



## **THE 5<sup>TH</sup> MONEY LAUNDERING DIRECTIVE & INSOLVENCY**

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### **1. Introduction**

The 5<sup>th</sup> Money Laundering Directive ('5MLD') was implemented on 10 January 2020. Its full title is 'The Money Laundering and Terrorist Financing (Amendment) Regulations 2019'.

5MLD was introduced by the EU in relation to changes in how terrorists operate, in response to the publication of the Panama Papers, the use of offshore accounts for disguising beneficial ownership and the increased use of crypto-currencies and other digital currencies for money laundering purposes.

A guide to 5MLD has been drafted by CCAB and is awaiting H M Treasury approval. As soon as approval is given by H M Treasury, a copy of the guidance will be circulated and published in the IPA newsletter and on the IPA web-site as part of our AML Regulatory page.

A link to the 5MLD Regulations can be found [here](#)

### **2. General matters to be aware of**

Most of the requirements of 5MLD do not relate to Insolvency work or Insolvency Practitioners ('IPs'). For example, a major change in 5MLD is in relation to tax advice. 5MLD covers direct and indirect tax advice. If you are in a practice that offers tax advice, your Nominated Officer and Compliance Teams should have, or will be issuing, guidance in relation to indirect tax advice.

IPs should be aware that the scope of entities that are now subject to Money Laundering Regulations has been extended and now include:

- Letting agents – any firm that provides services to individuals looking to rent or lease land or property and where there is a monthly rental value of €10k or more
- Art Dealers – any business engaged in the trade of works of art which have a value in one transaction or a series of transactions greater than €10k

- Cryptoasset exchange providers – entities that exchange cryptocurrency to cash or other virtual assets. Also includes entities that exchange cash to cryptocurrencies or other virtual assets
- Custodian Wallet Providers – these are entities that provide services which hold, safeguard, secure, store or administer virtual assets or cryptocurrencies on behalf of customers and clients

In effect these businesses are now brought into the AML regulatory framework and will be required to carry out risk assessments, CDD, EDD etc. as has been the requirement in insolvency work for some time and which were strengthened by the 2017 Money Laundering Regulations.

Letting Agents and Art Dealers where the rental income and value of transactions are above €10k are regulated by HMRC for AML/TF purposes.

Cryptocurrency dealers and Custodian Wallet Providers are regulated by the FCA for AML/TF purposes.

IPs should contact the relevant authority on any AML/TF issues should an appointment become available or a request for advice from one of these businesses be received and ensure that this is added to your case risk assessment.

### **3. Client Due Diligence ('CDD') and Enhanced Due Diligence ('EDD') Changes**

The main change is that the use of Electronic Verification for CDD and EDD has been recognised as becoming more prevalent in relation to identity and verification checks and 5MLD confirms that electronic verification can be utilised for CDD purposes.

You must ensure that any system or process that you utilise for Electronic Verification identification of possible clients is free from fraud and provides sufficient assurance to you of the identity of the individual (i.e. the debtor or person with significant control of a company etc.).

You must continue to take the reasonable steps to understand ownership and control of a business and in the identification of beneficial owners. Where you have exhausted all means to identify the beneficial owner you must take reasonable measures to verify the identity of the senior managing official in the company.

You must keep notes and records of steps taken and consider whether the lack of being able to identify the beneficial owners means that the risk assessment for a possible assignment is too high to continue with such work.

EDD is required where either party to a transaction or the transaction itself is established in a high risk third country. EDD is also now required where the transaction itself is unusually large or complex, or a series of transactions are unusually large or complex.

#### **4. Company Registration Details – new duty**

Where you are carrying out your identification and verification checks and reviewing company information prior to an appointment, where the information held on Companies House as to the Person with Significant Control ('PSC') differs from the details that you have obtained or been provided with as to the PSC, you have a duty as an IP to report any material discrepancy on the PSC to Companies House.

Further details on the requirement and a link to the reporting form Companies House require should there be a material discrepancy on a PSC can be found by clicking [here](#)

#### **5. What should you do?**

The majority of 5MLD does not relate specifically to insolvency work or your role as an IP.

The main points will remain:

- Consider any potential advisory work/assignment carefully for AML/TF risks
- Carry out appropriate CDD and EDD to ensure that you have a robust risk assessment for the proposed work
- Where you are using Electronic Verification – ensure that this is reliable and not subject to fraud – where you are unsure of the identity of a relevant person – take further steps to verify
- Where there is a material issue on the PSC details on Companies House – you must report this directly to Companies House
- Please ensure that you keep file notes of steps taken to identify & verify and that these are kept with your risk assessment
- Where you cannot identify and verify, or the risk appears too high for you – do not take the assignment forward
- Remember for letting agencies, art dealers and cryptoasset firms – contact HMRC or FCA as appropriate to advise of your potential work for the business/individual and seek their advice
- Always keep your case risk assessment under regular review as per Reg 28(11) of the 2017 Regulations

Where you are unsure – consult your Nominated Officer, or, where the IPA is your AML Supervisory Authority contact us on [amlhelpline@ipa.uk.com](mailto:amlhelpline@ipa.uk.com)

During the Covid-19 lockdown, IPs and members must remain aware of issues relating to AML/TF and ongoing risks in respect of potential new and ongoing assignments. A guidance note published by the Accountancy Affinity Group and adopted by the IPA has recently been published to assist. Please refer to the IPA's website for that and other guidance on dealing with AML and insolvency matters during this time.

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