



## Virtual Asset Service Providers become subject to registration requirements and AML/CTF obligations

May 2021

On 23 April 2021, provisions of the Fifth Anti-Money Laundering Directive (**5AMLD**) were transposed into Irish Law by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (**CJA 2021**), which amends the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (**CJA 2010**). Please see our recent briefing for analysis of changes introduced by 5AMLD: [New Irish Anti-Money Laundering Rules.](#)

One of the most significant changes introduced by 5AMLD is the extension of anti-money laundering and countering the financing of terrorism (**AML/CTF**) obligations to virtual asset service providers (**VASPs**).

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## VIRTUAL ASSET SERVICE PROVIDERS

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A VASP is defined under the CJA 2021 as (underlining added for emphasis) a person who, by way of business, carries out one or more of the following activities for, or on behalf of, another person:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets, that is to say, conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- custodian wallet provider (i.e. an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies);
- participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both.

but does not include a designated person that is not a financial or credit institution and that provides virtual asset services in an incidental manner and is subject to supervision by a national competent authority other than the Central Bank of Ireland (**Central Bank**).

A virtual asset is defined by the CJA 2021 as a "*digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include digital representations of fiat currencies, securities or other financial assets*".

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## OBLIGATION OF VASPS TO COMPLY WITH AML/CTF OBLIGATIONS

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The CJA 2021 brings VASPs within the definition of 'designated persons' under the CJA 2010. As such, VASPs are required to comply with AML/CTF obligations on an ongoing basis. This includes obligations relating to carrying out business risk assessments, customer due diligence, frequent monitoring of VASP customers and related transactions, filing of suspicious transaction reports, developing and implementing appropriate AML/CTF policies and procedures, maintaining records and ensuring provision of training.

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## REQUIREMENT FOR VASPS TO REGISTER WITH THE CENTRAL BANK AND PROCESS FOR REGISTRATION AS A VASP

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New and existing VASPs are required to register with the Central Bank.

- Existing VASPs which were established in Ireland prior to the commencement date of the CJA 2021 (23 April 2021) have three months from that date to register as a VASP with the Central Bank. For the interim period, an existing VASP may continue to carry on its business until its application for registration has either been granted or refused by the Central Bank.
- New VASPs which enter into business in Ireland after the entry into force of the CJA 2021 are required to register with the Central Bank before carrying out any services.

The Central Bank has published information on applications for registration on its website, available [here](#), as well as an [Instruction Manual and Guidance Note](#) for entities seeking to register as a VASP. An applicant for registration as a VASP is first required to submit a VASP Pre-Registration Form to the Central Bank. The Central Bank will then issue an email to the applicant containing details on how to access and submit a VASP Registration Form. The Central Bank offers an optional pre-application meeting to applicants, in order to answer specific questions about any aspect of the registration process and completion of the VASP Registration Form and the Central Bank recommends that applicants avail of this meeting before submitting the VASP Registration Form but only when the applicant has brought its VASP Registration Form to an advanced stage.

Registration of a VASP will be effective upon satisfaction of the Central Bank that:

- › the VASP's policies and procedures effectively combat money laundering and terrorist financing (**ML/TF**); and
- › the VASP's management and beneficial owners are fit and proper.

Where the Central Bank approves an application for registration of a VASP, it may attach conditions to registration. In addition, it may also amend the scope of a VASP's registration at a later date. The Central Bank will maintain a publicly available register of VASPs.

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## FITNESS AND PROBITY

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Persons holding certain management positions within VASPs and beneficial owners of VASPs are subject to the Central Bank's fitness and probity regime. This regime imposes standards in relation to competence, capability, honesty, ethical behaviour and financial soundness. These requirements apply both at the time of registration of a VASP and on an ongoing basis.

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## NEXT STEPS

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Existing VASPs and firms which plan to operate as VASPs in Ireland, must:

- prepare and submit their application for registration as a VASP; and
- ensure ongoing compliance with the obligations of VASPs under the AML/CFT regulatory framework.

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## HOW CAN WILLIAM FRY ASSIST YOU?

William Fry's Financial Regulation Unit has vast experience:

- assisting firms to secure registration/authorisation by the Central Bank efficiently;
- working with clients to ensure compliance with AML/CTF and fitness and probity obligations.

## CONTACT US

For more information, please contact Shane Kelleher or your usual William Fry contact.



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