

AMLD5: EXPANDED TRUST REGISTRATION REQUIREMENT – DELAYED BUT IN THE PIPELINE FOR THE UK

10 January 2020, the deadline for EU Member States implementing the Fifth EU Anti-Money Laundering Directive (AMLD5), has passed. A key feature of AMLD5 is the requirement for all express trusts to be registered in a central national register; a significant expansion of the current trust registration requirement which is limited to taxable trusts. The UK published the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) on 20 December 2019. These regulations implement AMLD5, with the exception of the expanded trust registration requirement. This briefing note follows on from our [December 2019 briefing note](#) and provides an update on what is next for the trust registration requirement.

BACKGROUND

The trust registration requirement was first introduced by the Fourth EU Anti-Money Laundering Directive (AMLD4), however, was limited to taxable trusts. AMLD5 extends the registration requirement to all express trusts whether or not already created. Given the ubiquity of trusts in the UK, the expanded registration requirement presents a significant practical challenge for the UK. In our [December 2019 briefing note](#), we set out some practical steps which could be taken by corporate trustees and businesses as groundwork in advance of implementation. We set out further background on the trust registration requirement under AMLD4 and AMLD5 in our [2018 briefing note](#).

UK IMPLEMENTATION OF AMLD5

On 20 December 2019, the government published the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#), together with an [Explanatory Memorandum](#). The Regulations amend the existing 2017 Money Laundering Regulations to implement AMLD5 in the UK. Most of the Regulations came into force on 10 January 2020, with a few exceptions which will come into force later in 2020. Both the Regulations and Explanatory

Key issues

- AMLD5 expands the existing trust registration requirement from taxable trusts to all express trusts
- The expansion presents a significant implementation challenge for the UK, where trusts are ubiquitous
- The 10 January 2020 implementation date has passed
- The UK's implementation legislation omits the expanded trust registration requirement
- Updates from government to industry bodies confirm that the expanded trust registration requirement is in the pipeline

Memorandum are silent on the trust registration requirement, which raises the question of what the government's intentions are for it.

WHAT'S NEXT FOR THE TRUST REGISTRATION REQUIREMENT?

In April 2019, HM Treasury launched a [consultation](#) on the transposition of AMLD5 into UK law. In the consultation paper, the government indicated that a more detailed technical consultation would be run by HM Revenue and Customs (HMRC) in respect of the trust registration requirement, in which the government would confirm its approach on various points and consult on matters such as the appropriate penalty framework for the regime.

This consultation remains outstanding, however, HMRC has provided updates to certain industry bodies including the Chartered Institute of Taxation and the Institute of Chartered Accountants of England and Wales. In the updates, HMRC advises that the technical consultation will be published in early 2020 and the registration requirement transposed into domestic law during 2020. The technical consultation will include draft legislation for the registration requirement, as well as additional information on matters such as the type of express trusts that will be required to register and penalties. The registration requirement is therefore in the pipeline and can be expected during 2020.

NEXT STEPS

The technical consultation and draft legislation are keenly awaited. They will provide an indication of the shape the trust registration requirement will take in the UK and, in particular, the express trusts in scope.

In our response to the 2019 consultation, we suggested that the express trusts captured by the registration requirement be limited to ensure a consistent approach with other EU Member States, where many arrangements which would be categorised as trusts under English law are contractual. We also suggested that the stated aim of the Money Laundering Regulations to combat money laundering and terrorist financing should inform the registration requirement and necessitate a proportionate approach. The government received over 200 responses to the consultation from a cross-section of stakeholders and a response is expected in early 2020.

Clifford Chance will continue to monitor developments in this area and can advise on the implications for your business. Please get in touch with your usual Clifford Chance contact or any individuals listed in this briefing for specific advice.

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