2020

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€4.06

ISBN 978-1-4468-6825-6



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