

Compliance Update

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Items Covered

- **Addendum to the CPC 2012 (Sept 2019)**
- **AML & CFT Guidelines for Financial Sector**
- **Beneficial Ownership Register**



Addendum to the CPC 2012 (September 2019)

- Central Bank published their response to CP 116 yesterday – Addendum to the CPC 2012 (September 2019) & Feedback statement.
- The Addendum outlines changes stemming from :
 - the CB consultation on Intermediary Inducements CP116 and
 - changes arising from the transposition of the Insurance Distribution Regulation 2018. (*Brokers Ireland seeking clarification on areas within section*)
- 6 month timeframe for implementation – comes into effect **31st March 2020**

Addendum to the CPC 2012 (September 2019)

- Clear from the feedback statement, that the CB took on board Brokers Ireland's submission and acknowledge the many benefits to consumers from the operation of Intermediaries in the Irish market, including access to advice, better competition in the market and a wider choice of products.
- They also took on board Brokers Ireland's opposition to the application of MIFID standards wholesale across the industry and proposals which would significantly increase the regulatory burden on consumers with questionable benefit to them.

Addendum to the CPC 2012 (September 2019)

- **Proposals not now going ahead include:**
 - CB didn't proceed with proposals to change to the term inducement.
 - Didn't introduce the concept of enhanced quality of service for all commission payments.
 - Didn't introduce the requirement to document conflicts of interest at each transaction.

Addendum to the CPC 2012 (September 2019)

- **On the issues of :**
 - Abolition of mortgage commission linked to the loan amount
 - Restriction on advising on products from a range where there is a difference in commission rates for the range of products involved

The Central Bank has indicated that they will carry out further research on these proposals as part of their upcoming review of the Consumer Protection Code in 2019/20.

- Brokers Ireland will monitor developments on these issues & update accordingly.

Addendum to the CPC 2012 (September 2019)

What is proceeding:

- The ban on using the term independent or a similar term in your name / description of service where you take commission.
- A list of all your commissions across all providers you deal with is to be made available to your consumers in your office /on your website and bring it to the attention of your consumer. Originally CP116 proposed that this “commission summary document” be given to all your consumers.
- Hospitality benefits from providers such as golf trips and sporting event tickets will be banned.

Addendum to the CPC 2012 (September 2019)

What is proceeding:

- The ban on overrides linked to volume and retention.

In relation to profit-based overrides, the Central Bank have advised that the change is not intended to interfere with the operation of the MGA distribution channel.

The aim is to address the potential commission and product producer bias that can arise because of particular commission arrangements. Consequently, the previous reference in the consultation paper to 'profit' has been removed.

However, it should be noted that MGAs must avoid conflicts of interest relating to targets that do not consider a consumer's best interests.

Addendum to the CPC 2012 (September 2019)

Changes : Remuneration

In order for commission to be acceptable, it must :

- a) not impair compliance with the regulated entity's duty to act honestly, fairly and professionally in the best interests of the consumer;
- b) not impair compliance with the regulated entity's obligation to satisfy the conflicts of interest requirements set out in Chapter 3 of this CPC;
- c) not impair compliance with the regulated entity's obligation to satisfy the suitability requirements set out in Chapter 5 of this CPC, and
- d) in the case of a non-monetary benefit, be designed to enhance the quality of the service to the consumer."

Addendum to the CPC 2012 (September 2019)

Changes : Conflicts of Interest

A regulated entity must avoid conflicts of interest relating to the following:

- a) fees, commission, other rewards or remuneration linked to the achievement of targets that do not consider the consumer's best interests e.g. targets relating to volume (including override commission) and bonus payments linked to business retention; and
- a) agreements under which the regulated entity receives a fee, commission, other reward or remuneration in the form of goods or services, in return for which it agrees to direct business through or in the way of another person.

Addendum to the CPC 2012 (September 2019)

Changes : Use of the term Independent

An intermediary may use the description “independent” or use any other word or expression that is a derivative of, or similar to this term –

- a) in its legal name, trading name or any other description of the intermediary, only where regulated activities provided by the intermediary are **all** provided on the basis of a fair analysis of the market; or
- a) in any description of a regulated activity provided by the intermediary, only where that regulated activity is provided on the basis of a fair analysis of the market,

and, only where the intermediary does not accept and retain any fee, commission, other reward or remuneration where advice is provided in respect of regulated activities provided by the intermediary, other than -

Addendum to the CPC 2012 (September 2019)

Changes : Use of the term Independent

- i) a minor non-monetary benefit that includes, for example, attendance at a conference within the State, IT software or platforms, or hospitality of a reasonable de minimis value such as food and drink during a business meeting or conference; and
- ii) a fee paid by a consumer, or a person acting on behalf of a consumer to whom the advice is provided.

Addendum to the CPC 2012 (September 2019)

Changes : Information about Remuneration

An intermediary must make available in its public offices/ website, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the intermediary which it has agreed with product producers.

Where an intermediary operates a website, it must publish the summary on its website. The summary must include a minimum of the following:

- a) an indication of the agreed amount or percentage of any fee, commission, other reward or remuneration where the payment is made to the intermediary on this basis;
- b) an explanation of the arrangement including details on the type of fee, commission, other reward or remuneration paid or provided to the intermediary, for example, sales commission or trail commission, and details affecting the fee, commission, other reward or remuneration paid or provided to the intermediary, for example, clawback provisions;

Addendum to the CPC 2012 (September 2019)

Changes : Information about Remuneration

c) details of any other agreed fees, administrative costs, or non-monetary benefits under such arrangements, including any benefits, which are not related to the intermediary's individual sales.

An intermediary must bring this information to the attention of the consumer, and provide any clarification of the information if requested by the consumer, before concluding a contract for a financial product or service.

An intermediary must retain records demonstrating that it has complied with this requirement.

Addendum to the CPC 2012 (September 2019)

Changes : New Definition

Minor non-monetary Benefit

means such minor non-monetary benefit that is capable of enhancing the quality of the service provided to a consumer and is of a scale and nature such that it could not be judged to impair compliance with a regulated entity's duty to act in the best interest of the consumer.

Addendum to the CPC 2012 (September 2019)

Next Steps....

- Liaise with Central Bank on areas which require clarification
- Liaise with Product Providers
- Brokers Ireland will issue further guidance in due course
- Seminar to be held in Portlaoise on Thursday the 24th of October
- Feedback welcome – compliance@brokersireland.ie

AML & CFT Guidelines for Financial Sector

- The Central Bank of Ireland published its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector on the 6th of September.
- The Guidelines also incorporate expectations set out in previous Central Bank AML/CFT Sectoral Reports, AML/CFT Bulletins, and relevant European Supervisory Authority Guidelines.
- Primary Legislation still applies: Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and the Criminal Justice (Money Laundering and Terrorist Financing (Amendment) Act 2018

AML & CFT Guidelines for Financial Sector

Key areas where amendments to policies/procedures required:

- Customer Due Diligence Requirements
- Business Risk Assessment
- Enhanced requirements when dealing with Politically Exposed Persons both domestic and non-resident.
- On-Going Monitoring
- Policies & Procedures
- Management Responsibilities
- Training
- Record keeping

4th AML Directive

Customer Due Diligence

Intermediaries are required to carry out customer due diligence:

- prior to establishing a business relationship with the customer.
- prior to carrying out an occasional transaction or service for a customer;
- prior to carrying out any service for a customer, if, having regard to the circumstances, the firm has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of ML/TF;
- prior to carrying out any service for a customer where the firm has reasonable grounds to doubt the veracity or adequacy of documents; and
- at any time, including where the relevant circumstances of a customer have changed

4th AML Directive

Customer Due Diligence

The identity of an individual has a number of aspects at any point in time, all of which must be obtained by the designated person:

- a) name (which may change due to particular events);
- b) address (which is likely to change from time to time); and
- c) date of birth (which is a constant).

Where a person purports to act on behalf of a customer, you must verify

- the identity of that person, and
- that they are authorised to so act.

4th AML Directive

Risk based approach to the identification and verification of an individual customer

- Simplified Due Diligence
 - Low Risk
- Enhanced Due Diligence
 - High Risk Third Country
 - Relationship/transaction presents a higher risk
 - Politically Exposed Persons - now also apply to PEPs resident in Ireland.
- Standard Due Diligence – applies to all other clients.

4th AML Directive

Business Risk Assessment

A business risk assessment should consist of two distinct but related steps:

- Identifying ML and TF risks relevant to a Firm's business; and
- Assessing the identified ML and TF risks in order to understand how to mitigate those risks.

The assessment of the risks inherent in your business should inform your risk based approach to the identification and verification of an individual customer. This in turn should drive the level and extent of due diligence appropriate to that customer.

A business risk assessment will assist firms to understand where they are exposed and which areas, they should prioritise to combat ML/TF

4th AML Directive

Business Risk Assessment

- The business risk assessment must be documented
- Reviewed and managed by a designated person at regular, predefined intervals and it must be **approved by senior management** (*in the case of a Sole Trader/One director companies/Partner of the business, its Principal*).
- Systems and controls should be put in place to ensure the individual and business risk assessments remain up to date.
- Where the firm is aware that a new risk has emerged, or an existing one has increased, this should be reflected in risk assessments as soon as possible;

4th AML Directive

Business Risk Assessment

- Issues throughout the year that could have a bearing on risk assessments should be recorded, such as:
 - Internal suspicious transaction reports;
 - Compliance failures and intelligence from front office staff; or
 - Any findings from internal/external audit reports;
- Should take into account Financial Sanctions requirements
- It is an offence to fail to comply with these requirements.
- A template Business Risk Assessment is available in compliance section of the Brokers Ireland members website.

4th AML Directive

Politically Exposed Persons

An individual who is or has been entrusted with a prominent public function - also applies to any close business associates or family member of these people.

Applies to non –resident & resident PEPs

Examples of PEPs are:

- Senior official of a major political party
- Senior official in the executive, legislative, administrative, military, or judicial branch of a government
- Senior executive of a government owned commercial enterprise or corporation.
- Any individual known to be a personal or professional associate of a PEP
- An immediate family member of a PEP; e.g. spouse, parents, siblings, children.

Firms should note that PEP status itself is intended to apply higher vigilance to certain individuals and put those individuals that are customers or beneficial owners into a higher risk category. It is not intended to suggest that such individuals are involved in suspicious activity!

4th AML Directive

Ongoing Monitoring

Firms should ensure that they have effective and appropriate on-going monitoring policies and procedures that are in place, in operation and adhered to by all staff.

Policies and procedures should include for example (not exhaustive – see guidance):

- Clear examples of trigger events that are understood by staff and targeted training should be provided for staff on how to identify possible trigger events and interpret these.
- Trigger events should also be reviewed on a regular basis by the firm and examples revised where appropriate
- Reassessment and, if applicable, re-categorisation of customers upon material updates to CDD information and/or other records gathered through a trigger event or periodic review;

4th AML Directive

Ongoing Monitoring

- Screening undertaken of all customers to identify new and on-going PEP relationships. The frequency of such screening should to be determined by the firm, commensurate with the firm's business risk assessment;
- “Complex or unusually large” transactions, or “unusual patterns of transactions” must be investigated in greater detail and monitoring increased if they appear suspicious.
- Firms should attempt to establish the rationale for changes in client behaviour and take appropriate measures, for example, by conducting additional due diligence.

4th AML Directive

Ongoing Monitoring

Monitoring means the scrutinising of transactions, and the source of wealth or of funds for those transactions, to determine if the transactions are consistent with the designated person's knowledge of

- a) the customer,
- b) the customer's business and pattern of transactions, and
- c) the customer's risk profile,

and ensuring that documents, data and information on customers are kept up to date in accordance with its internal policies, controls and procedures.

E.g. where an encashment request is received, the intermediaries' procedure may be to take additional measures to ensure the request is genuine such as:

- ✓ Phone the client to confirm the details/instruction
- ✓ Cross reference proof of ID and residency with existing proof of identity and residency on file

4th AML Directive

Internal Policies, Controls and Procedures

- Policies, controls and procedures must be **approved by senior management** and shall keep these policies, controls and procedures under review in particular when there are changes to the business profile or risk profile of your firm.
- Sole traders - must note that policies have been reviewed.
- Firms must ensure that persons involved in the conduct of the business (includes directors, other officers and employees) receive instruction and training in respect of the law and on how to identify transactions or other activity that may relate to money laundering or terrorist financing (suspicious transactions) and how to proceed once identified.
- Clear from CB feedback from inspections – importance of documentation!

4th AML Directive

Management Responsibilities

- Firms should ensure that appropriate evidence of discussions at Senior Management meetings and/or approvals concerning AML/CFT issues are recorded and retained in accordance with the firm's record retention policy.
- In the case of Sole Traders, or one director companies, the evidence of consideration given to these issues, and the decisions made should be recorded and retained in accordance with the firm's record retention policy.

4th AML Directive

Training

- It is recommended that annual anti-money laundering training be provided to staff on an annual basis.
- Firms should ensure that AML/CFT training is provided to all new recruits upon joining the firm in a timely manner and to all staff at least on an annual basis thereafter.
- The content of the firms training must be consistent with legislative and regulatory requirements and be tailored to the firm's business activities and consistent with firm policy and procedures document.
- Special training to meet specific need of some staff – e.g. Management/MLRO

4th AML Directive

Training

- Firms should ensure that the AML/CFT training provided includes an assessment or examination during the training session, which should be passed by all participants in order for the AML/CFT training to be recorded as completed.
- If the training does not contain an assessment or examination, firms must be in a position to demonstrate effectiveness of training and staff understanding in relation to same.
- Firms should keep a comprehensive record of:
 - all staff, Senior Management and agents who have received AML/CFT training;
 - the dates on which AML/CFT training was provided;
 - the nature and content of AML/CFT training provided;
 - the date on which the AML/CFT training was provided; and
 - Results of the assessment and examination during the training session.

4th AML Directive

Record Keeping

Firms should keep adequate records, including:

- All documentation and information obtained for the purposes of identifying and verifying a customer, person(s) authorised to act on behalf of the customer and any beneficial owners;
- All Business/Customer risk assessments;
- Copies of all additional documentation and information obtained, where EDD measures have been applied to a customer of the firm;
- Evidence of any sample testing of CDD files, which the firm has undertaken as part of its assurance testing process; and
- Copies of documentation and information obtained as part of the firm's ongoing monitoring process.

4th AML Directive

Record Keeping

- Copies of all transactions carried out for the customer
- Verification and evidence of the on-going monitoring conducted by the firm, including the monitoring of transactions, the results of such monitoring and decisions taken on foot of ongoing monitoring
- Reporting of suspicious transactions
- Training provided to staff, directors and other office holders
- Firms should retain all records of discussions and decisions made at Senior Management or equivalent level in relation to:
 - How the requirements of the CJA 2010 were assessed and implemented; and
 - Any AML/CFT issues as they arise on an on-going basis.

AML & CFT Guidelines for Financial Sector

- CB recently carried out survey to determine intermediaries activities which would indicate a higher risk for AML/CFT purposes (E.g. High levels of investment business/operation of a client premium account)
- Inspections will take place in 2020 in the area of AML/CFT – ensure policies/procedures are updated and integrated into the running of your firm!
- The Brokers Ireland AML/CFT Guidance document also available on the Brokers Ireland website has been updated to reflect the changes (for your ease of reference, these changes are highlighted in red in the document)

Beneficial Ownership Register

- Incorporated members must take actions – does not affect Partnerships/Sole Traders
- **Existing requirement**
Since 2016, incorporated entities were required to maintain an internal register of their beneficial owners, also known as PSC (People with Significant Control).

Details required to be obtained and placed on the companies internal beneficial ownership register included each beneficial owner's

- name
- date of birth
- nationality
- residential address, and
- the nature and extent of the interest held.

This information was required in respect of members, clients who are incorporated and also their own incorporated beneficial ownership details – register must be kept up to date.

Beneficial Ownership Register

- **New Obligations**

The new register (the RBO) opened for filings on Monday the 29th of July.

All incorporated members are required to take action in relation to this new requirement.

Filing of beneficial ownership data can only be made on-line through a portal on the RBO website at www.rbo.gov.ie . There are no paper forms and no filing fees involved.

A user ID and password is required to login. This can be set up at the time of registering beneficial ownerships – see <https://rbo.gov.ie/faqs.html>

Incorporated members will have until Friday the 22nd of November to file their data with the RBO

Beneficial Ownership Register

- **What is a Beneficial Owner?**

A Beneficial Owner is defined as any natural person(s) who ultimately holds or controls a shareholding of 25% plus one extra share (who owns or controls a company, either through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest).

Please note: the percentage test in relation to ownership of shares is not be the only method to determine who the ultimate beneficial owner is – control of voting rights, ownership interest and control via other means must also be considered.

Beneficial Ownership Register

- **What information do I need to file?**

The following information is required for each Beneficial Owner:

- Company Name and Number
- The name, address (Eircode is optional), country of residence, date of birth, nationality and PPS Number (this must match the given name and is for the purpose of verification).
- For beneficial owners who do not have a PPSN, the Registrar has determined under Regulation 21(2)(b), SI 110/2019, that the Form BEN2 be used, this is a Declaration as to Verification of Identity and contains the name, date of birth, nationality and address of the beneficial owner. The beneficial owner must solemnly declare this information to be correct and true and have this Declaration verified, witnessed and signed.
- The nature & extent of (a) the interest held and (b) the nature & extent of control exercised and the date of entry as beneficial owner.

Beneficial Ownership Register

- **A single Director and a different shareholder**

In the case of a single director company and where that director is the sole shareholder and is in total direct control of the company, s/he would be the sole beneficial owner of the company.

However, in the case of a single director company, with a different sole shareholder, the director will be considered a Beneficial Owner as they have direct control of the company, and the sole shareholder, if they meet the criteria of 25%+1 share is also deemed to be a beneficial owner.

Any Questions?

