

## **Greater transparency regarding beneficial ownership: potential issues on implementing the Fourth EU Anti Money-Laundering Directive into the UK persons with significant control (PSC) regime**

### **Introduction**

Transparency of beneficial ownership is becoming a familiar theme. The UK is seen as a leader in this field, having already established a new public register of persons with significant control (PSC) over UK private companies, limited liability partnerships (LLPs) and Societates Europaeae (SEs).

However, the Fourth Anti-Money Laundering Directive (EU 2015/849) (MLD4) which member states must implement by 26 June 2017, goes further. It extends the requirements on the holding and disclosure of beneficial ownership information to apply to corporate and other legal entities and trusts, and also requires the information held centrally to be up to date.

HM Treasury recently issued a consultation on the steps it proposes to take to implement MLD4, inviting feedback by 10 November. For the purposes of its consultation, HM Treasury is disregarding the European Commission's July proposals to amend some of the MLD4 rules. These would involve significant changes to MLD4 as currently drawn, including a call on member states to bring implementation forward from 26 June 2017 to 1 January 2017, to widen the scope of the trust register and to reduce the threshold indicating ownership and control to 10% in certain circumstances.

We expect the MLD4 requirements on beneficial ownership to be implemented in the UK by way of amendments to the PSC rules. HM Treasury acknowledges in its consultation a parallel set of plans (set out in a BEIS discussion paper earlier this year) to require foreign companies to provide details of their beneficial ownership before they can acquire UK real estate or participate in UK procurement projects. What this means for you is compliance with any amendments to the PSC regime in due course, including identifying which other entities in your business may also be subject to the revised regime.

### **The background to the MLD4**

MLD4 requires member states to use a central register to hold information on beneficial ownership for corporate and other legal entities incorporated within their territory. Member states can make the register public, or at a minimum ensure competent authorities (e.g. law enforcement), obliged entities (see examples below) for customer due diligence purposes, and others with a "legitimate interest" have appropriate degrees of access to the information. Obligated entities include credit institutions, financial institutions, auditors, external accountants and tax advisers, independent legal professionals (when acting in their professional capacity), trust or company service providers and estate agents.

### **MLD4 and trusts**

MLD4 has specific requirements for trustees of express trusts governed under the law of their member state, which have to obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information, which must be accessible to competent authorities (and obliged entities in situations where the trustee, in its capacity as trustee of the trust, forms a business relationship or carries out an occasional transaction as provided for in MLD4), includes the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising effective control over the trust. Further, a central register of the beneficial ownership information also

needs to be created for any trust that generates “tax consequences”, so that competent authorities can access this information without alerting the trust parties.

In its consultation, HM Treasury suggests that “tax consequences” in relation to trusts, means trusts that are liable to tax in the UK and that are required to submit tax returns to HMRC, such as for income tax, capital gains tax and inheritance tax. HM Treasury notes that this information is to be provided by the trustees when it becomes reportable, rather than when the liability arises (at which time the trustees are not necessarily aware of the tax consequences). HM Treasury also notes in its consultation that the trustees will be responsible for holding and obtaining the beneficial ownership information, as well as providing this for the central register when the trust generates tax consequences.

### **Key issues arising in HM Treasury’s consultation**

Set out below are three key areas arising in the consultation and which will shape the UK’s implementation of the beneficial ownership requirements of MLD4. No inference can be drawn from the consultation as to whether the government intends to extend the PSC requirements to align with MLD4 requirements (for instance, to make all the beneficial ownership information automatically publically available), or fine-tune them to allow more flexibility, where possible, under the MLD4 rules.

#### **Current information**

First, MLD4 requires entries for corporate and other legal entities on beneficial ownership at the central registry to be “current”. This differs from the current PSC requirements, where (unless the corporate entity elects to keep its register at the central register at Companies House) the corporate entity has only to keep its internal register updated on a daily basis. Its public register at Companies House is updated annually, as part of the corporate entity’s new confirmation statement.

HM Treasury requests views on how best to meet the “current” requirement, and how this meets with other information kept on the public register (i.e. pursuant to the PSC regime).

#### **Corporate and other legal entities**

Secondly, MLD4 applies to “corporate and other legal entities” and therefore with a much broader scope than the PSC regime (which only applies to UK private companies, LLPs and SEs). HM Treasury has identified some other entities that may be within scope of MLD4, including open-ended investment companies (OEICs), investment companies with variable capital (ICVCs), Scottish limited partnerships, unregistered companies and building and friendly societies. The beneficial ownership rules will therefore need to be adapted to apply to each relevant entity that is caught. For instance, OEICs are creatures of the OEIC Regulations pursuant to s236 FSMA rather than entities regulated under the Companies Act; and Scottish limited partnerships are regulated by the Partnership Act 1890 as supplemented by the Limited Partnerships Act 1907. The technical parameters of the current PSC regime will need to be adapted to fit with each entity. HM Treasury invites views from others on which entities should be within scope and the approach to take.

#### **Trusts**

Thirdly, MLD4 provides that measures that apply to trusts will also apply to other types of legal arrangements having a structure or functions similar to trusts. HM Treasury notes that trusts administered in the UK and non-resident trusts with a UK source income will be captured. This would mean that, for instance, Jersey property unit trusts holding UK real estate would be in scope, but those used for feeder fund vehicles (where there is no UK source income) may not. The consultation seeks views on what other arrangements should be considered as having a structure that is similar to express trusts. It also invites thoughts on any further considerations that the government should take account of when developing the central register of trust beneficial ownership information.

### **Getting in touch**

If you would like any further information or background, or analysis on how these provisions may apply to your corporate structures, please do get in touch with your usual BLP contact, or one of the authors.

### **London**

Adelaide House, London Bridge  
London EC4R 9HA England

#### **Matthew Baker**

Tel: +44 (0)20 3400 4902  
matthew.baker@blplaw.com

#### **Chris Ormond**

Tel: +44 (0)20 3400 2370  
chris.ormond@blplaw.com

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