

AML Policy Enhancements Required for Investment Funds

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 ("CJA 2018") transposed the majority of the Fourth Money Laundering Directive (EU) 2015/849 ("4MLD") into Irish law.

4MLD sought to put in place the updated FATF global standards, which promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

CJA 2018 came into force on 26 November 2018. It introduced significant changes from that date to Irish legislation on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing ("ML/TF"). Irish anti-money laundering ("AML") and counter terrorist financing ("CTF") legislation is now contained in the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 (the "CJAs").

The Central Bank of Ireland (the "Central Bank") is the competent authority for the monitoring of credit and financial institutions' compliance with the CJAs and is responsible for taking reasonable measures to secure compliance.

In September 2019, the Central Bank published its [AML and CTF Guidelines for the Financial Sector](#) (the "Guidelines"). The Guidelines supplement the CJAs and form core guidance for the Irish financial services industry in this area.

Impact Analysis Table

The table below considers the key changes introduced by the CJA 2018 that apply to Irish authorised investment funds (both UCITS and AIFs, irrespective of their legal form) and identifies important enhancements that these funds (and their Irish authorised management company or AIFM, if relevant) are required to make to their AML/CFT framework to comply with the CJAs.

How the Maples Group can help

We are assisting clients in considering measures that investment firms, UCITS and AIFs should take to ensure compliance with the CJAs.

In most cases, this will include:

- Conducting a gap analysis and a review of existing written AML/CTF policies including any existing documented business risk assessment with a view to preparing an enhanced AML/CTF policy document and documented business risk assessment;
- A review of internal controls and the AML/CTF procedures framework; and
- Engaging with administrators on funds' behalf to ensure that policies and operational processes at delegate level are being enhanced where required to comply with the new requirements.

Additionally, annual AML training for directors in 2019 should include a briefing on the changes introduced under the CJA 2018.

Further Information

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

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The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland *in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2018).*

November 2019

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This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.

Impact Analysis Table

Key Changes	New Requirements	Our Analysis and Recommended Measures
<p>Documented "Business Risk Assessment"</p>	<p>"Designated Persons"¹ are required to perform a business risk assessment to identify and assess the risks of ML/TF involved in carrying out their business activities. This must consider factors including: (i) type of customer; (ii) type of product; (iii) geographical risk; (iv) type of transaction; (v) delivery channel; and (vi) other risks.</p> <p>The Guidelines go into extensive detail on the types of risks that should be considered.</p> <p>The business risk assessment must be documented, kept up-to-date and approved by the Designated Person's senior management.</p>	<p>While this is a new requirement, there was formerly a requirement (in section 54) for Designated Persons to have policies and procedures on the assessment and management of ML/TF risks and relevant Irish AML guidance provided additional detail on the risk assessment framework. Therefore, many funds will already have a documented risk assessment in their AML policy and procedures.</p> <p>However, it is likely that Designated Persons will need to enhance the form and substance of their documented business risk assessment.</p>
<p>Policies and Procedures</p>	<p>The CJA 2018 prescribes a detailed list of elements to be covered in a Designated Person's internal policies, controls and procedures, including the following new elements:</p> <ul style="list-style-type: none"> • How the Designated Person identifies, assesses, mitigates and manages the risks of ML/TF; • Its customer due diligence ("CDD") measures; • Procedures to monitor transactions and relationships; • Suspicious transactions reporting; • Record keeping; 	<p>Designated Persons will need to analyse each new element and update their AML/CTF policy and procedures to appropriately capture these.</p>

¹ This is a collective term used in the CJAs to identify entities that are subject to the CJAs. This includes "Collective Investment Undertakings" which in turn, under the CJA 2018, now includes specifically: (i) UCITS; (ii) AIFs; (iii) UCITS management companies; and (iv) AIFMs.

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	<ul style="list-style-type: none"> • Document retention; • Systems and controls to identify emerging risks; and • Ongoing compliance controls in support of the policies, controls and procedures. <p>The policies, controls and procedures adopted must be approved by the Designated Person's senior management and kept up-to-date.</p>	
Risk Based Approach to CDD	<p>A range of changes have been made on how Designated Persons should establish and verify the identity of their customers (i.e. perform CDD), mandating a greater focus on the ML/TF risk assessment:</p> <ul style="list-style-type: none"> • Designated Persons must identify and assess the risks of ML/TF when carrying out CDD. This must include having regard to the business risk assessment and any relevant "risk variables"; • Designated Persons, as well as carrying out CDD on the customer and any connected beneficial owner, must now also carry out CDD on the person representing the customer; • Under the former framework, there were exemptions and simplified due diligence could be applied automatically to "specified customers", for example, financial institutions, listed companies and public bodies. Under section 34A, these exemptions have fallen away and a risk assessment will need to be performed on each investor to determine their risk rating and level of CDD to be applied; • Subject to certain exceptions, enhanced CDD is to be applied to customers in high-risk third countries and where relationships/transactions present a higher degree of risk of ML/TF. 	<p>It is acknowledged that, in most cases, the actual task of carrying out CDD on investors will be outsourced to the administrator.</p> <p>However, the arrangement with the administrator (and how this is reflected in the fund's AML/CTF policy) will need to be reviewed to ensure that it complies with the enhanced measures and there is an appropriate level of oversight.</p> <p>Similar changes will need to be considered to the Money Laundering Reporting Officer ("MLRO") role.</p> <p>Practical examples of areas to focus on in this respect include:</p> <ul style="list-style-type: none"> • The process to be followed when an investor has failed to provide the required CDD documentation, including consideration of the process to "discontinue the business relationship" in accordance with the CJAs and relevant Central Bank guidance; • The process in place where a third party carries out CDD and this is relied on by the fund, in accordance with the CJAs and the Guidelines.

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<p>New Ongoing Monitoring Requirements and Wider Scope of PEPs</p>	<p>Designated Persons must monitor business relationships to the extent reasonably warranted by the risk of ML/TF. The Guidelines require a Designated Person to allocate responsibility for approval of politically exposed person ("PEP") relationships to individuals who are appropriately skilled and empowered to do so. Such monitoring activity shall include scrutinising transactions and the source of wealth and source of funds to determine if they are consistent with the customer, their business patterns and risk profile. In this regard, the Guidelines impose a new requirement on Designated Persons to use reliable and independent data, documents or information to verify the source of wealth and source of funds of all PEPs.</p> <p>Designated Persons must undertake (i.e. re-do) CDD at any time where customers' circumstances have changed, where the risk of ML/TF warrants it.</p> <p>Designated Persons are also required to examine the background and purpose for (i) all complex or unusually large transactions; and (ii) all unusual patterns of transactions which have no apparent economic or lawful purpose, in order to determine whether they appear suspicious.</p> <p>The CJA 2018 has extended the definition of a PEP to include domestic PEPs. Previously the requirement to apply enhanced CDD measures only applied to PEPs residing outside Ireland.</p>	<p>Similar to the section immediately above, the arrangement in place with the administrator (and how this is reflected in the fund's AML/CTF policy) will need to be reviewed to ensure that it complies with the enhanced measures and there is an appropriate level of oversight.</p>
<p>Documents used to satisfy CDD requirements</p>	<p>The Guidelines do not include sample lists of documentation specifying CDD requirements. Designated Persons are instead required to maintain their own lists of acceptable documents which should be reviewed on an ongoing basis to ensure they remain current and relevant.</p>	<p>Designated Persons should liaise with the administrator and review their CDD requirements. Once approved, these should be reviewed periodically and updated as necessary.</p>

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Training	The Guidelines clarify that Designated Persons are required to ensure that ongoing AML/CTF training includes an assessment or examination during the training session which should be passed by all participants in order for the AML/CTF training to be recorded as completed. If the training does not contain such an assessment, the Designated Person should be able to otherwise demonstrate the effectiveness of training and staff understanding of such training.	Designated Persons should review existing training and if deemed necessary update the training to include an assessment which demonstrates its effectiveness and staff understanding of the training.