

## New Anti-money laundering regulations in force

Alert | 29 June 2017



### Introduction

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Regulations”) came into force on 26 June 2017. They implement the requirements of the EU’s Fourth Money Laundering Directive (“4MLD”) into UK law and replace previous money laundering regulations (“the 2007 Regulations”).

### Key points

- As in the 2007 Regulations, an individual or company offering professional trustee services (“Professional Trustees”) to occupational pension schemes, fall within the definition of “trust and company service providers” (TCSPs). As such they must comply with the anti-money laundering (“AML”) requirements, but will not be required to register with HMRC.
- Trustees will be required to comply with new requirements on the retention and disclosure of beneficial ownership information. In particular, they will be required to provide HMRC with information for its register of beneficial owners of taxable “relevant trusts”.
- Changes to the PSC regime (see our [Alert](#)) also took effect on 26 June 2017. Corporate trustees must now update their PSC register (which records the people or legal entities that own or control the trustee company) within 14 days of obtaining the revised information (rather than annually, through a confirmation statement) and have a further 14 days to file the information with Companies House.

### Background

“Money laundering” involves exchanging criminally obtained money and/or other assets for legitimate (or “clean”) money or assets that have no obvious link to their criminal origins.

Terrorist financing involves dealing with money or property that there is reasonable cause to suspect may be used for terrorism. The money or property may/may not be from criminal sources and may be in small amounts.

The Regulations set out what relevant businesses, including TCSPs, must do to prevent the use of their services for money laundering or terrorist financing purposes.

## Requirements for TCSPs

In brief, as a TCSP, a Professional Trustee is required to:

- undertake a risk assessment to identify and assess the risks of money laundering and terrorist financing to which its business is subject
- establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in the risk assessment
- undertake and keep records of customer due diligence (“CDD”) (see below)
- ensure its employees receive appropriate training.

These requirements are not new so should not require action from existing TCSPs. However, this would be a good time for policies and procedures to be reviewed.

TCSPs are required to register with HMRC, as the supervisory body for AML. However, again as under the 2007 Regulations, [HMRC guidance](#) makes clear that Professional Trustees need not register where their services relate to “certain low-risk trusts”. “Low-risk trusts” include occupational pension schemes.

## Customer due diligence

CDD must be undertaken to verify the identity of the person or the beneficial owner of an entity with whom the professional trustee is forming a contractual relationship. It will be required when:

- establishing a business relationship
- money laundering or terrorist financing is suspected.

In a slight change of emphasis to the previous position, the Regulations permit simplified CDD to be applied where a business relationship or transaction presents a low degree of risk of money laundering or terrorist financing. This allows the party to adjust the measures it takes to establish identity or beneficial ownership so that they are appropriate for the particular circumstances. Transactions relating to occupational pension schemes will almost always be low-risk for these purposes.

## Beneficial ownership information – corporate trustees

When entering into a business relationship with parties such as lawyers, auditors and banks, trustees can expect them to carry out CDD. To satisfy the CDD requirements under the Regulations, a corporate trustee (as a UK body corporate) must provide the following information on request:

- information identifying its name, registered number, registered office and principal place of business, its board of directors, the senior persons responsible for its operations, the law to which it is subject its legal owners and its beneficial owners
- its articles of association or other governing documents.

In addition, if during the course of a business relationship, there is any change in the information provided, the corporate trustee must notify the relevant person of the change and the date on which it occurred within 14 days from the date on which it became aware of the change.

## Beneficial ownership information – individual trustees

Broadly, the beneficial owners of an occupational pension scheme are:

- the principal employer (possibly also any participating employers but this is not yet clear)
- the trustees
- the members / prospective members, including survivors.

### Records

The Regulations require trustees to maintain accurate and up-to-date written records of all the beneficial owners of the trust, comprising the following information:

- in respect of an individual, their name, NI number or unique taxpayer reference (if any) (or, if the individual does not have an NI number or unique taxpayer reference, their usual residential address), their date of birth, and the nature of their role in relation to the trust
- in respect of a legal entity, its corporate or firm name, its unique taxpayer reference (if any), its registered or principal office, its legal form and the law by which it is governed, if applicable, the register of companies in which it is entered and its registration number, and the nature of its role in relation to the trust
- a description of the class of persons who are entitled to benefit from the trust.

This obligation, while seemingly more onerous, overlaps to a certain degree with trustees' existing duties to hold and maintain correct membership information. Clearly, there may be gaps in data, in particular in relation to deferred members where there may have been little or no contact for some time. We are liaising with HMT to clarify the extent of this obligation.

### Disclosure

When trustees enter into a transaction to which CDD applies, they must inform the other party that they are acting as trustees and, on request, provide them with information identifying all the beneficial owners of the trust. This may be achieved by describing the class of persons who are beneficiaries or potential beneficiaries, eg employees, former employees of the principal and participating employers and their survivors.

If, during the course of a business relationship, there is any change in the information provided, the trustees must notify the relevant person of the change and the date on which it occurred within 14 days from the date on which any one of the trustees became aware of the change.

## HMRC's register of beneficial owners

4MLD requires EU member states to establish central registers of beneficial ownership information for express trusts with tax consequences. Despite the low-risk presented by occupational pension schemes they are caught by this part of the legislation.

As a result, trustees will be required to provide HMRC with the following information on / before 31 January 2018:

- the full name of the trust, the date on which it was set up, a statement of accounts, describing the trust

assets and identifying the value of each category of the trust assets (including the address of any property held by the trust), the country where the trust is resident for tax purposes, the place where it is administered, a contact address for the trustees and the name of any advisers who are being paid to provide legal, financial, tax or other advice to the trustees

- in respect of the sponsoring employer(s) – its / their corporate or firm name, its unique taxpayer reference (if any), its registered or principal office, its legal form and the law by which it is governed, if applicable, the register of companies in which it is entered and its registration number, and the nature of its role in relation to the trust
- at least a description of the class of persons who are entitled to benefit from the trust, ie employees and former employees of the companies disclosed and their survivors.

However, the drafting of the Regulations is somewhat unclear as it could be interpreted as requiring detailed information on individual members to be entered into the register. We are therefore liaising with HMT on this issue and will provide an update as soon as we are able.

The register is not yet available.

## Actions

- Professional trustees should ensure that their AML policies and procedures remain fit for purpose and take a risk-based approach to the application of CDD measures.
- Corporate trustees should be prepared to respond to CDD enquiries with beneficial ownership information.
- Individual trustees should take reasonable steps to ensure they hold accurate and up-to-date written records of the scheme's participating employers and members as well as their own personal details, and be prepared to disclose the information to a party undertaking CDD.
- Trustees should enter the necessary information on HMRC's register of beneficial ownership as soon as practicable or, at the latest, by 31 January 2018.