

The Baroness Vere of Norbiton
House of Lords
SW1A 0PW

05 June 2024

Dear Lady Baroness Vere of Norbiton

Anti-money laundering (AML) and counter-terrorism financing (CTF) regulations

The Accountancy AML Supervisors' Group ("AASG") represents all 13 Professional Body Supervisors (PBSs) which oversee AML/CTF compliance for the accountancy sector in the UK. Please find below our response to HM Treasury consultation: "Improving the Effectiveness of the Money Laundering Regulations".

INTRODUCTION

1. AASG broadly agrees with the suggested measures and areas for change that have been identified in the consultation document. We acknowledge the need to ensure that the Money Laundering Regulations ("MLRs") do not create an unnecessary regulatory burden and that the requirements under the MLRs are proportionate to the identified risk.
2. However, there are a number of areas that the consultation has not considered. AASG had hoped those areas would be addressed in order to increase the effectiveness of the UK's AML regime:
3. **Requirement to be supervised** - The MLRs do not explicitly require "relevant persons" (as defined) to be supervised. The MLRs identify both the type of business that is in scope, and the supervisory authority for each category of relevant person. However, there is no express requirement for a relevant person to apply to or register with a supervisory authority. An explicit requirement to be registered with a Professional Body Supervisor would remove the possibility of individuals avoiding supervision.
4. **Fines and sanctions** - For accountancy professional bodies, our most serious sanction is to exclude a member. Yet because 'accountancy' isn't a reserved term, such excluded individuals may continue to offer accountancy services. Given HMRC's obligations as default supervisor, this may result in anomalies (we understand that there is only a limited number of circumstances where HMRC can refuse supervision). We believe that consideration should be given as to whether the MLRs can be amended to allow HMRC to refuse to supervise those individuals or firms previously excluded by a PBS.
5. **Director verification** - The MLRs require the relevant person to take reasonable measures to determine and verify the full name of each member of the board of directors of a body corporate. In the accountancy sector guidance ('AMLGAS'), it explains that this means the relevant person must confirm the director is who they say they are (i.e., using normal identity checks on the individual such as a obtaining a passport) but this may be done on a risk-basis. Although HM Treasury has approved this guidance, and therefore requirement, the equivalent wording is not

included in JMLSG or the legal sector guidance. We therefore ask that government re-considers the wording of Regulation 28 (3) (b) (ii) to make it clear whether the verification checks on a director should be the equivalent to the verification checks on a beneficial owner. It is important that we have a consistent approach across all regulated sectors.

Further points that have not been considered in the consultation are outlined in the Annex below, many of which were provided by AASG to HMT to support HMT's drafting of the consultation.

CHAPTER 1: MAKING CUSTOMER DUE DILIGENCE MORE PROPORTIONATE AND EFFECTIVE

6. We believe that there is no need for additional HMT guidance on customer due diligence. We believe that the Consultative Committee of Accountancy Bodies ("CCAB") AML guidance for the accountancy sector ("AMLGAS") could be amended to address all the relevant points (namely 'element of duration', when to carry out source of funds checks and 'complex or 'unusually large transactions') and could be aligned with other sector guidance to ensure consistency across all regulated sectors. Consideration could also be given to whether Regulation 27 should be separated into two parts, namely: 'onboarding CDD'; and 'ongoing CDD/monitoring', which could help to highlight the importance of ongoing CDD.

Digital identity verification

7. In the accountancy sector there is a generally less reliance on digital identity verification as clients are often met in-person. However, it is a challenge for firms to perform the necessary work to ensure that digital identify verification software is delivering the required level of assurance / comfort. It would be useful for Government to endorse the quality of a particular system or systems so that firms can have greater confidence in using this system for digital identity.
8. Some digital identity software providers have falsely claimed that digital identity verification is compulsory to comply with the MLRs. While individual PBS can issue their own communications to refute this, clarification from Government would be welcome.

Enhanced Due Diligence

9. We would recommend caution in adding additional high-risk factors into the legislation. It may be more difficult to update legislation for emerging threats and trends and these matters could be dealt with via AMLGAS. Furthermore, the list in the MLRs is not exhaustive, for example there are well-known high-risk factors, such as complex corporate structures, which are not included in the list. We are also concerned that relevant persons and firms may wrongly infer that this is an 'exhaustive' list which sets out all the risks which need to be considered. As this would not be the case, any revision to the legislation would need to be appropriately caveated.
10. Regulation 35(3A)(b) is not referenced specifically in the consultation; however, we would welcome more guidance on what would be an considered an acceptable level of EDD for domestic and non-domestic PEPs.

High Risk Third Countries (HRTC)

11. It would be beneficial to remove the list of checks at Regulation 33(3A) to reduce burdens on firms. The mandatory list of checks appears to suggest that an individual is high-risk because they are based in an HRTC which is not necessarily the case. In reality, navigating and mitigating jurisdictional risk in HRTCs can be difficult. Many verification procedures will not reduce the risk associated with that HRTC. The FATF does not include all of the checks outlined in regulation 33(3A). While some countries do not have robust enough AML measures to be removed from the 'grey list', that fact does not necessarily mean that such countries are actively engaging in money-laundering, so taking a more flexible risk-based approach to HRTCs could be beneficial.

CHAPTER 2: STRENGTHENING SYSTEM COORDINATION

12. We agree with the suggestions to extend information sharing gateways. We also recommend that the National Investigation Service (NATIS) be included in the scope of Regulation 52 to allow the effective sharing of information on bounce back loan fraud (for example).
13. AASG would welcome a more consistent method of sharing information across the system. Current methods, such as the use of SIS, FIN-NET, CJSM and email encryption can cause inconsistencies and create barriers to the sharing of information.
14. We would welcome a provision in the MLRs that requires supervisory authorities to publish a full list/register of their supervised population. Because of the make-up of some accountancy firms, and that some firm names may include personal data, supervisory authorities may have to obtain consent to publish details of a firm in the public domain. By including a requirement to publish a list/register of their supervised population in the MLRs, supervisory authorities will overcome this data protection issue supporting system coordination by ensuring that other public bodies have easy access to which supervisor supervises which firm.

Cooperation with Companies House

15. We agree with the suggestion in Q29 although we believe that the accountancy sector professional body supervisors do cooperate with Companies House on relevant matters.

NRA and system prioritisation

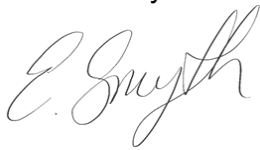
16. We think the MLRs are sufficiently clear on how to complete and use firm-wide risk assessments. Currently, regulated firms must perform a firm-wide risk assessment, which is informed by the supervisor's risk assessment, which is in turn informed by the NRA. Sector guidance provides greater detail as to how to implement the regulatory requirement in practice. PBS's also provide helpsheets and templates on how to perform the firm-wide risk assessment under Regulation 18.
17. The benefit of including a specific requirement that regulated firms must use the NRA to inform their firm-wide risk assessment is that each regulated firm would then read the NRA themselves and better understand the wider picture of threat and vulnerabilities to which the UK is subject. However, the document is very lengthy and not all of it is relevant to the vast majority of smaller, sole practitioners.

CHAPTER 3: PROVIDING CLARITY ON SCOPE AND REGISTRATION ISSUES

Currency Thresholds

18. We do not assess that there are any reasons why references to euros should be retained.

Yours sincerely



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Co-Chair, AASG



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Co-Chair, AASG

The members of the Accountancy AML Supervisors Group are:

- Association of Accounting Technicians
- Association of International Accountants
- Chartered Institute of Taxation
- Chartered Institute of Management Accountants
- Institute of Chartered Accountants of England and Wales
- Institute of Certified Bookkeepers
- Insolvency Practitioners Association
- Association of Chartered Certified Accountants
- Association of Taxation Technicians
- Chartered Accountants Ireland
- Institute of Accountants and Bookkeepers
- Institute of Chartered Accountants of Scotland
- Institute of Financial Accountants

Annex

1. Regulation 4 – Meaning of business relationship

It would be helpful to have more clarity as to whether a 'business relationship' is considered to exist in the absence of a signed contract/agreement by both parties. Regulation 27 requires firms to undertake CDD if they establish a business relationship, but we do not consider our members to have engaged a client until they have a signed letter of engagement. We would welcome more clarity in the regulations to clarify the starting point of a 'business relationship'.

2. Regulations 8 and 9 - Carrying on business in the United Kingdom

It would be useful to include bookkeepers as relevant persons and define what is meant by accountancy and/or bookkeeping services. It would also be helpful to clarify whether firms are required to be remunerated in order to be considered to be providing services 'by way of business'.

It seems there is a potential loophole for those providing services on a voluntary basis and/or charities.

We have instances of overseas members registering their businesses in the country of their residence but servicing clients operating in the UK. It could be argued that these clients should be subject to the UK's AML regime. However, under the current MLRs, these firms would not be able to register their businesses with a UK supervisory authority.

The MLRs do not cover virtual assistants but there is HMRC guidance around this. Should there be provisions for cloud-based services?

3. Regulation 21 – Internal controls

This regulation provides 'Where appropriate with regard to the size and nature of its business' a relevant person must have specific internal controls. It would be useful to have clarity around what is considered appropriate as this very much open to interpretation and professional judgement.

4. The Register of Overseas Entities (ROE)

Compared to the MLRs, there is a higher standard of verification for agents who appear on the register of UK-regulated agents for the purposes of the ROE. Should consideration be given to whether the MLRs should make reference to the ROE verification regulations in place?

5. Refusal to grant AML supervision: For accountancy professional bodies, our highest sanction is to exclude a member. However, because 'accountancy' isn't a reserved term, these people may continue to provide services. There seems to be a disconnect with our desire to remove them from professional body membership and HMRC's obligations as default supervisor. HMRC sees that they have only a limited number of circumstances where they can refuse supervision – but perhaps exclusion, or AML misconduct, should be such a factor?

Additionally, the MLRs only permit supervisors to reject an application if the person has been convicted of a relevant offence. On occasion we have received applications for supervision where individual is subject to an MLR investigation, but we find it difficult to refuse. Should consideration be given to how this can be addressed in the MLRs?