

IMPLEMENTATION OF THE EU'S FIFTH MONEY LAUNDERING DIRECTIVE

On 9 July 2018, the EU's Fifth Money Laundering Directive came into force. Member States now have until 10 January 2020 to give effect in local law to its provisions, which impose a range of potentially onerous new requirements. The amendments made by 5MLD form part of the EU Commission's action plan on further strengthening the fight against terrorist financing.

KEY CHANGES

EU member states were only obliged to implement 4MLD on 26 June 2017. 5MLD now amends 4MLD in several significant ways, including in relation to the following key areas: (i) the scope of the regulation; (ii) access to information on beneficial ownership; (iii) a centralised national register; and (iv) due diligence for high-risk third countries.

Virtual currency exchange platforms and custodian wallet providers

The amendments in 5MLD bring custodian wallet providers and providers engaged in exchange services between virtual currencies and fiat currencies (i.e. platforms used to exchange money for cryptocurrency) within the scope of 4MLD. These providers will be required to register and meet the requirements of the EU's money laundering regime.

This change is in order to address a risk that virtual currencies may be used by terrorist organisations to conceal financial transactions, as transfers with virtual currencies can be carried out anonymously.

There has been much commentary (including in the recitals to 5MLD itself) as to the extent to which these changes will be sufficient to address money laundering risks associated with virtual currencies. We can expect further developments in this area in due course. For more information, see our recent briefing:

<https://talkingtech.cliffordchance.com/en/fintech/cryptocurrencies-will-explode-one-way-or-another-.html>

Extension of the scope of 4MLD

The scope of the 4MLD regime has been extended to cover: (i) art dealers with respect to transactions that amount to EUR 10,000 or more; (ii) all forms of tax advisory services (meaning any person who undertakes to provide, directly or by means of other persons to which that other person is related,

Key changes made by 5MLD

- Extension of the scope of 4MLD – includes virtual currency exchange platforms and custodian wallet providers
- Lower limits in relation to CDD requirements on pre-paid instruments
- Beneficial ownership registration requirements broadened
- Specific EDD requirements in relation to high-risk third countries
- Centralised national registers of bank account information

material aid, assistance or advice on tax matters as a principal business or professional activity); and (iii) estate agents, including when acting as intermediaries in the letting of immovable property for which the monthly rent amounts to EUR 10,000 or more.

Lower limits in relation to CDD requirements on pre-paid instruments

The threshold for a customer due diligence exemption for electronic money products, including prepaid cards, has been lowered from EUR 250 to EUR 150 for the maximum balance and maximum monthly transaction limit. There is a maximum limit of EUR 50 for redemption in cash, cash withdrawal of the monetary value or amount paid per remote payment transaction, above which limit the existing customer due diligence exemption will no longer apply.

Beneficial ownership

4MLD requires corporates and other legal entities and taxable trusts to obtain and hold information on their beneficial ownership and to register this with a central national register accessible to competent authorities, Financial Intelligence Units ("FIUs") and obliged entities (within the framework of customer due diligence). In the case of corporates and other legal entities, the information was also accessible to those with a legitimate interest.

5MLD broadens the access to information on beneficial ownership. Member States must ensure that registers of beneficial ownership of trusts are accessible to those with a legitimate interest and that registers of beneficial ownership of corporates and other legal entities are accessible to any member of the general public on request (with a few exemptions for exceptional circumstances (such as where there is a risk of fraud, kidnapping and blackmail) which are to be laid down in national law).

5MLD also requires trustees of express trusts to register information on the beneficial ownership of the trust in a central national register. These requirements now apply to all express trusts (new and pre-existing), rather than just those that have tax consequences.

5MLD clarifies that the definition of "competent authorities" covers public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.

For further information on the requirement for all express trusts to register information on their beneficial ownership, see the following client briefing: "*The Fifth EU Anti-Money Laundering Directive – The New Trust Registration Requirement and what it means for Business*"

https://www.cliffordchance.com/briefings/2018/06/the_fifth_eu_anti-moneylaunderingdirective.html

Clarifying EDD for high-risk third countries

4MLD provides that once a country has been designated by the European Commission as having strategic money laundering or terrorist financing deficiencies, firms had to apply enhanced due diligence measures in respect to business relationships or transactions involving those countries (for

example, Syria or Iraq). 5MLD sets out a prescriptive list of enhanced due diligence measures that Member States must require firms to apply. These encompass checks on the customer, the purpose and nature of the business relationship, the source of funds and the monitoring of transactions. These are to be considered as a minimum set of requirements to be applied by all Member States. 5MLD also provides a non-exhaustive list of countermeasures that Member States and firms may apply when dealing with high-risk third countries.

Centralised national registers

5MLD requires Member States to establish a centralised automated mechanism which allows the identification of the holders and controllers of bank accounts and payment accounts so that all national bank accounts listed to one person can be identified in a timely manner. Access will be limited to FIUs and national crime agencies. Member States are also required to ensure that their national FIU is able to provide information relating to beneficial ownership and the information in the centralised national registers to the FIUs of other Member States in a timely manner.

IMPLEMENTATION

As noted above, EU Member States have until 10 January 2020 to implement 5MLD into national law. 5MLD is a minimum harmonising directive and Member States can choose to apply more stringent requirements at a national level.

Although the UK is expected to withdraw from the EU in March 2019, before the deadline for EU Member States to implement 5MLD, the current text of the draft withdrawal agreement between the UK and the EU includes a transitional or implementation period ending on 31 December 2020, during which the UK would be required to implement EU directives such as 5MLD. The UK may therefore be obliged to implement 5MLD but, even if not, it may choose to do so, not least in order to retain equivalence for AML purposes in the period after Brexit.

CONTACTS

Michael Lyons

Partner, London

T +44 20 7006 4317

E michael.lyons
@cliffordchance.com

Chris Stott

Senior PSL, London

T +44 20 7006 4231

E chris.stott
@cliffordchance.com

Abigail Rosenberg

Senior Associate, London

T +44 20 7006 2031

E abigail.rosenberg
@cliffordchance.com

Lydia Drake

Lawyer, London

T +44 20 7006 2270

E lydia.drake
@cliffordchance.com

Udo Prinz

Counsel, Luxembourg

T +352 48 50 50 232

E udo.prinz
@cliffordchance.com

Anna Biala

Counsel, Warsaw

T +48 22429 9692

E anna.biala
@cliffordchance.com

Sébastien Praicheux

Counsel, Paris

T +33 1 4405 5156

E sebastien.praicheux
@cliffordchance.com

Alexander Cappel

Counsel, Frankfurt

T +49 69 7199 1458

E alexander.cappel
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2018

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.