



Legal update — July 2017

Corporate The Fourth Anti-Money Laundering Directive



The fourth Anti-Money Laundering Directive (the Directive) was enacted on 25 June 2015 in order to strengthen current safeguards against the funding of terrorism and money laundering. EU member states had two years to implement the new rules into local law and full compliance across all member states (including the UK) was required by 26 June 2017.

Objectives of transposition into UK law

The main objectives in transposing the Directive were to update the anti-money laundering and counter terrorist financing legislation in the UK and to make sure it is both proportionate and effective.

Who does it apply to?

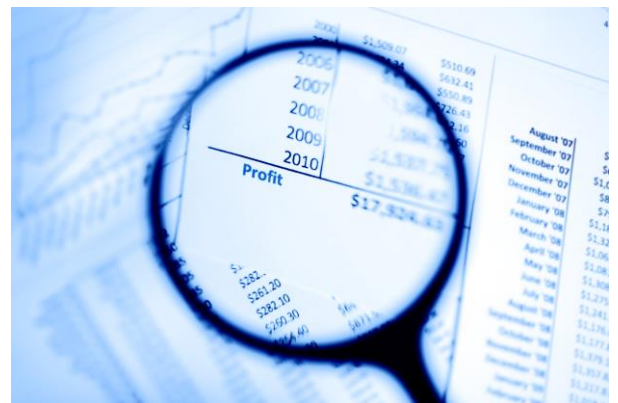
The Directive applies to financial institutions, auditors, accountants and businesses that make or receive cash payments totalling €10,000 or more. After the government's consultation was closed, it was also agreed that those persons who occasionally, or on a very limited basis engage in financial activity would be covered by the Directive if they have a turnover of £100,000.

What has changed?

The Directive replaces the third Anti-Money Laundering Directive and the main changes are regarding the following:

- entities covered must keep their own registers of people with significant control up to date and beneficial ownership information will need to be updated annually on the public Companies House central register
- a wider definition of politically exposed persons (PEPs) (to also include domestic PEPs)
- a greater emphasis on ultimate beneficial ownership and client due diligence (CDD) (CDD is now required by anyone trading goods in cash with a value over €10,000 when before this was €15,000)

- entities must adopt an enhanced risk based approach, whereby they will not automatically be able to rely on simplified due diligence (SDD) where the customer is for example a regulated entity, or listed on a stock exchange; entities will instead need to assess whether the customer is a low enough risk to be subject to SDD and this will need to be supported by documentation
- tax crimes are now classed as predicate offences (an offence that gives rise to proceeds that are used for terrorist financing or money laundering)
- the whole gambling sector is now covered



How does the Directive affect you?

If the Directive applies to you, due diligence is more onerous in that: you must review the management of cash-intensive customers; on-boarding procedures should be more thorough requiring additional information on the customer's income, and on-going monitoring throughout the relationship should be heightened. With the scope of who is defined as a PEP being widened, you must also review your existing clients and apply enhanced due diligence (EDD) to any domestic PEPs you may have. However, not all of the changes make the process more difficult. For instance, in the UK, for years now tax crimes have been classed as predicate offences, but the implementation of the Directive might give you some comfort with regard to

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clients you may have who are domiciled in another EU member state where they were not so classed previously. Furthermore, the existence of a central register makes your CDD quicker and easier with some information needed for this process being readily available.

Consequences of terrorist financing/money laundering

If a financial institution is found to be non-compliant with the Directive, with a legal person there will be a fine imposed of at least €5,000,000 or 10% of the institution's annual turnover. With a natural person, the fine imposed will be of at least €5,000,000. It is therefore essential that all institutions to which the Directive applies take appropriate measures to ensure compliance.

What measures should you take?

To assist you in complying with the Directive your business can take the following measures:

- make sure senior management are aware of the changes
- update your company's risk assessments with respect to money laundering and terrorist financing
- ensure policies and procedures reflect the changes
- consider broadening the scope of who is defined as a PEP
- regarding CDD, implement and document a risk based procedure
- ensure that your EDD procedure is markedly more thorough than the procedure for CDD
- roll out training relating to the Directive to all staff affected by the changes

What comes next?

In July 2016, a fifth Anti-Money Laundering Directive was published, which proposes to amend the Directive; its purpose is to strengthen the Directive in response to the increase in terrorist attacks across Europe over recent years. Negotiations on the details of the fifth Anti-Money Laundering Directive were set to be finalised by 30 June 2017 and we will provide a further update once the effects are clear.

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