IFA REPRESENTATION 6/17

Anti-Money Laundering Supervisory review consultation

The IFA welcomes the opportunity to comment on the Anti-Money Laundering Supervisory review published on 20 July 2017.

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

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The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter and regulator and is an awarding organisation recognised by Ofqual, the UK public body responsible for maintaining and monitoring standards for general and vocational qualifications and examinations. We offer a programme of professional qualifications and education as well as resources, events, training and seminars.

We are recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.

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Major points

General comments

1. As mentioned in our previous consultation response on the Anti-Money Laundering Supervisory regime issued on 15 March 2017, 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.

2. We also believe strongly in a consistent, fair, proportionate, accountable, transparent and risk-based supervisory regime which is in the public interest. However, as referred to in our previous communications, we and other professional bodies have some significant concerns which, whilst partially referred to in this consultation document, have not been addressed.

3. Furthermore, this consultation document and previous consultations appear to have "cherry picked" comments provided by the IFA, Accountancy Affinity Group and other professional bodies to support the goal of creating OPBAS. In section 4 of the consultation document, it is stated that "there was strong support for greater oversight to help improve the standard of AML supervision, especially where several supervisors operate in the same sector." In fact the IFA's response and that of the Accountancy Affinity Group other accountancy professional bodies clearly stated was that we were supportive of oversight in this area and that "HM Treasury could effectively undertake this function, if appropriately resourced to do so."

4. The rationale for oversight in the Accountancy Affinity Group response and the IFA's response was one of public interest rather than failure by the professional bodies in meeting supervisory standards. However, as has been previously requested to HM Treasury on numerous occasions, both verbally and writing, we have yet to see any evidence to support the fact that supervisors have not met the standards that are expected by supervisors, in spite of annual supervisors reports being submitted to HM Treasury on a voluntary basis and HM Treasury attending the Accountancy Affinity Group and Money Laundering Sector Group meetings on a regular basis.

5. The IFA has attended numerous consultation meetings with HM Treasury, along with other professional bodies, to provide comments and feedback on documentation produced by HM Treasury and at which there has been a strong reluctance to either take on board the views and comments provided, to provide factual evidence to substantiate and support claims HM Treasury were making and to coordinate meetings with key stakeholders, including law enforcement agencies, which the IFA has found extremely disappointing, frustrating and of major concern.

6. The introduction of OPBAS was justified on the grounds of having inconsistencies between supervisors which criminals may look to exploit, simplifying the amount of guidance which businesses have to follow and removing the unnecessary burdens without having a material impact on the fight against money laundering (https://www.gov.uk/government/news/uk-tightens-defences-against-money-laundering). However, as discussed below, we are concerned that HM Treasury will not achieve its desired outcomes in the accountancy sector by introducing OPBAS since the fundamentals on which OPBAS is being created appeared to be inherently flawed, based on perception rather than evidence. These points have been raised with HM Treasury on numerous occasions and not been addressed.

7. HM Treasury should also bear in mind the inadvertent consequences which may result of creating and implementing OPBAS which include and are not limited to:

    a. Creating a "two tier" supervisory system, one for professional body supervisors and another for HMRC, with different standards, reporting lines, accountability and costs;
    b. Reduction in the number of professional accountants as a result of increased costs and burdens being imposed on them. Individuals may choose to cease their membership and be supervised for AML by HMRC, which may be a cheaper alternative. If individuals cease their membership, they will no longer have to adhere to the ethical and technical standards expected of professionals, will not be subject to ongoing continuing professional development, disciplinary processes and practice management requirements such as professional indemnity insurance all of which protect the public; and

c. Reduction in the number of professional body supervisors and increase in the number of individuals and firms that HMRC may have to supervise.

Impact assessment

8. We are extremely concerned that HM Treasury is conducting the impact assessment for the creation of OPBAS after the decision has been made to create it and draft regulations regarding its powers are being consulted. The decision whether or not to create OPBAS should have been supported by a robust impact assessment prior to making the decision and the proposal for its creation should have been fully consulted with individuals, businesses and supervisors.

9. Seven out of the eight questions in the consultation document focus on benefits and costs for regulated businesses and supervisors. However, others affected by the proposals are not included as part of the consultation questions and the impact assessment:

    a. Micro organisations are not in scope of the impact assessment although as HM Treasury is aware, many of our firms are micro organisations that is, sole practitioners;

    b. Clients of firms of professional body supervisors;

    c. Public who may be affected detrimentally as a result of reduced numbers of professional accountants in the market. When faced with the additional costs of setting up and running OPBAS and the additional costs incurred by professional bodies for liaising with OPBAS, members may choose to cease their membership with professional bodies and become unregulated accountants providing services to the public and supervised by HMRC for AML. Under the current proposal, HMRC will not incur any of the costs of OPBAS and will therefore be the “low cost alternative” for AML supervision;

    d. Government and in particular HMRC. HMRC’s Making Tax Digital strategy and future strategy of Assured Tax Agents may be adversely affected by the reduction in professional body accountants, which may have an impact on tax avoidance and evasion. Research carried out by PwC showed that the sector generated an estimated £15.5bn in tax in 2015/2016, which comprises of £6.4bn of taxes borne and £9.1bn taxes collected. This contribution makes up 2.5% of all UK tax receipts – approximately the cost of total UK spending on police services

10. The IFA is also extremely concerned about the lack of detail, both in terms of benefits and cost, in the impact assessment and the underlying assumptions being made in the impact assessment as detailed below. Our comments are also supported by the Regulatory Policy Committee “The quality of the assessment would have been improved by including more detailed discussion of the options considered for the creation of OPBAS. The IA should have explained more on the structures of the new institution and the design of the oversight system. The IA should have also explained more clearly why the proposed policy is likely to be most efficient way of complying with the Directive.”

11. Focusing on the impact assessment itself and the claims that are made, we would like to draw your attention to the following points:

    a. *Transfer within the system:* The impact assessment for option policy 2 assumes that the OPBAS fee is a transfer within the system, the benefits and costs will be the same in the impact assessment. As far as we can see, the impact assessment assumes that set up and ongoing costs for OPBAS will be funded by professional bodies who will be able to pass the costs on to supervised businesses which in turn will pass on the costs to their clients. This seems a dangerous assumption to make for the following reasons. Members can cease to be members of a professional body and choose to be supervised by HMRC for AML. This may be an attractive option for members given that the FCA estimated running costs of OPBAS to be

£2m per annum and that, as far as we understand it, professional bodies will also have to incur the set up costs of OPBAS. In addition to the fees charged by OPBAS, supervisors are estimated to incur an additional £39,800 of incremental costs of liaising with OPBAS, reviewing supervisory procedures, participating in information sharing etc. These incremental costs exclude costs associated with policies, procedures and system changes required by the new regulations and any additional resources.

b. *Exploitation by criminals:* the impact assessment by HM Treasury does not include an estimated amount of the benefits achieved by preventing criminals from exploiting the inconsistencies in supervision. Since this is an integral part of the rationale for creating OPBAS, we strongly urge HM Treasury to quantify this are as part of their impact assessment and provide supporting evidence. To date, in spite of repeated requests, HM Treasury or other authorities have not provided any evidence of cases where criminals have exploited inconsistencies in supervision between supervisors. This point has been reiterated on many occasions to the HM Treasury in previous communications and at meetings of the Accountancy Affinity Group and the Money Laundering Sector Forum which meet regularly.

c. *Inconsistencies in supervision:* Given that no evidence has been shared with supervisors regarding the exploitation of inconsistencies by criminals, we are reasonably assuming that HM Treasury is trying to fix a perceived problem rather than an actual one. 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, namely HMRC who supervises individuals and firms not eligible for professional body membership, is outside the remit of OPBAS and will not report to OPBAS. Will HMRC adopt the same OPBAS standards as other professional body supervisors? While HMRC is ultimately accountable to Parliament rather than OPBAS, how will performance across the accountancy sector be evaluated when there are different reporting mechanisms, differences in accountability and perhaps different standards being adopted? Will HMRC be subject to the same penalties for poor standards? Will HMRC bear the costs of the creation of OPBAS since potentially they might be adopting the same standards? Without answers to these questions, does this not create a “two tier system” which criminals may exploit?

d. *Removing the unnecessary burdens of business:* the set up and running costs of OPBAS and other costs referred to in paragraph 17c clearly do not reduce the burdens on business but significantly increases them, particularly micro and small businesses.

e. *Simplifying the amount of guidance:* 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. 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. If there is no other guidance for the accountancy sector approved by HM Treasury, then it follows that the benefits to streamlining guidance in the sector will not be realised. As HM Treasury is aware, the draft CCAB guidance for the accountancy sector has been updated for the Money Laundering Regulations 2017 and issued as draft subject to HM Treasury approval.

f. *Options:* The impact assessment did not consider any other options, do nothing or legislate to provide the FCA with the necessary powers. The IFA is intrigued as to why other options were not considered given that the IFA and the Accountancy Affinity Group suggested in its response to the call for evidence “HM Treasury could effectively undertake this function (oversight function), if appropriately resourced to do so.” We would be interested to understand why this option was not considered and why contractual options such as those set up by the FCA in the Isle of Man were not considered.

g. *Assessment of supervisors:* The impact assessment states that “there is currently no formal and systematic mechanism for assessing supervisors’ performance. Since HM Treasury has required annual supervisors reports from professional body supervisors as part of its oversight role.” Given that this is the claim in the impact assessment, we and others can only infer that HM Treasury has not been conducting its role effectively and the creation of OPBAS in advance of the FATF Mutual Evaluation Review is to clearly cover up this failing. If this is the case, HM Treasury should incur the cost of creating OPBAS not supervisors since, as far as we are aware, we and other supervisors have provided HM Treasury with information to meet their requirements and continue to do so.

h. *Collaboration:* HM Treasury states in this consultation that it has “collaborated with AML supervisors and sought their participation in initiatives to strengthen the regime.” It also states that “whilst most supervisors engage with the HM Treasury on most of these initiatives, not all do so in all cases.” This statement is particularly disappointing. The IFA, like other professional bodies, have engaged and are continuing to engage positively and co-operated fully with HM Treasury in consultations relating to the implementation of the Fourth Money Laundering Directive, the Money Laundering Regulations 2017, creation of OPBAS, the second National Risk Assessment and other preparations leading to the Financial Action Task Force Mutual Evaluation Review which will commence towards the end of this year. We and other accountancy professional bodies, have been extremely collaborative and gone the extra mile to help HM Treasury in a number of initiatives to support the regime on a voluntary basis in the public interest. The IFA would like HM Treasury to provide evidence to support this claim which we strongly refute.

i. Consultation: The impact assessment claims that “There has been extensive consultation with professional body AML supervisors.” We, like other professional bodies, strongly refute this claim. Furthermore, we would add that the IFA has been requesting since last year for a project plan to be shared with supervisors in preparation for the FATF Mutual Evaluation Review in order to enable individuals, businesses and supervisors to participate as much as possible in relevant consultations. To date, this has not been forthcoming. A current example of this is the minimal involvement of firms and supervisors in providing feedback to the second National Risk Assessment being drafted by HM Treasury which is due to be published in October.

j. *Dates:* The date of the impact assessment appears to be 1/1/16 and yet the Minister signed the assessment on 4/6/17. Could HM Treasury please explain why an impact assessment on OPBAS appears to have been started such a long time ago and why it took the responsible Minister such a long time to sign this impact assessment?

Specific questions

Question 1: Do the draft regulations deliver the government’s intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?

12. Since the IFA has not been provided with any specific feedback from HM Treasury regarding its performance as a supervisor, it cannot comment on whether the government’s draft regulations achieve the government’s desired outcomes.

13. Specifically on the regulations themselves, there is no provisions for how OPBAS will meet their obligations in terms of supporting professional body supervisors in terms of guidance, information, training and other areas. Nor are there any provisions for those professional body supervisors that may wish to cease to be included in schedule 1 of the Money Laundering Regulations 1.

Question 2: On average, how many hours do staff in your business currently spend interpreting and applying different pieces of AML guidance per year? Please round your answer to the closest 10 hours.

14. This question is perplexing since we are not aware of any other guidance other than the CCAB guidance which has existed since 2007. As mentioned above, the CCAB guidance has been updated and is awaiting HM Treasury approval.

Question 3: Considering your answer to question 2 above, what proportion of the time your staff currently spend interpreting and applying AML guidance could be saved if the guidance were easier to understand? Please provide your answer as an estimated percentage of the total.

15. Not applicable.

Question 4: Putting the cost of staff aside, does your business incur additional costs to help your staff understand AML guidance, for example, expenditure on consultants? If so, how much does this cost a year on average? Please round your answer to the closest £100.

16. Not applicable.

Question 5: Do you expect your collaboration with other businesses to increase once AML supervisors' expectations are aligned? If so, how much might this save your business a year, on average? Please round your answer to the closest £100.

17. Not applicable.

Question 6: Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings. Please round your answer to the closest £100.

18. In view of the extremely brief consultation period, the ongoing FCA consultation on the source book which closes on 23 October 2017 and lack of detail being provided to supervisors, we are not in a position to discuss the implication of costs and resources.

Question 7: Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS's guidance going forward? If more or less, please provide the estimated annual additional cost or saving. Please round our answer to the closest £100.

19. As above, in view of the extremely short consultation period, we are not in a position to answer this question. The draft source book is high level and principles based and therefore subject to interpretation. Given this, the existence of the AAG which as setup to promote consistency in supervisory standards and best practice and the extensive and long standing experience of supervisors in this area, it is difficult to see what benefits a source book would bring. We would be interested in exploring this further with HM Treasury and/or OPBAS.

Question 8: In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for business you would like the government to take into account? If yes, please outline these and provide estimated costs or savings. Please round your answer to the closest £100.

20. See comments above.