

Improving the effectiveness of the Money Laundering Regulations

A consultation issued for public consultation by HM Treasury (HMT)

Comments from ACCA

7 June 2024

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GENERAL COMMENTS

ACCA is a Professional Body Supervisor (**PBS**) for anti-money laundering (**AML**) in the UK. We welcome the opportunity to provide views on the government's proposals to improve the effectiveness of the Money Laundering Regulations (**MLRs**). Our response to this consultation has been informed by input obtained from our supervised population and discussions with other accountancy PBSs.

ACCA fully supports the development of an effective UK AML supervisory regime that provides confidence in the UK as a safe, transparent and compliant jurisdiction to conduct business in. We believe that a robust and effective framework to tackle economic crime will help improve and facilitate further commercial activity for businesses in the UK.

We are generally supportive of the proposed changes to the MLRs to ensure that the legislation remains proportionate and effective. For example, we welcome the proposals to update the MLRs so that financial thresholds are in pound sterling rather than euros, and the suggested proposals to strengthen information sharing.

However, we have identified some areas of concern and these are highlighted in our responses to the questions raised where appropriate. In particular, we have concerns about the proposal to change the wording in regulation 33(1)(f) from 'complex' to 'unusually complex' as we believe this will create uncertainty and inconsistency of application. We also have concerns about the implications of making the list of requirements for high-risk third countries non-mandatory, and the potential consequence that firms may not conduct appropriate checks because there is no mandatory requirement.

We also note that changes to UK company law relating to identity verification are being introduced. ACCA supports the strengthening of the integrity of the Companies House register and the benefits this will bring. However, we suggest that alignment of the identity requirements across all the regulations is essential, as differences in the statutory requirements could result in confusion and additional cost and reduce the effectiveness of regulatory aims.

Finally, we are disappointed that HMT is yet to publish the outcome to the public consultation on the Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime, despite committing to do so by the end of March 2024. The continued uncertainty is unwelcome at a time when stability and clarity is needed to support the fight against economic crime.



AREAS FOR SPECIFIC COMMENT

CHAPTER 1: MAKING CUSTOMER DUE DILIGENCE MORE PROPORTIONATE AND EFFECTIVE

Customer Due Diligence

Due diligence triggers for non-financial firms

Q1 Are the customer due diligence triggers in regulation 27 sufficiently clear?

ACCA believes that the customer due diligence (**CDD**) triggers in regulation 27 are sufficiently clear. We are of the opinion that the currency thresholds in euros should be amended to pound sterling, and this is covered in more detail in Chapter 3 of the consultation response.

Source of funds checks

Q2 In your view, is additional guidance or detail needed to help firms understand when to carry out 'source of funds' checks under regulation 28(11)(a)? If so, in what form would this guidance be most helpful?

ACCA agrees with the consultation's assertion that providing a list of specific scenarios in which source of funds checks might be applied would create unnecessary mandatory checks that would not follow the principles of a risk-based approach.

ACCA believes that sector specific guidance would be helpful. This could be updated into existing guidance, such as the CCAB AML Guidance for the Accountancy Sector (**AML GAS**). We are of the opinion that in order to produce the most effective guidance there would need to be engagement from HMT in drafting the guidance to ensure it accurately represents the intentions of the MLRs.



Verifying whether someone is acting on behalf of a customer

Q3 Do you think the wording in regulation 28(10) on necessary due diligence on persons acting on behalf of a customer is sufficiently clear? If not, what could help provide further clarity?

ACCA believes that the provision should be made explicitly clear that the regulated firms must verify both the person purporting to be acting on behalf of the customer as well as the customer themselves.

Digital identity verification

Q4 What information would you like to see included in published digital identity guidance, focused on the use of digital identities in meeting MLR requirements? Please include reference to the level of detail, sources or types of information to support your answer.

ACCA would like to see clear guidance that details the expected minimum checks that are conducted by third-party digital verification tools. For example, through our AML supervisory activities we see a number of third-party providers that do not fully detail to consumers exactly what the software is checking and what data sources it relies on.

ACCA believes that consumers will be better protected if guidance is produced to outline the minimum standards required. For example, the software should be able to check that the client exists with the details provided. We are of the view that photographic ID should also be used to complement software so that this can be compared against the individual to ensure that they are the person they claim to be.

ACCA would also like to see guidance on when digital identity may be of use to complement traditional CDD approaches. This will ensure smaller firms that wish to retain their traditional methods do not feel they have to incur costs to procure a third-party provider. It will also support the firms so that they are not put under pressure by sales teams of third-party providers that claim they must use digital identity.



Q5 Do you currently accept digital identity when carrying out identity checks? Do you think comprehensive guidance will provide you with the confidence to accept digital identity, either more frequently, or at all?

As a designated body for AML Supervision, ACCA does not have clients itself and therefore it does not conduct identity checks.

However, ACCA would support comprehensive and clear guidance for firms. This will have the benefit of them being able to take confidence in adopting technology as well as giving AML supervisors a clear expectation to check against in our monitoring reviews and to produce supporting guidance for firms.

Q6 Do you think the government should go further than issuing guidance on this issue? If so, what should we do?

ACCA believes that new technologies to combat economic crime should be embraced and fully explored.

There are many third-party providers that sell their solutions to firms in the sector and we believe it would be beneficial for the government to engage with these companies to understand each product and ensure it meets the standards expected and has outcomes aligned with the MLRs. The government could also consider applying a certification to the providers. A government standard would ensure consistency and provide firms with the confidence and assurance they need to embrace new technologies.

Timing of verification of customer identity

Q7 Do you think a legislative approach is necessary to address the timing of verification of customer identity following a bank insolvency, or would a non-legislative approach be sufficient to clarify expectations?

ACCA has no comments in respect of this question as this is specific to the banking sector.



Q8 Are there other scenarios apart from bank insolvency in which we should consider limited carve-outs from the requirement to ensure that no transactions are carried out by or on behalf of new customers before verification of identity is complete?

ACCA has no comments in respect of this question as this is specific to the banking sector.

Enhanced Due Diligence

General triggers for enhanced due diligence

Q9 (If relevant to you) Have you ever identified suspicious activity through enhanced due diligence checks, as a result of the risk factors listed above? (Regulations 33(6)(a)(vii), 33(6)(a)(viii) and 33(6)(b)(vii)). Can you share any anonymised examples of this?

As a designated body for AML Supervision, ACCA does not conduct enhanced due diligence checks (**EDD**) on clients. Therefore, we are unable to comment on this area as we have not conducted EDD using the risk factors listed in the consultation.

Q10 Do you think that any of the risk factors listed above should be retained in the MLRs?

ACCA believes that it is positive to have a range of risk factors present. Whilst we acknowledge not every scenario will impact every sector, it does provide clarity that allows firms to consider which ones are appropriate in their overall risk-based approach. Sector specific guidance, such as the CCAB AML GAS, can provide further clarity for firms in the accountancy sector.

Q11 Are there any risk factors for enhanced due diligence, set out in regulation 33 of the MLRs, which you consider to be not useful at identifying suspicious behaviour?

ACCA believes that it is positive to have a range of risk factors present.



Q12 In your view, are there any additional risk factors that could usefully be added to, for example, regulation 33, which might help firms identify suspicious activity?

ACCA believes that the following areas could be considered as additional customer risk factors:

- High value goods eg Jewellers, Car Dealerships, Art, Antiques and luxury items
- Type of industry/business eg Properties (selling and renting), Import and Export (including haulage, freight, and shipping), Money Service Businesses, Cryptocurrency, Visa and immigration services, Investment services, Precious metals (eg gold, diamond trading), Charities
- Criminal convictions or adverse media
- High net worth individuals.

'Complex or unusually large' transactions

Q13 In your view, are there occasions where the requirement to apply enhanced due diligence to 'complex or usually large' transactions results in enhanced due diligence being applied to a transaction which the relevant person is confident to be low-risk before carrying out the enhanced checks? Please provide any anonymised examples of this and indicate whether this is a common occurrence.

Whilst ACCA acknowledges that 'complex' or 'unusually large' transactions will vary across financial sectors, we agree with the consultation that this continues to be a reasonable requirement.

If completed correctly firms will have identified the risk of such transactions from any relevant clients in their firm wide risk assessment, and will have established mitigating controls and processes to deal with such situations when they arise.

ACCA believes the current approach supports the risk-based approach that firms should adopt.

Q14 In your view, would additional guidance support understanding around the types of transactions that this provision applies to and how the risk-based approach should be used when carrying out enhanced check?

ACCA would support any sector specific guidance on this matter to further support firms' understanding and to ensure consistency of understanding and application.



Q15 If regulation 33(1)(f) was amended from ‘complex’ to ‘unusually complex’ (e.g. a relevant person must apply enhanced due diligence where... ‘a transaction is unusually complex or unusually large’):

- **in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.**
- **in your view, would this create any problems or negative impacts?**

ACCA believes this would not provide clarity as a transaction is either complex or it is not. Whilst a transaction can be unusually large for a client, we feel that by adding ‘unusually’ to the term complex will create further uncertainty.

We are of the opinion that all complex transactions require additional time, care and attention to determine their intended purpose and nature.

ACCA believes that it would be more appropriate to issue guidance to support understanding as outlined in Q14.

High Risk Third Countries

Q16 Would removing the list of checks at regulation 33(3A), or making the list non-mandatory, reduce the current burdens (cost and time etc.) currently placed on regulated firms by the HRTC rules? How?

ACCA believes that, while making the list non-mandatory would potentially reduce time and cost pressures, it has the unintended consequence that some firms will not conduct appropriate checks due to there being no mandatory requirement.

If no checks are mandated in the MLRs, ACCA is of the opinion that this would make enforcement action for supervisors in cases where AML controls are not sufficient very difficult as there would be no clear requirement on the firm to do the checks to which we could refer.

ACCA agrees with the suggestion in section 1.70 of the consultation that a better approach could be to align the EDD requirements for high-risk third countries (**HRTCs**) with other EDD triggers. This would remove those that go above the Financial Action Task Force (**FATF**) requirements and mitigate the risk of removing checks altogether.



Q17 Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?

See Q16.

Q18 Are there any High Risk Third Country-established customers or transactions where you think the current requirement to carry out EDD is not proportionate to the risk they present? Please provide examples of these and indicate, where you can, whether this represents a significant proportion of customers/transactions.

ACCA does not think there are any such customers or transactions. The countries are added to the list for a reason and therefore the rules need to be consistent and the requirement to conduct EDD should remain. If there are variants that allow certain customers or transactions to bypass that requirement, this creates uncertainty and loopholes that criminals will exploit.

ACCA agrees with the suggested approach in section 1.70 of the consultation that a better approach could be to align the EDD requirements for HRTCs with other EDD triggers. This would remove those that go above the FATF requirements and mitigate the risk of removing checks all together.

Q19 If you answered yes to the above question, what changes, if any, could enable firms to take a more proportionate approach? What impact would this have?

Not applicable.

Simplified Due Diligence

Pooled client accounts

Q20 Do you agree that the government should expand the list of customer-related low-risk factors as suggested above?

ACCA agrees with the suggested low-risk factors and they seem appropriate.



Q21 Do you agree that as well as (or instead of) any change to the list of customer-related low-risk factors , the government should clarify that SDD can be carried out when providing pooled client accounts to non-AML/CTF regulated customers, provided the business relationship presents a low risk of money laundering or terrorist financing?

ACCA agrees with this proposal.

Q22 In circumstances where banks apply SDD in offering PCAs to low-risk businesses, information on the identity of the persons on whose behalf funds are held in the PCA must be made available on request to the bank. How effective and/or proportionate do you think this risk mitigation factor is? Should this requirement be retained in the MLRs?

ACCA believes that this requirement should be retained in the MLRs to provide a gateway for banks to obtain information as part of their own risk-based approach.

Q23 What other mitigations, if any, should firms consider when offering PCAs? Should these be mandatory under the MLRs?

ACCA believes that making expectations mandatory in the MLRs is positive as it will provide clarity for firms and supervisors of what is required. It will also allow for these mitigations to be fully embedded into firms' risk-based approaches.

ACCA believes that further mitigations would benefit further discussion with those firms offering pooled client accounts (**PCAs**) to understand fully the risks so that appropriate mitigations can be considered.

Q24 Do you agree that we should expand the regulation on reliance on others to permit reliance in respect of ongoing monitoring for PCA and equivalent scenarios?

ACCA believes that this proposal would benefit from further discussion with those firms offering PCAs and that may wish to utilise reliance on others or ongoing monitoring.



Q25 Are there any other changes to the MLRs we should consider to support proportionate, risk-based application of due diligence in relation to PCAs?

See Q23 and Q24. ACCA believes that this proposal would benefit from further discussion with those firms offering PCAs to find a proportionate solution that supports a risk-based approach.

CHAPTER 2: STRENGTHENING SYSTEM COORDINATION

Information sharing between supervisors and other public bodies

Q26 Do you agree that we should amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner?

ACCA agrees with this proposal.

Q27 Should we consider extending the information-sharing gateway in regulation 52(1A) to other public bodies in order to support system coordination? If so, which public bodies? Please explain your reasons.

ACCA fully supports any improvements to enable coordinated and consistent sharing of information to help combat economic crime. We are happy to engage in further discussions to help identify any public bodies that will support this objective.

Q28 Should we consider any further changes to the information-sharing gateways in the MLRs in order to support system coordination? Are there any remaining barriers to the effective operationalisation of regulation 52?

ACCA fully supports any improvements to enable coordinated and consistent sharing of information to help combat economic crime.

In our role as an AML supervisor, we have experienced effective information sharing between other PBSs under the current provisions of regulation 52. However, we believe there is an opportunity for the government to consider s348 of FSMA 2000 and how this aligns with the objectives of information sharing. This has been quoted to us a number of times by the Financial Conduct Authority (FCA) as a reason for why they are unable to share information with ACCA.



Cooperation with Companies House

Q29 Do you agree that regulation 50 should be amended to include the Registrar for Companies House and the Secretary of State in so far as responsible for Companies House?

ACCA agrees with this proposal.

Q30 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

ACCA believes there should be full engagement and further discussion with all relevant parties to outline and map fully how this will change work. This will ensure that there are not any unintended consequences, contradictions to other regulations, or unnecessary burdens placed.

Q31 In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

See Q30.

Regard for the National Risk Assessment

Q32 Do you think the MLRs are sufficiently clear on how MLR-regulated firms should complete and use their own risk assessment? If not, what more could we do?

ACCA believes that the CCAB AML GAS provides an appropriate level of guidance on the MLRs and the expectations of the accountancy sector in relation to this area.



Q33 Do you think the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment (including the NRA)? If not, what more can we do?

ACCA believes that the CCAB AML GAS provides an appropriate level of guidance on the MLRs and the expectations of the accountancy sector in relation to this area.

ACCA is of the opinion that the National Risk Assessment (**NRA**) should be further strengthened in its next iteration to provide further supporting case studies and evidence of the risks faced by the accountancy sector. This will enable a more granular level of understanding of the risks for firms and allow a much more refined risk-based approach.

As an AML supervisor, ACCA incorporates the NRA findings into its supervisory framework.

Q34 One possible policy option is to redraft the MLRs to require regulated firms to have a direct regard for the NRA. How do you think this will impact the activity of: a) firms b) supervisors? Is there anything this obligation should or should not do?

ACCA notes that the NRA is not conducted as frequently as the firms' annual firm-wide risk assessment. NRAs have been published in 2015, 2017 and 2020. Therefore, there is a danger that trends and threats emerge in the intervening period which are not included in a document that firms must have regard to.

This could have the unintended consequence that, in the period between NRA publications, the quality of firm-wide risk assessments diminishes as firms will focus on meeting the legal requirement of the NRA and may be less able to adapt to emerging trends.

System Prioritisation and the NRA

Q35 What role do you think the NRA versus system prioritisation should play in the allocation of regulated firms' resources and design of their AML/ CTF programmes?

ACCA believes there should be full engagement and further discussion with all relevant parties to outline and map fully how this will work. This will ensure that there are not any unintended consequences, contradictions to other regulations, or unnecessary burdens placed on firms adopting a risk-based approach.



CHAPTER 3: PROVIDING CLARITY ON SCOPE AND REGISTRATION ISSUES

Currency Thresholds

Q36 In your view, are there any reasons why the government should retain references to euros in the MLRs?

ACCA is of the opinion that the currency thresholds in euros should be amended to pound sterling.

Q37 To what extent does the inclusion of euros in the MLRs cause you/your firm administrative burdens? Please be specific and provide evidence of the scale where possible.

ACCA is of the opinion that the regulations should be clear and tailored to the country where the legislation applies. Including references to euros in the UK regulations has the potential to cause confusion and inconsistencies.

Q38 How can the UK best comply with threshold requirements set by the FATF?

ACCA believes that HMT could engage with FATF on the proposed thresholds in the MLRs and have an open dialogue to ensure the United Kingdom meets their expectations and intentions.

Q39 If the government were to change all references to euros in the MLRs to pound sterling which of the above conversion methods (Option A or Option B) do you think would be best course of action?

ACCA is of the opinion that Option A would be the best course of action.

Q40 Please explain your choice and outline with evidence, where possible, any expected impact that either option would have on the scope of regulated activity.

Option A allows the MLRs to retain figures that firms should be familiar with. For example, since 2017 firms have been operating with Euro 10,000 so, for ease, they are likely to have applied



£10,000 in their procedures to safeguard from fluctuations in exchange rates and to ensure they are not falling below the FATF standards. Therefore, we believe that Option A is the simplest option and it removes the need to undertake exchange rate conversions on a certain date.

However, ACCA believes that HMT should engage with FATF on the proposed thresholds in the MLRs and have an open dialogue to ensure the United Kingdom meets their expectations and intentions.

Regulation of resale of companies and off the shelf companies by TCSPs

Q41 Do you agree that regulation 12(2) (a) and (b) should be extended to include formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf?

ACCA agrees with this proposal.

Q42 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons.

ACCA does not consider there to be any unintended consequences and we believe that the approach is proportionate and addresses the risks.

Q43 In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

ACCA is of the opinion that this will have minimal impact for accountancy firms that are trust or company service providers (**TCSPs**). The sale of 'off the shelf' companies is not a large volume activity undertaken by the sector.

ACCA believes it is correct to bring them into scope and any firms that do engage in this activity will be able to include the requirements alongside their existing policies and procedures.



Change in control for cryptoasset service providers

Q44 Do you agree that the MLRs should be updated to take into account the upcoming regulatory changes under FSMA regime? If not, please explain your reasons.

ACCA agrees with this proposal. Alignment of regulations ensures consistency and clarity of requirements.

Q45 Do you have views on the sequencing of any such changes to the MLRs in relation to the upcoming regulatory changes under the FSMA regime? If yes, please explain.

ACCA does not have any views on this area.

Q46 Do you agree that this should be delivered by aligning the MLRs registration and FSMA authorisation process, including the concepts of control and controllers, for cryptoassets and associated services that are covered by both the MLRs and FSMA regimes? If not, please explain your reasons.

ACCA agrees with this proposal. Alignment of regulations ensures consistency and clarity of requirements.

Q47 In your view, are there unique features of the cryptoasset sector that would lead to concerns about aligning the MLRs more closely with a FSMA style fit and proper process? If yes, please explain.

ACCA does not have specialist views and knowledge of the cryptoasset sector so we are unable to provide any insight on this area.

Q48 Do you consider there to be any unintended consequences to closer alignment in the way described? If yes, please explain.

See Q47.



CHAPTER 4: REFORMING REGISTRATION REQUIREMENTS FOR THE TRUST REGISTRATION SERVICE

Registration of non-UK express trusts with no UK trustees, that own UK land

Q49 Does the proposal to make these trusts that acquired UK land before 6 October 2020 register on TRS cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

ACCA is not aware of any unintended consequences.

Q50 Does the proposal to change the TRS data sharing rules to include these trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

ACCA is not aware of any unintended consequences.

Trusts required to register following a death

Q51 Do the proposals to exclude these trusts for two years from the date of death cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

ACCA is not aware of any unintended consequences.

Q52 Does the proposal to exclude Scottish survivorship destination trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

ACCA is not aware of any unintended consequences.



De minimis exemption for registration

Q53 Does the proposal to create a de minimis level for registration cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

ACCA is not aware of any unintended consequences.

Q54 Do you have any views on the proposed de minimis criteria?

ACCA believes the proposed de minimis criteria seem appropriate.

Q55 Do you have any proposals regarding what controls could be put in place to ensure that there is no opportunity to use the de minimis exemption to evade registration on TRS?

ACCA's AML supervised firms do not undertake this activity so we would encourage HMT to engage fully with those that do outside of the consultation process to ensure there are no loopholes in the proposal.

