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Post Implementation Review of 5th MLD

Fifth Anti-Money Laundering Directive (5th MLD)

The Fifth Anti-Money Laundering Directive (5th MLD) that came into force on the 10th January 2020, makes enhancements to the Fourth Anti-Money Laundering Directive (4th MLD), which necessitated a change in how regulated entities approach money laundering preventative measures.

The directive, transposed in the UK as of the 10th January 2020, is currently progressing across EU Member States.

This paper focuses on those changes transposed into regulation that affect Transfer Agents

The main changes for our industry are as follows:

- **Use of national Beneficial Ownership Registers in Customer Due Diligence**
- **The reporting of Beneficial Ownership Discrepancies to national registers**
- **Enhanced Due Diligence for relationships or transactions involving High Risk Third Countries (HRTC)**
- **Electronic Identification in Customer Due Diligence**
- **Politically Exposed Persons (PEP) Function Lists**
- **Use of Trust Registers in Customer Due Diligence**

Use of national Beneficial Ownership Registers in Customer Due Diligence

Introduction of the 5th MLD laid forth an obligation to utilise the national registers, where established, as part of Customer Due Diligence (CDD) processes.

A key feature of this change is the necessity for a comparison of the Beneficial Ownership information, obtained as part of Corporate Entity 'Know Your Customer' (KYC) and AEOI (CRS) Self-Certification reviews, with information available in the national register. In the UK, firms utilise the Companies House Register.

The alignment of 5th MLD & the Common Reporting Standard (CRS) means **an obliged entity is required to ensure that all information on an investor held or acquired is aligned**, and conflicting information on the same investor must be questioned and resolved. The Controlling Person definition, within the AEOI standard, confirms that the term corresponds to the term "beneficial owner" as described in Recommendation 10 and an obliged entity must interpret this in a manner consistent with the Financial Action Task Force Recommendations.

Further Information on the AEOI Standard is available using the following link:

[Automatic Exchange of Information](#)

Corporate entities includes all companies subject to an obligation to register PSCs on the Companies House register, including companies limited by guarantee or shares (otherwise referred



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to as limited liability companies), unlimited companies, limited partnerships, limited liability partnerships (LLPs), eligible Scottish partnerships and unregistered companies.

The reporting of Beneficial Ownership Discrepancies to national registers

There is a further obligation to report discrepancies identified between the two sets of information. In the UK, the definition of discrepancies reported to Companies House, is not defined in the directives but the UK government's interpretation is for material differences to be reported only and they have provided the below as a rule of thumb:

A discrepancy exists when the relevant entity has information that clearly indicates that the PSC information recorded by Companies House is inaccurate. The focus is on clear factual errors, not typing mistakes.

This could include a discrepancy with a:

- *person listed as a PSC*
- *missing PSC*
- *PSC exemption*
- *PSC type*
- *address*
- *place of registration*
- *date of birth*
- *legal form*
- *company statement*

Further information available using the following link: [Beneficial Owner Discrepancies](#)

On identification of a discrepancy, the obliged entity or their third party provider can make the report using the following link: [Report a discrepancy about a Beneficial Owner](#)

Enhanced Due Diligence for relationships or transactions involving High Risk Third Countries (HRTC)

The 5th MLD requires Enhanced Due Diligence (EDD) to be applied to relationships, or transactions, involving those countries listed on the EU Commission's list of countries with weak anti-money laundering and terrorist financing regimes.

Article 9 declared the below 16 countries as high risk:

1. Afghanistan	9. Pakistan
2. Bosnia & Herzegovina	10. Sri Lanka
3. Ethiopia	11. Syria
4. Guyana	12. Trinidad & Tobago



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5. Iraq	13. Tunisia
6. Iran	14. Uganda
7. Laos	15. Vanuatu
8. North Korea	16. Yemen

The UK transposition of 5th MLD has defined a transaction involving a HRTC as a transaction not carried out as part of an established business relationship, however this varies across the EU.

Companies will maintain their own country risk rating standards according to their internal risk appetite inclusive of FATF and EU guidance, of which the above listed countries will be included.

Electronic Identification in Customer Due Diligence

5th MLD includes a new provision that KYC and CDD processes may, where available, include the use of electronic identification means (including e-IDs) or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities. A key change being the new reference to firms being able to rely on Digital Identity providers, whereas the previous language limited the definition to credit reference agencies providing info to said firms.

Politically Exposed Persons (PEP) Function Lists

Member States are required to issue lists indicating the specific functions that, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions.

Use of Trust Registers in Customer Due Diligence

The requirement for Member States to implement centralised beneficial ownership registers for Trusts incorporated within their jurisdiction. Expansion of the types of trusts to be entered on to the Trust Register.

Review of the Sixth Anti-Money Laundering Directive (6th MLD)

This became law as of the 3rd Dec 2020 for EU members who then have until the 3rd June 2021 to implement and comply with the new provisions.

The main requirements under the directive include:

- Establishing minimum rules on the definition of criminal offences and sanctions relating to money laundering. Money laundering activities will be punishable by a maximum term of imprisonment of (at least) four years, and judges must be able to impose additional



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sanctions and measures (e.g. temporary or permanent exclusion from access to public funding, fines, etc.)

- Articles 7 & 8 will introduce corporate liability for offences. Legal entities could be held liable for certain money laundering activities, and courts could impose a range of sanctions (e.g. exclusion from public aid, placement under judicial supervision, judicial winding-up)
- Removing obstacles to cross-border judicial and police cooperation
- Setting out a definition of 'criminal activity' covering offences with six-months term of imprisonment, as well as a list of 22 specific offences

The scope of the proposed changes center on the criminal offences and penalties applied in the case of money-laundering activities. , rather than any procedural or process changes in current requirements, and Natural persons face a 4yrs prison sentence rather than 1yr.