THE
INVESTMENT
ASSOCIATION
INVESTMENT MATTERS

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Consultation on the Transposition of 5MLD
Sanctions and Illicit Finance Team (2/27)
HM Treasury
1 Horse Guards Road
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London

Email: Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

Date: 10 June 2019

Dear Sir or Madam

RE: Transposition of the Fifth Money Laundering Directive: consultation

The Investment Association is delighted to provide input to your consultation.

The prevention of money laundering and terrorist financing is essential to confidence in, and correct functioning of, the financial markets in the United Kingdom. The Investment Association, therefore, strongly supports the implementation of the Firth Money Laundering Directive (5MLD). It is important that the UK is seen to be meeting its obligations in this area.

While we recognise that the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) regulations 2017 (MLRs or 'the Regulations') need to be updated to implement the 5MLD, we understand the other changes being proposed, particularly in response to the recent FATF MER.

We particularly support the extension of ML/TF regulation to the letting sector of the real estate industry. There is a perceived greater risk with let (as opposed to purchased) properties being used for the purposes of crime. Sub-letting of properties further increases this risk, as the tenants are likely to undergo less vetting (as it is not currently a regulatory requirement). As financial services companies invest in commercial property and increasingly in the housing sector, particularly as an underlying investment, the proceeds of criminal tenants' operations could swiftly enter the financial system.

We support the lowering, or total removal, of the EUR 10,000 threshold for letting agents, to further combat let properties being used for criminal purposes. We would welcome all letting agents becoming 'obliged entities', with the requirement to undertake risk-based due diligence on landlords and tenants.

We also have issues around the proposed clarification, in the regulations, as to what constitutes "secure" electronic identification processes. We believe 'secure' should be defined and future proofed, within the regulations. Such standards should be explicit and set out in government guidelines, ideally in the MLRs, they should not be left to sectoral industry bodies such as the JMLSG.

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Obliged entities should have direct access to registers of beneficial owners, both those for companies and for trusts. They should not need to rely on clients to provide extracts of such registers. We also have concerns about the proposal that obliged entities be required to notify the registers of any discrepancies of which they become aware.

We recognise that the current consultation does not have any draft regulations to implement the proposals being consulted on. We look forward to seeing these drafting changes to the MLRs. If, in light of any of our comments, you would like to discuss possible wordings, prior to the publication of the consultation, we would be pleased to do so.

We would, of course, be happy to discuss *any* aspect of our response in more detail. If you have any questions, please contact me directly (adrian.hood@theia.org).

Yours faithfully

Adrian Hood

Regulatory and Financial Crime Expert

ANNEX I

RESPONSES TO QUESTIONS

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 240 members collectively manage over £7.7 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 37% of European assets.

More information can be viewed on our website.

CHAPTER 2

In addition to our answers to the questions asked in the Consultation Paper, we would also ask the government to consider introducing a requirement for commercial due diligence providers (electronic or otherwise, such as Experian, Equifax, Kroll and Refinitiv) and high risk party (sanctioned, PEPs, known criminals etc.) database providers (such as Worldcheck, Dow Jones and Thompson Reuters) to be approved by a suitable body.

This would further support the government's objectives in Chapters 3 and 8, assisting obliged entities seeking a 'secure' provider and may additionally benefit Companies House, in the maintenance of beneficial ownership registers and other records.

EXPANDING THE DEFINITION OF 'TAX ADVISOR'

1. **What additional activities should be caught within this amendment?**

No comment.

2. **In your view, what will be the impact of expanding the definition of tax advisor? Please justify your answer and specify, where possible, the costs and benefits of this change.**

No comment.

LETTING AGENTS

3. **What are your views on the ML/TF risks within the letting agents sector? What are your views on the risks in the private landlord sector, especially comparing landlord-tenant to agent-landlord-tenant relationships? Please explain your reasons and provide evidence where possible.**

We support the extension of ML/TF regulation to this sector.

Given the ML/TF risks within the letting agents' sector, risks relating to how letting agents conduct and manage ongoing oversight of the tenant relationship are a concern. Several firms have experienced issues where the use of the property has been altered and illicit funds are then channelled through the alternative use of the property.

The extension of ML/TF regulation to this sector gives us greater assurance that tenants resident in buildings are legitimate and have been appropriately identified and verified.

There is a perceived greater risk with let (as opposed to purchased) properties being used for the purposes of crime, such as cannabis farms, human trafficking, prostitution or even the harbouring of terrorist cells. Sub-letting of properties further increases this risk as the tenants are likely to undergo less vetting (as it is not currently a regulatory requirement). As financial services companies invest in commercial property and increasingly in the housing sector, particularly as an underlying investment, the proceeds of criminal tenants' operations can swiftly enter the financial system.

4. **What other types of lettings activity exist? What activities do you think should be included or excluded in the definition of letting agency activity? Please explain your reasons and provide evidence where possible.**

We are supportive of the extension of the regulatory definition to include letting agents, however, we are of the opinion that this extension would benefit from a clear definition of who would be in scope, as 'letting agency' is not defined in law. A clear definition would ensure that there is consistency of approach in application (and avoid duplication of requests). For example, when the consultation paper refers to "lets only" does that mean just sourcing tenants, and what is the scope of "social housing"?

We suggest that the definition includes any property agents with direct contractual relationships for:

- Rental or property management services;
- Facilitating the receipt of funds from tenants; or
- Acting in an introductory capacity between a landlord and a tenant.

There is a risk that without a clear definition, in particular with respect to large commercial letting arrangements, each client would be subject to numerous CDD requests, by multiple parties, for the same transaction (for example by the: regulated landlord; solicitor; letting agent; property manager) and will not further reduce the AML risks of the transaction.

5. **Should the government choose a monthly rent threshold lower than EUR 10,000 for letting agents? What would the impact be, including costs and benefits, of a lower threshold? Should the threshold be set in euros or sterling? Please explain your reasoning.**

Given our response to Question 3 above, we would support the lowering or removal of the EUR 10,000 threshold for letting agents, to further combat let properties being used for criminal purposes. We would welcome all letting agents becoming 'obliged entities', with the requirement to undertake risk-based due diligence on landlords and tenants.

For example, some small tenants may be deemed high risk, for example, retail centres which have small pop up shops who rent spaces in a retail centre may present a higher risk of money laundering concerns, compared to a large retail outfit like Boots.

Please also refer to our response to Question 13, as removing the threshold for letting agents would allow banks to conduct simplified due diligence on letting agents' pooled accounts.

6. **Do letting agents carry out CDD checks on both contracting parties (tenants and landlords) when acting as estate agents in a transaction?**

We would support the CDD requirement applying to both tenants and landlords.

7. **The government would welcome views on whom CDD should be carried out and by what point? Should CDD be carried out before a relevant transaction takes place (if so, what transaction) or before a business relationship has been established? Please explain your reasoning.**

No comment.

8. **The default supervisor of relevant letting agents will be HMRC, but professional bodies can apply to OPBAS to be a professional body supervisor. Are you a member of a professional body, and would this body be an appropriate supervisor? If this body would be an appropriate supervisor, please state which professional body you are referring to.**

We agree with the default supervisory authority being HMRC. However, evidence from onsite visits to some managing agents already regulated by HMRC for ML suggests an overly light touch approach is taken to oversight of ML risks within that industry. It will be important that the ML regulations are applied consistently to this sector by HMRC, to ensure that landlords can rely on the quality of CDD undertaken on tenants by the letting agents.

9. **What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, training staff etc.)? Please provide figures (even if estimates) if possible.**

No comment.

10. **Should the government extend approval checks under regulation 26 of the MLRs to letting agents? Should there be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, managers and officers)?**

We see no reason why the Regulation 26 approval checks should not be extended to letting agents, particularly as risks of letting agencies being wholly owned or controlled by a criminal group have been identified by NRA threat assessments.

11. **Is there anything else that government should consider in relation to including letting agents under the MLRs?**

No comment.

CRYPTOASSETS

The IA supports full implementation of the FATF Recommendations in this area.

Questions 12 – 25 not covered

ART INTERMEDIARIES

Questions 26 – 36 not covered

CHAPTER 3: ELECTRONIC MONEY

Questions 37 – 43 not covered

CHAPTER 4: CUSTOMER DUE DILIGENCE

ELECTRONIC IDENTIFICATION PROCESSES

44. Is there a need for additional clarification in the regulations as to what constitutes "secure" electronic identification processes, or can additional details be set out in guidance?

Yes. It is always important for the Regulations to set out, at least, the high-level standards in this sort of situation.

We believe 'secure' should be defined and future proofed, within the regulations. The use of the word 'secure' is ambiguous and leaving it to personal judgement to ascertain what is considered 'secure' would lead to inconsistency. We would recommend liaison with electronic verification service providers, for the construction of this definition.

As per our additional comment to Chapter 2, we would also support regulatory approval of electronic verification service providers.

45. Do you agree that standards on an electronic identification process set out in Treasury-approved guidance would constitute implicit recognition, approval or acceptance by a national competent authority?

Treasury-approved guidance, such as the JMLSG Guidance, should ***not*** be relied on to set standards alone.

JMLSG is a private sector body, and its Guidance is intended to explain the requirements of, and give practical advice on compliance with, UK anti-money laundering ("AML") and counter-terrorist financing ("CTF") legislation, and the regulations prescribed pursuant to legislation. It is not within the remit of JMLSG to prescribe standards, neither may it be regarded as a standard-setting body nor as a "national competent authority" that could do so.

The scope of the JMLSG Guidance is limited to the financial services sector. It does not cover other sectors which are subject to the MLR, such as the legal and accountancy sectors, or the gambling industry.

Such standards should be explicit, not implicit, and precisely covered in the MLRs. For consistency in the application and implementation of the electronic verification process, a Treasury approved guidance consisting of implicit recognition and approval by a competent authority will be welcomed.

46. Is this change likely to encourage firms to make more use of electronic means of identification? If so, is this likely to lead to savings for financial institutions when compared to traditional customer on-boarding? Are there any additional measures government could introduce to further encourage the use of electronic means of identification?

If the electronic verification systems are approved by a regulator, we believe this may encourage some more obliged entities to utilise them.

However, the lack of approved guidance is unlikely to increase the uptake of EID&V process significantly, as it is not the reason most firms who don't use this process have not taken it up. One of the reasons is the jurisdiction limitations. Many EID&V providers can only accommodate coverage for UK based customers. For asset management firms with international clients, EID&V is, therefore, not useful or applicable. If these providers are able to expand their jurisdiction outreach and coverage, it may make it more attractive to firms with international interests.

We would also suggest that relevant information held by government departments is made more easily available to approved service providers.

CHANGES TO REGULATION 28

47. To what extent would removing 'reasonable measures' from regulation 28(3)(b) and (4)(c) be a substantial change? If so, would it create any risks or have significant unintended consequences?

For those of our member firms that currently rely on this flexibility, the removal of 'reasonable measures' under Reg 28, reducing 'reasonableness', risks removing any ability to apply SDD in low-risk situations for regulated firms. The final regulations should make it clear that the identification that a firm is regulated by the FCA or other supervisory authority should be taken into account, and be an indication that SDD can be applied to such firms.

We consider that removing 'reasonable measures' would not fulfil the FATF MER Criterion 10.9. The underlying FATF recommendation 10 (and the interpretive notes for recommendation 10 C5) clearly allows 'reasonable measures' which gives scope for a risk-based approach as in the 10 C5 footnote 29. Removing 'reasonable measures' would, therefore, conflict with the FATF recommendations and not achieve the clarity required by the FAFT MER Criterion 10.9. This action would also increase the prevention costs, to a figure disproportionate to the risk of some products, which could lead to some firms ceasing the provision and administration of some of the lower risk low margin products.

Consequently, the retention of 'reasonable measures' is vital in providing a risk-based proportionate approach for the effectiveness of combatting ML and TF.

To provide the clarity required by the FAFT MER Criterion 10, we would suggest that the MLRs are updated to mirror the wording used in the underlying FATF 40 recommendation's interpretive notes 10 C5 and the accompanying footnote (29).

48. Do you have any views on extending CDD requirements to verify the identity of senior managing officials when the customer is a body corporate and the beneficial owner cannot be identified? What would be the impact of this additional requirement?

We consider that the approach should be risk-based. As noted above the FATF Interpretive notes to recommendation 10 C5 provide 'reasonable measures' as follows:

> (i.iii) Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

For lower risk products verifying the identity of a corporate and screening the entity for links to Sanctions, PEPs and criminal activity is of greater benefit in combatting ML/TF than

asking for sight of a company official's passport. It should also be noted that due diligence conducted by third-party providers (for products with increased risk) can provide a much greater depth of information enabling a robust assessment of the risks posed by the company and their individual beneficial owners.

If this requirement is extended, then there will be an extra burden on corporate clients to provide the information and on obliged firms to keep the information up to date on an ongoing basis. It will be difficult to enforce corporate clients to update obliged firms when there are changes to the individuals holding senior management positions. Obliged firms would need to rely on something like an automated data feed from the PCS register at Companies House, if this is available.

49. Do related ML/TF risks justify introducing an explicit CDD requirement for relevant persons to understand the ownership and control structure of customers? To what extent do you already gather this information as part of CDD obligations?

The guidance on this point in the MLR would need to set clear expectations about how far a firm would be expected to go to "understand" the control/ownership structure of its customers. ML/TF risks vary by product and therefore CDD requirements should continue to reflect this (as the JMLSG Guidance does now). There would need to be no ambiguity in industry guidance so that firms apply CDD consistently.

This section of MLR should be expanded to recognise the offerings provided by commercial due diligence companies. Third party due diligence providers gather relevant information which can be considered when conducting customer due diligence.

CHANGES TO REGULATION 31

50. Do respondents agree we should clarify that the requirements of regulation 31 extend to when the additional CDD measures in regulation 29 and the EDD measures in regulations 33-35 cannot be applied?

Yes, it would make sense for the requirement to apply to any failure to complete necessary CDD, including EDD. Regulation 31(1) should be amended to make its scope clear.

51. How do respondents believe extending regulation 31 to include when EDD measures cannot be applied could be reflected in the regulations?

Under the Risk Based Approach firms must determine, when dealing with any client where there is a higher risk. It is up to the firm to have policies and procedures under which they identify higher risk situations, and the increased level of due diligence necessary as a result. Where this self-identified, higher level of due diligence cannot be completed then the firm must cease transactions.

This could be achieved by the inclusion of the wording in bold as follows:

'Requirement to cease transactions etc.

31.—(1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures as required by regulation 28, **or enhanced due diligence as in accordance with chapter 2,** that person— '.

In addition, this approach should also be applied to an existing client who becomes rated as high risk during the course of the relationship. If the relationship cannot be exited (which is the case in some transactions) then the firm must manage the relationship out.

52. Do respondents agree the requirements of regulation 31 should not be extended to the EDD measures which already have their own 'inbuilt' follow up actions?

We agree that there is no need for them to be so extended as this could cause ambiguity and confusion.

CHAPTER 5: OBLIGED ENTITIES: BENEFICIAL OWNERSHIP REQUIREMENTS

CHECKING REGISTERS WHEN ENTERING INTO A NEW BUSINESS RELATIONSHIP

53. Do respondents agree with the envisaged approach for obliged entities checking registers, as set out in this chapter (for companies) and chapter 9 (for trusts)?

Yes. It would, of course, simplify the process if obliged entities had a right to access the register of beneficial owners for trusts.

Where a firm requests information on the beneficial ownership of an entity and does not receive it in a reasonable timeframe, then they should be entitled to gain the information from the appropriate register. The register should also take note of the fact that the entity had failed to supply the information on request.

It will be vital that firms are entitled to rely on the proof of registration or excerpt of the register provided by the customer.

Many firms would prefer to check the Registers directly, rather than ask potential customers to provide proof of registration and rely solely on that as evidence. Customers should be required to provide relevant information (such as the 'registered number') to facilitate searching the register.

This new requirement should not be applied to business relationships that existed prior to the regulations transposing 5MLD entering into force.

We would suggest that the onus be extended to the provision of this information to approved due diligence providers; and that obliged entities can place reliance on such approved companies, in providing this information as part of their verification/due diligence packages. For firms to be required to access the PSC registers/ obtain copies separately would be overly onerous.

REQUIREMENT FOR ONGOING CDD WHERE THERE IS A DUTY TO REVIEW BENEFICIAL OWNERSHIP INFORMATION

54. Do you have any views on the government's interpretation of the scope of 'legal duty'?

It would be helpful if the sources of this 'legal duty' could be disclosed.

55. Do you have any comments regarding the envisaged approach on requiring ongoing CDD?

The application to ongoing CDD should be on a risk-based approach, without a prescribed timescale.

CHAPTER 6: ENHANCED DUE DILIGENCE

ENHANCED DUE DILIGENCE

56. Are there any key issues that the government should consider when defining what constitutes a business relationship or transaction involving a high-risk third country?

What will 'involving' mean in this context? A definition will be required as this is more ambiguous than the current requirements of 'established in'. Would 'resident, incorporated, controlled from or based in' high-risk third countries constitute 'involving' or is it wider than this? Clarity is required or there is the risk of different firms applying different interpretations.

57. Are there any other views that the government should consider when transposing these Enhanced Due Diligence measures to ensure that they are proportionate and effective in combatting money laundering and terrorist financing?

Any transposition should make it clear where application is optional or subject to a risk-based approach by the obliged entity. Obliged entities should be encouraged to implement the EDD measures in a proportionate and effective manner.

Implementation should avoid any unnecessary super-equivalence or gold-plating of the obligations arising from the Regulation.

Where the supervisory authorities are left to determine which requirements are necessary, based on their assessment of risk, then they should be clear on how they will make such decisions. They should have a clear and transparent process for making such determinations.

58. Do related ML/TF risks justify introducing 'beneficiary of a life insurance policy' as a relevant risk factor in regulation 33(6)? To what extent is greater clarity on relevant risk factors for applying EDD beneficial?

Where there could be a risk of ML/TF for life assurance beneficiaries, for example with bonds which have an investment or surrender value, the relevant risks factors that should be taken into account are those already covered by Regulation 33(6). The beneficiary of a life insurance policy' is not a risk factor in itself. There is, therefore, no need to explicitly mention the 'beneficiary of a life insurance policy' as it is implicit that the same risk factors apply.

CHAPTER 7: POLITICALLY EXPOSED PERSONS: PROMINENT PUBLIC FUNCTIONS

POLITICALLY EXPOSED PERSONS: PROMINENT PUBLIC FUNCTIONS

59. Do you agree that the UK functions identified in the FCA's existing guidance on PEPs, and restated above, are the UK functions that should be treated as prominent public functions?

Yes.

It would be extremely helpful if the government could provide a register of those in the UK holding such functions. This register should be made available to approved customer due diligence providers. These providers should then be obliged to integrate this data into their databases, which are utilised by obliged entities to identify whether relevant parties are PEPs.

There should also be greater clarity in the MLRs around when a PSC of a state-owned entity (SOE) should be considered high risk, such as a family member of a high ranking government official (PEP) being a PSC of an SOE.

60. Do you agree with the government's envisaged approach to requesting UK-headquartered intergovernmental organisations to issue and keep up to date a list of prominent public functions within their organisation?

Yes.

CHAPTER 8: MECHANISMS TO REPORT DISCREPANCIES IN BENEFICIAL OWNERSHIP INFORMATION

MECHANISMS TO REPORT DISCREPANCIES IN BENEFICIAL OWNERSHIP INFORMATION

We are concerned about the standardisation and alignment of PSC registers throughout the European Union ('EU'). Currently, we are aware that the registers of France, Luxembourg,

Germany and Austria only allow individuals to be entered on the register. For the interconnectivity of the EU PSC registers to be effective, then standardisation is imperative.

61. Do you have any views on the proposal to require obliged entities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

While the principle is appreciated, the practicality of this would need further consideration and consultation. The mechanism should be designed to be secure, but simple to use.

The point made in paragraph 8.9 is important, placing the reporting obligation on obliged entities when they 'notice a discrepancy'. The obligation should not be made any stricter.

Many obliged entities use third party suppliers to verify the identity of corporate customers, they may not, themselves, directly view the information from the PSC register. Where an approved third-party supplier is used, then it should be responsible for reporting any discrepancies that they notice.

We note the Department for Business, Energy and industrial Strategy consultation paper on 'Corporate Transparency and Register Reform'. This covers an enhancement of the role of Companies House. It (paragraphs 47 and 51) consults on Companies House introducing verification of identity on Companies and includes (in paragraphs 83-91) the possibility of Companies House identifying PSCs and (in 112-114) extends this to some shareholders. We are supportive of Companies House themselves being required to undertake verification of the data they hold.

For obliged entities to report discrepancies to Companies House could be a significant burden. The process should be made as clear and simple as possible. This requirement should be proportionate and incorporate 'reasonable measures', a definition of reportable discrepancies and scenarios where Companies House will feedback following their investigation. For instance, many cases of discrepancies may be minor spelling variants, due to different ways of presenting information, or due to timing issues.

Sharing of information obtained directly from a customer or adviser could have data protection implications. The extent of information to be reported to Co House needs to be considered – perhaps a simple alert that discrepancies have been identified would be sufficient.

Reports should only be required where discrepancies raise reasonable suspicions. Further exploration is therefore required around this requirement.

62. Do you have any views on the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

We think it is appropriated for competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and that held on the register.

63. How should discrepancies in beneficial ownership information be handled and resolved, and would a public warning on the register be appropriate? Could this create tipping off issues?

We have no comment on how Companies House should seek to resolve any discrepancies. We do consider that the PSC Register should show when a discrepancy has been reported concerning a specific company. This 'flag' should remain until the discrepancy has been satisfactorily resolved.

The obliged entity which submitted the discrepancy report should be notified of the result of any investigation by Companies House.

The register should have functionality so that any obliged entity that has used the information in the PSC Register about a specific company as part of its reasonable steps to verify the identity of the beneficial owners of a customer could automatically be notified of any change to the beneficial ownership information resulting from a discrepancy report.

CHAPTER 9: TRUST REGISTRATION SERVICE

DEFINITION OF EXPRESS TRUST

64. Do respondents have views on the UK's proposed approach to the definition of express trusts? If so, please explain your view, with reference to specific trust type. Please illustrate your answer with evidence, named examples and propose your preferred alternative approach if relevant.

We support the government's proposal that where a trust is already registered with another registration service there will be no additional requirement to register the trust on the TRS. For example, this should apply to an authorised pension scheme already registered with HMRC or The Pensions Regulator.

We would welcome clarification from HMT that this would not apply to authorised unit trusts, particularly as their details have been given to the FCA.

We also support the government's wider technical consultation on this issue later in the year.

65. Is the UK's proposed approach proportionate across the constituent parts of the UK? If not, please explain your view, with reference to specific trust types and their function in particular countries.

No comment.

66. Do you have any comments on the government's proposed view that any obligation to register an acquisition of UK land or property should mirror existing registration criteria set by each of the UK's constituent parts?

We agree with this proposal.

67. Do you have views on the government's suggested definition of what constitutes a business relationship between a non-EU trust and a UK obliged entity?

No comment.

68. Do you have any comments on the government's proposed view of an 'element of duration' within the definition of 'business relationship'?

Yes. Setting an element of duration could cause considerable confusion.

It would seem that the 'element of duration' determines whether, or not, a non-EU resident express trust receiving services from an obliged entity based in the UK will be required to register on the TRS. So when does the duration of the service get determined? For instance, it could be that the parties initially intend that the service is only provided for six months. As such, it would seem that the trust should not get registered. But what happens if the service provided gets prolonged, to last for more than a year? At which point should the trust get registered?

If trusts only register retrospectively, once a service has been provided, then the obliged entity providing the service will not be able to require the trust to provide evidence of its entry on the TRS as part of its CDD.

Would it not be simpler to define the element of duration by exclusion, so that it encompasses any relationship other than a one-off, or occasional, transaction? Alternatively, it could exclude any business relationship which, by its nature, will not last more than 12 months.

DATA COLLECTION

69. Is there any other information that you consider the government should collect above the minimum required by 5MLD? If so, please detail that information and give your rationale.

No comment.

70. What is the impact of this requirement for trusts newly required to register? Will there be additional costs, for example paying agents to assist in the registration process, or will trustees experience other types of burdens? If so, please describe what these are and how the burden might affect you.

Many trusts with which obliged entities deal may be set up by laypersons, who will require assistance in the TRS registration requirements. We would, therefore, suggest that the government launches a campaign and produces advice for those responsible for such trusts, as they did for the ScamSmart campaign.

71. What are the implications of requiring registration of additional information to confirm the legal identity of individuals, such as National Insurance or passport numbers?

The extra information would help identify individuals, which would align with the overall purpose of the prevention of money laundering. While considerable clarity would be added by the collection of this information, its provision would not be onerous, if done as part of the original registration.

However, this could increase the fraud risk to the individual – please see our answer to question 76 for further detail.

REGISTRATION DEADLINES

72. Does the proposed deadline for existing unregistered trusts of 31 March 2021 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

No comment.

73. Does the proposed 30 day deadline for trusts created on or after 1 April 2020 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

While we would generally agree with the proposal, we would suggest an extended period, or the application of leniency, if the party responsible for registration is a layperson. The registration obligation will not be at the forefront of their considerations, at times of change in their personal circumstances, such as moving home (generating a change of address required for the register).

74. Given the link with tax-based penalties is broken, do you agree a bespoke penalty regime is more appropriate? Do you have views on what a replacement penalty regime should look like?

No comment.

DATA SHARING WITH OBLIGED ENTITIES

75. Do you have any views on the best way for trustees to share the information with obliged entities? If you consider there are alternative options, please state what these are and the reasoning behind it.

It would be preferable to for the obliged entity to have access to trust register, in much the same way as they do to the PSC Register held by Companies House or the FCA register of regulated firms, although the section on legitimate interest is noted, as is the application of fees in paragraph 9.47.

Requiring trustees to share information would add delay and cost to administration if individual enquiries had to be made of them.

However, if direct access to the register is not possible, even for obliged entities, trustees should be required to provide obliged entities with a copy of their entry on the register. This should include all the information that obliged entities need in order to carry out their CDD on the trust.

The information provided should be verifiable so that obliged entities are able to be confident that it is a genuine extract from the register, and has not been altered, amended or redacted in any way.

DATA SHARING FOR LEGITIMATE INTEREST REQUESTS

76. Do you have any comments on the proposed definition of legitimate interest? Are there any further tests that should be applied to determine whether information can be shared?

We note the government's proposal for when someone has a legitimate interest in the data in a trust register, set out in paragraph 9.45.

We would suggest that the government adds more detail to the first bullet point, clarifying the types of parties to whom this will apply, such a member of an LEA or a Nominated Officer of a financial services sector firm and that their status as such is also evidenced (in addition to their identity).

Obliged entities are actively involved in anti-money laundering or counter-terrorist financing activity, inasmuch as they have to submit a SAR if they have knowledge or suspicion of money laundering.

Allowing access to Obliged Entities may assist in that OE's can report inaccuracies, omissions and other concerns.

Para 9.47 notes a technical consultation. We welcome this and would be keen to take part in that consultation.

DATA SHARING ON TRUSTS OWNING NON-EEA COMPANIES

77. Do the definitions of 'ownership or control' and 'corporate and other legal entity' cover all circumstances in which a trust can indirectly own assets through some kind of entity? If not, please set out the additional circumstances which you believe should be included, with rationale and evidence.

No comment.

78. Do you have any views on possible definitions of 'other legal entity'? Should this be defined in legislation?

No comment.

79. Does the proposed use of the PSC test for 'corporate and other legal entity', which are designed for corporate entities, present any difficulties when applied to non-corporate entities?

None of which we are aware.

80. Do you see any risks or opportunities in the proposal that each trust makes a self-declaration of its status? If you prefer an alternative way of identifying such trusts, please say what this is and why.

No comment.

81. The government is interested in your views on the proposal for sharing data. If you think there is a best way to share data, please state what this is and how it would work in practice.

No comment.

CHAPTER 10: NATIONAL REGISTER OF BANK ACCOUNT OWNERSHIP

NATIONAL REGISTER OF BANK ACCOUNT OWNERSHIP

82. Do you agree with, or have any comments upon, the envisaged minimum scope of application of the national register of bank account ownership?

No comments.

83. Can you provide any evidence of the benefits to law enforcement authorities, or of the additional costs to firms, that would follow from credit cards and/or prepaid cards issued by e-money firms; and/or accounts issued by credit unions and building societies that are not identifiable by IBAN, being in scope of the national register of bank account ownership?

No comment.

84. Do you agree with, or have any comments upon, the envisaged scope of information to be included on the national register of bank account ownership, across different categories of account/product?

No comment.

85. Do you agree with, or have any comments upon, the envisaged approach to access to information included on the national register of bank account ownership?

While we recognise the scope of the amended Article 32a, we would suggest that, as with the access to the TRS, this register should be accessible to the Nominated Officers of other financial service sector firms to assist with internal investigations.

When seeking access to this information, the Nominated Officer of a financial services sector firm should be evidenced as such and have their identity verified.

86. Do you have any additional comments on the envisaged approach to establishing the national register of bank account ownership, including particularly on the likely costs of submitting information to the register, or of its benefits to law enforcement authorities?

No comment.

87. Do you agree with, or have any comments upon, the envisaged frequency with which firms will be required to update information contained on the register? Do you have any comments on the advantages/disadvantages of the register being established via a 'submission' mechanism, rather than as a 'retrieval' mechanism?

No comment.

CHAPTER 11: REQUIREMENT TO PUBLISH AN ANNUAL REPORT

REQUIREMENT TO PUBLISH AN ANNUAL REPORT

88. Do you think it would still be useful for the Treasury to continue to publish its annual overarching report of the supervisory regime as required by regulation 51 (3)?

We agree that it would be useful for the Treasury to publish an annual report, in addition to those issued by the individual AML supervisors. This would provide extra levels of transparency and consistency, which would benefit all stakeholders in the AML process.

CHAPTER 12: OTHER CHANGES REQUIRED BY 5MLD

OTHER CHANGES REQUIRED BY 5MLD

89. Are you content that the existing powers for FIUs and competent authorities to access information on owners of real estate satisfies the requirements in Article 32b of 4MLD as amended?

Yes, pending the implementation of the draft Bill establishing a register of beneficial owners of overseas entities that own or buy property in the UK.

90. Are you content that the government's existing approach to protecting whistle-blowers satisfies the requirements in Article 38 of 4MLD as amended?

Yes.

CHAPTER 13: POOLED CLIENT ACCOUNTS

POOLED CLIENT ACCOUNTS

91. Are there differences in the ML/TF risks posed by pooled client accounts held by different types of businesses?

No comment

92. What are the practical difficulties banks and their customers face in implementing the current framework for pooled client accounts? Which obligations pose the most difficulties?

No comment.

93. If the framework for pooled client accounts was extended to non-MLR regulated businesses, what CDD obligations should be undertaken by the bank?

No comment.

CHAPTER 14: ADDITIONAL TECHNICAL AMENDMENTS TO THE MLRs

ENFORCEMENT POWERS

94. Do you agree with our proposed changes to enforcement powers under regulations 25 & 60?

These changes seem reasonable.

95. Do you agree with our proposed amendment to the definition of "officer"?

This change seems sensible, however, we would suggest that it may be better to amend the definition to include 'senior managers'.

OPBAS INFORMATION-SHARING POWERS

96. Do you agree with our proposed changes to information-sharing powers of regulations 51, 52?

We would support the necessary changes to allow OPBAS to communicate appropriately.

REQUIREMENT TO COOPERATE

97. Do you have any views on this proposed new requirement to cooperate?

This requirement would seem to be required in order for OPBAS to be effective and create a level playing field for the supervisory regime.

REGISTRATION

98. Do you agree with our proposed changes to regulations 56?

No comment.

COMPLEX NETWORK STRUCTURES

99. Does your sector have networks of principals, agents and subagents?

No comment.

100. Do complex network structures result in those who deliver the business to customers not being subject to the training requirements under the MLRs?

Those delivering the service should be properly trained to do so.

101. Do complex network structures result in the principal only satisfying himself or herself about the fitness and propriety of the owners, officers and managers of his or her directly contracted agents, and not extending this to sub-agents delivering the business?

No comment.

102. If you operate a network of agents, do you already provide the relevant training to employees? Do you ensure the agents who deliver the service of your regulated business are 'fit and proper'?

No comment.

103. What would be the costs and benefits to your business of the regulations clarifying intention to extend requirements to layers of agents and sub-agents?

No comment.

CRIMINALITY CHECKS

104. Do the proposed requirements sufficiently mitigate the risk of criminals acting in regulated roles?

These requirements should be standard practice.

NEW TECHNOLOGIES

105. Should regulation 19(4)(c) be amended to explicitly require financial institutions to undertake risk assessments prior to the launch or use of new products, new business practices and delivery mechanisms? Would this change impose any additional burdens?

We fully support the amendment of MLR regulation 19(4)(c) to explicitly include new products, business practices and delivery mechanisms, in line with FATF Recommendation 15.2.

GROUP POLICIES

106. Should regulation 20(1)(b) be amended to specifically require relevant persons to have policies relating to the provision of customer, account and transaction information from branches and subsidiaries of financial groups? What additional benefits or costs would this entail?

Bringing the MLRs in line with FATF Recommendations seems reasonable.