IFA REPRESENTATION 03/24

Open Consultation - Improving the effectiveness of the Money Laundering Regulations

The IFA welcomes the opportunity to this open consultation published on 11 March 2024.

We would be happy to discuss any aspect of our response and to take part in any further consultations in this area.

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Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small to medium-sized enterprises or in micro and small to medium-sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME focused accountancy group, with more than 49,000 members and students in 100 countries.

The IFA is a full member of the International Federation of Accountants (IFAC), the global accounting standard-setter. As such, the IFA takes its place alongside the UK and Ireland's six chartered accountancy bodies.

The IFA have been approved by:

- HM Treasury to supervise our members for the purposes of compliance with the Money Laundering Regulations, and by the Financial Services Authority in the Isle of Man.
- The Charity Commission in England and Wales, for conducting independent reviews of charity accounts below the audit threshold;
- The Scottish Charity Regulator, for providing independent examination of Scottish charity accounts;
- The Civil Aviation Authority (CAA) for IFA practising members to join the ATOL Reporting Accountants (ARA) scheme; and
- The Financial Conduct Authority (FCA) for IFA practising members to sign off High Net Worth Individuals (HNWI) statement of the individual's income or assets in accordance with FCA rules.

The IFA is represented on several UK Government committees and forums alongside other IFAC members, including the HMRC Agent Support Group, HMRC Compliance Reform Forum, HMRC Guidance Strategy Forum and HMRC Charter Stakeholder Group.

General comments

1. The IFA acknowledges the need to review the Money Laundering Regulations (MLRs) and broadly agrees with the suggested measures and changes identified in the consultation.

2. It is important to ensure that any changes to the MLRs do not create unnecessary admin burdens on supervised firms.

3. In compiling its response, the IFA invited comments from members and facilitated discussions in workshops to inform our answers to these questions.

4. We also contributed to the joint Accountancy AML Supervisors' Group (AASG) letter sent to Baroness Vere, Treasury Lords Minister, and agree that there are a number of issues that have not been considered that were previously submitted in the call for evidence.

5. The MLRs do not explicitly require 'relevant persons' in the accountancy sector 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.

6. For accountancy professional bodies, our most serious sanction is to exclude a member. Yet because 'accountancy' is not 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 professional body supervisor, unless they can demonstrate that they have addressed all the issues that led to their exclusion.

7. 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 AML Guidance for the Accountancy Sector ('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 obtaining a passport) but this may be done on a risk-basis. Although HM Treasury approved this guidance, and therefore the requirement, the equivalent wording is not included in Joint Money Laundering Steering Group ('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.

8. Regulation 35(3A)(b) is not referenced specifically in the consultation; however, we would welcome more guidance on what would be considered an acceptable level of EDD for domestic and non-domestic PEPs.

Responses to consultation questions

Chapter 1: Making customer due diligence more proportionate and effective.

Q1: Are the customer due diligence triggers in regulation 27 sufficiently clear?

9. The IFA believes that the customer due diligence triggers detailed in Regulation 27 are sufficiently clear and in our experience when dealing with smaller firms, this requirement is generally well understood and implemented.

10. Firms supervised by the IFA utilise the Consultative Committee of Accountancy Bodies (CCAB) and AAMLGAS, as well as templates and guidance provided by IFA. We feel any amendments could be made to AMLGAS to address all the relevant points detailed in the consultation.

11. Members providing feedback on this issue felt that any changes to the regulations could complicate things as the regulation as it stands is generally well understood.

12. Consideration could also be given to whether Regulation 27 should be separated into two parts. These being 'onboarding CDD' and 'ongoing CDD/monitoring,' which could help highlight the importance of ongoing CDD.

Q2: In your view, is additional guidance or detail needed to help firms understand when to carry out 'source of funds' checks under regulation 28(11)(a)? If so, in what form would this guidance be most helpful?

13. We believe that AMLGAS could be amended to address all the relevant points ('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.

Q3: Do you think the wording in regulation 28(10) on necessary due diligence on persons acting on behalf of a customer is sufficiently clear? If not, what could help provide further clarity?

14. We believe the language used in Regulation 28(10) is sufficiently clear to members supervised by the IFA and therefore does not require any additional wording.

15. In addition to AML requirements, IFA supervised firms must include members who have a public practice license. The IFA Public Practice Regulations require firms to provide clients with a letter of engagement and terms of business, which clearly states who the firm engages with, the services to be provided, as well as both the firm's and client's obligations.

Q4: What information would you like to see included in published digital identity guidance, focused on the use of digital identities in meeting MLR requirements? Please include reference to the level of detail, sources or types of information to support your answer.

16. As smaller practitioners, the majority of IFA supervised firms provide accountancy services to local low risk clients that are met face to face and therefore do not rely on digital identity checks as part of their customer due diligence processes.

17. We are aware of firms being sold digital verification software packages that claim to provide complete CDD/AML compliance solutions. Some software suppliers state that digital verification is compulsory, but this is clearly a misrepresentation of the MLR requirements. The IFA, along with other accountancy professional body supervisors, communicate this issue to firms, however we feel that a definitive message from government would add some much needed clarity to this area.

Q5: Do you currently accept digital identity when carrying out identity checks? Do you think comprehensive guidance will provide you with the confidence to accept digital identity, either more frequently, or at all?

18. This relates more to IFA supervised firms when conducting CDD, however clarity on when digital verification checks are required would be beneficial to the firms that use them.

Q6: Do you think the government should go further than issuing guidance on this issue? If so, what should we do?

19. We do not think there is a need for the government to go further than issuing guidance.

20. The government could consider some form of approval of software platforms that provide digital verification checks, as this is currently an unregulated market with some providers misrepresenting, or mis-selling packages to firms.

Q7: Do you think a legislative approach is necessary to address the timing of verification of customer identity following a bank insolvency, or would a non-legislative approach be sufficient to clarify expectations?

21. This question relates to the banking sector and therefore we offer no opinion.

Q8: Are there other scenarios apart from bank insolvency in which we should consider limited carve-outs from the requirement to ensure that no transactions are carried out by or on behalf of new customers before verification of identity is complete?

22. This question is not relevant to the accountancy sector.

Q9: (If relevant to you) Have you ever identified suspicious activity through enhanced due diligence checks, as a result of the risk factors listed above? (Regulations 33(6)(a)(vii), 33(6)(a)(viii) and 33(6)(b)(vii)). Can you share any anonymised examples of this?

23. This question is not relevant to the IFA.

Q10: Do you think that any of the risk factors listed above should be retained in the MLRs?

24. Not applicable.

Q11: Are there any risk factors for enhanced due diligence, set out in regulation 33 of the MLRs, which you consider to be not useful at identifying suspicious behaviour?

25. All the risk factors relevant to the accountancy sector set out in Regulation 33 are useful in identifying suspicious behaviour.

Q12: In your view, are there any additional risk factors that could usefully be added to, for example, regulation 33, which might help firms identify suspicious activity?

26. We, along with other accountancy professional body supervisors, would recommend caution in adding additional high-risk factors into the legislation. It is more difficult to update legislation for emerging threats and trends and these matters could be dealt with via AMLGAS.

27. 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 there may be the inference by firms that this is an 'exhaustive' list, which sets out all risks that need to be considered, as this would not be the case, given the nature of assessing risks in each case, this would need to be clearly explained.

Q13: In your view, are there occasions where the requirement to apply enhanced due diligence to 'complex or usually large' transactions results in enhanced due diligence being applied to a transaction which the relevant person is confident to be low-risk before carrying out the enhanced checks? Please provide any anonymised examples of this and indicate whether this is a common occurrence.

28. In the accountancy sector, firms generally view documents received from clients relating to historical periods. Therefore, transaction monitoring is not as relevant to our firms as in other sectors.

Q14: In your view, would additional guidance support understanding around the types of transactions that this provision applies to and how the risk-based approach should be used when carrying out enhanced check?

29. As above, this question is not applicable to the accountancy sector.

Q15: If regulation 33(1)(f) was amended from 'complex' to 'unusually complex' (e.g. a relevant person must apply enhanced due diligence where... 'a transaction is unusually complex or unusually large'):

• in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.

• in your view, would this create any problems or negative impacts

30. As above, this question is not applicable to the accountancy sector, however the suggested amendment to 'unusually complex' would appear to be appropriate.

31. We are not aware of any problems or negative impacts this minor change would create.

Q16: Would removing the list of checks at regulation 33(3A), or making the list non-mandatory, reduce the current burdens (cost and time etc.) currently placed on regulated firms by the HRTC rules? How?

32. We believe it would be beneficial to remove the list of checks at Regulation 33 (3A) to reduce the burdens on firms.

33. The mandatory list of checks appears to be based on the premise that everyone in a HRTC is high-risk, but this is not necessarily the case. The challenge is that navigating and mitigating jurisdictional risk in HRTCs can be difficult as many verification procedures will not reduce the risk associated with that HRTC.

34. The FATF does not include all the checks outlined in Regulation 33(3A). While some countries do not have robust enough AML measures to be removed from the 'grey list', it does not necessarily mean they are actively engaging in money-laundering, so taking a more flexible risk-based approach to HRTCs could be beneficial.

Q17: Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?

35. We can see no issues or problems arising from removing the list of checks at Regulation 33(3A) for the reasons detailed above.

Q18: Are there any High Risk Third Country-established customers or transactions where you think the current requirement to carry out EDD is not proportionate to the risk they present? Please provide examples of these and indicate, where you can, whether this represents a significant proportion of customers/transactions.

36. We are not aware of any High Risk Third Country-established customers or transactions where the current requirements to carry out CDD is not proportionate to the risks they present.

Q19: If you answered yes to the above question, what changes, if any, could enable firms to take a more proportionate approach? What impact would this have?

37. Not applicable.

Q20: Do you agree that the government should expand the list of customer-related low-risk factors as suggested above?

38. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Q21: Do you agree that as well as (or instead of) any change to the list of customer-related low-risk factors, the government should clarify that SDD can be carried out when providing pooled client

accounts to non-AML/CTF regulated customers, provided the business relationship presents a low risk of money laundering or terrorist financing?

39. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Q22: In circumstances where banks apply SDD in offering PCAs to low-risk businesses, information on the identity of the persons on whose behalf funds are held in the PCA must be made available on request to the bank. How effective and/or proportionate do you think this risk mitigation factor is? Should this requirement be retained in the MLRs?

40. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Q23: What other mitigations, if any, should firms consider when offering PCAs? Should these be mandatory under the MLRs?

41. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Q24: Do you agree that we should expand the regulation on reliance on others to permit reliance in respect of ongoing monitoring for PCA and equivalent scenarios?

42. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Q25: Are there any other changes to the MLRs we should consider to support proportionate, risk-based application of due diligence in relation to PCAs?

43. This question relates to pooled bank accounts and is not applicable to the accounting sector.

Chapter 2: Strengthening system coordination.

Q26: Do you agree that we should amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner?

44. Although not directly affecting the accountancy sector, we agree it would be appropriate to amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner to strengthen information sharing gateways.

Q27: Should we consider extending the information-sharing gateway in regulation 52(1A) to other public bodies in order to support system coordination? If so, which public bodies? Please explain your reasons.

45. The IFA supports any initiatives to extend information sharing gateways to other public bodies to enhance system coordination.

46. The IFA has engaged with the National Investigation Service (NATIS) on numerous occasions to assist with investigations relating to alleged COVID-19 linked frauds, such as bounce back loan and furlough scheme investigations, using data protection requests and production orders. It would be helpful to extend the information sharing gateway in Regulation 52(1A) to include NATIS to allow information to be shared more efficiently and strengthen the information sharing gateway.

Q28: Should we consider any further changes to the information sharing gateways in the MLRs in order to support system coordination? Are there any remaining barriers to the effective operationalisation of regulation 52?

47. We, along with other accountancy professional body supervisors, 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.

48. 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 and support system coordination by ensuring that other public bodies can easily identify which supervisor regulates each firm.

Q29: Do you agree that regulation 50 should be amended to include the Registrar for Companies House and the Secretary of State in so far as responsible for Companies House?

49. Yes, we agree that Regulation 50 should be amended. Although we already engage effectively with Companies House this would provide grounds for more comprehensive cooperation.

Q30: Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

50. We do not foresee any unintended consequences of making the changes as described in the consultation. Any improvements to strengthen the information sharing gateway are welcome and can only have a positive effect on the regime.

Q31: In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

51. We believe this will have little or no effect on supervisory activity as we already use information and intelligence provided by Companies House to inform our risk management of supervised firms.

Q32: Do you think the MLRs are sufficiently clear on how MLR-regulated firms should complete and use their own risk assessment? If not, what more could we do?

52. The IFA believes the MLRs are sufficiently clear on how supervised firms should complete and use their own firm-wide risk assessments to monitor and mitigate risks to the firm.

53. Currently, supervised firms must perform a firm-wide risk assessment, which must be informed by the supervisor's risk assessment, and is in turn informed by the NRA.

54. The IFA provides templates and workshops to help firms understand the link between the NRA and the services they provide to create/use a firm-wide risk assessment appropriately tailored to their firm.

55. As part of the annual renewals process, IFA firms are required to submit their firm-wide risk assessments, which helps to inform the IFA of the risk rating of each firm. This is an automated process utilising the risk outlook developed by the AASG, which was compiled using the NRA alongside developing risks.

56. An in-depth review of a firm-wide risk assessment is an integral part of an AML review where firms are required to explain their understanding of the risks with reference to the NRA.

57. The AMLGAS also provides appropriate guidance for firms to utilise.

Q33: Do you think the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment (including the NRA)? If not, what more can we do?

58. We believe the MLRs are sufficiently clear on the sources of information supervised firms should use to inform their risks assessment, as described in our answer to question 33.

Q34: One possible policy option is to redraft the MLRs to require regulated firms to have a direct regard for the NRA. How do you think this will impact the activity of: a) firms b) supervisors? Is there anything this obligation should or should not do?

59. We see a benefit in requiring regulated firms to use the NRA to inform their firm-wide risk assessments. This would ensure that each regulated firm reads the NRA and understands the broader landscape of threats and vulnerabilities facing the UK.

60. However, the document is very lengthy and not all of it is relevant to the vast majority of smaller, sole practitioners.

Q35: What role do you think the NRA versus system prioritisation should play in the allocation of regulated firms' resources and design of their AML/ CTF programmes?

61. The AASG has issued 45 summary alerts covering 55 original JMLIT/other alerts to its supervised populations since the last iteration of the NRA in 2020, which effectively updates priorities that may have arisen since its publication.

62. We believe, therefore, there is a place for both the NRA and prioritisation rather than one versus the other.

Chapter 3: Providing clarity on scope and registration issues.

Q36: In your view, are there any reasons why the government should retain references to euros in the MLRs?

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

Q37: To what extent does the inclusion of euros in the MLRs cause you/your firm administrative burdens? Please be specific and provide evidence of the scale where possible.

64. We do not believe there will be any administrative burdens on firms in the accountancy sector caused by the inclusion or removal of euros in the MLRs.

Q38: How can the UK best comply with threshold requirements set by the FATF?

65. By converting euros on a 1-to-1 basis, it would, on current exchange rates, facilitate FATF requirements in relation to defined thresholds.

Q39: If the government were to change all references to euros in the MLRs to pound sterling which of the above conversion methods (Option A or Option B) do you think would be best course of action?

66. We believe that Option A would be the simplest choice as this would be easily understood by firms and meet FATF defined thresholds.

Q40: Please explain your choice and outline with evidence, where possible, any expected impact that either option would have on the scope of regulated activity.

67. As referred to in our answer to question 39, this would be the simplest to understand in the accountancy sector.

Q41: Do you agree that regulation 12(2) (a) and (b) should be extended to include formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf?

68. We can see no reason why Regulation 12(2) (a) and (b) should not be extended to include the formation of firms without an express reason. However, we have not come across this service provision without an ongoing business relationship, so we have limited experience to provide further comment.

Q42: Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons.

69. We can see no unintended consequences from making this change.

Q43: In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

70. As previously mentioned, this is not something we have come across and so we feel unable to comment on any impact this change would have.

Q44: Do you agree that the MLRs should be updated to take into account the upcoming regulatory changes under FSMA regime? If not, please explain your reasons.

71. This does not relate to the accountancy sector; therefore, the IFA has no comment on this issue.

Q45: Do you have views on the sequencing of any such changes to the MLRs in relation to the upcoming regulatory changes under the FSMA regime? If yes, please explain.

72. This does not relate to the accountancy sector; therefore, the IFA has no comment on this issue.

Q46: Do you agree that this should be delivered by aligning the MLRs registration and FSMA authorisation process, including the concepts of control and controllers, for cryptoassets and associated services that are covered by both the MLRs and FSMA regimes? If not, please explain your reasons.

73. This does not relate to the accountancy sector; therefore, the IFA has no comment on this issue.

Q47: In your view, are there unique features of the cryptoasset sector that would lead to concerns about aligning the MLRs more closely with a FSMA style fit and proper process? If yes, please explain.

74. This does not relate to the accountancy sector; therefore, the IFA has no comment on this issue.

Q48: Do you consider there to be any unintended consequences to closer alignment in the way described? If yes, please explain.

75. This does not relate to the accountancy sector; therefore, the IFA has no comment on this issue.

Chapter 4: Reforming registration requirements for the Trust Registration Service

Q49: Does the proposal to make these trusts that acquired UK land before 6 October 2020 register on TRS cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

76. We do not see any unintended consequences regarding this proposal.

Q50: Does the proposal to change the TRS data sharing rules to include these trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

77. We do not see any unintended consequences regarding this proposal.

Q51: Do the proposals to exclude these trusts for two years from the date of death cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

78. We do not see any unintended consequences regarding this proposal.

Q52: Does the proposal to exclude Scottish survivorship destination trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

79. We do not see any unintended consequences regarding this proposal.

Q53: Does the proposal to create a de minimis level for registration cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

80. We do not see any unintended consequences regarding this proposal.

Q54: Do you have any views on the proposed de minimis criteria?

81. We feel the proposed de minimis criteria look appropriate and should help to differentiate between small, low value trusts and the higher risk trusts that hold property.

Q55: Do you have any proposals regarding what controls could be put in place to ensure that there is no opportunity to use the de minimis exemption to evade registration on TRS?

82. We also agree that the responsibility to determine whether a trust qualifies as being de minimis should fall to the trustees.

83. The government should provide clear guidance to trustees that includes control measures to prevent settlors attempting to circumnavigate the thresholds by creating multiple trusts that meet the de minimis criteria.

Contact details

Should you wish to discuss this response further, please contact Tim Pinkney, IFA Director of Professional Standards, by email at timp@ifa.org.uk.