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Corporate

# Consultation on the Anti-Money Laundering Supervisory Regime

Response to Consultation  
*(published: 15 March 2017)*

## Introduction

1. The Institute of Financial Accountants (IFA) welcomes the opportunity to comment on HM Treasury's consultation on the Anti-Money Laundering Supervisory Regime issued on 15 March 2017.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the IFA is given below.

## Who we are

4. Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small- to medium-sized enterprises or in micro and small- to medium-sized accounting practices advising micro and SME clients.
5. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.
6. The IFA is part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with 35,000 members and students in 80 countries.
7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.
8. We offer a programme of professional qualifications and education as well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.
9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession and is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications. It is also authorised by HM Treasury and the Financial Services Authority in the Isle of Man as a supervisor to monitor its members for compliance with the Anti-Money Laundering regulations in the UK and the Isle of Man.

## General comments

10. We strongly support the UK's drive to combat money laundering and terrorist financing. We are therefore committed to support and contribute to the development and implementation of the Money Laundering Regulations 2017 and robust AML/CFT regime.
11. As referred to in the Accountancy Affinity Group statement on the Oversight Supervisory Regime, we believe strongly in a consistent, fair, proportionate and risk based supervisory regime which is in the public interest. We are also supportive of the principles underpinning an oversight body and are pleased that HM Treasury have recognised the benefits professional bodies bring to the regime, since they are closest to the innovations and emerging risks within the sector they

supervise.

12. However, we have a number of concerns referred to below which should be considered by HM Treasury in order that the desired outcomes are achieved including reducing the 'burden on legitimate British businesses.'

#### Scope of OPBAS

13. While the changes are allegedly being introduced in response to the Call for Information on the AML Supervisory Regime and the Cutting Red Tape Review of the UK's Anti-Money Laundering and Counter Financing of Terrorism Regime, HM Treasury has, in our view, not addressed all the issues raised in these consultations by creating OPBAS, particularly the matter of inconsistencies in the accountancy sector.
14. OPBAS will be created to supervise the private sector AML supervisors in the accountancy and legal profession. In the accountancy sector, this means that HMRC does not come under the scope of OPBAS, since it is a public sector organisation.
15. The creation of OPBAS will effectively create a "two tier system" in the accountancy sector supervision. As mentioned in our previous response to the Call for Information on the AML Supervisory Regime, HMRC currently supervises a considerable number of firms within the accountancy sector that would not be eligible for supervision by other accountancy sector supervisors. The lack of fit and proper test, amongst many other issues, means that as a supervisor HMRC is functionally different to other supervisors operating in the accountancy sector.
16. We would welcome HM Treasury clarifying how the creation of OPBAS will ensure high standards across the AML/CTF regime in the accountancy sector when a key supervisor in that sector is outside the scope of OPBAS.
17. HM Treasury appears to be working under an assumption the AML/CTF supervision in the private sector needs more oversight than AML/CTF supervision in the public sector, presumably because accountants working in the private sector are more at risk of being used to facilitate money laundering and terrorist financing than accountants who are not members of a professional body and are supervised by HMRC for AML/CTF. We would welcome evidence from HM Treasury to collaborate this assumption. Historically, there has been very little transparency about 'professional enablers' and HMRC's role as a 'default supervisor' in the AML sector.
18. If HM Treasury wants to increase consistency of AML/CTF supervision across the entire accountancy sector, the IFA is of the view that OPBAS should also have oversight of HMRC and should be held to the obligations and standards of other professional bodies. If this is not possible, the FCA should become the 'default supervisor' for AML supervision for members and firms who are not eligible to be supervised by professional bodies.

#### Perception

19. While the argument for oversight and consistency is sound, to the outside world, the setting up of OPBAS to supervise private sector professional accountancy body supervisors appears to be a vote of no confidence in the past performance of the supervisors. Yet at no time has HM Treasury expressed this concern directly to supervisors, not even when annual supervisory returns were submitted to HM Treasury. Indeed, the IFA has never had any feedback from HM Treasury on its annual supervisory return nor have other professional body supervisors.

One might therefore reasonably assume that HM Treasury is trying to fix perceived problem. The creation of OPBAS appears to also be based on a perception that conflicts of interest exist in professional bodies when undertaking supervisory, enforcement and representational functions. The National Risk Assessment

explicitly stated that there is no evidence of a conflict of interest affecting the adequacy of professional body supervision but a perception remained. It appears that OPBAS is being set up to address a perception problem, without a proper impact assessment being undertaken of both benefits and costs. It is imperative that the government undertakes such as an assessment since this is required by government guidelines.

### Consultation process

20. We are disappointed that the lack of consultation by HM Treasury on the creation of a new watchdog which will be funded by the professional bodies it supervisors. While the notion of an oversight body was touched round the edges in the Call for Information on the Supervisory Regime in June 2016, the existence of such a body and its funding was not consulted by HM Treasury with all professional bodies affected. We gather there were informal last minute confidential consultations with the Chair of the Accountancy Affinity Group, the Chair of the Legal Affinity Group and the Chair of the Money Laundering Advisory Forum and concerns were raised but to no avail. The lack of transparency by HM Treasury on this matter, given that HM Treasury allegedly values the role and contribution that supervisors play in the prevention of money laundering and terrorist financing, is of concern.
21. The timing of the consultation on the oversight regime is less than ideal in light of the other demands from supervisors on AML/CTF. As with the consultation on the draft Money Laundering Regulations 2017, HM Treasury does not appear to have adhered to the government's consultation principles, in particular regarding the amount of time for the consultation and the fact that the supervisory bodies being consulted may require additional time given all the other demands being placed on them in addition to other day to day commitments.
22. We hope that HM Treasury and the government will meet the consultation principles referred to above in future consultations, particularly in regulations required to create OPBAS, its functions, funding and powers and the role of the Money Laundering Advisory Committee (MLAC) referred to in this consultation.

### Guidance

23. One of the justifications by HM Treasury for creating OPBAS is the large volume of supervisor issued guidance which creates confusion and unnecessary costs on business.
24. The CCAB Anti-Money Laundering guidance for the accountancy sector, which has been approved by HM Treasury, is the only guidance for the accountancy sector. As a reminder, the front page of the guidance states that this guidance must be taken into account by courts and professional bodies when determining an accountant's conduct. The guidance goes on to say that it is aimed at all entities providing accountancy services irrespective of membership of a recognised professional body. We would welcome clarification and evidence from HM Treasury of the existence of duplicated and overlapping guidance.
25. If there is no other guidance for the accountancy sector approved by HM Treasury, then it follows that the CCAB guidance referred to above will have to be updated when the Money Laundering Regulations 2017 are finally issued in June 2017. While the IFA is aware that work has been undertaken to update the CCAB guidance, the final guidance has not been finalised which will have an impact on the entire accountancy sector. This guidance will be essential for firms to develop and update their risk assessments, policies, procedures, internal controls, systems and so on.
26. It is our understanding that the OPBAS will be approving sector guidance going forward instead of HM Treasury. OPBAS will not be fully operational until the start of 2018. Therefore, the IFA would like clarification on how the approval process will work for sector guidance, given that there will

be a need for the guidance to be finalised and approved prior to OPBAS being fully operational.

### Implementation

27. The obligations on supervisors are outlined in the draft Money Laundering Regulations 2017 which have been recently consulted on. Given the forthcoming election on 8 June, it seems likely that the final wording of the regulations will only be known a few days before they come into force, assuming there is no further consultation on the matter.
28. Supervisors and firms alike, will need time to implement the requirements of the Money Laundering Regulations 2017.
29. In light of the above and the fact that OPBAS will not be fully operational until early 2018, the IFA would like to ask HM Treasury to provide guidance on this matter during the transition period, especially in light of the forthcoming Mutual Evaluation review of the UK by the Financial Action Task Force (FATF). This will help to ensure consistency across the accountancy and legal sectors and “remove unnecessary burdens without having a material impact on the fight against money laundering.”

### Comments on specific questions

30. In addition to our general comments, our comments on specific questions set out in the consultation document are set out below.

#### **Question 1: Are these powers to monitor supervisors’ activities and penalise poor practice sufficient? If more powers should be added, which power might be?**

31. Yes, the powers to monitor supervisors’ activities and penalise poor practice are sufficient. However, OPBAS will need to develop and publish a common approach to deciding what powers they will use and why to ensure consistency and fairness.
32. It is our understanding that OPBAS will discuss and share best practice with HMRC as a supervisor of accountancy and trust and company service providers. The government should clarify what penalties will be incurred by HMRC if the activities and practices of HMRC are not deemed to be sufficient in light of these shared discussions of best practice. In other words, what powers will OPBAS have to hold HMRC to account as a supervisor for accountancy and trust and company service providers given that HMRC is outside of the OPBAS scope for oversight.

#### **Question 2: Should the Office’s powers to request information or attendance at interviews be extended to supervisors’ members as well as supervisors themselves?**

33. We support the principle that OPBAS should have powers to request information from supervisors in order to undertake its role in the AML/CTF regime. While we support the principle, more thought needs to be given regarding what type of information, frequency, timescales and so on to ensure that the requests for information are not unduly burdensome for professional bodies and their supervised populations. We would welcome consultation in this area prior to the powers being drafted in the regulations relating to the creation and functions of OPBAS.
34. Again, in principle we would support the principle that OPBAS requests supervisors’ members and supervisors themselves to attend interviews. However, regulations and/or guidance will have to be published as to why OPBAS may want to use these powers, what the purpose of the interviews will be, how often and so on.

*Question 3: Should the Office report annually on other issues, in addition to its performance against its objectives in that year, priorities for the coming year and expectations around emerging risks? If so, which issues should the Office report on?*

35. The IFA has in a previous submission highlighted that our members rarely place reliance on another party's CDD, since there are serious consequences in terms of liability should things go wrong. The purpose of CDD is to know and understand a client's identity and their business activities and therefore minimise the risk of AML/terrorist financing. If professional accountants want to rely on CDD measures by another party, a consider level of trust would be needed between parties to ensure that the risk of getting CDD wrong is mitigated.

*Question 4: The government envisages the Office having representation at the Money Laundering Advisory Committee, the Anti-Money Laundering Supervisors Forum and engaging with the Accountancy and Legal Affinity Groups. What role could the Office best fulfil in each forum, and are there other fora the Office should attend, if so, which?*

36. The role that OPBAS could play is dependent on the purpose and terms of reference for the Money Laundering Advisory Committee (MLAC), the Anti-Money Laundering Supervisors Forum (AMLSF) and the Affinity Groups (AAG).
37. From the consultation, it is our understanding that MLAC will provide a forum for policy development and it will be revitalised later this year. As previously requested in the Call for Information on the Supervisory Regime it would helpful for supervisors and others to come under the terms of reference of MLAC and also the process for being appointed to such a Committee. Clarity on this matter may help to decide what role OPBAS may have in this forum.
38. From IFA's perspective there has always been a certain amount of confusion in relation to the actual role of MLAC, although it is understood that when it was set up in 2003 it was set up as a "forum for key private and public sector stakeholders to co-ordinate the AML regime and review its efficiency and effectiveness"<sup>1</sup>. The group's terms of reference are not freely available, nor have its agendas and minutes been made publically available since 2008. It is unclear how HM Treasury determines who the key stakeholders are to sit on MLAC, nor how appointments are reviewed to ensure that MLAC continues to meet its intended purpose. Therefore, the IFA would welcome consultation on this area to ensure that the desired outcomes for MLAC as a policy developer are achieved.
39. 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, including sharing best practice.
40. The Anti-Money Laundering Supervisors forum was set up by the supervisory authorities specified in the MLR 2007 to share views on current and emerging concerns and best practice for anti-money laundering supervision. The AMLSF is attended by all anti-money laundering supervisors as well as HM Treasury and the NCA. The Accountancy Affinity Group is a sub-group consisting of accountancy based supervisors.

41. So, in conclusion, depending on the Forum, OPBAS would have a role in contributing towards policy development and sharing information and best practice across the accountancy and legal sectors but also other sectors.

**Question 5: How might AML supervisory regime evolve over the next five to ten years, especially in the legal and accountancy services sectors? What are the advantages and disadvantages to the potential options – how might government help minimise the disadvantages?**

42. The creation of OPBAS seeks to ensure high standards across the regime while imposing the minimum possible burden on legitimate businesses. HM Treasury has stated that OPBAS will set out how professional body AML supervisors should comply with their obligations in the Money Laundering Regulations 2017 and will also have the powers to penalise any breaches of the new regulations. It will be interesting to measure how these stated outcomes will be met in 5 years and if the benefits of creating OPBAS outweigh the costs.
43. The FCA will remain as an AML supervisor for the financial services industry. The extent to which other professional bodies will actively supervise anti-money laundering or simply provide information and support to OPBAS is yet to be decided and may not be decided until years to come.
44. The burden and additional cost of funding OPBAS may result in professional bodies ceasing to be AML supervisors which may undermine some of the objectives and stated objectives for OPBAS. As HM Treasury has acknowledged, professional bodies bring considerable benefits to the regime since they are closest to the sector. OPBAS (or the FCA) have no experience of the accountancy sector, especially supervising smaller firms, which is what the IFA does.

**Question 6: Are there other issues you would like government to take into account as it considers increasing the oversight of AML supervision in the accountancy and legal sectors?**

45. We hope that the new oversight framework will be based on the principles of consistency, fairness, proportionality and risk. As currently designed, the oversight framework, does not seem to address these principles.