

TRUST REGISTRATION REQUIREMENT UPDATE



The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 come into effect on 6th October 2020 and the main amendment is regarding Trusts.

5MLD increased the scope of the trust registration service, requiring that all express trusts are registered in a central national register. Previously, it was only taxable trusts that needed registering. There was a risk that the new regime would require a large number of trusts to be registered, which previously did not need to be registered. The UK Government's approach however is measured in their final regulations, exempting trusts which are considered to present a low money laundering risk.

Now that the final regulations have been published, [solicitors who advise on a wide range of transactions in both commercial and private contexts will need to consider the potential registration consequences of the broadening scope of the trust registration service.](#)

The registration requirement applies to Type A trusts, Type B trusts and Type C trusts, which are defined below:

- **Type A trusts:** UK trusts which are express trusts and are not EEA registered trusts or exempt.
- **Type B trusts:** non-UK trusts which are express trusts, have at least one trustee resident in the UK and are not EEA registered trusts or exempt, where the trustees of that trust, in their capacity as such (i) enter into a business relationship with a "relevant person"; or (ii) acquire an interest in land in the UK.
- **Type C trusts:** non-UK trusts which are express trusts and are not exempt, where none of the trustees are resident in the UK and those trustees in their capacity as such, acquire and interest in land in the UK.

For these purposes, a trust is a UK trust if all the trustees are resident in the UK (or at least one trustee is resident in the UK and the settlor was resident and domiciled in the UK when the trust was set up or the settlor added funds to the trust), regardless of the governing law of the trust.

The trustees of Type A, B and C trusts must collect specified information on beneficial ownership and register with HM Revenue and Customs' Trust Registration Service.

Exemptions

Schedule 3A of the 2020 Regulations sets out the list of trusts which are exempted from the registration requirement. The exemptions in the 2020 Regulations apply equally to both UK trusts and non-UK trusts.

This includes:

- General exemption for trusts incidental to commercial transactions
- Lending, capital markets and structured debt transactions and securities and derivatives trading
- Financial markets infrastructure and client money, securities or other assets

See the full regulations and list of exemptions here:

<https://www.legislation.gov.uk/ukxi/2020/991/made/data.pdf>

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Regulation 44 of MLR 2017 - recording beneficiaries

Reg 44 requires trustees of 'relevant trusts' (defined as a UK express trust, a non-UK taxable trust or a non-UK trust subject to the registration requirement) to maintain written records of the beneficial owners of the trust and provide them on request to any law enforcement body. Therefore, a UK trust could be exempt from the registration requirement, but the trustees could still be required to keep written records of beneficiaries under Reg 44. This could be challenging for some trusts to comply with.

Deadline for registration

The 2020 Regulations provide that the deadline for registration is 10 March 2022 for trusts set up **before** 9 February 2022. Registrable trusts set up **on or after** 9 February 2022 must be registered within 30 days of being set up.

Penalties

We await full details of the penalty regime in due course.

What trustees and businesses will need to do

- carry out a review to determine whether they may be trustees of registrable trusts.
- consider whether they have the relevant information to comply with the registration requirements, where the registration requirements may apply
- develop robust processes for the ongoing identification of registrable trusts, data collection in respect of beneficiaries, record keeping and registration with the Trust Registration Service, where potentially subject to the 2020 Regulations

From 10 March 2022, [all firms subject to anti-money laundering obligations under the 2017 Regulations entering into a business relationship with a trust which is subject to the new registration requirements must check whether the trust has been properly registered and must investigate and report any discrepancies](#). Therefore, even if they are not acting as trustee, these firms may need to determine whether the trusts used on their transactions are subject to the new requirements and will need to put in place new processes to comply with this requirement.