AIA
THE ASSOCIATION OF INTERNATIONAL ACCOUNTANTS

Consultation Response

Review of the UK's AML/CFT regulatory and supervisory regime

October 2021

AIA Response: Review of the UK's AML/CFT regulatory and supervisory regime

The Association of International Accountants (AIA) welcomes this opportunity to respond to HM Treasury's 'Call for Evidence: Review of the UK's AML/CFT regulatory and supervisory regime'.

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 Response

Recent improvements to the regulatory and supervisory regimes

Question 1: What do you agree and disagree with in our approach to assessing effectiveness?

AIA agrees that the MLRs should be well designed and drafted and should not be subjective. It is vital that this is the case so that application across regulated sectors is consistent which will result in decreasing unnecessary regulatory burden.

We agree that the MLRs should be well understood and applied by the regulated sector and that non-compliance should be both proportionately and persuasively addressed by supervisors.

We support the fundamental point that the regulated sector should act to identify and report suspicious transactions and that all objectives should support FATF immediate outcomes to ensure an internationally joined-up approach to tacking economic crime, money laundering and terrorist financing.

There are, however, some key areas missing in improvements to the UK's regulatory and supervisory regimes that would provide additional support:

- Clarity should be provided in the OPBAS sourcebook on how effectiveness is assessed in its regulated population.
- POCA and law enforcement agencies are mentioned in the consultation as being a critical element in the UK's response to ML/TF so there should be consistency and clarity on how the effectiveness of these is measured and assessed. Ultimately all the controls that a supervised firm puts in place are to identify and report suspicious activity and will manifest in a suspicious activity report or a direct report to law enforcement. Measures to ensure the effectiveness of the response from law enforcement are essential, otherwise potentially effective MLRs will result in no actual disruption and reduction in money laundering.
- A review of the MLRs/POCA and other legislation was recommended by the National Audit Office, Better Regulation Framework and Regulators 'Code. This review will be key to informing this review of the MLRs. for example, the oversight arrangements for multiple regulators needs to be formalised in the MLRs. Currently, there is little transparency about the oversight arrangements for the statutory supervisors, particularly on effectiveness. However, the accountancy and legal professional bodies have OPBAS as an oversight regulator which has produced 3 reports, the latest on effectiveness of PBs.
- It is important that similar standards of effectiveness are applied across the sector

In addition, there are some areas on which we do not agree:

Prevention

- Accountants can only report suspicious activity. If a regulated accountant with all the relevant controls in place were to identify a transaction, they can only make a report – whether they have failed to prevent ML is down to the law enforcement activity triggered by that report and accountant should not be liable for sanctions.
- Acknowledging, identifying, and reporting suspicious transactions is the sector's responsibility, but it is debateable that the sector is responsible for preventing suspicious transactions from occurring. For example, if clients are declined because of AML concerns they are free to go elsewhere into the unregulated sector so that those transactions will therefore not be prevented.

- The strength of the accountancy sector is that it can go some way to preventing unintentional complicity in ML through improving the education of clients but if a business is intent upon ML they are likely to seek to use accountants outside the regulated sector.

Transactions

- The term 'transaction' is not specific enough and should be explained to ensure that it is understood to apply more widely than simply monetary payments that a bank will process. Otherwise, some key stakeholders will not view transactions as their responsibility. Alternatively, the reference to transaction could be expanded to include 'suspicious activity, concerns about potential clients unearthed during CDD or EDD' – a more precise definition in the MLRs would be useful here.

Question 2: What particular areas, either in industry or supervision, should be focused on for this section?

The primary, overarching focus should be to ensure that the regulations are clear, concise, non-subjective and straight-forward in order that they can be readily adhered to with minimal additional efforts. Clarity in the Regulations should have the effect of reducing the opportunity for interpretation that leads to 'gold-plating'. This will also aide supervisors in acting when non-compliance is found as we have a clear requirement with no ambiguity in the Regulations that could potentially lead to misinterpretation by the supervised population.

Opportunities for reducing complexity, unintended consequences, and ensuring proportionality. There is a cost to firms of compliance in terms of lost time and hence delivery of client work. An unnecessarily complex system increases the risk that firms fail to comply as increased complexity impacts the extent of time lost on compliance matters.

Measures should be enshrined in the regulations to confirm that the effectiveness of the regulations can be assessed and reported upon. This will help to ensure that the requirements have a clear purpose that will have a tangible impact on economic crime.

The MLRs should align with all the other economic crime legislation as they all need to fit together and not create conflicting requirements or confusion.

Question 3: Are the objectives set out above the correct ones for the MLRs?

The primary objectives imply that it is solely the responsibility of the sector to identify, prevent and report suspicious transactions, which is disproportionate. The regulations should clearly identify the roles of all stakeholders in AML to ensure that the right stakeholders are enabled to take appropriate action.

The role of government departments should be explicit in the MLRs in terms of oversight, sharing information and approval of sector guidance. And most importantly, providing monitoring on the effect of the Regulations and provision of data on clearly defined criteria for effectiveness and performance measures.

The responsibilities of all stakeholders with responsibilities under the Regulations should be clearly defined and assigned to ensure that these responsibilities sit with the correct agency and cannot be abdicated to other stakeholders because of non-explicit regulations.

The supervisors' risk-based approach recognises the proportionality of their responsibilities and seems an appropriate priority.

For the most part it is relatively simple to identify beneficial owners etc. making the third primary objective reasonable. This is dependent upon the Statutory Instrument consultation as to whether it becomes an on-going requirement.

A clear objective of working in partnership to share collective understanding should be articulated.

As in our answer to Question 1 above, we question the application of the term 'prevention'. Supervisors identify and report but ultimately it is the action of law enforcement that results in preventing criminals from money laundering. Any regulation that places a requirement on the supervised population to prevent money laundering would be unhelpful and deflect the focus from the real 'preventers'.

It should be an explicit requirement for the regulated sector to register for supervision with their supervisor. While this requirement may be implicit in the regulations, it is not transparent and should be made explicit to help PBs intervene more effectively in cases where there is a failure to be supervised.

The way in which unsupervised accountants are regulated should also be addressed, either by restriction of title or direction of non-professional body accountants to a specific supervisor with appropriate enforcement powers.

Question 4: Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

Evidence as to the effectiveness of the MLRs is hard to find in the absence of data from law enforcement. Regarding the achievement of the objectives based upon the FATF risk-based approach guidance, the Annual Returns submitted by each professional accountancy body to HM Treasury contain figures on enforcement.

The objective of sharing information is helpful in allowing the professional body supervisors to inform their members of risks and typologies and produce specific guidance as new threats become apparent. Professional Body Supervisors (PBSs) already share information and intelligence between each other and work collaboratively via forums such as the Accountancy AML Supervisors' Group (AASG) to develop and share best practice. However, information sharing from law enforcement and regulators with the PBSs is piecemeal and often one-way in that data from government and law enforcement is not available. Information sharing between the professional bodies is effective even considering the apparent low level of money laundering enabled by the sector, in terms of frequency the burden of cross-body meetings is relatively high. There should be reciprocal sharing back to PBS from law enforcement to further develop this and so PBS can use it to inform their supervisory frameworks.

The experience of the accountancy professional bodies is that money laundering is infrequently encountered by the supervised population, however the law enforcement sector does not always understand how infrequently practising accountants encounter criminality in their work. The MLRs should enable an assumption that an accountant may never encounter organised crime or may only encounter it rarely in their career.

Law enforcement should build on the work undertaken to develop their understanding of the accountancy sector and issues that are faced. This will help develop the quality, type and frequency of information they share.

Beneficial Ownership information is not always accurate or complete in Companies House. Currently competent authorities do not meet this objective, but it is hoped that following the Companies House reforms this may be implemented. Indeed, as part of due diligence, the MLRs are drafted in such a way that you cannot rely on beneficial ownership information held by Companies House.

There is no explicit requirement to register for supervision presently. This can impact PBS taking effective sanctions when these cases are identified as the requirement is not clearly defined.

In addition, supervision and monitoring of unregulated accountants, or those providing accountancy services under another title is missing. This means that the Regulations are ineffective as they are not targeting all accountants equally and this can only be rectified by restriction of either title or function of these advisers.

High-impact activity

Question 5: What activity required by the MLRs should be considered high impact?

There is no definition of 'high impact' and there needs to be more clarity of what 'high impact' means.

To measure high impact there needs to exist a framework to identify and assess where the problems are occurring, principles to understand why interventions are having an impact, and a learning process. We have therefore taken the view that this question is asking what areas contribute to an effective AML regime.

- Client due diligence and risk assessment enable firms to identify ML risk and having effective measures and controls in place enable firms to mitigate any risks to their practice.
- Ongoing monitoring of clients enables firms to monitor client activity and spot patterns and trends that fall outside of the client's usual activity, and where suspicious activity has been found make a SAR.
- Training is crucial as 'relevant persons' within the accountancy sector need to be trained to perform AML responsibilities and be able to spot suspicious activity.
- The risk-based approach provides firms with the ability to apply appropriate controls and systems needed to understand and assess ML/TF risks to their practice.
- Intelligence sharing amongst PBs within the accountancy is an effective measure as it allows AML supervisors to share intelligence about supervised members and make informed decisions where a breach of the MLRs has been found.

Question 6: What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?

As mentioned above, we have no measures or definition of 'high impact' in the call for evidence.

However, we have identified that client due diligence is effective as this allows firms to understand their clients and spot any 'unusual activity' which can be investigated to see if it is suspicious or not.

PBs carrying out compliance reviews, ensuring firms understand and comply with the requirement of the MLRs.

Increased supervisory tools, where non-compliance of the MLRs has been found PBs have the power to enforce disciplinary action and sanctions where necessary also is an effective measure.

Additionally, PBs raising awareness of the ML risks within the accountancy sector through educating and publishing the risks to supervised firms is also an effective measure.

Question 7: Are there any high impact activities not currently required by the MLRs that should be?

There is no requirement to register for supervision in the MLRs which is a significant gap. There should be explicit wording in the MLRs for the requirement to register for supervision which avoids any

ambiguity around the requirement to be supervised for AML.

Question 8: What activity required by the MLRs should be considered low impact and why?

We have no measures or definition of 'low impact' in the call for evidence. Therefore, we have taken the view that the question is referring to areas that contribute to a less effective AML regime.

We have identified that the requirement of BOOMs under regulation 26 to submit basic disclosure certificates is an increased administrative burden and costly for both PBs and firms.

Smaller practices with sole practitioners having to comply with policies and procedures documents and firm compliance reviews where there is no staff is less effective.

HMRC's TCSP register in its current format and the requirement for PBS to upload lists of firms who provide TCSP services is also less effective as we received no feedback as to whether this has been of use to law enforcement or any outcomes of this requirement. Consideration should be given to whether there should be a similar list of all supervised entities.

National Strategic Priorities

Question 9: Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?

National Strategic Priorities could only improve effectiveness if based on appropriate evidence. The current landscape is typified by several different initiatives and approaches from different government departments with competing priorities. It is unclear if National Strategic Priorities would then take priority and allow resources to be withdrawn from other areas. To be effective, the development of National Strategic Priorities would require further consultation with input from various stakeholders.

Question 10: What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?

Without more detail of the parameters on which the National Strategic Priorities would be based, it is difficult to comment on what benefits the Strategic National Priorities would offer above and beyond the National Risk Assessment.

Question 11: What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

This question depends on what is included within this publication and how it affects firms and supervisors. There is potentially a risk that by publishing national priorities, that criminals may be allowed to exploit areas of weakness not seen as a government priority.

Enforcement

Question 15: Are the current powers of enforcement provided by the MLRs sufficient? If not, why?

The requirements provided in the MLRs are considered sufficient for supervisors.

However, one element that does present difficulties for supervisors and requires addressing is currently there is not an explicit requirement for somebody to register for AML supervision.

The lack of this clear requirement can present difficulties and create unnecessary work for supervisors when taking enforcement action against members who have not registered.

Question 16: Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?

We believe that they are adequate and allow for mechanisms to be put in place and applied by supervisors.

Question 17: Is the current application of enforcement powers sufficiently dissuasive? If not, why?

When identifying breaches of the MLRs all supervisors have set disciplinary powers, sanctions guidance and methods of publication of decisions of disciplinary action.

The majority or transgressions identified are issues that are administrative in nature rather than being indicative of facilitating or turning a blind eye to money laundering or terrorist financing. Therefore, we believe that in the context of the MLRs the powers are sufficient.

As AML supervisors we are not empowered for criminal prosecutions. Therefore, we do not have any information on how dissuasive they are for money laundering or terrorists that are subject of law enforcement investigations/prosecutions.

To achieve consistency and set clear expectations there may be benefit in setting a common minimum sanction standard. An example of where this works well is the Insolvency Service Common Sanctions Guidance.

Question 18: Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

We are surprised that, while the accountancy sector being deemed as high risk for money laundering in the NRA, the volume of prosecutions and evidence of law enforcement investigations in relation to money laundering in the sector are low.

Criminal prosecutions and the following associated publicity should play a part in an effective enforcement regime. They will raise awareness of the consequences to those in the supervised population who may, for various reasons, be tempted to facilitate or engage in money laundering.

Supervisors can actively share information on prosecutions with our supervised populations to highlight and raise awareness on the consequences to further discourage criminality or regulatory breaches.

The current lack of prosecutions in the sector means that supervisors are not in a position to see the impact.

Barriers to the risk-based approach

Question 19: What are the principal barriers to relevant persons in pursuing a risk-based approach?

We consider principal barriers in pursuing a risk-based approach (RBA), are the complexities and costs

involved in replacing or updating legacy systems particularly in the case of sole practitioners. Smaller businesses continue to find it difficult to recoup the costs of dedicating resources and time to ML/TF compliance and hence this creates a barrier to compliance. This makes it challenging for these very small micro-entity businesses to exploit the potential innovative RBA to AML/CFT. Whilst the flexibility that is built into the regulations can be good, it also allows for subjectivity and inconsistencies in pursuing an RBA. There is a risk that firms may look at the requirements and rather than implement an RBA, adopt an approach where they implement everything, believing it is better to be doing more than what they need to. This creates the risk of relevant persons adopting defensive AML/CFT frameworks, due to their incomplete understanding of the reality of risk and how the regulations apply, as well as concerns they may be disciplined by a supervisor when reviewed.

To mitigate against this, there should be a clearer interpretation regarding the level to which the regulations should be implemented for smaller firms. Consideration should also be given to the proportionality and appropriateness of measures for very small micro-entity businesses, as relevant persons often consider the RBA is not especially relevant for their very small micro-entity businesses.

From a supervisory perspective, we consider the lack of sufficient granular information on threat, impact and risk for the different sectors and services/products, as a barrier to pursuing a risk-based approach to supervision. The current approach in which the NRA amalgamates PBSs and HMRC into the 'accountancy sector' is not adequate given PBSs are interested in risks for their supervised population. For example, it is recognised that TCSPs are a major risk, but we are only left with high-level detail on why without any actual examples of what has been happening that can help to inform an RBA. As a result, without any up-to-date detail on trends and the continued lack of specifics supplied to the sector around risks, there continues to be a lack of understanding of what the actual ML/TF risks are to PBS's. Consequently, this has had an impact on effectiveness and efficiency in delivering a risk-based approach.

Question 20: What activity or reform could HMG undertaken to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?

One area of reform which would be of benefit is the facilitation and encouragement of greater intelligence sharing through the supervisor-to-supervisor gateway from law enforcement and government agencies. This will allow PBSs to use that intelligence to inform our approach to supervision.

There should be consideration of the production of a robust and detailed National Risk Assessment (NRA) that justifies the risk in each regulated sector using well-researched statistics and data, rather than one-off case studies. Year on year the accountancy sector has been considered high risk, without any substantial statistical data as to if this comes from those who are supervised or those operating without supervision. It is hoped that this will encourage a change in the mindset of law enforcement and government that when they talk about 'accountants' they start to make differentiation and provide data to show what is relevant for those who are regulated by a PBS and those by HMRC.

The introduction of national strategic priorities may help support better operationalise a risk-based approach by promoting information-sharing and coordination, between regulators and the private sector, on the one hand, and among the supervisors themselves, on the other. These measures may help to integrate real-time information sharing on emerging threats and vulnerabilities into compliance processes and practices.

Question 21: Are there any elements of the MLRs that ought to be prescriptive?

Whilst we consider the flexibility afforded by the regulations as important in facilitating and promoting

a proportionate and effective RBA, both to supervision and the AML process and procedures within regulated entities, we can also see the value in a standard approach to CDD across the board, so that everyone operates to a common standard, as this will prevent criminals from targeting the firms of least resistance.

From a supervisory perspective, such an approach will also make it easier to take potential disciplinary action when a firm has no CDD. However, in doing so we also consider that it is important to strike the right balance, as a more prescriptive approach to the MLRs risks the RBA creeping into the remit of zero tolerance and the traditional, rule-based approach.

We feel such considerations would benefit from wider discussion, it is suggested that HMT should work with key stakeholders such as the NECC to understand the threats and risks in this area by sector and incorporate these learnings in the NRA. PBS and others in the regulated sector can provide feedback as well.

Understanding of risk

Question 22: What are the primary barriers to understanding ML/TF risk?

We consider barriers to understanding ML/TF risk could be attributed to the speed at which ML/TF trends threat analysis are communicated to the regulated sector. Information on ML/TF risks is mainly contained in the NRA and informed by NECC threat analysis. However, risk information is not responsive enough to incorporate changes in trends domestically and internationally. ML/TF trends rapidly evolve and the speed at which the trends are communicated to PBSs and the sector is rarely provided by law enforcement and when provided it is not done at pace. We believe more could be done to improve engagement between law enforcement and the supervised sector, by doing so we believe would help better address priority ML/TF threats within the sector.

Question 23: Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?

We consider that within the supervised sector there is generally an adequate understanding of money laundering risk, to pursue a risk-based approach. Supervised entities have a good awareness of businesses that might be more prone to exploitation and typical issues that are higher risk such as cash-based businesses or operating for a certain jurisdiction.

Whilst the understanding of money laundering risks continues to grow amongst supervised entities, it is evident that there is still a misunderstanding amongst some relevant persons concerning the application of a risk-based approach, and the insufficient documentation of risks. However, information on Terrorist Financing is limited since it depends on motivations that are hard to capture. As referred to above, understanding of ML/TF risks can be enhanced by improving the granularity of risk by sector, services and in the case of the accountancy sector by those that have oversight of PBSs and those that have oversight of HRMC.

Question 24: What are the most effective actions that the government can take to improve understanding of ML/TF risk?

We consider the most effective actions to be:

- Improving and facilitating the sharing of good quality risk information between law enforcement and the supervisory authorities, so that the firms can receive clear and concise risk alerts.

- Producing a robust and detailed National Risk Assessment that justifies the risk in each regulated sector using well-researched statistics and data, rather than one-off case studies.
- Case studies relevant to the sector and the impact of the risks associated with ML/TF
- A clear strategic direction in AML/CTF effort in the UK to focus the resources and efforts of the AML regime in the areas that matter; and
- Driving an increased understanding of the different regulated sectors by both government and law enforcement. We see discrepancies in supervision between the professional body supervisors who take a holistic approach to supervision and include AML alongside their wider understanding of the services provided, the quality of the firm's compliance in other areas, and the skills and experience of the partners and staff. HMRC, on the other hand, only focus on AML matters and do not have the benefit of the wider holistic approach

We believe these actions clarity would help supervisors in their supervisory strategy in establishing if we are capturing or missing those that create most of the risk as well as enabling supervisors to address any misconceptions around the proportionality of the risk-based approach.

Expectations of supervisors to the risk-based approach

Question 25: How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?

We do not allow discretion in the demonstration that supervised firms have undertaken a whole firm risk assessment and record their ML/TF risk considerations as part of the CDD process. However, the risk-based approach, whether by our firms or supervisors, involves judgement and discretion by its very nature.

In respect of this question, we have taken discretion to mean a firm's ability to apply discretion to what it considers as relevant ML/TF risk ratings to their clients and the respective activities they conduct for each. We accept that there is no one size fits all approach to the application of the risk-based approach. Consequently, supervisors exercise a degree of discretion when assessing the methodology firms have applied to their risk-based approach and look for evidence to support this as part of supervisory reviews. However, whatever approach the firm adopts must be driven by its understanding of ML/TF risk.

Question 26: Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?

No examples at present.

Question 27: What more could supervisors do to take a more effective risk-based approach to their supervisory work?

Given the varied approaches to the risk-based approach amongst PBSs and the wider regulated sector, it may be beneficial to share risk-based approaches across the accountancy sector and across the regulated sector which may improve consistency in approaches. We consider that there may be trends coming from different sectors that are relevant to the accountancy sector.

Question 28: Would it improve effectiveness and outcomes for the government and/or supervisors

to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high-value intelligence to law enforcement as an explicit goal?

We consider that incorporating a definition and measurement of effectiveness would be helpful, in understanding and measuring the impact of what the regulations are trying to achieve. A clear definition of 'effectiveness' would also promote efficient allocation of resources toward higher-impact activities for supervisors, rather than toward lower-impact activities. Any definition would need to be supplemented by well-developed metrics of effectiveness. For example, what is considered high-value intelligence and how would this be captured, as well as logic maps to inform future plans and intervention based on different regulatory models, with short-term outcomes and long-term outcomes.

Whilst there are strong arguments for a definition of effectiveness, there are some concerns within the supervisory sector that such an approach could push the AML regime further towards a tick-box exercise and away from a risk-based approach, with tailored policies and procedures. Similarly, there are concerns that relevant persons could find a two-tier approach to compliance confusing, having to follow both AML Guidance for the Accountancy Sector (AMLGAS) and a separate set of compliance effectiveness definitions. A solution to mitigate against this may be to incorporate indications of effectiveness into the sector guidance. It is also considered that effectiveness should not be alone driven by the provision of high-value intelligence to law enforcement. The key focus of the AML regulations is preventing criminals from doing business in the UK and any effectiveness measures should be focussed on how this is achieved. We are concerned that by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, clients should be less likely to be laundering money and therefore the number of SARs submitted would be low. We do accept that clients change, situations change, and what was once a lawful business could change into something that is not – nonetheless, we think these situations are the exception, rather than the norm.

We understand that there are challenges across different sectors concerning SARs reporting, such as the potential over-reporting by banks and the perceived under-reporting by the professional services sectors. However, we believe that there is still work to be done on improving the information/intelligence flow relating to risks and how money laundering occurs. We have not yet seen the benefit of the actions and workstreams implemented to date.

As such any definitions of effectiveness would need to be determined with consultation from supervisors and the wider AML/CFT regime to get an understanding of what effectiveness looks like and to ensure we are not being held to an unreachable definition.

Question 29: What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

We believe a clear definition is seen as an essential step forward in providing a clear way to measure outcomes to demonstrate effectiveness and impact.

However, alongside any definitions should be the measure of inputs, regulatory activities, outputs, and impact – not just outcomes – to measure effectiveness.

Furthermore, there should be a system in place for periodic review of effectiveness since what is considered effective today may not be effective tomorrow considering changing domestic and international risks and ML/TF activities.

Application of enhanced due diligence, simplified due diligence and reliance

Question 30: Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?

We consider these requirements are appropriate and proportionate.

Question 31: Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?

We have no feedback on this from law enforcement to determine whether enhanced due diligence (EDD) has countered higher risks of ML/TF or that firms failing to undertake EDD has resulted in ML/TF taking place.

It should be noted that many firms undertake more client due diligence on particular clients than is required under a risk-based approach.

Question 32: Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?

Firms rarely apply simplified CDD and will apply normal CDD to all clients except where EDD is required.

Question 33: Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?

Most firms deal with clients where normal due diligence applies. Simplified due diligence tends to be applied when dealing with government departments or local authorities etc.

Question 34: Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

It is rare to find firms using reliance and they will generally undertake CDD themselves. This is mainly because the liability still rests with the firm who is relying on the CDD of another organisation.

Question 35: Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?

Small accountancy firms rarely make use of reliance.

Question 36: Are there any changes to the MLRs which could mitigate de-risking behaviours?

No further comments to make as it is unclear whether this section applies to the accountancy sector.

How the regulations affect the uptake of new technologies

Question 37: As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending

and in what way?

It is difficult to assess this as there is limited reference to technology within the MLRs and it is unclear to what extent technology can be relied upon to fully discharge regulatory requirements. Further understanding of what new technology can offer (e.g. digital ID, electronic CDD systems, AI) and the cost implications is required.

Question 38: Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?

This issue requires further consideration. In particular, the MLRs need to be more explicit about the safe and effective use of digital identity technology, for example, there is a lack of clarity as to how much reliance can be placed on e-verification. Many smaller firms are reluctant to invest money in technology at this stage when it is not clear whether the packages being offered would satisfy the future or current requirements of the MLRs.

Question 39: More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

The use of new technologies to combat economic crime should be embraced, however there needs to be good coordination between legislative developments and digital providers to ensure that the products being offered by third-party sellers to the supervised population meets the standards expected by government.

SARs Reporting

Question 40: Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?

The most significant barrier to efficient engagement by the accountancy sector relates to the ability of firms to deliver / implement the requirement to understand the risk posed to the relevant person, design policies and procedures to mitigate those risks and provide training to staff. These barriers are:

- **Poor information sharing between law enforcement, government agencies, supervisory authorities, and the firms on where the risks lie and what money laundering looks like.** AIA, along with other members of the Accountancy AML Supervisors' Group (AASG) has issued risk alerts to the accountancy sector, along with an updated AASG Risk Outlook, to help firms understand how they may encounter money laundering and how to spot it.
- **A belief that there is small chance that SARs are acted upon.** Lack of feedback may lead accountants to think that this means the UKFIU places little value on SARs themselves. Better feedback from the UKFIU would help to dispel this myth, however feedback must go beyond notification that a firm has incorrectly submitted a DAML, for example. Positive and useful feedback will encourage firms to continue to submit SARs and do the right thing.

Question 41: What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?

By accessing SARs, supervisors would be able to assess, and improve, the quality of the SARs being submitted by firms, supporting the recent work of the UKFIU to raise the standard of the SARs submitted. It is also valuable to review the contents of SARs to identify emerging risk trends to ensure

that this is being fed back to the wider supervised population and is being captured in risk assessments.

AIA believes that allowing AML/CTF supervisors access to the content of the SARs is an important element of an effective risk-based approach to supervision, as supervisors use this information to understand sector risks and emerging trends. Supervisors are then able to relay this information back to firms so that they can improve and enhance their understanding of the risks they may face.

It is important to recognise that there is no legal requirement for relevant persons to use glossary codes or fill out SARs templates in a certain way. As such, supervisors will not discipline a firm for a 'poor' quality SAR unless the information omitted was fundamental to the suspicion or if the firm has deliberately omitted information to conceal the identity of the subject. 'Poor' quality SARs may result in best practice recommendations or commitments from the firm to make changes to the quality of the information they submit. Creating a gateway to view the SARs does not confer an obligation to monitor/supervise/discipline the quality of the SARs beyond making best-practice recommendations to the firm.

Question 42: If you have concerns about enhancing this role, what limitations and mitigations should be put in place?

Without appropriate mitigations, supervised firms may have concerns in respect of confidentiality and the risk of tipping off. It is important that these concerns are addressed through appropriate mechanisms to protect the confidentiality of important elements so that, for example, it is not possible to identify the reporter or subject of the SAR from documents retained by the supervisor. Or that reviewers / inspectors are trained on the importance of keeping the content of SARs confidential. Protections should be set for supervisors against subject access requests under data protection legislation as well as maintaining the client's privilege (where appropriate).

The review should not extend to an assessment of whether there is a 'suspicion' or not, as suspicion itself is subjective.

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

It is also important to recognise that there is no legal requirement to use glossary codes or fill out SARs templates in a certain way. As such, supervisors will not discipline a firm for a 'poor' quality SAR unless the information omitted was fundamental to the suspicion or if the firm has deliberately omitted information to conceal the identity of the subject. Creating a gateway to view the SARs does not confer an obligation to monitor / supervise / discipline the quality of the SARs beyond making best practice recommendations to the firm and requiring (or offering) targeted training.

Question 43: What else could be done to improve the quality of SARs submitted by reporters?

It is important to initially clearly define what 'quality' means. Quality is currently being driven by how firms should use glossary codes, how to complete certain fields within the SARs reporting system, and the narrative text provided in relation to the suspicion itself. Instead, a greater focus should be given to guidance on what is suspicion and when the bar of suspicion is met. Firms need more case studies of scenarios of when to report and when not to report, using services and / or transactions that they are likely to come across in their day-to-day work. Currently, there is not one body responsible to produce this guidance.

AIA has undertaken extensive work to educate its members in relation to SAR quality but we believe more can be done to build upon this work and improve the information / intelligence flow relating to risks and how money laundering initially occurs.

Additional other actions could include:

- Simpler format to submit SARs, tailored to the reporters' sector
- Drop down glossary codes
- Sleeker process to receive feedback
- Mandatory declaration of AML supervisor

Question 44: Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?

It is important that good quality information becomes intelligence to law enforcement.

However, by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, the firm is less likely to take on clients with high AML risk, acting as a barrier for those clients / businesses from doing business in the UK, and therefore the number of SARs submitted might be lower.

An unintended consequence of defining effectiveness of the MLRs by the provision of high-value intelligence may be that firms are driven to do the opposite – they may submit SARs where the bar of suspicion has not been met or where the quality of the information on the location of the proceeds, or the person benefitting of the proceeds is poor quality, just so that they can show they have submitted SARs.

Question 45: To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?

AIA currently monitors its supervised population on an ongoing basis for meeting the requirements for continued participation in the profession. We perform cyclical monitoring on our firms based on their risk profile and where we find issues or non-compliance we act to enforce compliance by firms or take wider enforcement action including sanctions and exclusion from membership.

Gatekeeping tests

Question 46: Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?

AIA believes it is ineffective to have two separate regulations, applying to different parts of the AML-regulated sector, with no reference to the relative risks within those sectors. One concise and consistent set of requirements will make a common entry standard across the AML-regulated sector and ensure a consistent approach.

Question 47: Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?

Response

Question 48: Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

AIA believes that the current obligations and powers for supervisors and the current set of penalties for non-compliance support an effective gatekeeping system.

However, it would be beneficial if all supervisors identified non-compliance issues as part of an effective gatekeeping system using the same platform. For example, HMRC does not currently use the FCA's Shared Intelligence Service to identify non-compliance issues in the same way as PBSs.

Guidance

Question 49: In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

It is vital for there to be comprehensive sector-specific guidance that explains to each relevant sector how the MLRs should be applied in the context of their sector. However, the current process does not support a timely update to the guidance, nor a consistent interpretation of new parts of the MLRs.

Question 50: What barriers are there to guidance being an effective tool for relevant persons?

Several barriers exist which may prevent guidance being an effective tool for relevant persons:

- The guidance drafting process is complicated by the way in which changes to the MLRs are drafted and often there is no consolidated version of the updated MLRs, only the statutory instrument itself.
- The accountancy sector guidance is drafted by a large working group of specialist volunteers from the sector which results in high-quality and well-considered guidance but makes the guidance itself length and the drafting process time consuming.
- Delay in implementing the guidance due to frequent staff changes within HM Treasury prevents continuity within the approval process.

Question 51: What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

The main barrier to the process is the time taken for review and approval of guidance, a set timetable for each stage of the process should be put in place, and as far as possible for there to be dedicated points of contact within HM Treasury to lead the review and approval process from start to completion. It would also be helpful for a consolidated version of the amended regulations to be available at the outset and for some form of project management lead from HM Treasury to co-ordinate the interpretation being taken by different sectors on changes which are subjective in intent.

Question 56: What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?

The success of measuring the effectiveness of this key objective of OPBAS should be measured collectively against all the main objectives:

- Raise standards and ensure a consistent approach to AML supervision

- Provide guidance to PBSs on how to comply with their obligations in line with the updated money laundering regulations
- Hold enforcement powers to penalise breaches of regulation made by PBSs
- Facilitate collaboration between supervisors and law enforcement in terms of tackling money laundering and terrorist financing

Maintaining a high standard of AML supervision is directly linked to OPBAS providing PBSs with guidance to follow, sharing best practice and setting transparent definitions of what is meant by 'high standards, including regularly updating the OPBAS Sourcebook.

Question 57: What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

OPBAS has an objective to facilitate collaboration between supervisors and law enforcement in terms of tackling money laundering and terrorist financing. A review should be undertaken of the guidance issued by OPBAS and the effectiveness of the work undertaken to facilitate collaboration and intelligence sharing.

Question 58: What if any further powers would assist OPBAS in meeting its objectives?

OPBAS should have oversight powers over all supervisors, particularly where statutory supervisors supervise the same sectors as the PBSs. It is difficult to demonstrate how there can be consistency within the supervision of the accountancy sector, when OPBAS's remit does not include HMRC, who are responsible for the supervision of approximately a quarter of regulated accountancy firms.

OPBAS appear to have sufficient powers but there should be greater transparency over how and when OPBAS will use their powers and what events will trigger the use of those powers, particularly in terms of defining timeframes from the OPBAS regulation of 'reasonable period' and 'without delay'.

Question 59: Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

The extension of OPBAS's remit would greatly assist the perception of consistency of supervision across regulated sectors. However, this needs to be matched with transparent disclosure of monitoring results and best practice. There should also be an appropriate review of the ability to take enforcement action and review of the collaboration to escalate issues from PBS enforcement to criminal prosecution.

On 2 June 2021 the Crown Prosecution Service (CPS) published updated guidance on prosecuting standalone 'failure to disclose' cases under section 330 of the Proceeds of Crime Act 2002 (POCA) but there has been no subsequent guidance on how this will be identified and reported by the PBS.

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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