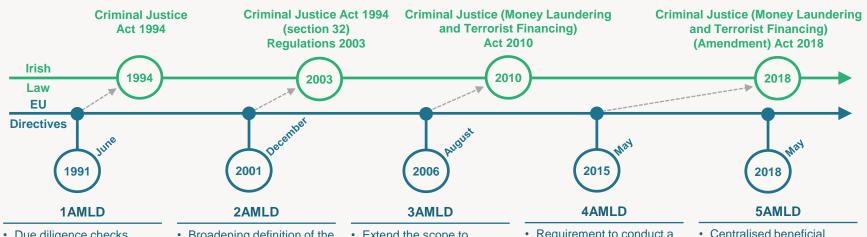


Anti-Money Laundering and Countering the Financing of Terrorism

CBI guidelines for the Financial Sector September 2019

## 1. Timeline – EU regulatory development



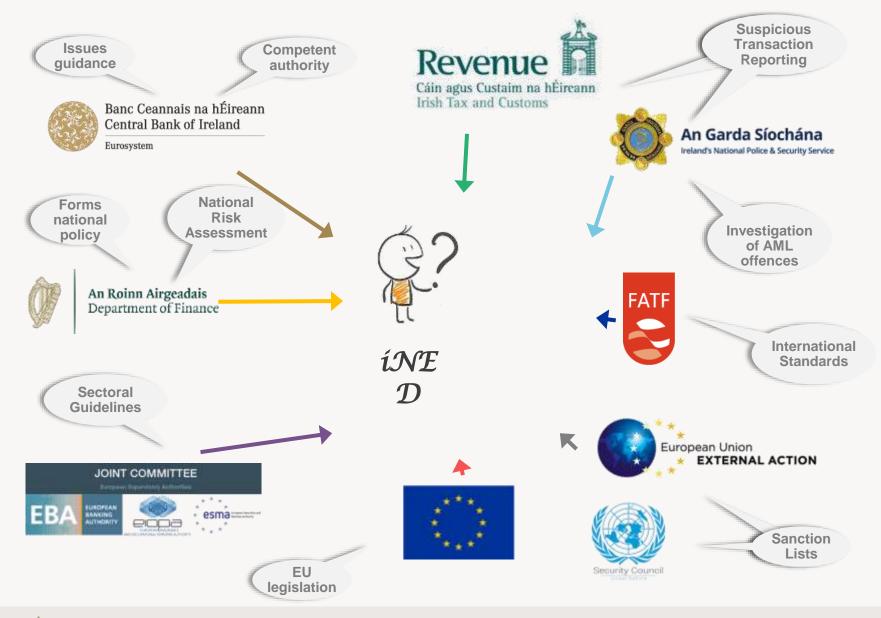
- · Due diligence checks
- 5-year retention for AML records
- Mandatory central system of reporting
- · Disclosure of suspected ML offences
- · Broadening definition of the predicate offences
- Expand the scope to the currency exchanges, money transmitters and investment firms
- · Added the authority to identify, freeze and seize any property
- Extend the scope to lawyers, notaries, accountants, real estate agents and casinos
- Set up €15,000 threshold on transactions
- EDD measures for PEPs
- SDD for low-risk transactions

- · Requirement to conduct a 'business risk assessment'
- Adopting a risk based CDD
- Reducing the threshold on transaction to €10.000
- Requirement to identify beneficial ownership
- Extend the scope of EDD to domestic PEPs
- · Remove the automatic entitlement to apply SDD

- ownership registers
- EDD on risky countries nationals
- · Extending the scope of industries
- Due diligence on the crypto currency holders
- Greater protection for whistleblowers



## 2. AML universe - no "shortage" of rules / guidance!





## 3. AMLD4 development



## Key Areas:

- ☐ Governance arrangements
- National risk assessment for Ireland
- AML Business risk assessment
- ☐ Customer due diligence
- Beneficial ownership
- ☐ Preparing for a CBI AML Meeting



## 4. AMLD4 development (Con't)

### **FATF Recommendations**

- 1 Assessing risks and applying a risk-based approach
- 2 National cooperation and coordination
- 3 Money laundering offence
- 4 Confiscation and provisional measures
- 5 Terrorist financing offence
- 6 Targeted financial sanctions related to terrorism and terrorist financing
- 7 Targeted financial sanctions related to proliferation
- 8 Non-profit organisations
- 9 Financial institution secrecy laws
- 10 Customer due diligence
- 11 Record-keeping
- 12 Politically exposed persons
- 13 Correspondent banking
- 14 Money or value transfer services
- 15 New technologies
- 16 Wire transfers
- 17 Reliance on third parties
- 18 Internal controls and foreign branches and subsidiaries
- 19 Higher-risk countries
- 20 Reporting of suspicious transactions
- 21 Tipping-off and confidentiality
- 22 DNFBPs customer due diligence
- 23 DNFBPs Other measures
- 24 Transparency and beneficial ownership of legal persons
- 25 Transparency and beneficial ownership of legal arrangements
- 26 Regulation and supervision of financial institutions
- 27 Powers of supervisors
- 28 Regulation and supervision of DNFBPs
- 29 Financial intelligence units
- 30 Responsibilities of law enforcement and investigative authorities
- 31 Powers of law enforcement and investigative authorities
- 32 Cash couriers
- 33 Statistics
- 34 Guidance and feedback
- 35 Sanctions
- 36 International instruments
- 37 Mutual legal assistance
- Mutual legal assistance: freezing and confiscation
- 39 Extradition
- Other forms of international cooperation

# CBI AML Guidelines - Content

Risk management AML risk assessment

**AML Governance and Oversight** 

Customer Due Diligence SDD and EDD

Identifying and reporting of suspicious transactions

AML/CFT training and training records

**Record keeping** 

International financial sanctions
Obligations on firms



## 5. Governance – Legislative Framework

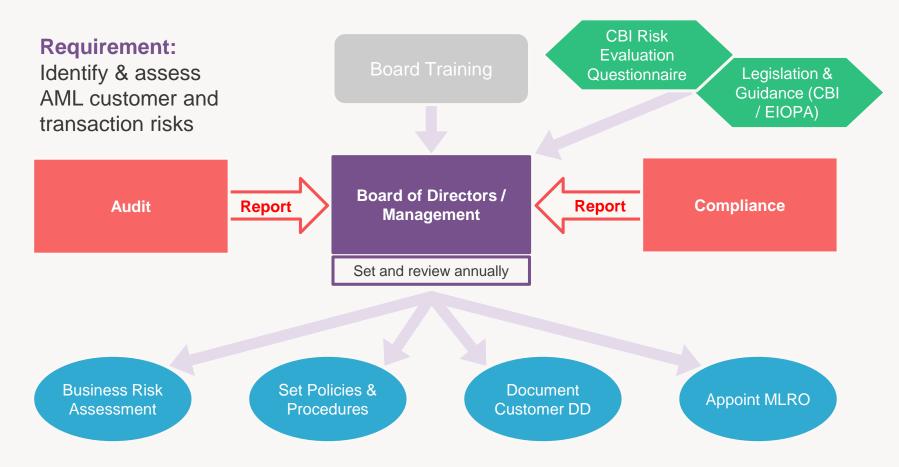
CBI Guidance – 2.1: Firms are obliged to put in place an effective risk-based AML/CFT framework which includes:

- 1. Risk-based approach;
- 2. CDD measures;
- 3. Reporting suspicions transactions;
- 4. Governance;
- 5. Policies and procedures;
- 6. Record keeping; and
- 7. Training.





## 6. Governance – Company Organisation Framework



CBI Guidance 5.1: Firms should document their determination in writing and retain the determination in accordance with the Firm's record keeping policies and procedures.

Observation: Must be able to demonstrate that AML system of governance is embedded in the organisation and staff are familiar with their duties.



## 7. National risk assessment for Ireland



## Life Insurance Risk Rating Medium (Low) Main Vulnerabilities:

- Reliance of intermediaries and other third parties for customer DD.
- Ability to exercise an oversight of intermediaries across multiple jurisdictions.
- The wider geographic reach of cross border insurers increases the likelihood of their exposure to PEPs DD and other higher risk customers



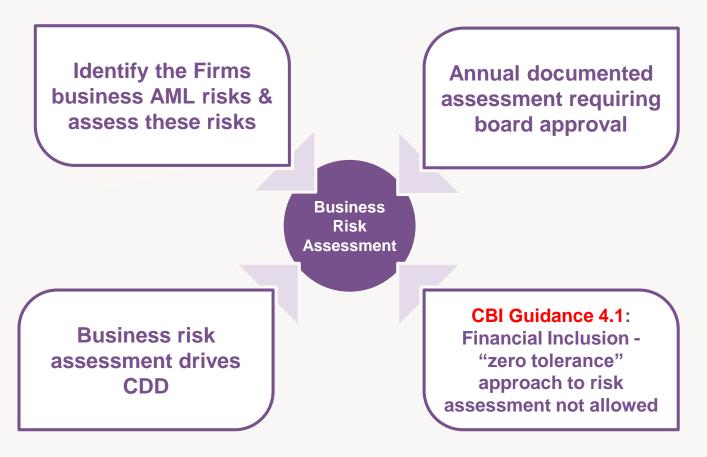
## 8. CBI supervisory engagement model

#### Risk of money-laundering / terrorist financing High **Medium (High)** Medium (Low) Low Strategic, spot Strategic, spot **Inspection Cycle** 3 years check & check & 5 years responsive responsive Strategic, spot Strategic, spot AML/CFT review Annually 5 years check & check & meetings responsive responsive AML/CFT Risk Strategic, spot check & **Evaluation** Annually 2 years 3 years **Questionnaires** responsive



## 9. AML Business risk assessment

#### CBI Guidance 4.2: Firms MUST conduct an AML Business Risk Assessment that:



Failure to complete a business risk assessment is an offence liable to (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both), or (b) on conviction on indictment to a fine or imprisonment not exceeding 5 years (or both).



## 10. Business risk assessment

CBI Guidance – 9.2.1: Firms should document and record their Business Risk Assessments including:

#### **Description of business**

- Business model
- Governance framework
- Outsourcing arrangements
- Reporting channels
- Control functions



#### **Risk factors**

- Business activities
- Customers profile
- Product / Service
- Transaction type
- Geographic location
- Distribution channels

#### Sources of information

- National Risk Assessment
- Regulatory guidance
- FATF standards
- FIU correspondence
- UN / EU sanctions

Business Risk Assessment

#### **Process**

- Identify applicable ML/TF risk
- · Apply weighting risk factors
- Categorise business relationships
- Monitor and review ML/TF risks
- Identify emerging risks
- Update ML/TF risk assessment

#### **MLRO** role

- Fit and proper
- Authority & Responsibilities
- Reporting lines
- Access to resources & information



#### Conclusion

- Summary
- Reference to NRA framework
- Key risks applicable to a Firm
- Risks mitigants
- Risk-based CDD measures



## 11. Customer Due Diligence

- Firms are required to identify and verify customers and where applicable, beneficial owner(s).
- The level of Customer Due Diligence ("CDD") measures depends upon the nature of the relationship between the Firm and its customer, the type of business conducted and the perceived ML/TF risks arising.

**lower AML risk** 

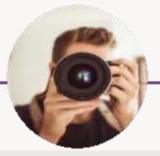
higher AML risk

# Simplified customer due diligence ("SDD")

- Adjusting the timing of CDD
- Adjusting the quantity of information obtained for identification
- Adjusting the quality or source of information obtained for identification

# Enhanced Customer Due Diligence ("EDD")Establishing a customer's source of wealt

- Establishing a customer's source of wealth / source of funds or any other relevant information
- Applicable to all identified PEPs
- Responsibility for the approval of PEP by senior management
- Enhanced on-going monitoring of PEPs







# 12. Customer Due Diligence (CDD) – Comments on the guidance

CBI Guidance 5.4: Exemption for SDD removed. Firms put measures in place and document. Monitoring still required.

Beneficial ownership identity still required

Allows future technological developments

CBI Guidance 5.2: no prescriptive list of acceptable CDD documentation, firms should instead maintain their own lists of documents.

Guidelines seem to suggest there could be circumstances where the obligation to verify a beneficial owner's identity did not arise.

CBI Guidance 5.2: new obligation imposed under section 33(6) prohibits processing transactions prior to completing customer verifications.

CBI Guidance 5.22: Obligation to identify all beneficial owners and verify their identity by taking such measures reasonably warranted by a risk-based approach.



## 13. Customer Due Diligence (CDD) – Issues

Trusts –
requirement to
identify all beneficial
owners–legacy
systems issues

Trusts –systems ability to store multiple BO & allow searches.

Sanction screening - not robust - directors / authorised signatories / trusts ben BO – Failing to identify beneficial owner – even if SDD.

Demonstrate
ongoing
monitoring business
relationship clients
& transactions.

AML Tools - lack of documentation / awareness / oversight

AML "Hits" Documenting action
to be taken when an
AML "hit" arises



## 14. Beneficial ownership confusions

#### **FATF Rec. 24 & 25**

- Ensure adequate, accurate and timely information on beneficial ownership
- Consider measures to facilitate access to beneficial ownership and control information by financial institutions

EUROPEAN UNION
(ANTI-MONEY
LAUNDERING:
BENEFICIALOWNER
SHIP OF
CORPORATE
ENTITIES)
REGULATIONS 2016

#### 5 November 2016

- Requirement to have a BO register
- BO > 25% or if none directors / CEO
- All Irish companies & other bodies corporate (inc. ICAVs, industrial and provident societies)

#### AMLD4 Art. 13 - CDD

- CDD shall comprise identifying the beneficial owner & take reasonable measures to verify that person's identity
- Member States shall ensure that BO information is held in a central register & is accessible by competent authorities and others with a legitimate

EUROPEAN UNION
(ANTI-MONEY
LAUNDERING:
BENEFICIAL
OWNERSHIP OF
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REGULATIONS 2019

AMLD5

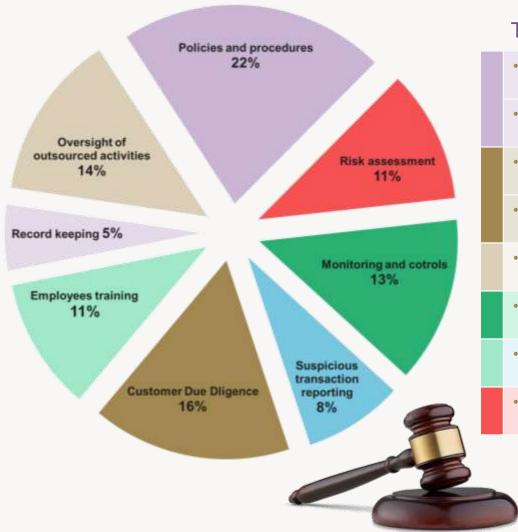
#### **22 November 2019**

- Centralised BO register
- BO > 25% or if none directors / CEO No change
- All Irish companies & other bodies corporate (inc. industrial and provident societies) – Not ICAV
- PPS / Ben 2



## 15. CBI fines in respect of breaches of the CJA

CBI published information on AML failures (2012-2019). Total fines of €12,582,000 in relation to 12 financial Firms.



## Typical failures

- Failure to adopt policies & procedures to monitor and manage compliance with CJA.
- Failure to incorporate a mechanism for regular review of policies & procedures.
- Failure to conduct adequate customer due diligence on new and existing customers.
- Failure to identify a PEP or a close associate of a PEP prior to establishing a business relationship.
- Failure to ensure that all necessary arrangements were in place with third parties to conduct CDD.
- Failure to monitor and scrutinise customer transactions and identify suspicious activities.
- Failure to demonstrate that staff had been instructed on the AML / CTF requirements.
- Failure to assess the ML/TF risks specific to the business and the relevant mitigating systems.



## 16. Preparing for CBI AML Review Meetings

- The Anti-Money Laundering Division ("AMLD") of the CBI is a division that monitors adherence to AML regulations.
- A typical review meeting with the AMLD lasts 2 hours and focuses on a high-level overview of the firm's activities, governance framework, AML risk assessment and AML policy and procedures.
- In preparing for this meeting attendees should be comfortable answering questions on the following areas:
  - Be able to articulate their role in relation to AML, i.e. PCF Head of Compliance and MLRO;
  - Have read and understood the sector rating and implications for their sector set out in the National Risk Assessment;
  - Describe the AML reporting arrangements for the board;
  - Describe the training they have received;
  - Describe the firm's AML processes and ongoing monitoring including triggers; and
  - Describe the main AML risks to the firm.





## 17. Key takeaways

#### **Areas covered:**

- ☑ Governance arrangements
- National risk assessment for Ireland
- AML business risk assessment
- Customer due diligence
- Beneficial ownership
- Preparing for a CBI AML Meeting

### **Key learnings:**

- Document policies and procedures and review annually
- Know about the National risk assessment for Ireland
- Mandatory AML business risk assessment
- Customer due diligence common issues to be alert for
- All client BO must be identified
- Actions to prepare for a CBI AML Meeting
- Directors need specific training on their AML responsibilities
- Ensure monitoring in 2020 of AML by Compliance / Audit



## Don't forget SEAR !!!





# THANK YOU

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