ARTHUR COX

Briefing

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AML and CTF

FATF evaluation of Ireland published

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Following its on-site visit to Ireland in November 2016, the Financial Action Task Force (**FATF**) has published its Mutual Evaluation of Ireland - 2017: Key findings, ratings and priority actions together with a helpful Executive Summary.

OVERVIEW

The report strikes a broadly positive note, highlighting that Ireland's anti-money laundering (**AML**) and counter-terrorism financing (**CTF**) framework is on a strong legislative and institutional footing, with the Central Bank of Ireland performing well from a supervisory perspective.

The report also notes that last year's national risk assessment by Ireland showed an appreciation of the risks that Ireland could face from an international perspective (see our earlier briefing: AML Update: Department of Finance publishes National Risk Assessment for Ireland) and that both the Central Bank and Department of Justice and Equality (**DJE**) have established good levels of cooperation with the entities within their respective remits.

However, FATF has signalled that more enforcement action needs to be taken, and that more work is needed to identify the international money laundering (**ML**) risks faced by Ireland.

The action points for Ireland arising from the FATF visit are summarised below.

CROSS-BORDER RISK

Greater consideration needs to be given to cross-border ML and terrorism financing (**TF**) risks.

ENFORCEMENT

The relevant Irish authorities should:

» more actively pursue prosecutions for both ML and TF offences; and

» strengthen their efforts to pursue the proceeds of crime moved offshore.

NON-PROFIT ORGANISATIONS (NPOS)

Where NPOs are identified as vulnerable to TF, more focused and proportionate measures should be applied.

FINANCIAL INTELLIGENCE UNIT (FIU)

Adequate procedures need to be put in

place to safeguard the role of the FIU and to ensure its independence.

BENEFICIAL OWNERSHIP

Steps should continue to be taken to enable the operation of the central register of beneficial ownership for corporates. The register, which will be operated by the Companies Registration Office, is currently expected to be up and running towards the end of 2017.

INCREASED MONITORING

The DJE should further expand its monitoring of entities that come within its remit, and increase its resources to facilitate this.

Supervisors, in particular those who supervise Designated Non-Financial Businesses and Professions (**DNFBPs**) should further focus on ensuring compliance with obligations relating to politically-exposed persons (**PEPs**) and targeted financial sanctions. Express reference was made to a need for the Law Society and designated accountancy bodies to effectively and proportionately sanction those who do not comply with their AML/CTF obligations.

TECHNICAL DEFICIENCIES

The Irish legislative framework should be amended to address the technical deficiencies noted in the Technical Compliance Annex to the report. The Annex rated Ireland's compliance with various FATF recommendations as either "*compliant*", "*largely compliant*", "*partially compliant*" or "*non-compliant*".

The only area in respect of which Ireland was listed as <u>non-compliant</u> was in respect of higher-risk countries. FATF noted that Ireland does not have measures which require the application of enhanced due diligence (**DD**) measures where a transaction or business relationship involves a country or is linked to a country in respect of which FATF has called for enhanced DD to be applied.

The following resulted in Ireland being categorised as only <u>partially compliant</u> in a number of areas:

» ***Enforcement:*** Difficulties in ensuring asset freezing without delay.

» ***NPOs:*** Apart from charitable organisations, Ireland has not identified features and types of NPOs which by virtue of their activities and characteristics are likely to be at risk of TF.

» ***PEPs:*** The definition of "PEP" in Irish legislation is not consistent with definition of "PEP" in the FATF glossary. However, the Irish legislation defines PEPs by reference to the Third Money Laundering Directive. While FATF's 2012 Recommendations extended its definition of a PEP to include persons who have been entrusted with prominent functions in international organisations, the Irish legislation does not reflect that at the moment. FATF does, however, acknowledge that Ireland will be updating its legislative provisions regarding PEPs when transposing the Fourth Money Laundering Directive.

» ***Correspondent banking:*** Ireland has only applied enhanced measures regarding correspondent banking relationships to respondent institutions outside the EU.

» ***Technology:*** FATF noted that there is no specific requirement to undertake risk assessments of new products, business practices or technologies prior to their utilisation, although it acknowledges that financial institutions are required to assess ML and TF risks arising from new technologies generally, and that Ireland participates in a number of committees at EU level which examine the risks inherent in various products and services.

» ***Foreign branches and subsidiaries:*** FATF noted some shortcomings with respect to reporting entities' internal controls, including the lack of an explicit requirement for the appointment of a compliance officer and an independent audit function, the lack of pre-hiring screening for all employees (other than those that are separately subject to fitness and probity requirements) and an absence of a requirement for ongoing training.

» ***DNFBPs:*** FATF is of the view that there are several deficiencies in provisions applicable to DNFBPs in respect of customer DD, record keeping, PEPs and new technologies. It was also concerned that private members' clubs which operate as casinos in practice are only required to be registered and not licensed.

» ***Trustees:*** While professional trustees have obligations to obtain and hold information on the settlor, trustee, and beneficiaries, and face sanctions for failure to comply with those requirements, FATF noted that circumstances where a private non-professional individual acts as a trustee are not in-scope, and there are no specific requirements for trustees to hold basic information on other regulated agents of, and service providers to, the trust.

» ***FIU:*** Ireland could not demonstrate to FATF that the FIU is operationally independent and autonomous from other parts of An Garda Síochána, and the FIU has a limited ability to conduct strategic analysis under its current IT system.

» ***Cash:*** Regarding cash couriers, FATF was concerned that the cross-border cash declaration system does not apply to intra-EU movements of cash or to movements of cash using mail or cargo. It also noted that the penalties imposed for failing to declare cash are low and neither proportionate nor dissuasive.

» ***Statistics:*** An Garda Síochána does not keep statistics on ML investigations, and the FIU is limited in its ability to analyse statistics.

The report provides useful insight into the ML and TF risks faced by financial services providers in Ireland, the steps being taken from a legal and supervisory perspective to address those risks, and areas in respect of which further steps are likely to be taken. On the basis of the report, it seems likely that the Central Bank will continue to be active in taking enforcement action against firms that it supervises who breach AML and/or CTF requirements.

If you require advice in relation to your AML and CTF policies and procedures, please get in touch with Robert Cain or your usual Arthur Cox contact.

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