

AML Frameworks of Schedule 2 Firms under CBI Scrutiny

Introduction

On 16 December 2020, the Central Bank of Ireland (the "CBI") issued a [Dear CEO Letter](#) to Schedule 2 Firms as described below (the "Dear CEO Letter") highlighting concerns with low levels of compliance with anti-money laundering and counter financing of terrorism ("AML/CFT") obligations.

The Dear CEO Letter provides greater clarity and guidance to Schedule 2 Firms on their AML/CFT obligations.

The publication of this Letter and the greater regulatory focus in this area is likely to enhance awareness of the requirements that apply, and the measures many firms will need to take to meet the CBI's standards.

Schedule 2 Firms

The term "Schedule 2 Firm" refers to an entity which carries on business in Ireland involving one or more of the services/activities prescribed in Schedule 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended (the "CJA"). This includes activities such as lending or financial leasing.

These entities are typically otherwise not obliged to register with or obtain authorisation from the CBI but, subject to certain exemptions, are required under the CJA to register with the CBI for AML purposes.

More importantly, these entities are subject to the AML/CFT obligations of the CJA that apply to credit and financial institutions.

The Schedule 2 regime has existed since 2010 although it has been the subject of greater focus since the CBI registration regime was introduced in 2018.

Warning to Unregistered Firms Carrying out Schedule 2 Activities

In the materials accompanying the Dear CEO Letter, the CBI issues a warning to firms not registered as Schedule 2 Firms undertaking activities that bring them into scope for registration. It states the following:

"We are also taking this opportunity to remind all firms to assess their activities to determine if they are required to register with us under Schedule 2. Firms who fail to register are at risk of significant criminal and/or administrative sanctions. In 2021, the Central Bank will use all means available to identify those firms not registered and take appropriate action."

Considering the Dear CEO Letter - Practical Measures

The Dear CEO Letter contains a detailed summary of matters identified by the CBI during its review of the sector and engagement with specific Schedule 2 Firms.

The Letter is critical of written policies and procedures that are not tailored to the business

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or properly implemented in practice, either by the firm itself or by a supporting service provider.

In terms of some of the main findings, the Letter indicates the following:

- Boards should receive and challenge regular reporting in order to have robust oversight of all AML/CFT risks facing the firm;
- Where AML/CFT activities are outsourced, these arrangements must be formally documented and subject to strong ongoing oversight by the firm; and
- AML/CFT processes and procedures must also be sufficiently detailed and tailored to the individual profile of the firm.

In reviewing the Letter's findings, some practical questions which Schedule 2 Firms should consider are as follows:

- Has the firm put in place written policies and procedures to ensure compliance with the AML/CFT regime?
- Does the firm comply with these requirements on an ongoing basis, and can this be demonstrated?
- Does the firm receive reports on, and actively consider, AML/CFT matters at each quarterly board meeting?
- If AML obligations are outsourced, is this properly documented and overseen in practice?
- Does the board and senior management receive annual training on AML/CFT matters?
- Has the firm undertaken a documented risk assessment and specifically considered its customers and business activities as part of this?

In the Dear CEO Letter, the CBI indicates that it expects Schedule 2 Firms to carefully consider its contents and to bring it to the attention of the board in order to ensure that relevant issues are addressed.

How the Maples Group Can Help

The Maples Group is a global leader in the provision of legal advice and professional services in the area of corporate governance. We work in the world's leading jurisdictions by combining legal, regulatory and fiduciary and fund services teams to provide a comprehensive service to our clients.

We can assist firms that may potentially be subject to registration in assessing their activity in the context of the scope of Schedule 2.

We will be working with affected clients to assess the Letter, consider its practical implications for the relevant firm's particular circumstances and develop and tailor materials and compliance solutions that will ultimately result in the enhancement of the AML/CFT frameworks to the expected standards.

Further Information

If you would like further information, please liaise with your usual Maples Group contact or:

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