

UK's Anti-Money Laundering Laws May Extend to Private Landlords

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On April 15, the UK Treasury [released](#) proposed steps, entitled a “consultation,” to adopt the EU’s Fifth Money Laundering Directive (“5AMLD”) into national law, while also seeking comments and evidence from stakeholders to inform the final government decisions on adoption of 5AMLD. In certain respects, the exchequer suggests that it might expand the scope of 5AMLD, in part by targeting a perceived gap in stemming the flow of illicit funds in the real property sector. To achieve that goal, it sets forth the possibility of imposing new duties on landlords to carry out extensive due diligence on their tenants, subject to further feedback.

Discussion

5AMLD makes several amendments to the EU’s Fourth Anti-Money Laundering Directive (“4AMLD”). Among other things, 5AMLD expands 4AMLD’s definition of “obliged entities” to include “estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10,000 or more.” That 5AMLD does not distinguish between residential and commercial property is a significant difference with efforts in the United States to target illicit funds in the real property sector – which, to date, have been cabined to residential property.

As we have previously written (see, e.g., [here](#) and [here](#)), real estate transactions as a means to facilitate money laundering is a rapidly growing problem in both developed and developing countries. The UK is no exception – in May 2017, for instance, Transparency International [identified](#) at least 160 properties – worth

around £4.4 billion – that had been bought by individuals posing a high risk of corruption, including those who have been charged and convicted with corruption offenses.

In that vein, the UK has posed the question in the consultation of whether anti-money laundering obligations should be extended to landlords (as opposed to 5AMLD’s focus on “estate agents”), in order to target transactions that are particularly vulnerable to such conduct. That is, while a substantial number of real estate transactions involve regulated entities such as banks and financial services entities, when a transaction does not involve such entities, a real estate agent or, in the instance where a landlord chooses to perform the letting function on its own, an elevated risk of encountering illicit funds may arise. Indeed, the Treasury’s consultation includes commentary that excluding private landlords from regulation “would leave a significant gap in coverage, as there would be no oversight of an agentless business relationship and no requirement to have policies or procedures in place to mitigate the risk of money laundering and terrorist financing in that relationship.” The consultation therefore states that the “government invites views and evidence on the risks attached to landlord-tenant relationships in comparison to agent-landlord-tenant relationships.”

Takeaways

While the UK’s post-Brexit status may complicate the timing of its implementation of 5AMLD, there is little doubt that the UK will, in fact, adopt a version of the directive into national law, although the details still need to be determined. With this in mind, real estate companies and professionals alike should closely monitor the legislative developments to ensure that they will be able to comply with the new obligations, mindful that their obligations may vary between EU Member States.

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