Response by the Professional Bodies of the Accountants Affinity Group[1] to the HM Treasury Money Laundering Regulations 2017: consultation

Whilst some members of the AAG may have submitted individual responses to this consultation, the points raised below outline AAG's views on a number of key areas as well as responding to the specific consultation questions.

Exceeding the requirements of the Fourth Money Laundering Directive ('MLD')

We believe that certain aspects of the Money Laundering Regulations 2017 ('MLR') unnecessarily exceed the requirements of the 4MLD which make those sections of the MLR too prescriptive or burdensome on those it affects, specifically:

- **Criminality testing** – The 4MLD does not specify criminality checks on accountants, it states that "member states shall ensure that competent authorities take the necessary measures to prevent criminals convicted in relevant areas or their associates from holding a management function in or being the beneficial owners of those obliged entities." However, HM Treasury has interpreted this not just as requiring a criminality test but have also applied it to all of the accountancy sector rather than those providing trust and company formation services which are higher risk. Criminality checks are likely to be excessively costly, administratively burdensome and with minimal benefit. Many other countries regard the declaration approach (currently adopted by the accountancy sector in addition to membership checks and requirements) as sufficient, for example Ireland has not included criminality checks in its transposition of the MLD. In addition, the inclusion of "manager" within the definition can be interpreted too widely and it would be preferable instead for it to be limited to "beneficial owner, principal or nominated principal".
- **Body corporate information** – the requirement under regulation 28(3) of obtaining and verifying company registration is excessively prescriptive.
- **Trusts register** – the same could be said of the detail required to be reported for the central trust register. The extra detail required under regulations 44(4) and 44(6), including a requirement to submit annual accounts and valuations and details of advisers (giving any form of advice), risks being burdensome and costly for trustees.

[1] The Accountants Affinity Group (AAG) is a sub-committee of the UK Anti Money Laundering Supervisors Forum. The accountancy professional body supervisors listed in Schedule 3 of the Money Laundering Regulations 2007 (as amended) are represented in the group. This consists of the Association of Accounting Technicians, Association of Chartered Certified Accountants, Association of International Accountants, Association of Taxation Technicians, Chartered Institute of Management Accountants, Chartered Institute of Taxation, Insolvency Practitioners Association, Institute of Certified Bookkeepers, Institute of Chartered Accountants in England and Wales, Chartered Accountants Ireland, Institute of Chartered Accountants of Scotland, Institute of Financial Accountants and International Association of Bookkeepers.

The AAG is a forum in which the professional bodies work collaboratively to develop accountancy sector supervisory policy to promote consistency in standards and best practice. It is an information sharing forum.

- **TCSP register** – the requirement under regulation 53(2) to register with HMRC if providing trust and company formation services and irrespective of who supervises the firm is excessive in certain situations. If TCSP is incidental to the work of accountancy service providers or is a referral to another TCSP, there should be no requirement to register as a TCSP provider with HMRC. Such untargeted measures are contrary to the better regulation principles as well as the intention behind the register.
  In addition, having a central register itself goes beyond the MLD which only includes the requirement to be "licensed or registered". Being registered with a professional body would therefore comply with the MLD. If the requirement of a register is to remain in the MLR, it should be a default register for those not already registered with a professional body.
- **PEP definition** – the definition under regulation 35 (12)(c)(i) ""family member" of a politically exposed person includes— (i) a spouse or partner of that person" could be interpreted widely as "partner" is not defined and should instead be the same as in the MLD, i.e. "the spouse, or a person considered to be equivalent to a spouse".
- **Privilege** – regulation 84(6) only makes reference to legal advisers and not the other relevant professionals previously afforded the privileged circumstances exemption. To exclude accountants from this privilege exemption encourages inter profession arbitrage where clients may be encouraged to seek advice from lawyers who are not subject to the same AML considerations as accountants.
- **Audit function** – regulation 21(1)(c) requires a relevant person to "establish an independent audit function". The term "audit" has a specific statutory meaning in the UK and it is therefore inappropriate to use this terminology in the UK transposition as it is contrary to the intention of the MLD. The term "independent audit function" should be defined and the independent aspect should not mean that the function must be carried out externally as opposed to maintaining independence internally.
- **Supervision**
  - Approval – the requirement under regulation 26(7) that the supervisory authority "must approve an application under paragraph (5) unless the applicant has been convicted of a relevant offence" is unworkable as we have additional factors for not approving an application for supervision, including being supervised by another professional body.
  - Trained staff – Article 48(2) of the MLD requires staff to be "appropriately skilled" whereas regulation 48(1)(c) of the MLR specifies "only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions". Clarification is sought on what appropriate qualifications means and that it should not be prescriptive as many staff will have attended AML/CTF training courses but will not have a qualification. Furthermore, "only" implies that all employed staff, including those carrying out administrative functions, must be trained.
  - Risk assessment – regulation 17(4) of the MLR states that "Each supervisory authority must develop and record in writing risk profiles for each relevant person in its own sector" whereas Article 48(6) of the MLD does not prescribe a written profile or the requirement for it to be done for each relevant person.
  - Regulatory information – the time limits for a supervisory authority supplying information to HM Treasury under regulation 21(c) should be the same as those imposed on HM Treasury under regulation 16(6), i.e. "as soon as reasonably practicable".

Responses to specific questions

Q1: The government is interested in views on its approach to one-off company formation, including under which circumstances it might be appropriate, as part of a risk based approach, for a trust or company service provider to apply simplified due diligence where it concerns the formation of a single company.

We would support the availability of simplified due diligence (SDD) where appropriate for one-off company formation. For the accountancy sector, such work is likely to be incidental to their main work and would just be included as part of their overall risk assessment on work being carried out. However, this requirement in the MLR does not address the issue that any individual can set up a company directly through Companies House with no client due diligence or questions asked.

Q2: The government welcomes views on its approach to allow SDD only when firms providing pooled client accounts are low risk.

The MLD specifies factors to be taken into consideration where SDD should still be available, but only applies them where the account is held by an independent legal professional. The accountancy profession may also provide pooled client accounts and so to restrict the approach just to the legal profession would be inappropriate.

Q3: The government would welcome views on whether the reference to "at the latest within two working days" should be included and if not, how long third parties should be given to provide this information.

In our previous consultation response, we highlighted that reliance is rarely used. However, the requirement to respond within two workings days is not practical or realistically achievable. The length of time given to provide the information should be decided between the parties relying on/being relied on.

Q4: The government would welcome views from the sector on the requirement for the policies, controls and procedures to be documented.

We would urge HM Treasury to be proportionate and not be too prescriptive on how policies, controls and procedures should be documented as requirements will vary hugely depending on the size of the entity. Larger firms are likely to have more sophisticated systems and resources to support it whereas the same would not be appropriate for a sole trader. Article 8 of the MLD should not be enhanced.