

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Accelerated Half-Day of Learning: RPD Session

Wednesday, 18 November | 9.30 am to 10.30 am



Peter Osborne

Consultant, Head of Knowledge Team
and Head of Digital Services
+353 1 611 9159
Peter.Osborne@mccannfitzgerald.com



Imelda Higgins

Senior Associate
+353 1 611 9172
Imelda.Higgins@mccannfitzgerald.com

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Peter Osborne and Imelda Higgins



Welcome and Format

- Corruption Offences (**Peter Osborne**)
- Anti-Money Laundering and Counter-Financing of Terrorism (**Imelda Higgins**)
- Ethics in the Public Sector (**Peter Osborne**)

Corruption Offences (Peter Osborne)

Criminal Justice (Corruption Offences) Act 2018

- Principal offences and their ingredients
 - Active and passive corruption
 - Active and passive trading in influence
 - Corruption in relation to office, employment, etc
 - Corruptly giving or receiving gifts and advantages (and the evidential presumption of corruption)
- The due diligence defence for bodies corporate
- Corruption offences can have extra-territorial effect
- “acts” include omissions

Corruption Offences (*cont'd*)

Criminal Justice (Corruption Offences) Act 2018 (*cont'd*)

- “officials”, “Irish officials” and “foreign officials”
- A body corporate is guilty of offence where an offence under the 2018 Act is committed with the intention of obtaining or retaining business for the body corporate or an advantage in its conduct of business, and is committed by (among others):
 - a) a director, manager, secretary or other officer
 - b) an employee, agent or subsidiary of the body corporate

Active and Passive Corruption (Section 5)

Active Corruption

- **corruptly** offering / giving
- an advantage
- to a person
- on account of
- any person
- doing an act in relation to his/her office, employment, position or business (“**Job**”)
- “**Corruptly**”: *acting with an improper purpose*
- “**Person**” (Interpretation Act): includes a body corporate

Passive Corruption

- a person
- **corruptly** requests / accepts
- an advantage
- on account of
- any person
- doing an act in relation to his/her Job

Note: there isn't any requirement that an “official” is involved – this offence applies equally to wholly private sector corruption

Active and Passive Trading in Influence (Section 6)

Active Trading in Influence

- a person
- **corruptly** offers / gives
- an advantage
- to induce another person
- to exert an improper influence
- over an act of an official
- in relation to the official's Job

Note: any offence must relate, directly or indirectly, to corruptly exerting improper influence over an act or omission by an “official”

S6(3): it's immaterial whether the influence actually existed etc, and whether the supposed influence actually leads to the intended result

Passive Trading in Influence

- a person
- **corruptly** requests / accepts
- an advantage
- on account of a person promising
- to improperly influence an official
- to do an act in relation to the official's Job

Corruption in Relation to Office, Employment, Position or Business (Section 7)

- An Irish official who, directly or indirectly, alone or with another person, does an act in relation to his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person, commits an offence
- An Irish official who uses confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person commits an offence

Corruptly Giving or Receiving Gifts and Advantages (and the Evidential Presumption of Corruption) (Section 8)

- Giving an advantage that may be used to facilitate an offence
 - a person (“A”)
 - gives a gift, consideration or advantage to another person
 - where A ought reasonably to know that
 - the advantage will be used
 - to facilitate the commission of an offence

Where a gift, consideration or advantage has been given to an official and the person who gave the gift had an interest in the discharge by the official of their functions then it will be presumed to have been given and received corruptly unless the contrary is proven.

The Due Diligence Defence (Section 18(2))

- It is a defence for the body corporate to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence
- The Act does not define “all reasonable steps” or “all due diligence” but regard should be had to international best practice in this area
- An essential building-block for availing of the section 18 defence is to have in place (and to monitor compliance with) an effective anti-bribery and corruption (“ABC”) compliance programme
- An effective ABC programme
 - Top-level commitment
 - Risk assessment
 - Standards and controls
 - Communication, education and training
 - Oversight: monitoring and review
 - Sanctions for non-compliance

Anti-Money Laundering and Counter-Financing of Terrorism (Imelda Higgins)

Domestic Developments

- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020
- Solicitors (Money Laundering and Terrorist Financing) Regulations 2020
- Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020

EU Developments

- Supervisory Developments
- CRD V
- EU Commission Action Plan
- Brexit

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

- Designated Persons
- Business Risk Assessment
- Customer Risk Assessment
- Customer Due Diligence
 - ID & V
 - On-going Monitoring
- Suspicious Transaction Reporting (STRs)
 - Tipping off
- Policies and Procedures
- Recording Keeping
- Training

CDD - E-identification

- FATF Guidance

Transaction Monitoring

- CBI - AML Bulletin

STRs

European Union (Modifications of Statutory Instrument No 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020

- Register of Beneficial Ownership of Certain Financial Vehicles
 - UNIT Trusts
 - ICAVs
 - Credit Unions
- File Beneficial Ownership Information by 25 December 2020/within 6 months from authorisation date
- Unit Trust – definition of beneficial ownership
 - Unit Trust - beneficial owner' means
 - a natural person who owns, or is ultimately entitled to control, more than 25% of the units in the entity, or
 - any other natural person exercising ultimate control over the entity by means of direct or indirect ownership or by other means,
 - and shall be deemed to include any trustee under, or the settlor of, the arrangements that constitute the entity (whether or not falling within either or both of the preceding subparagraphs);

Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020

- Scope
 - Virtual Asset Service Providers
 - Property Service Providers (Letting where monthly rent more than EUR 10,000)
 - Trading/acting as an intermediary in trade of works of art (transactions in excess of EUR 10,000)
- Virtual Asset Service Providers must register with the CBI
- The holder of a registration must take reasonable steps to ascertain that any person who is a beneficial owner of the virtual asset service provider concerned is a fit and proper person

Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020

Customer Due Diligence

- Must carry out CDD when contacting a customer for the purposes of reviewing any relevant information relating to the beneficial owner connected with customer
- Specific reference to Electronic Identification Regulation
- Electronic Money Derogation
- Requirement to check information on customer's beneficial ownership is in relevant register when establishing a business relationship
- Examination of background and purpose of certain transactions
- Politically Exposed Persons
- Specific CDD measures for customers in high-risk third countries

EU Developments: Supervision

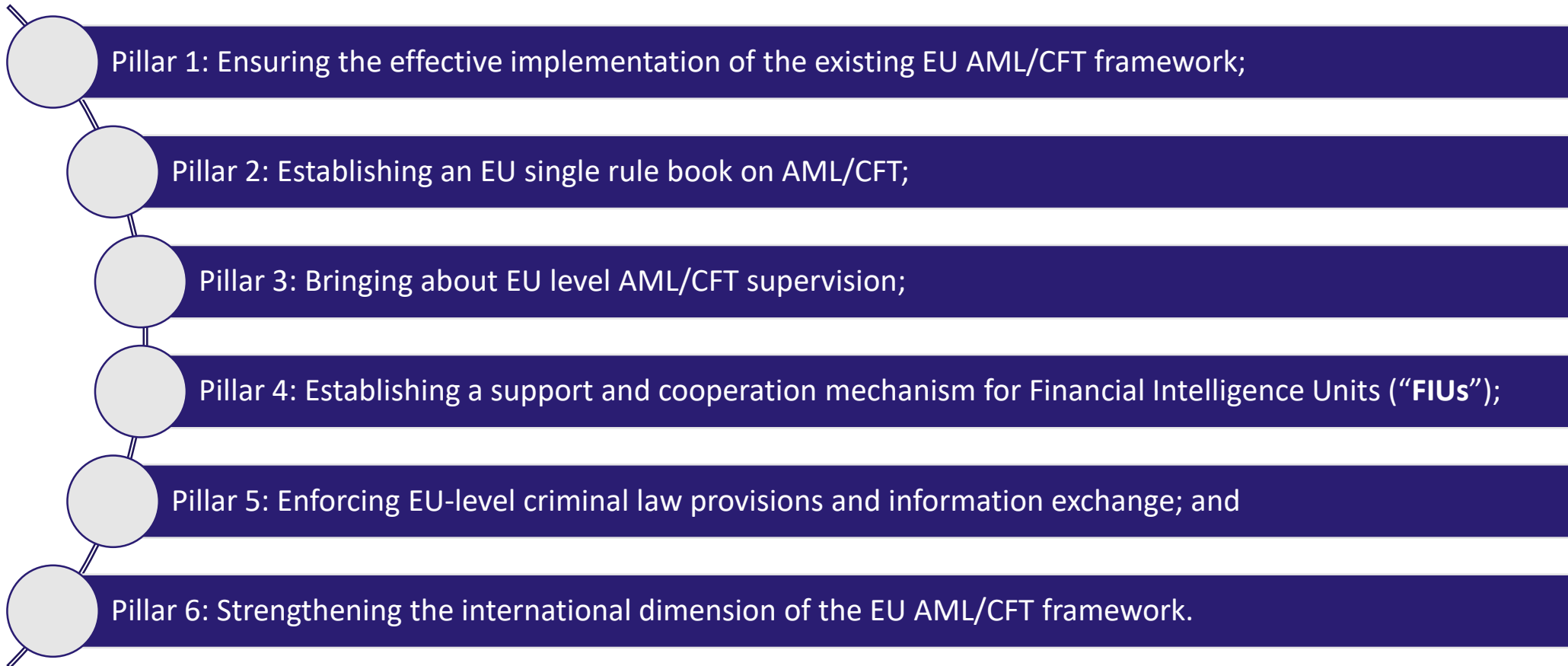
AML/CFT mandate of each of European Supervisory Authorities consolidated in EBA

Guidelines on the cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (December, 2019)

EBA report on competent authorities' approaches to the anti-money laundering and countering the financing of terrorism supervision of banks (February, 2020)

EBA Opinion on how to take into account ML/TF risks in the Supervisory Review and Evaluation Process (November 2020)

EU Developments: EU Commission Action Plan



Impact of Brexit on AML

Increased risk of money laundering/terrorist financing

Decrease in effectiveness of existing information sharing mechanisms

Increased risk of regulatory divergence in AML/CFT requirements

Increased risk of regulatory divergence in sanctions

Ethics in the Public Sector (Peter Osborne)

- Ethics in Public Office Obligations
 - Ethics in Public Office Act 1996 (sections 17 and 18)
 1. System of annual declarations of interest
 2. Ongoing obligation of designated director or employee to declare any interest in any matter coming before them
- SIPO guidance to support compliance
 - “Top Ten Best Practices for Public Bodies”
- Code of Practice for the Governance of State Bodies
- Specific Legislative Codes
- Public Sector Standards Bill 2015 (lapsed)

Public Officials: Ethics in Public Office Obligations

Ethics in Public Office Act 1995

- Administered by the Standards in Public Office Commission (“**SIPO**”)
- Establishes a framework for the disclosure of interests by holders of “designated directorships” and occupiers of “designated positions” in the civil service and in the semi-state sector
- Registrable interests defined to include employments, shareholdings, directorships, holding of land or other property, gifts, supplies of property or services, travel facilities, consultancies and contracts to a minister or a public body
- **The annual requirement**: Those in public office must (annually) prepare a statement in writing of their (and connected persons’) interests to the relevant authority (*State Code*: upon appointment too)

Public Officials: Ethics in Public Office Obligations *(cont'd)*

Ethics in Public Office Act 1995 *(cont'd)*

- **The ongoing requirement**: If *actual knowledge* that you have (or a “connected person” has) a material interest in a matter to which the function relates, you must, before, or as soon as may be after, such performance, furnish a statement in writing of those facts and of the nature of the interest to the relevant authority. A “connection” may be familial or business-derived
- Compliance is a contractual requirement (statutorily implied term)
- Obligation applies whether or not interest has already been disclosed in a statement of registrable interests
- “material interest” if performance of function of office, or of decision made in relation to or in course or as a result of performance of function, may be to confer on or withhold from you or a connected person a significant benefit without also conferring it on or withholding it from persons in general

SIPO Guidance

SIPO's "Top Ten Best Practices for Public Bodies" to support compliance:

1. Nominate an ethics contact in the organisation
2. Maintain a register of Designated Directorships and Designated Positions of Employment
3. Establish clear oversight procedures
4. Ensure all new appointees are aware of their obligations under the Ethics Acts
5. Establish effective annual statements of interest process

SIPO Guidance *(cont'd)*

6. Establish effective statements of 'material interest' process
 7. Issue regular reminders
 8. Conduct training
 9. Maintain confidentiality
 10. Observe statutory retention period
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- Annual statements of interest for the year 2020 must be submitted before 31 January 2021

Code of Practice for the Governance of State Bodies

2016 edition (revised from 1992, 2001 and 2009) under the auspices of the Department of Public Expenditure and Reform (and recent Annex to the Code on Gender Balance, Diversity and Inclusion)

- Different types of body corporate: invariably a “State body” for the purposes of the Code will be either a company (‘State Code+’) or a statutory corporation
- Application to joint ventures and subsidiaries
- The Code is secondary to body-specific legislation
- The board has a “key role” in setting the ethical tone of the relevant organisation

Code of Practice for the Governance of State Bodies *(cont'd)*

- Board should act on fully informed and ethical basis
- A board member, whether or not holding a designated directorship under the Ethics in Public Office Acts, must follow the obligations set out in the Ethics Acts regarding disclosure of interests
- Board should have in place procedures to monitor and manage potential conflicts of interest of board members and management
- Conflict of interest rules should be brought to board members' attention upon appointment

Code of Practice (*cont'd*) and Specific Legislative Codes

- Express obligation on board member “to avoid any conflict between the board member’s duties to the company and the board member’s other interests unless the board member is released from his or her duty to the company in relation to the matter concerned”
- Provides for disclosure of interests by board members and there is substantial overlap with the Ethics in Public Office Acts obligations where people holding “designated directorships”
- There may additionally be organisation-specific requirements, *eg*:
 - S31, Health Insurance Act 1994 (Health Insurance Authority)
 - S23, Road Safety Authority Act 2006 (RSA)
 - S6, Schedule 1, Central Bank Act 1942 (Central Bank)
 - S13, Gas Act 1976; s10, Gas (Interim) (Regulation) Act 2002 and S10 and 11, Gas Regulation Act 2013 (Ervia, CRU and Gas Networks Ireland respectively)

Questions?



Peter Osborne

Consultant, Head of Knowledge Team
and Head of Digital Services

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Senior Associate

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