**Fifth Money Laundering Directive and Trust Registration Service**

**Consultation Response: Wedlake Bell LLP**

Wedlake Bell LLP is a central London law firm over 200 years old. It has 68 partners and is one of the top 100 firms in the UK on turnover.[[1]](#footnote-1)

The firm welcomes the opportunity to respond to HM Treasury's consultation document "Fifth Money Laundering Directive and Trust Registration Service" dated 24 January 2020 ("**the Consultation Document**").

Wedlake Bell's response has been prepared by its Private Client team who have extensive experience of setting up and advising on trusts, administering trusts and estates, and acting for parties involved in contentious trust and probate claims. The size of trust or estate the team usually administers and/or advises on would generally range from £1million to £20million.

The team is ranked in the Legal 500 (tier 3) and Chambers High Net Worth guide (Band 4). Wedlake Bell was awarded "Law Firm of the Year – London" in the Citywealth Magic Circle Awards 2018 and came runner up in 2019, with the Private Client group's leader Camilla Wallace winning "Woman of the Year".

**Questions**

**1. Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.**

We welcome the clarification concerning which 'express' trusts will not be required to register, however, there are still some notable omissions to the list of exclusions.

Dormant pilot trusts are not mentioned in the consultation and, as the draft regulations currently stand, these will be subject to registration. Many of these trusts' sole asset will be £10. We are confident that we will not be alone in querying how professional advisors will be expected to identify and locate all dormant pilot trusts in which they may have had an involvement, and who should bear the costs of any work connected with undertaking such an extensive project. As the overall objective of the transposition of 5MLD into UK law is to ensure that the UK's anti-money laundering and counter terrorist financing regime is up to date, effective and proportionate, we question the level of risk these types of trust realistically pose. We would suggest that a de minimis threshold be considered instead.

We note that the government will continue to consider the risk of bare trusts being used for money laundering or terrorist financing. In respect of those for minors, while intestacy trusts will be excluded, it is unclear whether trusts for children where they are not expressly made will be required to register, for example, a child's savings account. Again, these represent a low risk and should also be excluded from registration.

Consideration should also be given to excluding Employee Ownership Trusts (EOTs).

**2. Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?**

The consultation does not provide any further clarification on the issue of 'business relationships' and refers to the 'element of duration' requirement set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. We note that this will not be further defined in legislation but will exist if there is an ongoing and repetitive nature to the relationship which at the outset is expected to last more than 12 months. Further guidance on this critical point is needed as soon as possible.

Furthermore it is unclear why the draft legislation is not consistent with the Government's statement in April last year that the requirement to register for non-EEA trusts entering a business relationship with a UK obliged entity would be restricted to those that are deemed to be administered in the UK by virtue of having one UK trustee. This raises the possibility that trustees of non-EEA trusts will not instruct UK practitioners if they are required to register, and result in the UK losing valued business to less compliant jurisdictions.

**3. Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?**

We refer to our previous comment under question 1 concerning the difficulties of identifying dormant pilot trusts. Lay trustees may not remember that such a trust exists, while professional trustees face having to identify and locate such trusts from extensive storage records, in some cases having to go back decades. It is unknown what grants, if any, will be available to businesses who need to employ extra resources to undertake this task. We note that HMRC propose sending a notification to the trustee in the case of failing to register, however, it is unclear how HMRC propose identifying, and locating, such trustees. There is a high risk of inadvertent non-compliance and if on a large scale this could devalue the whole trust registration scheme.

**4. Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.**

We note that the nature of a legitimate interest request must be in relation to a specified instance of suspected money laundering or terrorist financing activity and form part of an investigation into this instance. We are concerned that 'investigation' is not defined and the proposed wording could allow access to anyone, including journalists, to sensitive information simply because they are 'involved' in an investigation.

There does not appear to be a corresponding requirement for a similar interest where the reason for access arises as a result of a trust owning a non-EU company or other entity. Furthermore, reasons do not seem to have to be given as to why the information is being requested nor is there any provision for refusing it. The consultation states that the Directive provides for a request to be refused where there are reasonable grounds to believe it is not in line with the objectives of the Directive, but this should also be clearly set out in the regulations. It is disproportionate to allow anyone to request to see the register (as opposed to only law enforcement or professionals) where a registered trust controls a non-EEA entity.

**5. Does the proposed handling of exemptions for legitimate interest and third county entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?**

We note that the Directive sets out exemptions for providing access to beneficial ownership information where to grant access to that information would create a 'disproportionate risk' to the beneficial owner. We have concerns about how a risk will be deemed as 'disproportionate' and suggest that if there was ANY risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation to ANY beneficial owner whether or not a minor or otherwise legally incapable this should be the overriding factor in deciding whether or not to release information.

**6. Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing? Please be specific and provide examples.**

We are not aware of any such instances. We would only reiterate that given trusts represent a low risk in terms of money laundering and terrorist financing, it is imperative that any additional responsibilities and expenses imposed onto trustees by these regulations, as well as any decisions to disclose sensitive and personal information, are consistently fair and proportionate.

**Wedlake Bell LLP**

**20 February 2020**

**Ref: ATKE**

1. The Lawyer's top 200 UK law firms 2019 by revenue (ranking: 88) [↑](#footnote-ref-1)