



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Re: Compliance by Trust or Company Service Providers (TCSPs or Firms) with their obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (CJA 2010).

Dear CEO,

The Central Bank of Ireland (the Central Bank) is the competent authority charged with effectively monitoring the compliance of credit and financial institutions with Part 4 of the CJA 2010. This includes TCSPs that are subsidiaries of credit and financial institutions registered with the Central Bank. To monitor the compliance of TCSPs with Part 4 of the CJA 2010, the Central Bank conducts supervisory engagements on an ongoing basis, including on-site inspections. In September 2017, the Central Bank hosted a seminar to which all those TCSPs supervised by the Central Bank were invited. At the seminar the Central Bank shared the findings from the programme of supervisory engagements undertaken up to that point, as well as outlining its compliance expectations.

The purpose of this letter is to provide an overview of the findings identified by the Central Bank arising from supervisory engagements it has undertaken since its seminar in 2017. While the Central Bank has noted improvements in anti-money laundering and countering the financing of terrorism (AML/CFT) controls in some areas, in other areas TCSPs have not taken sufficient action to address the findings highlighted by the Central Bank at its seminar in 2017.

In particular, the Central Bank notes that many TCSPs still place over reliance on their parent company's AML/CFT controls, in key areas such as risk assessment and policies and procedures. More specific findings and expectations in relation to these areas are outlined in the Appendix.



In order to assist Firms in complying with their AML/CFT compliance obligations, there are various sources of information available, including the Central Bank's Guidelines on Anti Money Laundering and Countering the Financing of Terrorism issued in September 2019¹, as well as guidance published by the European Supervisory Authorities (ESAs) and Financial Action Task Force (FATF). Firms should ensure that they are familiar with, and have regard to, all relevant guidance published by these bodies.

As CEO of a TCSP, the Central Bank expects you to carefully consider the contents of this letter and to bring to the attention of your Board the issues raised in order to ensure that any issues relevant to your Firm are addressed. You, your Board and all relevant committees play a critical role in ensuring your Firm's compliance with its obligations contained in the CJA 2010. In addition to the issues raised in this letter, TCSPs are also reminded of the key obligations to establish and maintain frameworks tailored to mitigate AML/CFT risks inherent in their specific business activities and to position themselves to demonstrate to the Central Bank that all reasonable steps have been taken to ensure compliance with the requirements of the CJA 2010.

As a breach of the CJA 2010 may result in significant criminal or civil penalties, it is imperative that the implications of non-compliance are understood by Boards and Senior Management of all Firms and that all reasonable steps to ensure compliance have been taken. The Central Bank is prepared to use the full range of its regulatory tools where firms do not comply with their CJA 2010 obligations. This includes, where necessary, the pursuit of enforcement action against Firms.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tommy Hannafin', written over a horizontal line.

Tommy Hannafin

Head of the Anti-Money Laundering Division

¹ <https://www.centralbank.ie/regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/guidance-on-risk>



Appendix – details of Central Bank findings arising from on-site inspections

Board oversight - *Findings*

In some cases, there was insufficient evidence of Board oversight in relation to AML/CFT. The below are examples of shortcomings identified during the inspection process:

1. AML/CFT does not feature as a regular topic on the Board agenda or, where it does, it has only recently become an agenda item.
2. There is limited evidence of robust challenge and discussion of AML/CFT related matters at Board meetings.
3. All Firms inspected outsource some element of their AML/CFT activities (primarily, but not always to other group entities). In relation to these outsourced activities, it was noted that:
 - a. In some instances, particularly where group outsourcing arrangements were used, either written service level agreements were not in place or if they were in place they were generic, lacked detail and were not sufficiently tailored to the Firm.
 - b. In addition, there was insufficient evidence of Board oversight in respect of such outsourced activities. It is important to remember that the Firm remains fully responsible for compliance with all of its AML/CFT legislative obligations, even where it has outsourced AML/CFT related activities.
4. Some of the TCSPs were unable to demonstrate that the money laundering reporting officer (MLRO) was in a position to act independently. For example, instances where TCSP's, providing directorship services, had appointed the MLRO as a director to a number of the TCSP's client companies.
5. Firms had not always formally documented who is responsible for AML/CFT for the Firm.
6. Some Firms were unable to demonstrate that the MLRO reports to the Firm's directors in relation to the Firm's AML/CFT activities.

The Central Bank's expectations

1. Firms should be in a position to demonstrate that AML/CFT is a regular feature at Board meetings.
2. The Board receives sufficient AML/CFT reporting in relation to performance against key performance indicators, for example relating to suspicious activity reports, high-risk customers, etc. This can help to ensure that the Board is aware of and can appropriately challenge any AML/CFT issues arising.



3. When outsourcing any AML/CFT activities either to an external party or to a group entity, the Central Bank expects:

- a. Firms to have written contracts/service level agreements clearly setting out the obligations and responsibilities of the respective parties; and
- b. The Board to demonstrate that it has full oversight of AML/CFT outsourced activities through assurance testing and that they can evidence that they are actively monitoring the progress of any management action points resulting from reviews conducted in this regard.

4. The Board must ensure that the role of MLRO can be performed with independence at all times and that he/she is not appointed to dual roles that could be considered a conflict of interest.

5. The roles and responsibilities of Firm's Board, Senior Management/MLRO regarding key elements of the Firm's AML/CFT framework should be clearly defined and documented.

6. The MLRO must have a direct reporting line to the Board providing sufficiently detailed reports on a frequent basis.

Money Laundering and Terrorist Financing (ML/TF) Risk assessment – *Findings*

1. The majority of the TCSPs inspected could not demonstrate that they had assessed and documented their ML/TF risks as they pertain to the Firm's business activities.

2. Some Firms had considered and documented risks for individual customers or had undertaken a risk assessment on a particular service but they could not demonstrate that they have completed a holistic business wide ML/TF risk assessment.

The Central Bank's expectations

1. The Firm must determine the ML/TF risks facing their business as a whole.

2. The Firm must document consideration of the risks pertaining to the Firm's particular services/products, customers, jurisdictions and distribution channels mindful of the nature, scale and complexity of the TCSP's business model.

3. The business wide ML/TF risk assessment must be reviewed at least annually. The consideration and approval by the Firm's Board of this ML/TF risk assessment must be formally evidenced.

4. In addition where a Firm is part of a larger group structure it is essential that the Firm's ML/TF risk assessment is driven by the Firm as opposed to the parent company.



AML/CFT Policies & Procedures – *Findings*

1. Some Firms did not have their own AML/CFT policies and procedures and were depending on their parent company's AML/CFT policies and procedures containing the requisite information. Often the policies and procedures failed to reference the TCSP.
2. The Firms inspected to date have all been members of a larger group company, some of which are members of large multinational group companies. However some Firms, in adopting and implementing the group AML/CFT policies and procedures, could not demonstrate an understanding of these group AML/CFT policies and procedures.
3. Where the Firm did have their own AML/CFT policies and procedures, it was noted that they were not adequately tailored to the Firm's business model nor were they sufficiently detailed.
4. Some Firms could not satisfactorily evidence consideration and approval of the AML/CFT policies and procedures by their Boards.

The Central Bank's expectations

1. The Firm, as a designated person in its own right, must ensure that the AML/CFT policies and procedures in place are:
 - a. Appropriately tailored and reflect the practices within the TCSP and
 - b. Are consistent with Irish legislative requirements.
2. The Firm must ensure that policies and procedures are subject to review on at least an annual basis and are updated and reviewed more frequently as and when required.
3. Consideration and approval of the AML/CFT policies and procedures by the Board must be satisfactorily evidenced.
4. Where the TCSP is applying group AML/CFT policies and procedures, the Board and the MLRO must ensure that
 - a. The Firm evidences consideration of alignment of the group policies and procedures to the Firm and ensures that such group policies and procedures are in adherence with Irish legislative requirements.
 - b. Application of group policies and procedures are adequately tailored to the TCSP's business activities.
 - c. That relevant staff have a detailed knowledge and understanding of policies and procedures.