

Consultation Response

*Amendments to the Money Laundering,
Terrorist Financing and Transfer of Funds
(Information on the Payer) Regulations 2017
Statutory Instrument 2022*

October 2021

AIA Response: Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022

The Association of International Accountants (AIA) welcomes this opportunity to respond to HM Treasury's consultation on 'Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022'.

As a professional body supervisor recognised under Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended 2019) AIA recognises its key role in preventing economic crime and contributing to a robust approach to AML safeguards.

Working with other accountancy sector supervisory bodies through the Accountancy AML Supervisors' Group (AASG) and more widely with government, regulators and other sectors through the AML Supervisors Forum (AMLSF) enables a real public-private partnership which delivers a focussed response to the threat of money laundering and terrorist financing.

As a membership organisation of professionals we recognise that the regulations are in place to protect our members and safeguard against their being exploited by criminal elements to facilitate illicit activity. Therefore, we work to provide guidance and support, so they recognise the red flags of money laundering and fulfil their obligations by reporting suspicious activity.

AIA has made a return focussed on amendments to the MLRs which affect Suspicious Activity Reporting and Reporting Discrepancies.

AIA Response

SARs Reporting

Question 13: In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

Supervisors should have an explicit legal right to access the Suspicious Activity Reports (SARs) of their supervisory population on request and the Money Laundering Regulations should make this clear.

However, any such change should not impose an additional expectation or obligation that would require supervisors to check SARs during every AML review or make provision for any specific expectations regarding timing of reviews. Supervisors should be required to utilise discretion on how to incorporate the right to access into their supervisory approach, for example as part of AML reviews for high-risk firms or as part of a thematic review on SARs.

The right to access SARs would allow supervisors to:

- Identify whether a firm's Money Laundering Reporting Officer (MLRO) responds promptly to internal reports
- Determine whether reports have been made in a timely manner to the National Crime Agency (NCA); and
- Assess the quality of the information contained within the SAR.

Information on the quality of SARs judged against existing published UKFIU guidance (or other guidance provided by the UKFIU directly to supervisors) can be used to inform supervisors' risk-based approaches and consequently educational support provided to firms. However, disciplining members and firms for submitting poor-quality SARs would not be feasible as SARs themselves cannot be used as evidence in established disciplinary processes.

Allowing supervisors' access to SARs will provide greater visibility of the range of issues that are being reported by supervised populations and potentially help identify emerging risks that can be shared more widely with other supervisors and law enforcement through information sharing channels such as the Intelligence Sharing Expert Working Group (ISEWG) attended by all accountancy professional body supervisors.

Question 14: In your view, is Regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

Explicitly referring to the reviewing of SARs within the proposed Regulation 66 will ensure clarification and alleviate concerns that reviewing SARs was not part of a professional body's supervisory function. Clarification and certainty will also promote a consistent approach by all supervisors.

Question 15: In your view, would allowing AML/CTF supervisors access to the content of SARs help support their supervisory functions? If so, which functions and why?

Allowing supervisors access to the content of SARs would support their supervisory functions by incorporating these new gateways into the existing risk-based approach and monitoring and supervision.

Supervisors should use appropriate published guidance, particularly issued by the UKFIU, to help assess the quality of SARs; supervisors should then also provide feedback to members and firms as appropriate, alongside signposting to existing guidance.

There should not be an expectation, however, that supervisors would review every SAR for all their supervised population. Review of SARs should be undertaken on a risk-based approach.

To inform the risk-based approach employed by PBSs, regular, ongoing and PBS-specific feedback from the UKFIU is important since the SAR reporting system should provide trends, detailed information of the PBS's population and areas requiring improvement to increase the quality of SARs submitted

Question 16: Do you agree with the proposed approach of introducing an explicit legal requirement in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

AIA agrees that supervisors should have an explicit legal right to access the SARs of supervised members on request and that the MLRs should make this clear.

However, any such change should not impose an additional expectation or obligation that would require supervisors to check SARs on every AML review. Supervisors should have discretion on how to incorporate the right to access into their supervisory approach.

Care should also be given to determining an approach where a member has submitted a SAR but not retained a copy of their submitted report. Current limitations within the SAR Online filing system do not allow reporters to retrieve copies of submitted reports so it is possible that a member may correctly file a SAR (whether of good or bad quality) and be unable to produce this for review. There should not therefore be an expectation in relation to PBSs that a compliance finding be made where the quality of the SAR is not able to be assessed.

Question 17: In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

The proposed changes may have resource implications for supervisors depending on how many SARs are reviewed on a visit, which reviews/visits will include a review of SARs and what information will be recorded or stored. Supervisors will also need to assess the mechanism for how SARs are accessed, and which reviews will request access to SARs. Resource wise time taken to review SAR quality during a visit or review necessarily means less time spent assessing other aspects of AML compliance.

Question 18: Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations can be put in place to address these? Please provide suggestions of potential mitigations if applicable.

Without appropriate mitigation in place supervised individuals or firms may have concerns in respect of confidentiality and the risk of tipping off. It is therefore important that these concerns are addressed through appropriate mechanisms to protect confidentiality so that, for example, it is not possible to identify the reporter or subject of the SAR from documents or monitoring retained by the supervisor.

This means that protections should be set for supervisors against subject access requests under data protection legislation as well as maintaining the client's privilege (where appropriate).

Any review should not extend to an assessment of whether there is 'suspicion' or not as this remains subjective – supervisors should be focussed on assessing quality.

Any explicit legal requirement should also be accompanied by a provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.

It is useful to note that there is currently no legal requirement for reporters to use glossary codes or complete SARs templates in any specific way. Therefore, supervisors will not be able to discipline a firm for submitting 'poor' quality SARs unless the information omitted was fundamental to the formed suspicion or if the firm had deliberately omitted information to conceal the identity of the subject or for some other reason.

Creating a gateway to view a SAR does not confer an obligation to monitor / supervise / discipline the quality of the SARs beyond making best practice recommendations to the firm, updating guidance for all members, or requiring a firm to undertake specific training.

Reporting Discrepancies

Question 41: Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

There are benefits in creating an ongoing duty to report discrepancies as an important prerequisite for detecting inaccurate information. Additionally, an ongoing duty to report would create greater assurance of the Companies House register, enhanced transparency, and good governance. Professional accountants carrying out CDD and ongoing monitoring of their clients are well placed to identify and report discrepancies.

Any changes to the reporting discrepancies approach should be clearly defined to avoid unintended consequences. A first step would be to look at the current provisions and what the outcomes and the impact has been so far. For example, it is unclear what the impact of the cited 35,000 reports of discrepancies cited so far has been in preventing money laundering or terrorist financing.

Question 42: Do you consider there to be any unintended consequences of making this change? Please explain your reasons.

AIA believes that the proposals made could create increased volumes of work and additional costs for both Companies House and supervised firms / individuals. Firms may find that their administrative burden is increased as clients may have been slow to update records – depending on the number of clients served this could be substantial. Consideration should be given to when the additional checks are required to be completed and clarity and this process, for example whether it is left to firms to decide when they undertake checks as there could be inconsistencies in how this requirement is applied.

A change to requirements should be accompanied by a simplified reporting mechanism and further clarity of what is required of firms, for example how a firm should build these requirements into its risk-based approach.

Any significant increase in reporting could create a backlog for both Companies House and firms. Within the consultation document it was noted that approximately one third of all reports submitted proved to be invalid. This significant number has associated resource implications as all reports must be considered. Education is key to ensuring that valid reports are submitted and that invalid reports are

reduced. Feedback should be provided on invalid reports to ensure that the same mistakes are not made.

Any additional reporting requirements will also lead to an increase in burden on Companies House resourcing. Companies House currently has limited powers, resources, and IT to deal with discrepancy report and whilst we are aware that a new web service relating to reporting discrepancies is in development there are uncertain timescales surrounding its implementation and, in the meantime, a higher number of invalid reports will cause an additional burden.

More guidance must also be considered in relation to the expectation on AML supervisors to act when they identify situations where reports have not been made, for example any disciplinary matter taken up by a PBS would be assisted by clear and unambiguous reporting requirements within the Regulations.

It would also be beneficial to review the current obligations as both education and greater clarity of regulatory requirements would itself allow for a wider impact that may reduce the requirement for ongoing checks.

It also remains unclear how the proposals minimise money laundering and terrorist financing risks without any substantial changes to the powers of Companies House.

Question 43: Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

Further discussion is required to understand the current impact of reports made so far and what the resulting impact would be through increasing the scope. For example, the impact from the severity of the discrepancies identified and the outcomes from those reports. Companies House should consider making this assessment annually within its reporting.

This would further reinforce the positive impact that reporting discrepancies can have and allow individuals and firms to buy-in to the requirement.

Question 44: In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

It is difficult to assess the additional time and costs impact of this proposed change as the statistical information that would assist determining the extent to which clients have incorrect data held on Companies House is not available. Of the 35,000 reports submitted to far there is no available data or detail on the impact of these reports and what actions the reports lead to. It is therefore difficult to comment on the benefits and the result of increasing the scope.

Applying customer due diligence when onboarding clients is a key process to mitigate money laundering and terrorist financing risk, so it is vital that we ensure that any changes to processes do not adversely impact the supervised population – there is a risk that any additional administrative burden

About AIA

The Association of International Accountants (AIA) was founded in the UK in 1928 as a professional accountancy body and promotes the concept of 'international accounting' to create a global network of accountants.

AIA is recognised by the UK government as a recognised qualifying body for statutory auditors under the Companies Act 2006, across the European Union under the mutual recognition of professional qualifications directive and as a prescribed body under the Companies (Auditing and Accounting) Act 2014 in the Republic of Ireland. AIA also has supervisory status for its members in the UK under the Money Laundering Regulations 2017. AIA is a Commonwealth Accredited Organisation.

AIA believes in creating a global accountancy profession and supports the International Federation of Accountants (IFAC) in their vision of a global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets and economies. AIA has adopted IFAC's Code of Ethics for professional accountants and also incorporates IFAC's International Education Standards (IES) into its qualifications and policies.

AIA has members working throughout the whole spectrum of the accountancy profession. Many of our members are at the top of the accountancy industry, from senior management to director level. Conversely, significant numbers of our members work in small and medium sized businesses (SMEs) and we strive to champion the importance of SMEs and their needs.

Further Information

The above replies represent our comments upon this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

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