The new Anti-Money Laundering Regime: FromCounsel explains the basics

15 October 2017
On 26 June 2017, a new anti-money laundering regime came into force. Notable changes from the regime in place prior to this include:

- a risk-based approach to the assessments, policies and controls for identification and prevention of money laundering and terrorist financing;

- enhanced beneficial ownership information requirements which include changes to the PSC regime and new requirements for trusts; and

- changes to customer due diligence, including in relation to PEPs, and simplified due diligence.

Our FromCounsel Guide explains the key aspects of the provisions.

Our FromCounsel SBEEA Guides: Parts 1 and 2 have been updated to reflect the amendments to the register of people with significant control regime.
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This Guide does not contain legal advice and is not a complete statement of the law. Readers should take specific legal advice before taking any action or entering into any transaction.
What has been introduced and what does it replace?

What was the previous regime?

On 15 December 2005 the Third Anti-Money Laundering Directive (Directive 2005/60/EC) (3AMLD) came into force. In the UK, 3AMLD was transposed by the Money Laundering Regulations 2007 (as amended) (MLR 2007) and the Proceeds of Crime Act 2002 and was reflected in the Terrorism Act 2000. On 25 June 2015, the Fourth Anti-Money Laundering Directive (Directive 2015/849/EU) (4AMLD) entered into force. Member states were required to transpose 4AMLD by 26 June 2017, on which date 3AMLD was repealed.

On 28 December 2006 Regulation (EC) No 1781/2006 (2006 FTR) came into force. In the UK, this had been transposed by the Transfer of Funds (Information on the Payer) Regulations 2007 (TF Regulations). On 26 June 2015, the Fund Transfer Regulation ((EU) 2015/847) (FTR) entered into force and applied directly in all member states as of 26 June 2017, on which date 2006 FTR was repealed.

What is now in place?

New UK Regulations

On 26 June 2017, the following regulations came into force (together the 2017 Regulations):

- the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) – these revoke MLR 2007 and the TF Regulations;
- the Information about People with Significant Control (Amendment) Regulations 2017 (PSC Amendment Regulations 2017); and
- the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (Scottish Partnerships (PSC) Regulations 2017).

The 2017 Regulations transpose 4AMLD into UK law. While FTR is directly applicable, there are aspects that require transposition into national law and MLR 2017 effects that transposition. Analysis of FTR and the provisions in MLR 2017 that transpose those parts of it which require transposition are beyond the scope of this Guide.

The FC SBEEA Guides Part 1 and Part 2 cover, in detail, the provisions of the PSC Amendment Regulations 2017.
Who does the new anti-money laundering regime apply to?

MLR 2017 applies to ‘relevant persons’. ‘Relevant persons’ are persons listed in regulation 8 who are acting in the course of business carried on by them in the UK and who do not fall under an exclusion in regulation 15.

Who is on the regulation 8 list?

- credit institutions (regulation 10(1));
- financial institutions (regulation 10(2));
- auditors (regulation 11(a));
- insolvency practitioners (regulation 11(b));
- external accountants (regulation 11(c));
- tax advisers (regulation 11(d));
- independent legal professionals (regulation 12(1));
- trust or company service providers (regulation 12(2));
- estate agents (regulation 13(1));
- high value dealers (regulation 14(1)(a)). Note the decrease in the payment de minimis threshold from €15,000 under MLR 2007 to €10,000 as well as the addition of making as well as receiving payments;
- casinos (regulation 14(1)(b)); and
- for the purposes of stated regulations, auction platforms (regulation 14(1)(c)).

Each is defined and detailed in the regulations listed.

Who will be deemed to be carrying on business in the UK?

Regulation 9 sets out a number of circumstances where a relevant person will be considered to be carrying on business for the purposes of MLR 2017 even if not otherwise regarded as doing so.

If an entity believes it does not carry on business in the UK but has its registered or head office in the UK, the provisions of regulation 9 should be carefully checked to ensure that this does not bring it within the ambit of MLR 2017.

HMRC has published a Guidance note: Money laundering supervision: who needs to register (HMRC Guidance Note). The HMRC Guidance Note provides guidance for relevant persons in determining whether an activity is being carried out ‘by way of business’, and whether the activity is being carried out in the UK. In relation to the UK element, the guidance provides that a business will be carried out in the UK if the registered office or (if none) head office is in the UK, and the day to day management of the business is by that registered or head office (or another UK office).

What are the exclusions under regulation 15?

These remain broadly as for MLR 2007. However, there is a change to the exclusion for a person engaging in financial activity on an occasional or very limited basis (which is subject to meeting all conditions listed). The condition as to the cap on annual turnover from the financial activity has been amended so that such turnover cannot exceed £100,000. Under MLR 2007, this was £64,000.
What are the obligations on ‘relevant persons’ under MLR 2017?

Once it is established that the person in question is a relevant person carrying on business in the UK and, as such, MLR 2017 applies to that person, the next step is to determine what that relevant person is required to do under MLR 2017. This section of the Guide also covers what others (eg supervisory authorities) must do under MLR 2017.

**Undertake risk assessments (regulations 16, 17 and 18)**

**Supervisory authorities, HM Treasury and the Home Office (regulations 16 and 17)**

Supervisory authorities are the bodies listed in regulation 7 (or 62 for payment service providers) which are responsible for monitoring relevant persons for whom they are the supervisory authority, and taking measures to ensure compliance. Regulations 46 to 52 set out the duties of supervisory authorities.

Supervisory authorities, HM Treasury and the Home Office are all required to carry out risk assessments. Supervisory authorities must identify and assess money laundering and terrorist financing risks to which relevant persons for which they are the supervisory authority are subject. HM Treasury and the Home Office must, prior to 26 June 2018, put in place arrangements for the carrying out of a risk assessment to identify, assess, understand and mitigate money laundering and terrorist financing risks affecting the UK.

**Relevant persons (regulation 18)**

All relevant persons must, taking into account the size and nature of their business, take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which their business is subject. Factors which must be taken into account when carrying out that risk assessment are set out in regulation 18(2) and include information from supervisory authorities (regulations 17(9) and 47) oblige supervisory authorities to make certain information available to relevant persons supervised by them), and risk factors including factors relating to its customers and where the business operates.

All steps taken in performing this risk assessment must be recorded in writing and that record kept up to date. Information as to the risk assessment and the record kept must be provided to the supervisory authority on request.

**Establish and maintain policies, procedures and records (regulation 19)**

Relevant persons must (regulation 19(1)):

- Establish and maintain policies, controls and procedures to mitigate and manage the money laundering and terrorist financing risks identified in their risk assessment.
- Regularly review and update those policies, controls and procedures.
- Keep a written record of those policies, controls and procedures, changes to them and steps taken to communicate this to their business.
What must the policies, controls and procedures cover?

**Regulation 19(3)** provides that the policies, controls and procedures must include:

- risk management practices;
- internal controls – regulations 21 to 24 (see page 9);
- customer due diligence – regulations 27 to 38 (see pages 10-18);
- reliance and record keeping – regulations 39 to 40 (see pages 19-20); and
- monitoring and managing compliance with, and internal communication of, the policies, controls and procedures.

Where the regulations expand in detail on the above policies, controls and procedures, this is considered in this Guide at the pages specified.

What are the requirements in relation to policies, controls and procedures?

The policies, controls and procedures must:

- be proportionate with regard to the size and nature of the business (the relevant person may take into account guidance from the FCA or (if the guidance is approved by the Treasury) any other supervisory authority or appropriate body (**Relevant Guidance**) in determining this); and

- be approved by ‘senior management’ (under MLR 2017, ‘senior management’ is those officers and employees of the relevant person who have knowledge of its money laundering and terrorist financing risks and who have the authority to make decisions affecting its risk exposure (**senior management**)).

They must also provide for:

- identification and scrutiny of complex and unusually large transactions or unusual patterns of transactions where there is no apparent economic or legal purpose, and any other activity or situation that the relevant person considers is particularly likely, by its nature, to be related to money laundering or terrorist financing;

- the taking of additional measures, as appropriate, to prevent use of products/transactions favouring anonymity for money laundering or terrorist financing;

- measures, in preparation for and during the adoption of new technology, to assess and, if required, mitigate money laundering and terrorist financing risks that the new technology, when adopted, may cause; and

- those in the business who know or suspect (or have reasonable grounds for knowing or suspecting) a person of being engaged in money laundering or terrorist financing to be required to comply with **Part 3 Terrorism Act 2000** (which covers using money or property for the purposes of terrorism or which arises from terrorism) or **Part 7 Proceeds of Crime Act 2002** (which covers money laundering offences) (together, **Terrorism and Money Laundering Offences**). Broadly, both Acts require disclosures to be made of knowledge or suspicion of
offences. For details of what must be disclosed, and when, the relevant parts of each Act should be reviewed.

Note that there are additional requirements for certain specified businesses (eg regulation 19(4)(e) in relation to money service businesses).

**Are there any provisions setting out how groups of companies should deal with policies, controls and procedures?**

Yes, there are provisions as to communication of, and compliance with, policies, controls and procedures within the group.

Relevant persons must, where applicable, communicate their policies, controls and procedures to branches and subsidiary undertakings outside the UK (regulation 19(6)).

Relevant parent undertakings (which are relevant persons who are parent undertakings (as defined in s 1162 CA 2006)) must:

- ensure that their policies, controls and procedures are applied to: (a) subsidiary undertakings (inside and outside the UK); and (b) branches outside the UK, where those subsidiary undertakings and branches are carrying out any activity in respect of which the relevant person is captured by MLR 2017 (regulation 20(1)(a)) and regularly review and update those policies, controls and procedures (regulation 20(1)(c));

- establish, maintain and regularly review and update group policies, controls and procedures for data protection and information sharing in order to prevent money laundering and terrorist financing (regulations 20(1)(b) and (c));

- maintain a written record of the above two requirements, any changes made, and steps taken to communicate the same to subsidiary undertakings and branches (regulation 20(1)(d));

- ensure that subsidiary undertakings and branches:
  - in an EEA state, follow that state’s 4AMLD transposing law (regulation 20(2)); and
  - in a non-EEA state which does not impose anti-money laundering and terrorist financing requirements as strict as the UK, apply measures equivalent to MLR 2017 (save that if the relevant state does not permit this, the relevant parent undertaking must inform its supervisory authority and take additional measures to handle the risk effectively) (regulations 20(3), and (4)); and

- ensure that information relevant to prevention of money laundering and terrorist financing is shared between group members subject to any restrictions on information sharing (regulation 20(5)).

In MLR 2007, the requirements in relation to group level policies, controls and procedures only applied to credit institutions and financial institutions.
Internal controls (regulations 21 to 24)

What must relevant persons do?

Where appropriate (as explained below):

- appoint a member of either the board (or equivalent management body) or ‘senior management’ as an officer to be responsible for compliance with MLR 2017;

- screen (that is, assess skills, knowledge and expertise for their functions, and their conduct and integrity) ‘relevant employees’ before their appointment and during the course of employment;

- establish an independent audit function to examine and evaluate their policies, controls and procedures, make recommendations and monitor compliance with recommendations; and

- appoint an individual as a ‘nominated officer’ to whom disclosures of knowledge or suspicion of Terrorism and Money Laundering Offences (under Part 3 Terrorism Act 2000 or Part 7 Proceeds of Crime Act 2002) should be made.

The identity of the individual(s) appointed to monitor compliance and to act as the nominated officer must be provided to the relevant supervisory authority within 14 days of appointment.

Who are ‘relevant employees’ for the purposes of screening and training?

These are employees whose work is relevant to compliance with MLR 2017 or who are otherwise capable of contributing to identifying or mitigating money laundering and terrorist financing risks or preventing or detecting money laundering and terrorist financing (relevant employees).

What training measures are required?

Relevant persons must (regulation 24):

- take appropriate measures to ensure relevant employees are made aware of money laundering and terrorist financing law and relevant data protection requirements;

- take appropriate measures to ensure relevant employees are given training to recognise and deal with transactions, activities or situations which may be related to money laundering and terrorist financing; and

- maintain a written record of the above (in particular the training given).

Note that the obligation to make relevant employees aware of relevant data protection requirements is new to MLR 2017.

How do relevant persons decide what is appropriate?

This is to be decided having regard to the nature and the size of their business. The relevant person must take into account their own risk assessment and may take Relevant Guidance into account.
Customer due diligence (regulations 27 to 38)

When should CDD be applied?

A relevant person must carry out CDD:

➢ if they establish a ‘business relationship’ (a business, professional, or commercial relationship between a relevant person and a customer which arises out of the relevant person’s business and the relevant person expects to have an element of duration – note that this includes company formation even if that is the only transaction) (regulation 27(1)(a) and regulation 4);

➢ if they carry out an occasional transaction which is a ‘transfer of funds’ (Article 3.9 FTR – broadly, any transaction at least partially carried out by electronic means on behalf of a payer with a view to making funds available to a payee (on each side, through a payment service provider)) > €1,000 (regulation 27(1)(b));

➢ if they suspect money laundering or terrorist financing (regulation 27(1)(c));

➢ if they doubt the veracity or adequacy of previously obtained identification or verification documentation or information (regulation 27(1)(d));

➢ if they are not a high value dealer or casino and they carry out an occasional transaction ≥ €15,000 (whether as single or several apparently linked operations) (regulation 27(2));

➢ if they are a high value dealer and they carry out an occasional transaction in cash ≥ €10,000 (whether as single or several apparently linked operations) (regulation 27(3));

➢ if they are a casino and they carry out a transaction described at regulation 27(6) (broadly, a wagering of a stake or collection of winnings) ≥ €2,000 (whether as single or several apparently linked operations) (regulation 27(5));

➢ in relation to existing customers (regulation 27(8)):
  ▪ at other appropriate times on a risk-based approach (regulation 27(9) sets out some of the factors to be taken into account which include indication of a change of identity or beneficial owner, inconsistent transactions, and change in purpose or intended nature of relationship); and
  ▪ when they become aware that the circumstances of an existing customer which are relevant to its risk assessment for that customer have changed.

What measures are required to perform CDD?

In all circumstances in which CDD is required, a relevant person must:

➢ unless already done, both identify and, from documents or information from a reliable source independent of the customer, verify the customer’s identity (under regulation 28(18) this
includes documentation provided by an official body which are provided to the relevant person by or on behalf of the customer) (regulation 28(2)(a) and (b)); and

➢ assess and, if appropriate, obtain information on the purpose and intended nature of the business transaction or relationship (regulation 28(2)(c)).

If the customer is a body corporate, a relevant person must also (regulation 28(3)):

➢ obtain and verify the:
  ▪ company name;
  ▪ company or registration number;
  ▪ registered office address (or if different, principal place of business);

➢ unless the body corporate is a company which is listed on a ‘regulated market’, take reasonable measures to determine and verify:
  ▪ the law to which to which the body is subject;
  ▪ its constitution (e.g. articles of association);
  ▪ the names of directors (or members of equivalent body to board of directors) and persons responsible for operations.

Note that under regulation 43(1), corporate bodies not listed on a ‘regulated market’ are under an obligation to provide this information on request from the relevant person (as well as beneficial ownership information).

If the customer is beneficially owned by another person, a relevant person must (unless it is a company which is listed on a ‘regulated market’) also (regulation 28(4)):

➢ identify the beneficial owner;

➢ take reasonable measures to verify his/its identity so that the relevant person is satisfied that it knows who the beneficial owner is;

➢ if the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement, take reasonable measures to understand its ownership and control structure.

This cannot be satisfied by relying solely on a PSC register (regulation 28(9)). Note that if a relevant person is trying to find beneficial ownership information in relation to a body corporate and has not, after exhausting all possible means, found this information or has not been able to satisfy itself that a person identified is in fact the beneficial owner, it is entitled to treat the senior person responsible for management of the body corporate as being its beneficial owner (regulation 28(6)).

If someone (A) is acting on behalf of a customer, a relevant person must also (regulation 28(10)):

➢ verify that A is authorised to act for the customer;

➢ identify A and verify that based on information or documents obtained from a reliable source independent of A and the customer.
Business relationships must be subject to on-going monitoring – this includes scrutinising transactions for consistency with the relevant person’s knowledge of the customer’s business and risk profile, and keeping CDD documentation up to date.

Note that credit institutions and financial institutions are subject to additional CDD requirements set out in regulation 29. This includes, under regulation 29(7), applying CDD measures to all anonymous accounts and passbooks that already existed on 26 June 2017 (MLR 2017 prohibit the creation of these for new and existing customers).

The ways to comply with the CDD requirements and the extent of the measures must reflect the general risk assessment as well as the risk in any particular case. They may differ from case to case. Assessing the risk must take account of all factors including the purpose of the transaction or relationship, the level of assets or size of transaction, and the regularity and duration of the business relationship. Note that relevant persons must be able to demonstrate to their supervisory authorities that the measures taken are appropriate in light of the risks identified by the relevant person itself and, where such risks have been identified in information made available to the relevant person, risks identified by its supervisory authority.

Note that CDD is required in all cases where due diligence is required – EDD is in addition to that and SDD is simplifying and modifying the extent and measures of CDD in appropriate cases.

**What is the meaning of ‘regulated market’ under MLR 2017?**

MLR 2017 provides that ‘regulated market’:

- within the EEA, has the meaning given by Article 4.1(21) of MiFID II; and
- outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the specified disclosure obligations.

Note that MiFID II Article 4.1(21) is not in effect until 3 January 2018.

The MiFID II definition of ‘regulated market’ reflects the definition of ‘regulated market’ in Article 4.1(14) MiFID.

**When must CDD be carried out?**

CDD must be performed *before* the business relationship is established or the transaction carried out. However, provided that verification is completed as soon as possible after first contact, verification can be completed while the business relationship is being established if it is necessary in order to avoid disruption of normal business, and the money laundering and terrorist finance risks are low. There are additional requirements as to timing of CDD by credit institutions and financial institutions (regulation 30(4)) and trusts (regulation 30(7)).

**What happens if CDD cannot be performed?**

If a relevant person cannot comply with CDD requirements, it must (regulation 31(1)):

- not establish a business relationship with, or carry out any transaction (whether via a bank account or otherwise) for or on behalf of, the customer;
- terminate any existing business relationship;
➢ consider whether a disclosure of Terrorism and Money Laundering Offences is required (under Part 3 Terrorism Act 2000 or Part 7 Proceeds of Crime Act 2002).
When should EDD be applied?

A relevant person must carry out EDD:

➢ in any case identified as being, or where there is, a high risk of money laundering or terrorist financing under the relevant person’s own risk assessment or in information made available to the relevant person by its supervisory authority (see page 6 as to supervisory authorities) (regulation 33(1)(a));

➢ in any transaction or business relationship with a person in a high-risk third country (regulation 33(1)(b)). This is subject to an exception where the person is a branch or majority owned subsidiary of an EEA state entity (see regulation 33(2) for the conditions). A country is a high-risk third country where it is identified as such by the European Commission – the current list is set out in Commission Delegated Regulation (EU) 2016/1675. The European Commission adopted a Commission Delegated Regulation amending Delegated Regulation (EU) 2016/1675. However, the regulation has not, as at the date of this Guide, entered into force and the list of high-risk third countries remains as set out in Regulation 2016/1675;

➢ where a credit institution or financial institution has or proposes to have a ‘correspondent relationship’ with another such institution from a third country (regulation 34(4)(a) sets out what a ‘correspondent relationship’ is – broadly, the provision of banking services, including providing a current or other liability account and related services such as international funds transfers or the relationship between credit institutions and financial institutions (regulation 33(1)(c));

➢ where a customer or potential customer is a politically exposed person (PEP) or a family member or known close associate of a PEP (regulation 33(1)(d) – see pages 15-17);

➢ wherever a customer or potential customer has provided false or stolen identification documentation and the relevant person plans to continue to deal with them (regulation 33(1)(e));

➢ if a transaction is complex or unusually large or there is an unusual pattern of transactions, and there is no apparent economic or legal reason for them (regulation 33(1)(f)) – in this case, regulation 33(4) provides certain matters that the EDD must cover; and

➢ in any other case where its nature means that there is a higher risk of money laundering or terrorist financing (regulation 33(1)(g)).

In assessing whether there is a high risk (and the extent of the measures required), the relevant person has to consider all risk factors including those set out at regulation 33(6) which cover customer risk factors, product, service or transaction risk factors, and geographical risk factors. It is noted (regulation 33(7)) that the presence of these risk factors may not necessarily mean a high risk of money laundering or terrorist financing.
Note that **regulation 34(2)** prohibits credit institutions and financial institutions having correspondent relationships with shell banks. A shell bank is a credit institution or financial institution (or institution carrying out equivalent activities) incorporated in a jurisdiction in which it has no physical presence involving ‘meaningful decision-making and management’ (and is not part of a conglomerate) (**regulation 34(4)(b)**).

**What measures are required to perform EDD?**

Where EDD is required, a relevant person must apply enhanced customer due diligence measures and enhanced on-going monitoring.

*In all circumstances* in which EDD is required, EDD must include (**regulation 33(4)**):

- as far as reasonably possible, examining the background and purpose of the transaction;
- increasing the degree and nature of monitoring of the business relationship so as to determine if it, or the transaction, is suspicious.

*Depending on the circumstances*, EDD may also include (**regulation 33(5)**):

- seeking additional independent, reliable sources to verify information;
- taking additional measures to better understand the ownership and financial situation of the customer and other parties to transaction;
- taking further steps to be satisfied that the transaction is consistent with the purpose and nature of the relationship; and
- increasing monitoring of the relationship.

Credit institutions and financial institutions must, in determining what EDD measures to adopt, take account of the ESA Guidelines (see **page 28**) (**regulation 33(8)**).

Where a credit institution or financial institution proposes to have a correspondent relationship with a credit institution or financial institution from a non-EEA state, there are additional requirements (see **regulation 34**).

Note that EDD measures are to be carried out *in addition* to CDD measures.

**What do MLR 2017 provide in relation to politically exposed persons (PEPs)?**

**What is a PEP?**

An *individual* customer or beneficial owner who is entrusted with *prominent public functions*. Note that, unlike MLR 2007, UK PEPs *are* caught by MLR 2017 (relevant persons cannot apply the MLR 2017 provisions related to PEPs to a person who would otherwise be a PEP under MLR 2017 but was not a PEP under MLR 2007 and has ceased to hold the relevant office before 26 June 2017). **Regulation 35(14)** sets out a non-exhaustive list of PEPs. ‘Middle-ranking or more junior officials’ will not be PEPs. The FCA PEP Guidance gives further guidance on the definition of prominent public function, the roles set out in the non-exclusive list, and information to be used in the process of identification and in conducting EDD. In the FCA’s view, it is unlikely that a large number of customers in the UK will be treated as PEPs in practice.
Who are family members or known close associates (KCAs) of PEPs?

➢ Family members of PEPs include (regulation 35(12)(b)):
  ▪ a spouse or civil partner of PEP;
  ▪ children of PEP and their spouse or civil partner; and
  ▪ parents of PEP.

This is a non-exhaustive list. Note that the FCA PEP Guidance states that the FCA also considers that family members include brothers and sisters and that it may be appropriate to include a wider circle of family members if the PEP poses a higher risk.

➢ KCAs of PEPs are (regulation 35(12)(c)):
  ▪ individuals known to have joint beneficial ownership of legal entity or legal arrangement or other close business relationship with the PEP; and
  ▪ individuals known to have sole beneficial ownership of legal entity or legal arrangement set up for benefit of the PEP.

What do relevant persons have to do in relation to PEPs?

Relevant persons must:

➢ have ‘appropriate’ risk management systems and procedures in place to determine if a customer or its beneficial owner is a PEP or a family member or KCA of a PEP, and then to manage the enhanced risks (see regulation 35(2) as to factors to be taken into account in determining what is ‘appropriate’) (regulation 35(1));

➢ once a PEP (or family member or KCA of a PEP) has been identified:
  ▪ assess the level of risk and extent of EDD measures to be applied (regulation 35(3)). In doing so, the relevant person may take into account any Relevant Guidance and must take into account any relevant information made available to it by its supervisory authority (regulation 35(4)). The FCA PEP Guidance assists with regard to indicators to take account of when assessing the risk and the measures to be taken in different risk situations;
  ▪ get ‘senior management’ approval for starting or carrying on the business relationship (the FCA PEP Guidance elaborates on the senior management approval requirements) (regulation 35(5)(a));
  ▪ take adequate measures to establish source of wealth and funds involved in the proposed business relationship or transaction (regulation 35(5)(b));
  ▪ conduct enhanced ongoing monitoring of the relationship (regulation 35(5)(c)); and
  ▪ after that person ceases to be a PEP, continue EDD on that former PEP for at least 12 months (or longer period required to address risks) (note that this is not required in relation to family members and KCAs of PEPs) (regulation 35(9)).
Both MLR 2017 and the FCA PEP Guidance emphasise that a business relationship with a PEP or family member or KCA of a PEP should not be closed or declined merely because of that fact – the risk, and possible mitigation, must be assessed on a case by case basis. Note that these measures are in addition to the standard EDD measures.
When can SDD be applied?

SDD measures can be applied where, having taken into account: their own risk assessment; the assessment of the risk assessment and information made available to the relevant person by its supervisory authority; and risk factors set out in regulation 37(3), a relevant person has determined that the particular business relationship or transaction presents a low risk of money laundering or terrorist financing (regulation 37(1)). It is noted (regulation 37(4)) that the presence of these risk factors (which include that a company has securities listed on a regulated market and that the customer is resident in an EEA state) may not necessarily mean a low risk of money laundering or terrorist financing.

Note that there is no longer a prescribed set of situations in which SDD is ‘automatically’ available (unlike under MLR 2007) – the risk assessment must be made in each case.

Where a credit institution or financial institution is determining what SDD measures to apply (and the extent of those), it must take account of the ESA Guidelines (see page 28) (regulation 37(7)).

There are circumstances in which a relevant person must cease to apply SDD – these are set out in regulation 37(8) and cover doubts arising as to the veracity or accuracy of any identification or verification documentation, the risk assessment changing such that it no longer considers the circumstances to be low risk, any suspicion of money laundering or terrorist financing, or the conditions for CDD applying.

There are specific circumstances which apply to electronic money as set out in regulation 38.

What measures are required to perform SDD?

Where SDD is permitted, a relevant person must continue to apply CDD measures set out in regulation 28 (see pages 10-13) but can, taking into account its determination of the risk, adjust the extent, timing or type of measures.

The relevant person must ensure that it monitors the transaction or relationship sufficiently in order to detect any unusual or suspicious transactions.
Reliance and record-keeping (regulations 39 to 41)

What records do relevant persons need to keep?

Relevant persons must keep the following records:

➢ copies of documents and information obtained to satisfy CDD (including additional requirements for credit institutions and financial institutions), EDD (including additional requirements for credit institutions and financial institutions, and PEPs) and SDD; and

➢ sufficient records (original documents or copies) in relation to transactions subject to due diligence measures or being monitored to enable the transaction to be reconstructed.

In addition to the record keeping requirements set out at regulation 40, relevant persons are subject to various record-keeping requirements set out elsewhere in MLR 2017. These cover:

➢ steps taken to carry out a risk assessment (regulation 18(4));

➢ policies, controls and procedures established by a relevant person, changes made, and steps to communicate to business, and, where applicable, to subsidiary undertakings and branches (regulations 19(1)(c) and 20(1)(d));

➢ measures taken to make relevant employees aware of the law relating to money laundering and terrorist financing and relevant aspects of data protection, and training given in this regard (regulation 24(1)(b));

➢ beneficial owners and potential beneficiaries of trusts (regulation 44(1) and explained on pages 21-22).

If a relevant person relies on another (A) to carry out the necessary due diligence (see below), A is subject to the same requirements to keep records (regulation 40(6)).

How long must records be kept for?

The records must be kept for at least five years from the end of the transaction or business relationship (but a relevant person is not required to keep records relating to any transaction which occurs as part of a business relationship for longer than ten years). Once the period ends, the relevant person must delete any personal data (subject to certain exceptions set out in regulation 40(5)).

Can a relevant person rely on a third party to carry out CDD on its behalf?

Yes, a relevant person can rely on a third party to carry out the CDD measures set out in regulations 28(2) to (6) and (10) (regulation 39(1)).

Only third parties listed in regulation 39(3) may be used for this purpose and the third party cannot be established in a high-risk third country (regulation 39(4)).

If the third party fails to apply the necessary CDD measures, the relevant person is still liable for the failure (regulation 39(1)).

If a relevant person does choose to use a third party for CDD measures (see pages 10-13), it must (regulation 39(2)):

➢ immediately obtain from the third party, all the CDD information; and
➢ enter into written arrangements with the third party which enable the relevant person to obtain from the third party, immediately on request, copies of identification and verification documentation (and any other relevant documentation) and require the third party to keep the records for the period specified in regulation 40.
**Provide beneficial ownership information to relevant persons (regulations 42 to 45)**

MLR 2017 introduced new requirements in relation to provision of beneficial ownership information to relevant persons and the holding of beneficial ownership information in relation to trusts.

These obligations to provide information are in addition to the changes to the information about people with significant control regime (PSC Regime) which were introduced by the PSC Amendment Regulations 2017 which put in place amendments in order to bring the PSC Regime in line with the requirements of Article 30 4AMLD. The PSC Regime and amendments to it are explained in the FC SBEEA Guides, Part 1 and Part 2.

**What information do corporate bodies have to provide to relevant persons and others under MLR 2017? (regulation 43)**

A ‘UK corporate body’ must, upon request, provide the following to relevant persons with which it enters into a relevant transaction or a business relationship (regulation 43):

- information identifying its name, registered number, registered office, principal place of business, board of directors (or equivalent management board), senior persons responsible for operations, law it is subject to, legal owners, and, if there are any, its beneficial owners (as defined in regulation 5(1));

- articles of association or other governing documents; and

- any changes to the information provided above and the date of that change (within 14 days of the body corporate becoming aware of the change occurring).

There are also obligations regarding providing information to certain law enforcement authorities if requested. Such information has to be provided within the ‘reasonable period’ specified by that authority.

**What bodies are included within ‘UK body corporates’ under regulation 43?**

A body corporate incorporated under the law of any part of the UK and which is not listed on a regulated market (AIM is not a regulated market and so companies traded on AIM are subject to regulation 43). This expressly includes eligible Scottish Partnerships (these were brought within the PSC Regime under The Scottish Partnerships (PSC) Regulations 2017), which is briefly explained in the FC SBEEA Guide: Part 1.

**What is a ‘relevant transaction’?**

A relevant transaction is one where the relevant person is required to apply CDD under regulation 27 (regulation 43(9)).
What do relevant trusts have to do under MLR 2017? (regulations 44 and 45)

The trustees of ‘relevant trusts’ must:

➢ maintain accurate and up to date written records of beneficial owners and potential beneficiaries (the information required is set out in regulation 44(5) to (8)), contact addresses for trustees, and names of advisers giving the trustees legal, financial or tax advice;

➢ inform relevant persons that they enter into a relevant transaction or a business relationship with, that they are acting as trustees and provide, upon request, information identifying all beneficial owners of the trust. If there is any change to this, the trustees must notify the relevant person within 14 days of any of the trustees becoming aware of the change; and

➢ where the trust is a ‘taxable relevant trust’, provide information to HMRC about the trust, its beneficiaries, and potential beneficiaries (these being set out in more detail in regulation 45(2) and the required information being listed in regulation 45(5) to (8)) on or before 31 January 2018 (or 31 January after the tax year in which the trustees were first liable to pay tax). In addition, the trustees must, each year, confirm that the information has not changed or notify HMRC of the change (and the date of the change) by (broadly) 31 January after the relevant tax year. Note that in relation to regulations 44 and 45, where the trust is a collective investment scheme, reference to trustees includes reference to the scheme’s manager or operator.

This information is used by HMRC to keep a register of beneficial owners and potential beneficiaries of taxable trusts. This register must be established by HMRC (in any form they see fit).

‘Relevant transaction’ has the same meaning as for corporate bodies (see page 21).

There are also obligations on HM Treasury regarding provision of information to certain law enforcement authorities if requested.

What is a ‘relevant trust’?

A ‘relevant trust’ is an express trust which is (regulation 42(2)(b)):

➢ a UK trust (all trustees are resident in UK or satisfies residency conditions for one trustee and settlor in accordance with regulation 42(2)(d)); or

➢ a non-UK trust which receives income from a UK source or has assets in the UK and pays UK tax.

What is a ‘taxable relevant trust’?

A ‘taxable relevant trust’ is a relevant trust where trustees are liable to pay UK tax in relation to the trust assets or income (regulation 45(14) sets out the relevant taxes which include income tax, capital gains tax, and SDLT).
Relevant firms to obtain approval for beneficial owner, officer or manager (regulation 26)

Regulation 26 MLR 2017 introduces a restriction on a person being the beneficial owner or an officer or a manager of a relevant firm or a relevant sole practitioner without getting approval by the relevant supervisory authority.

Approvals must be granted unless the applicant has been convicted of a relevant offence (listed in Schedule 3 MLR 2017) (regulation 26(8)(a)). Any approval given is not valid if the applicant has been convicted of a relevant offence (and will cease to be valid if already granted at the time of conviction) (regulation 26(9)). In addition, approvals can be granted for a limited period (regulation 26(8)(b)).

This requirement will not have been breached upon MLR 2017 coming into force if an approval application had already been made prior to that (regulation 26(3)).

What is a ‘relevant firm’ and a ‘relevant sole practitioner’?

‘Relevant firms’ and ‘relevant sole practitioners’ are auditors, insolvency practitioners, external accountants and tax advisers, independent legal professionals, estate agents, and high value dealers.
What registration requirements are set out in MLR 2017?

What registers are maintained by supervisory authorities under MLR 2017 (regulations 54 and 55)?

In addition to HMRC’s register of beneficial owners of taxable relevant trusts (see page 22), the following supervisory authorities are required to maintain the following registers (regulation 54):

➢ FCA: register of relevant persons who are persons authorised for the purposes of FSMA and who have notified the FCA that they act (or intend to act) as a money service business or trust or company service provider; and

➢ HMRC: register of relevant persons not in the FCA’s register and who are high value dealers, money service businesses, trust or company service providers and, where HMRC are the supervisory authority, bill payment service providers and telecoms, digital and IT payment service providers.

The FCA and HMRC may also maintain additional registers set out in regulation 55 and if they elect to do so, must take reasonable steps to bring that decision to the attention of those relevant persons to whom the register relates.

How do relevant persons who must be entered into a register maintained by the FCA or HMRC apply to be so registered (regulations 57 to 60)?

Relevant persons who require registration in a register under regulation 54 or 55 must make an application in the manner and with the information that the FCA or HMRC determines. The FCA maintains a Money Laundering Registration Page. HMRC also maintains a Money Laundering Supervision Page for guidance and registration.

An application by a money service business or trust or company service provider for registration in a register maintained by the FCA or HMRC under regulation 54 must be refused if the applicant, its owner or beneficial owner (or other parties in the case of a money service business) is not a fit and proper person to carry on the business. This also applies to financial institutions if the FCA opts to maintain a register of them under regulation 55. Regulation 59 sets out further the process for determining of applications.

Under regulation 60, registrations can be suspended or cancelled in a number of circumstances.

If not on the mandatory FCA or HMRC register (regulation 54 – listed above), the relevant person must not carry out the relevant business (regulation 56(1)). This also applies where the FCA or HMRC decides to keep a register under regulation 55 and operates from 12 months after the register is established (regulation 56(5)).
How are the provisions of MLR 2017 enforced?

**Information-gathering and investigation powers (regulations 65 to 74)**

Supervisory authorities are granted a number of powers including the power to:

- require the provision of documents and information from relevant persons, payment service providers and connected persons (connected persons are those listed in Schedule 5 MLR 2017 in relation to a relevant person or payment service provider), in each case, past and present (regulation 66);

- request assistance from foreign authorities in obtaining documents and information (regulation 68);

- subject to satisfaction of certain conditions (broadly, belief that there has been a contravention of anti-money laundering legislation), enter into and inspect premises and inspect documents and information on those premises without a warrant (regulation 69); and

- subject to satisfaction of certain conditions (more specific and ‘lower level’ failures to comply with anti-money laundering legislation), apply for a warrant for entry into premises (in order to search the premises and take possession of documents and information on those premises) (regulation 70).

Further detail on these provisions is beyond the scope of this Guide.

**Enforcement powers**

Generally, MLR 2017 provides a wider range of enforcement measures compared to MLR 2007. A brief summary is set out below however a detailed explanation of the various penalties available is beyond the scope of this Guide.

**Civil penalties**

There are various civil penalties that can be imposed by the FCA and/or HMRC where a person contravenes applicable requirements under MLR 2017 (or FTR given that it is directly applicable). These are:

- imposition of a financial penalty on the breaching person or on a person who was an officer at the time and was knowingly concerned in the contravention; and/or

- publication of a censuring statement; and/or

- cancellation or suspension by the FCA of a permission, authorisation or registration, or imposition of limits on such permission, authorisation or registration, or on the carrying on of a regulated activity, in each case for a period of up to 12 months; and/or

- where a person was an officer of the breaching person at the time and was knowingly concerned in the contravention, imposition of a temporary prohibition on that person holding
an office or position of responsibility for management decisions or a permanent prohibition on that person having a management role.

In addition, where the FCA or HMRC believe that a contravention, or continued contravention, is reasonably likely, they can apply to the High Court for an injunction restraining that contravention.

If a person has taken all reasonable steps and exercised all due diligence to ensure that the requirement has been complied with, the FCA and HMRC are not permitted to impose a financial penalty or publish a censuring statement.

**Criminal penalties**

There are various criminal penalties that a person who contravenes applicable requirements under MLR 2017 (or FTR given that it is directly applicable) can be liable to. These are:

- on summary conviction, imprisonment for up to three months and/or a fine; and
- on conviction of indictment, imprisonment for up to two years and/or a fine.

A person who has been convicted of a criminal offence for their contravention cannot also be subject to a civil sanction.

If a person has taken all reasonable steps and exercised all due diligence to avoid committing an offence, he cannot be guilty of a criminal offence.

There are offences relating to prejudicing investigations into, and providing false or misleading information in relation to, potential contraventions of MLR 2017 (and FTR). Both are subject to the same criminal sanctions as contravention of a requirement.

Where an offence is committed by a body corporate, partnership or unincorporated body, MLR 2017 sets out provisions whereby an officer (or, if applicable, member managing the affairs of a body corporate) can be liable alongside the relevant body for the offence where the offence was committed with consent or connivance of that officer (or member) or attributable to their neglect.
What guidance is available for relevant persons?

There are a number of guidance notes and guidelines in relation to MLR 2017 and anti-money laundering generally. These include those listed below. Guidance covering the PSC regime is covered in the FC SBEEA Guides Part 1 and Part 2.

**FCA Guidance**

The FCA is the supervisory authority (see page 6) for those relevant persons listed in regulation 7(1)(a).

➢ **The treatment of politically exposed persons for anti-money laundering purposes (FCA PEP Guidance)**

Under MLR 2017, the FCA is required to issue guidance regarding enhanced due diligence in respect of PEPs. F/G 17/6 ‘The treatment of politically exposed persons for anti-money laundering purposes’ sets out the finalised guidance. This confirms that a case by case analysis of PEPs is required and clarifies how the definitions in relation to PEPs in MLR 2017 should be applied in the UK. See pages 15-17.

The FCA PEP Guidance has not been approved by HM Treasury.

Note that the FCA states that the FCA PEP Guidance will also satisfy its obligation to issue guidance on politically exposed persons under s 333U FSMA 2000 as and when that section comes into force.

➢ **Specialist sourcebook for professional body supervisors which sets out expectations in relation to anti-money laundering supervision**

The FCA’s current consultation, GC 17/7 ‘Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors’ is seeking views on the proposed text for this. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) will oversee the adequacy of anti-money laundering supervision by professional body supervisors. The draft sourcebook is designed to aid effectiveness of professional body supervisors by making clear the OPBAS’s expectations of professional bodies. See pages 33-34.

**HMRC Guidance**

HMRC is the supervisory authority (see page 6) for those relevant persons listed in regulation 7(1)(c) – these include company service providers not supervised by the FCA or a professional body (in Schedule 1).

HMRC has updated its money laundering regulations Webpage which includes a number of guidance notes in relation to the anti-money laundering regime, both generally and for those relevant persons for whom it is the supervisory authority. In addition, for those businesses required to register with HMRC, there is an online, digital system for anti-money laundering supervision under which registrations, renewals, updates and payments can be made online.

**Sector specific**

Where a relevant person is a member of, or regulated or supervised by, a professional body listed in Schedule 1 MLR 2017, that body will be the supervisory authority (see page 6) of that relevant person.
Whether each body has produced and, if relevant, updated sector specific guidance (and whether or not that has been approved by HM Treasury) should be checked with that body.

Industry guidance approved by HM Treasury must be taken into account by a court in considering whether a person (within the relevant sector) has committed certain offences under the Proceeds of Crime Act 2002 or Terrorism Act 2000, and whether a person or institution (within the relevant sector) has complied with applicable requirements in MLR 2017. In addition, in considering disciplinary action for a breach of the Senior Management Arrangements, Systems and Controls sourcebook of the FCA Handbook and/or criminal prosecution for MLR 2017 breaches, the FCA may have regard to whether such guidance was followed.

➢ Legal sector

The supervisory authority listed in MLR 2017 for solicitors in England and Wales is the Law Society of England and Wales. This responsibility has been delegated in part to the SRA.

The Law Society has provided a Quick guide to the Money Laundering Regulations 2017. It previously maintained an Anti-Money Laundering Practice Note but, as announced on 19 September 2017, this has been replaced by the LSAG Guidance (see below).

The Legal Sector Affinity Group, which comprises the supervisory authorities for the legal sector (regulation 7 MLR 2017), has published a draft of its Anti-Money Laundering Guidance for the Legal Sector (LSAG Guidance). The guidance, which applies across the entire legal sector, replaces previous legal sector guidance and good practice information on complying with anti-money laundering and counter-terrorist financing obligations. It is extensive and includes flowcharts to give an overview of how all the obligations link together as well as examples to help put the theory into context.

The LSAG are in the process of obtaining approval from HM Treasury for the LSAG Guidance which will be published as final once that approval is obtained. When approval is obtained the courts will be required to consider compliance with the guidance in assessing whether a person committed an offence or took all reasonable steps and exercised all due diligence to avoid committing the offence. See FC Feature 20 September 2017 for further details.

### European Supervisory Authorities (ESA)

The Joint Committee of ESA published final Guidelines on anti-money laundering and countering the financing of terrorism (ESA Guidelines).

These guidelines promote a common understanding of the risk-based approach and set out how it should be applied. They form part of the ESA’s wider work on fostering a consistent and effective approach by credit institutions and financial institutions and supervisors to anti-money laundering and the prevention of terrorist financing.

The guidelines offer guidance on the factors that credit institutions and financial institutions should consider when assessing the risk associated with a business relationship or transaction. They also set out how credit institutions and financial institutions can adjust their CDD procedures to mitigate any risks they have identified. Competent authorities will use the guidelines when assessing the adequacy of the risk assessment and management systems and controls that credit institutions and financial institutions have in place.
**Joint Money Laundering Steering Group (JMLSG)**

JMLSG is made up of the leading UK Trade Associations in the Financial Services Industry including the BVCA. JMLSG published its Final Revised Guidance on the prevention of money laundering and terrorist financing for the UK financial services industry (JMLSG Guidance). The JMLSG Guidance reflects the provisions of MLR 2017 and takes account of the ESA Guidelines. The final versions follow comments received on the consultation versions of the amended JMLSG Guidance published in March and April and reflect amendments to MLR 2017 from the draft regulations (marked-up versions of the final Guidance showing changes from these consultation drafts are provided). The JMLSG Guidance will be submitted to HM Treasury for ministerial approval.

The JMLSG Guidance is intended to: outline the legal and regulatory framework for anti-money laundering and counter-terrorist finance requirements and systems across the financial services sector; interpret the legal and regulatory requirements and how, practically, to implement these; indicate good industry practice with a proportionate, risk-based approach; and assist firms in setting up and running systems and controls necessary to mitigate the risks in this area.

**Wolfsberg Standards**

The Wolfsberg Group is an association of thirteen global banks which aims to develop frameworks and guidance for the management of financial crime risks by banks, particularly with respect to Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.

The Wolfsberg Standards consist of the various sets of anti-money laundering principles and related statements, guidance, and FAQs issued by the Group since its inception in 2000. Publications recently updated by the Group include:

- **Wolfsberg Guidance on PEPs.** Note that, as this was published in May 2017, it does not reflect MLR 2017;

- **Wolfsberg Correspondent Banking Due Diligence Questionnaire (CBDDQ).** A substantive and comprehensive update of the CBDDQ was announced on 15 October 2017. The CBDDQ is a questionnaire for correspondent banks which is designed to aid financial institutions conducting due diligence on correspondent banking relationships. The CBDDQ can be obtained by the banking community by emailing ddq@wolfsberg-principles.com; and

- **Wolfsberg Group Payment Transparency Standards.** Originally released in 2007, this publication established payment message standards to be observed by banks. On 15 October 2017, the Group published a revision which includes a number of additional standards.

**FRC**

The FRC launched a Consultation on revised guidance on anti-money laundering requirements which closed on 8 September 2017. The current FRC guidance is provided in Practice Note 12: Money Laundering: Guidance for Auditors on UK Legislation and, as well as proposing revisions to this guidance, the FRC proposes to incorporate the guidance as an Appendix to ISA (UK) 250 (Revised June 2016) Section A: Consideration of Laws and Regulations in an Audit of Financial Statements (rather than have it as a stand-alone Practice Note). Note that ISA (UK) 250 was revised in July 2017 (to clarify the definition of non-compliance).
How is article 30 4AMLD on beneficial ownership transposed in the UK?

Article 30 4AMLD provides that member states shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. This information must be held in a central register.

The UK’s PSC regime, introduced in April 2016 under SBEEA 2015, already provided for a central register of beneficial information. However, following consultations on the matter, the Government concluded that the PSC regime in place prior to 26 June 2017 did not satisfy the Article 30 requirements.

Therefore, the Information about People with Significant Control (Amendment) Regulations 2017 (PSC Amendment Regulations 2017) were brought in to transpose the requirements. These came into effect on 26 June 2017. The key changes to the PSC regime are set out below and are explained in more detail (along with the PSC regime more generally) in the FC SBEEA Guides Part 1 and Part 2.

**New entities brought within PSC regime**

**Companies with voting shares admitted to trading on EEA regulated market**

The exemption for DTR5 issuers from the PSC regime has been replaced with an exemption for ‘companies with voting shares admitted to trading on a regulated market which is situated in an EEA State’. The effect of this is that, as of 26 June 2017, companies with shares admitted to trading on prescribed markets are not exempted from the PSC regime and are required to comply with Part 21A CA 2006. Prescribed markets, as defined in the FCA Glossary, are markets established under the rules of a UK recognised investment exchange. Both AIM and the NEX Exchange Growth Market are prescribed markets – as such, companies with voting shares admitted to trading on these markets are, from 26 June 2017, within the scope of the PSC regime.

**Unregistered companies**

Part 4 PSC (Amendment) Regulations 2017 extends the PSC regime to unregistered companies from 26 June 2017 and makes the necessary amendments to the Unregistered Companies Regulations 2009 in order to apply Part 21A to unregistered companies.

**Scottish limited partnerships and certain Scottish general partnerships**

From 26 June 2017, the Scottish Partnerships (PSC) Regulations 2017 extend the PSC regime to cover Scottish limited partnerships and certain Scottish general partnerships (‘eligible Scottish partnerships’).

**Deadlines for entering PSC information into the PSC register**

The obligations in place (prior to 26 June 2017) on entities subject to the PSC regime to give certain notices, and enter information and changes on the PSC register are subject to a requirement that, from 26 June 2017, the notice or entry must be given or made in the PSC register (or the central
register if the entity has a central register election in place in respect of its PSC register) within 14 days.

**Deadlines for filing PSC information with the registrar of companies**

The requirement, prior to 26 June 2017, to file PSC information with the registrar of companies on incorporation and annually via the confirmation statement was, on 26 June 2017, replaced with a requirement to notify the registrar of companies of PSC information and changes within 14 days of the entry being made in the entity’s PSC register.

Article 30 also provides that such entities must provide such information to relevant persons conducting due diligence on them – this is dealt with by regulation 43(1) MLR 2017 (see page 21).

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What is next for the anti-money laundering regime?

**Fifth Anti-Money Laundering Directive (5AMLD)**

On 5 July 2016, the European Commission adopted [Proposal (COM(2016) 450 final) (5AMLD)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0450) for a Directive to amend 4AMLD. This proposal operates by way of amendments to 4AMLD rather than as a restatement or replacement. In addition to the proposed amendments to 4AMLD, 5AMLD proposes to amend the First Company Law Directive, Directive 2009/101/EC relating to the disclosure of company documents, the validity of obligations entered into by a company, and nullity – this directive was codified in the Company Law Codification Directive (Directive 2017/1132) which came into effect on 20 July 2017 (see [FC Feature 18 July 2017](https://www.fromcounsel.com/feature/2017/07/18)).

The main aim of the proposal is to address what the Commission believes are gaps in the current anti-money laundering regime under 4AMLD arising from an oversight of certain financial means used by terrorists and a lack of transparency in financial transactions (often arising from the use of offshore jurisdictions).

Amendments to 4AMLD proposed under 5AMLD include the following.

- The addition of virtual currency exchange platforms to the list of obliged entities (these are entities to which 4AMLD applies).
- Decreasing the maximum transaction limits for certain pre-paid instruments (below which member states can elect not to require obliged entities to apply certain CDD measures).
- Enabling national financial intelligence units to request anti-money laundering and counter terrorist financing information from any obliged entity.
- The harmonisation of member states’ approaches to EDD which must be applied in the case of high-risk third countries.
- Improving access to beneficial ownership information which includes:
  - requiring member states to ensure public access to certain beneficial ownership information for firms and legal entities engaging in profit-making activities;
  - reducing the threshold for identification of beneficial owners of certain companies which present a specific risk of being used for money laundering and tax evasion to 10% (from 25%);
  - ensuring direct interconnection of national beneficial ownership registers; and
  - clarification of beneficial register requirements for taxable relevant trusts to ensure consistency between member states.
- Clarification of a number of 4AMLD provisions.

Both the Council of the European Union (October 2016 – see [FC Feature 1 November 2016](https://www.fromcounsel.com/feature/2016/11/01)) and the European Parliament (March 2017 – see [FC Feature 9 March 2017](https://www.fromcounsel.com/feature/2017/03/09)) have commented on the European Commission’s proposal for 5AMLD. Both pieces contain extensive amendments further developing the matters which the European Commission identified as needing development in 4AMLD.

As at the date of publication of this guide, there is no agreement on a final text of 5AMLD. Key developments on 5AMLD will be covered by the FC current awareness service.
High-risk third countries

The current list of high-risk third countries is set out in Commission Delegated Regulation (EU) 2016/1675.

As part of the European Commission’s roadmap designed to accommodate the concerns expressed by the European Parliament, the Commission is to assess the relevant third countries, starting with those of the highest priority. For those priority countries, the Commission will present its results by the end of 2018. For the remaining countries, the Commission will carry out its assessment gradually once new information sources become available.

The European Commission adopted a Commission Delegated Regulation amending Delegated Regulation 2016/1675 however, as at the date of this guide, this is yet to enter into force (due to objections by the European Parliament) and therefore, Regulation 2016/1675 remains in force without amendment.

Criminal Finances Act

On 5 May 2017, the Criminal Finances Act 2017 (CFA 2017) was published.

CFA 2017 seeks to make the legislative changes necessary to give law enforcement agencies and their partners capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.

CFA 2017 introduces, among other things, two new criminal offences of corporate failure to prevent tax evasion. The first of these covers UK tax evasion offences and the second, subject to preconditions, covers foreign tax evasion offences.

It also includes provisions to reform the Suspicious Activity Report regime, and introduces Unexplained Wealth Orders (UWOs), whereby an individual who is a politically exposed person, or is suspected of involvement in or association with serious criminality, is required to explain the origin of their assets that appear to be disproportionate to their own income. Note that for the purposes of CFA 2017, the definition of politically exposed person includes family members and known close associates. The definition also excludes an individual who is, or has been, entrusted with prominent public functions by the UK or another EEA State.

On 12 July 2017, the Criminal Finances Act 2017 (Commencement No. 1) Regulations 2017 (CFA Regulations) were made. The CFA Regulations are the first commencement regulations made under CFA 2017 (see FC Feature 5 May 2017). For the most part, they bring Part 3 CFA 2017 (corporate offences of failure to prevent facilitation of tax evasion) into force on 30 September 2017.

Key provisions of the Criminal Finances Act 2017 will be explained in further detail in an upcoming FC Feature.

OPBAS

On 15 March 2017, the Government announced the introduction of a new watchdog, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). This will be a watchdog within the FCA and, as at the date of this Guide, both the FCA and HM Treasury are conducting consultations – HM Treasury is consulting on Oversight of Professional Body Anti-Money Laundering Supervision...
Regulations 2017 and FCA is consulting on proposed text for a specialist sourcebook for professional body supervisors which sets out expectations in relation to anti-money laundering supervision.

OPBAS is expected to be in operation by the beginning of 2018.

See FC Feature 16 March 2017 for an explanation of this body and FC Features 21 July 2017 and 24 July 2017 for the latest as at the date of this Guide.

**On-going consultations on matters related to the new anti-money laundering regime**

**HM Treasury consultation on OPBAS**

See above. This consultation also seeks evidence on the potential costs and benefits of OPBAS and on streamlined anti-money laundering guidance for businesses in order to support the Government’s impact assessment, and consider how the anti-money laundering supervisory regime might evolve over time. The consultation closed on 17 August 2017 and HM Treasury is analysing feedback.

**FCA consultation on OPBAS sourcebook**

See pages 33-34. The consultation closing date is 23 October 2017 (see FC Feature 24 July 2017).

**FCA consultation on FCA Handbook changes resulting from MLR 2017**

On 12 June 2017, the FCA published Consultation Paper 17/13 on the implementation of 4AMLD and FTR. The FCA sets out how it proposes to amend the Decision Procedure and Penalties manual and Enforcement Guide in light of changes that will be introduced under MLR 2017. These changes include, notably, an increase in the powers of supervisory bodies (including the FCA) to deal with non-compliance and the introduction of enhanced enforcement tools. The changes would be made under the Enforcement (Fourth Money Laundering Directive) Instrument 2017, a draft of which is annexed to CP 17/13. The policy statement setting out the amendments and final form of instrument is expected imminently.

**FCA consultation on revised guidance on AML requirements**

On 26 June 2017, the FRC launched a Consultation on revised guidance on anti-money laundering requirements. This guidance is currently provided in Practice Note 12: Money Laundering: Guidance for Auditors on UK Legislation and, as well as proposing revisions to this guidance, the FRC proposes to incorporate the guidance as an Appendix to ISA (UK) 250 (Revised June 2016) Section A: Consideration of Laws and Regulations in an Audit of Financial Statements (rather than have it as a stand-alone Practice Note). The consultation closing date was 8 September 2017. Note that ISA (UK) 250 was further revised in July 2017 (to clarify the definition of non-compliance).

**Other EU legislation related anti-money laundering**

As part of the implementation of the European Commission’s Action Plan for strengthening the fight against terrorist financing, a number of initiatives linked to 4AMLD are in progress as at the date of publication of this Guide.
**Countering money laundering by criminal law**

In December 2016, the European Commission proposed a directive to establish minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering. The Commission has also published a Roadmap in relation to its proposal for a directive on the criminalisation of money laundering.

As at the date of publication of this Guide, the Council of the European Union has adopted its position on the proposed directive (which does include some amendments to the original text, including in relation to the definition of criminal activity and the introduction of a criminalisation obligation for self-laundering).

The next step is for the European Parliament to adopt its position on the Council’s consolidated compromise text of the proposed directive.

**Sharing AML information between tax authorities**

On 16 December 2016, Directive 2016/2258/EU granting tax authorities access to anti-money laundering information was published in the Official Journal of the European Union. The Directive modifies Directive 2011/16/EU on administrative co-operation in the field of taxation. Member states have until 31 December 2017 to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive, which will apply from 1 January 2018.

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# Terms used in this Guide

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