



Anti-Money Laundering Bulletin

Issue 8 / July 2022

Welcome to the latest edition of the Central Bank's Anti-Money Laundering Bulletin. This edition focuses on the Virtual Asset Service Providers (VASP) sector, which came within the scope of AML/CFT legislation, and consequently the Central Bank's registration and supervisory remit, in April 2021. In the intervening period, a significant number of firms have applied to the Central Bank for registration. This Bulletin provides Central Bank observations arising from the assessment of registration applications to date in order to assist future applicants in preparing their applications. The bulletin provides an overview of the:

1. Legislative framework
2. Outreach and engagement
3. Levy information
4. Key issues with registrations received and Central Bank expectations in relation to same

Registration Process

Since 23 April 2021, VASPs are a "designated person" for the purposes of the "Criminal Justice (Money Laundering and Terrorism Financing) Act 2010 to 2021 ("CJA 2010 to 2021") and are required to comply with the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) obligations contained under Part 4 of the CJA 2010 to 2021.

The Central Bank is the competent authority for VASPs in Ireland, with responsibility for the assessment of VASP Registration Applications and the ongoing AML/CFT supervision of VASPs.



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Message from Tommy Hannafin - Head of Anti-Money Laundering Division

The Central Bank works to serve the public interest by being an open, engaged and future-focused regulator, seeking to anticipate and support innovation in the financial services industry. Alongside this, we continue to evolve our regulatory frameworks, safeguarding the

With respect to VASPs, the Central Bank's responsibilities as the Competent Authority relate only to AML/CFT i.e. the Central Bank does not supervise VASPs from a prudential or consumer protection perspective. In assessing a registration application the Central Bank must be satisfied that:

- the firm's AML/CFT policies and procedures are effective in combatting the money laundering and terrorist financing (ML/TF) risks associated with its business model; and
- the firm's management and beneficial owners are fit and proper.

Recognising that the VASP registration process is new the Central Bank took a number of actions to support applicants, including:

- creating a dedicated VASP section on its website which provides potential applicants with access to details of the registration process, links to relevant Central Bank and other guidance and information on ongoing AML/CFT obligations (see box to the right);
- offering prospective applicants an optional pre-application meeting, to provide prospective applicants the opportunity to seek clarification on any aspect of the registration process, including completion of the VASP AML/CFT Registration Form. The Central Bank highly recommends that prospective applicants avail of this meeting in advance of submitting their registration;
- attending and participating in public events related to the VASP sector. The Central Bank will continue its outreach programme to the VASP sector.

It should be noted that it is a criminal offence to carry on the business of a VASP in Ireland in the absence of a registration from the Central Bank.¹

Levy

As with all other supervised financial institutions, registered VASPs will be subject to a supervisory levy which will be driven by the level of resources applied to their supervision. In this regard VASPs present an inherent high ML/TF risk and will be subject to an intrusive supervisory engagement model that is commensurate with that risk. Further information will be provided in relation to this in due course.

resilience of the financial system and meeting our supervisory responsibilities.

Effective regulation to prevent financial crime supports innovation in new markets such as virtual assets.

The Central Bank plays a very important gatekeeper role in Ireland's fight against money laundering and terrorist financing and seeks to ensure that regulated financial service providers have the necessary risk culture, and risk and control frameworks in place to minimise the risk of the use of their products or services by criminals for the purposes of money laundering or terrorist financing (ML/TF).

In its assessments of applications for registration as a VASP, the Central Bank has identified significant and widespread weaknesses in the proposed risk and control frameworks of the vast majority of applicants. These weaknesses are such that the Central Bank is not satisfied that firms will have the necessary and appropriate controls in place to effectively manage and mitigate the ML/TF risk to the firm, the sector and society. The Central Bank has advised individual applicants of its concerns and identified weaknesses with a view to firms reassessing their

¹ VASPs established in Ireland and carrying on business as a VASP immediately prior to the 2021 Act coming into force who applied to the Central Bank for registration before 23 July 2021 are permitted to continue to offer VASP services pending the outcome of their application.

Key Central Bank observations on registrations received and assessed to date

During the Central Bank's assessment of VASP registration applications received to date, a number of recurring weaknesses have been identified. In order to assist future applicants in submitting complete and comprehensive applications and understanding the Central Bank's requirements and expectations, this section sets out the key issues identified and reiterates the expectations of the Central Bank.

Incomplete Applications:

A number of registration applications did not contain the required information and documentation and consequently these applications could not progress to the assessment phase. As an example, some firms had submitted policies but no accompanying procedures. A number of firms submitted a copy of the firms internal risk register in place of a documented risk assessment.

It is worth noting that the majority of firms that did not progress to the assessment phase had not availed of the pre-application meeting and/or had not given consideration to the guidance documents issued by the Central Bank.

Assessment Phase:

In undertaking its assessment of registration applications, the Central Bank has noted recurring fundamental issues that prevent the Central Bank from approving registration applications as the applicants cannot meet their AML/CFT legislative obligations or the Central Bank's expectations. In such cases, the Central Bank has communicated its concerns and expectations to the applicants for further consideration. The below paragraphs intend to provide an overview of the recurring issues identified during the assessment of registration applications.

Money Laundering and Terrorist Financing (ML/TF) Risk Assessment:

An effective AML/CFT control framework is built on an appropriate ML/TF risk assessment that focuses on the specific ML/TF risks arising from the firm's business model. This risk assessment should drive the firm's AML/CFT control framework such that it ensures there are robust controls in place to mitigate and manage the specific risks identified through the risk assessment.

The Central Bank identified a significant number of issues with the ML/TF risk assessments conducted by VASP applicant firms, including:

- A number of firms had not assessed or documented the ML/TF risks as they pertain to the firm's customers and business activities. The Central Bank expects a Risk

proposed frameworks and implementing the necessary enhancements.

The purpose of this Bulletin is to advise future VASP applicants of the weaknesses identified to date by the Central Bank and to reiterate the Central Bank's expectations in these areas. The Central Bank expects all future applicants to have considered the information provided in this Bulletin and that their proposed risk and control frameworks reflect the applicant's obligations and the Central Bank's expectations in these areas. In that respect, it is incumbent on all involved to ensure that Ireland is best positioned to minimise the negative societal impacts of money laundering and terrorist financing.

A key focus of our strategy is being future focused – we seek to regulate for a rapidly evolving financial system so that the opportunities presented by the current unprecedented period of change and innovation can be realised for citizens and the economy. But, that requires a simultaneous commitment to effective regulation and supervision, so that the risks are minimised. Equally, firms seeking registration must be committed to preventing their business being used to launder the proceeds of crime or to finance terrorism.

Assessment to be specific to the firm and the specific risks that pertain to that firm's activities and customers.

- Several VASP applicant firms did not document the inherent ML/TF risks that pertain to the firm or document how, after assessing the effectiveness/strength of the firm's control environment, the firm had determined the residual risk rating for each of the risk factors as set out in the CJA 2010 to 2021.
- A number of firms did not consider relevant information in the National Risk Assessment, CJA 2010 to 2021 and/or guidance on risk issued by the Central Bank, when documenting the firm's risk assessment. This included consideration of inherent risk factors, such as Nature, Scale, Complexity, Geographical Risk, Products and Services risk, etc.

Policies and Procedures:

When developing AML/CFT policies, controls and procedures ("AML/CFT P&Ps"), firms should maintain a detailed documented suite of AML/CFT P&Ps, which are:

- supplemented by guidance
- accurately reflect operational practices; and
- fully demonstrate consideration of and compliance with all legal and regulatory requirements.

The Central Bank identified a number of recurring issues with the AML/CFT P&Ps submitted by applicant firms including;

- Several firms submitted AML/CFT P&Ps that did not meet the Irish legislative and regulatory requirements, in many instance referring to legislative frameworks in other jurisdictions where parent/group entities are situated. Where firms rely on group policies and procedures, these must be sufficiently detailed, applicable to the Irish entity that is applying for VASP registration and meet the Irish legislative and regulatory requirements.
- The Central Bank received several registration applications that included the firm's policies but failed to include the firm's procedures that document *how* the firm meet their legislative obligations. As detailed in the application guidance, applicant firms are required to submit AML/CFT P&P relating to Customer Due Diligence ("CDD"), Transaction Monitoring, Suspicious Transaction Reporting, Financial Sanctions, Record Keeping, Training and Assurance Testing.

Customer Due Diligence ("CDD"):

Links to useful sources of information available on the Central Bank website:

- VASP AML/CFT Registration Form. [VASP AML/CFT Registration Form](#)
- Document outlining the Central Bank's expectations for firms applying for VASP Registration. [Instruction and Guidance Note for VASP Applicants](#)
- Instruction document for firms uploading documentation through the Central Bank of Ireland's Online Reporting System. [ONR Instructions for VASPs](#)
- The Central Bank's Fitness and Probity Website. [Information on the Central Bank's Fitness and Probity Regime](#)
- Previous Correspondence between AMLD and Industry. [Anti-Money Laundering Division Correspondence with Industry](#)

CDD involves more than just verifying the identity of a customer. Firms should collect and assess all relevant information in order to ensure that the firm:

- Knows its customers, persons purporting to act on behalf of customers and their beneficial owners, where applicable;
- Knows if its customer is a Politically Exposed Person (“PEP”)
- Understands the purpose of the account and therefore understands the expected activity; and;
- Is alert to any potential ML/TF risks arising from the relationship.

The Central Bank identified a number of recurring issues with the CDD AML/CFT P&Ps submitted by applicant firms including;

- A number of applicant firms failed to demonstrate compliance with the legislative obligation to obtain information reasonably warranted by the ML/TF risk on the purpose and intended nature of the business relationship with a customer prior to the establishment of the relationship.
- The Central Bank received several registration applications where the firm failed to demonstrate how screening is conducted for PEPs for both new and existing customers. A number of firms also failed to document how PEP customers are managed including documenting requirement for Senior Management approval, the application of Enhanced Due Diligence (“EDD”) measures to PEPs and enhanced on-going monitoring measures.
- Several firms failed to document policies and procedures relating to the refresh of CDD documentation.

Financial Sanctions Screening:

The Central Bank’s expectation is that firms have an effective screening system in place, appropriate to the nature, size and risk of their business. In addition to this, firms should have clear escalation procedures in place to be followed in the event of a positive match.

- Several firms failed to document the frequency of Financial Sanctions screening, how the firm screens (including what, if any, software is used) and also the steps the firm would take in the case of a Financial Sanctions hit.

Outsourcing:

A firm can outsource certain AML/CFT Functions, but are reminded that the firm remains ultimately responsible for compliance with its obligations under CJA 2010 to 2021. It is expected that, where firms outsource AML/CFT functions, a documented agreement is in place that clearly defines the obligations of the outsource service provider. Firms should also evidence that sufficient oversight is conducted on the outsourced activity.

- The Central Bank’s AML/CFT Guidelines for the Financial Sector. [AML/CFT Guidelines for the Financial Sector](#)
- Updated Guidance document from FATF on Virtual Assets and Virtual Asset Service Providers. [FATF Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers](#)

A number of VASP applicant firms outsource certain AML/CFT functions to group-related parties and/or non-group related parties.

- Several firms did not include their policies around outsourcing or submit their service level agreements
- In addition to this, several firms have failed to demonstrate sufficient oversight of the outsourced activities or failed to evidence that appropriate regular assurance testing of the outsourced activities takes place.

Individual Questionnaires for proposed Pre-Approval Controlled Function role holders:

A number of firms have failed to or delayed in submitting Individual Questionnaires (IQs) for each of their proposed Pre-Approval Controlled Function (PCF) role holders. IQs should be submitted for each individual proposed to hold a PCF role as soon as practical.

The Central Bank's expectation on a firm's presence in Ireland.

In line with the principle of territoriality enshrined in the EU AML Directives and Section 25 of the CJA 2010 to 2021, the Central Bank expects a physical presence located in Ireland and for there to be at least one employee in a senior management role located physically in Ireland, to act as the contact person for engagement with the Central Bank. In addition, in accordance with Section 106 H of the CJA 2010 to 2021², the Central Bank may refuse an application where the applicant is so structured, or the business of the applicant is so organised, that the applicant is not capable of being regulated to the satisfaction of the Central Bank.

² <https://www.irishstatutebook.ie/eli/2021/act/3/enacted/en/html>