



Consultation on Transposition of 4MLD
Sanctions and Illicit Finance Team
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14th November 2016

Dear Sir / Madam

CONSULTATION ON THE TRANSPOSITION OF THE FOURTH MONEY LAUNDERING DIRECTIVE

Please find enclosed a copy of our considered response to Questions 64 and 65 of the Consultation which seek views on further considerations the government should consider when developing a central register of trust beneficial ownership.

We are particularly concerned with one substantial loophole in the present position where a discretionary trust does not identify a beneficial owner on the face of the trust deed. The problem is that a discretionary trust arrangement can be abused by money launderers when established alongside a letter of wishes.

To address the problem, we suggest the following solutions when implementing the Fourth Money Laundering Directive.

1. With a view to enhancing transparency, we propose an amendment the effect of which would require any letter of wishes prepared by a settlor, binding or non-binding, to be recognised as a trust document and information contained in the letter would be included in the central register. When implementing the Fourth Money Laundering Directive, we propose the insertion of a clause (f) to Article 31(1) which would have the effect of requiring “all other natural persons identified in a document, or instrument, relating to the trust, including a letter (or memorandum) of wishes” to be identified.
2. Amendments to the transposition of Articles 3(6)(b) and 31(1) of 4MLD, so that when implementing the Fourth Money Laundering Directive, the regulations would be treated as if they read as follows:

Article 3(6)(b)

“(b) in the case of trusts:

...

(iii) the protector(s), if any

...

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(v) all other natural persons exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

Article 31(1)

“Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regard the trust. That information shall include the identity of:

- (a) the settlor;*
- (b) the trustee(s);*
- (c) the protector(s) (if any);*
- (d) the beneficiaries or class of beneficiaries; and*
- (e) all other natural persons exercising effect control over the trust.”*

Further, looking beyond the issue of implementation, we believe there is a case for reconsidering the abuse of discretionary trusts by money launderers more broadly. A question arises as to whether some form of statutory intervention is required to regulate the use of these trust instruments.

The reasons for our proposal are detailed in our enclosed submission. Thank you for indicating you are content to accept receipt of our submission very slightly out-of-time. We hope it is useful and will assist the government in the fight against financial crime.

Yours sincerely,

Jonathan Fisher QC
Bright Line Law Services Ltd