Accountants for the real world

Improving the effectiveness of the Money Laundering Regulations

Association of Accounting Technicians (AAT)

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1. About AAT

1.1 AAT is the UK's leading qualification and professional body for technical accountants and bookkeepers. We have around 51,000 members in over 100 countries, approximately 75,000 students studying our qualifications and over 6,600 Licensed Members.

1.2 Founded in 1980, AAT is a registered charity committed to increasing the availability of high-quality accountancy education and raising professional standards. We aim to advance public education, promote the study of accountancy, prevent crime, and promote and enforce standards of professional conduct for accountants.

1.3 Over 840,000 small businesses are supported by AAT's licensed members to help build the businesses' financial capabilities. AAT also helps businesses of all sizes upskill and train employees to be the business leaders of the future.

1.4 AAT's suite of qualifications is highly regarded across the profession and open to all. We help school leavers take their first steps in their career as well as thousands of career changers gain and develop new skills to equip them for careers in finance.

2. Introduction

2.1 AAT welcomes the opportunity to respond to this consultation. AAT supports the Government's drive to combat money laundering and terrorist financing and to ensure that UK businesses are appropriately supported in order to identify and prevent money laundering and terrorist financing activity.

2.2 We note that the review of the Money Laundering Regulations (MLRs) published in 2022 found that the MLRs work broadly as intended, however we agree that there is always room to improve the effectiveness of the regime.

2.3 In that regard, whilst AAT is in agreement with the proposed developments to the MLRs as outlined in the consultation document, there are aspects of the UK's AML regime that are not addressed in the proposals that could have a significant impact on improving the regime's effectiveness.

2.4 In addition, AAT acknowledges that for the MLRs to be effective they need to be operated through a robust supervisory regime. AAT responded to the HM Treasury consultation on Reforming ant-money laundering and counter-terrorism financing[1] in September 2023 and we are concerned that since the closure of the consultation there has been no announcement on next steps, a summary of responses, or an impact assessment. The ongoing uncertainty around the supervisory reform and the apparent lack of an impact assessment of the implications relating to each of the proposed supervisory reform models challenges the Government's desire for the MLRs to be effective.

2.5 In our response, rather than responding to all of the consultation questions we have captured views in relation to those questions that are relevant and where we have a comment to make.

[1] Reforming AML and counter-terrorism financing supervision | AAT

3. Executive Summary

3.1 **Regulation 27 should be separated into two parts; onboarding and ongoing CDD/monitoring**, as ongoing CDD and monitoring is more likely to identify irregular activity/behaviour of a client.

3.2 **The government should go further than just issuing digital identity guidance and should look into the introduction of regulation around software providers** due the proliferation of software providers that are either making erroneous claims about the mandatory requirement to utilise digital identity verification or are making claims about the capacity to rely on their products to ensure compliance when in reality their products are not sufficiently comprehensive.

3.3 **Making the list of checks at regulation 33(3A) non-mandatory would reduce the current burden on regulated firms.** Retaining the list of checks will be useful, enabling firms to better understand what EDD measures could be applied, but the time and cost spent in managing levels of risk in HRTCs is disproportionate to the risk posed, as pursuing the relevant verification procedures doesn't necessarily result in a reduction in the risk associated with that HRTC.

3.4 **AAT agrees that the government should expand the list of customer-related low-risk factors around Simplified Due Diligence for pooled client accounts** however, if the government opts to expand the list as proposed, there should be guidance provided on the minimum duration that SDD can be applied before ongoing monitoring of the risk becomes mandatory.

3.5 **The information-sharing gateway should be expanded to allow regulated entities to share information with supervisory authorities** but there needs to be one consistent method of sharing information that ensures compliance with GDPR across the system.

3.6 **Requiring regulated firms to have direct regard for the NRA would drive up levels of understanding** enabling the regulated firms to develop a more comprehensive understanding of the threats and risks they need to be aware of.

4. Responses to questions

Chapter 1: Making customer due diligence more proportionate and effective

<u>Customer Due Diligence</u>

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

4.1 AAT recognises the importance of ensuring that appropriate levels of clarity and understanding are in place so that all supervised entities are fully aware of, and deliver to, their obligations.

4.2 Broadly speaking AAT is of the view that the customer due diligence triggers in Regulation 27 are sufficiently clear, however there are a couple of suggestions for further development that AAT would recommend.

4.3 Firstly, AAT considers that 27(1)(c) – 'suspects money laundering or terrorist financing' as a trigger is too vague. This provision should specify whether these suspicions are required to have arisen from a business relationship order for CDD to take place. Otherwise, it could be interpreted that a relevant person is expected to undertake CDD where there are suspicions even if there is no business relationship.

4.4 In addition, AAT contends that Regulation 27 should be separated into two parts; onboarding and ongoing CDD/monitoring, as it is the ongoing CDD and monitoring which is more likely to identify irregular activity/behaviour of a client. In conducting supervisory reviews whilst AAT sees firms

consistently undertaking CDD at the point of onboarding, we have captured evidence that fewer firms are undertaking/documenting ongoing CDD/monitoring.

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?

4.5 The Consultative Committee of Accountancy Bodies (CCAB) AML guidance for the accountancy sector (AMLGAS) touches upon sources of funds checks but only 'when necessary' or as part of EDD. Whilst it would be helpful for supervisors to receive clearer guidance to issue to the sector, AAT does not consider that this should be prescriptive in the MLRs.

4.6 Moreover, there is a risk that providing scenarios presents the risk of them then being taken as prescriptive provisions; with the number of variables and sectors covered, this would not be helpful.

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?

4.7 AAT considers that the wording in Regulation 28(10) is sufficiently clear.

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.

4.8 AAT is aware that member firms encounter challenges in being able to appropriately identify whether digital identity verification software is providing the necessary service in order for the member firms to be confident in the software's verification processes.

4.9 AAT is aware of AML software providers that claim their products ensure compliance with the MLRs however these products contain gaps in their risk assessment profiles. It would therefore be beneficial for the Government to provide assurances around those software products that are sufficiently comprehensive in order that member firms can have greater confidence in using those systems for digital identity purposes.

4.10 Across the accountancy sector the Professional Body Supervisors have shared experiences whereby some digital identity software providers specify that digital identity verification is a compulsory requirement in order to comply with the MLRs. AAT provides regular guidance to its members around the MLRs however further clarity in Government guidance on this matter would be beneficial, along with a reiteration of the need for firms to carry our risk assessments when using digital identities.

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

4.11 As referenced above, one of the major issues relating to the usage of digital identities is in relation to the proliferation of software providers that are either making erroneous claims about the mandatory requirement to utilise digital identity verification or are making claims about the capacity to rely on their products to ensure compliance when in reality their products are not sufficiently comprehensive. Therefore, AAT considers that the government should go further than just issuing guidance and should look into the introduction of regulation around software providers.

Enhanced Due Diligence

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

4.12 Having reflected on this matter with the other PBSs in the accountancy sector, AAT similarly considers that caution should be applied around adding further high-risk factors into the legislation. The current list in the MLRs is not exhaustive and there are challenges around updating legislation for emerging threats and trends. Care should be taken to ensure that any development to the list of risk factors does not infer that the list is exhaustive and sets out the full array of risks that member firms need to consider.

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?

4.13 No, however AAT considers that the AML supervisors would benefit from more guidance on Regulation 35(3A)(b) as to what would be an acceptable level of EDD for domestic PEPs vs non-domestic PEPs.

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?

4.14 AAT is of the view that adding something around TCSP services would be beneficial. Sector guidance and the current National Risk Assessment of Money Laundering and Terrorist Financing (NRA) identifies TCSP services as high risk and that relevant persons should therefore be undertaking EDD under Reg 33(1)(a)(ii). It may be necessary to make explicit reference to EDD being required where there is a high-risk involving TCSP services, for example in a situation where a firm is providing a significant amount of TCSP services to one client, such as in the case of a registered office being provided to a large number of businesses owned by one client.

‘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.

4.15 This is not something that AAT has experience of as AAT member firms do not often, if at all, engage in complex or unusually large transactions.

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?

4.16 Additional guidance support would be helpful in supporting understanding around the types of transaction this provision applies to as long as it was broken down by sector.

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?***

4.17 AAT considers that using the word ‘unusually’ for complex transactions would have a negative impact as this could result in one-off transactions from not being subject to EDD measures or could lead to professional enablers exploiting this potential loophole due to the ambiguity of the word ‘unusually’.

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?

4.18 Whilst having the list of checks is useful in terms of enabling firms to better understand what EDD measures could be applied, AAT agrees that making the list of checks at Regulation 33(3A) non-mandatory would reduce the burden on firms. AAT's rationale for this is that the time and cost spent in managing levels of risk in HRTCs is burdensome and pursuing the relevant verification procedures doesn't necessarily result in a reduction in the risk associated with that HRTC. It would seem a more proportionate solution to adopt a risk-based approach.

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

4.19 It is possible that there may be some unintended consequences of making the list of checks at Regulation 33(3A) non-mandatory, however AAT recommends conducting a review after a defined time period, say 12 months, in order to establish whether the number of SARs/investigations has increased in respect of HRTC customers/transactions as this could potentially indicate a CDD failure.

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?

4.20 Yes, however AAT considers that it would be likely to see an increase in the number of supervised firms being able to apply SDD due to their client/services profiles. Therefore, if the government opts to expand the list of customer-related low-risk factors as proposed, there should be guidance provided on the minimum duration that SDD can be applied before ongoing monitoring of the risk becomes mandatory.

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?

4.21 Yes, this would improve access to PCAs amongst the member firms in AAT's supervised population.

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

4.22 Verification of AML supervision arrangements could be applied where a regulated firm is applying for a PCA.

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?

4.23 AAT does not agree that the regulation should be expanded. AAT considers the idea of reliance to be counterintuitive as the onus is still on the person placing reliance upon another firm to be compliant with the MLRs. It is Aat's experience that once we explain the rules around reliance to firms, they would rather just undertake their own CDD.

Chapter 2: Strengthening system coordination

Information sharing between supervisors and other public bodies

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.

4.24 AAT is of the view that the gateway should be expanded to allow regulated entities to share information with supervisory authorities. AAT recently became aware of a bank that may hold useful information about our supervised population following an analysis activity carried out by the bank. However, it has been difficult to identify a gateway that allows the bank to share this information with us. AAT believes that the information has been shared with the UKFIU but again, we have not received this intel.

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?

4.25 There needs to be one consistent method of sharing information that ensures compliance with GDPR across the system. For example, AAT uses SIS to alert other PBSs of potential red flags but not all agencies use SIS. AAT also has CJSM and Egress for email intelligence in place, but find key stakeholders, such as HMRC, do not use the same encryption methods.

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?

4.26 AAT considers that it is difficult to answer questions 29, 30 and 31 as they do not provide an explanation as to how Regulation 50 would be used by Companies House. AAT does not want to agree to this and then see the creation of a disproportionate number of information sharing activities. As a PBS, AAT already provides HMRC a list of TCSPs and Companies House a list of ROE agents and soon, ACSPs. As mentioned above, AAT also uses SIS to alert other PBSs about red flags. There needs to be one central register of regulated entities across each sector that all relevant agencies can be granted access to, and be expected to add intelligence to, under Regs 50/52 of the MLR.

Regard for the National Risk Assessment

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?

4.27 Yes, however the MLRs could make specific reference to the published guidance available for each sector so that it is clear to firms that there are specific documents available. Sector specific guidance provides a greater level of detail around implementing the regulatory requirement in practice.

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?

4.28 Requiring regulated firms to have direct regard for the NRA would drive up levels of understanding amongst the regulated firms enabling them to develop a more comprehensive understanding of the threats and risks they need to be aware of.

4.29 AAT considers however that this will only work if the NRA is correct in its assessment of risk. For example, the current NRA identifies TCSP as high risk. Whilst AAT agrees that there is more

opportunity for criminals to use TCSP services to facilitate criminal activity, the likelihood of this arising amongst AAT's supervised population is lower than it is within a population of firms only providing TCSP services. This is because the firms supervised by AAT are providing accountancy services alongside the TCSP services and therefore usually have access to a wider range of information regarding their clients and have a more established view of their clients' behaviour. As such, we do believe the current NRA accurately reflects the degrees of risk within the provision of TCSP services.

4.30 There also needs to be consideration about how digestible the NRA is, it is already a lengthy document. A sizeable proportion of AAT's supervised population are small, sole practitioner businesses for whom not all of the NRA is specifically relevant.

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?

4.31 AAT recommends that the government is mindful of the related cost implications of compliance for regulated firms and supervisors. Whilst AAT supports the development of measures that further ensure compliance, consideration regarding the impact of the need for regulated firms and supervisors to be able to commit resources appropriately is required.

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?

4.32 AAT does not consider that there are any reasons why the government should retain references to euros in the MLRs. Using sterling would provide greater clarity for AAT's supervised population.

Additional observations

The scope of the review as detailed in the consultation document misses the opportunity to address additional elements of the MLRs that AAT considers require development.

4.33 Register of Overseas Entities (ROE) - compared to the MLRs, there is a higher standard of verification for agents who appear on the register of UK regulated agents for the purposes of the ROE. Whilst AAT appreciates that there are separate verification regulations in place for ROE, AAT considers that the MLRs should provide clarity for regulated firms and make reference to these.

4.34 Regulation 4 - it would be helpful to have greater clarity as to whether a 'business relationship' is considered to exist in the absence of a signed contract/agreement by both parties. Regulation 27 requires firms to undertake CDD if they establish a business relationship, but AAT does not consider its regulated member firms to have engaged a client until they have a signed letter of engagement. Therefore, AAT considers that providing clarity as to the starting point for the purposes of a 'business relationship' under the MLRs.

4.35 Regulations 8 and 9 - 'Carrying on business in the United Kingdom'. AAT takes the view that it would be useful to include bookkeepers as relevant persons and define what is meant by accountancy and/or bookkeeping services. It would also be helpful to clarify whether firms are required to be remunerated in order to be considered to be providing services 'by way of business'. It seems there is a potential loophole for those providing services on a voluntary basis and/or charities. AAT has seen an increase in the number of overseas members registering their businesses in the country of their residence but servicing clients operating in the UK. AAT considers that these clients should be subject to the UK's AML regime. However, under the

current MLRs, these firms would not be able to register their businesses with a UK supervisory authority.

4.36 Regulation 21 – currently this regulation provides 'Where appropriate with regard to the size and nature of its business' a relevant person must have specific internal controls. It would be useful to have clarity around what is considered appropriate as this very much open to interpretation and professional judgement.

4.37 The MLRs do not cover virtual assistants but there is HMRC guidance around this. AAT is of the view that consideration as to whether there should be provisions for cloud-based services is required.

4.38 It is AAT's view that more clarity is needed around what constitutes an appropriate fine along with confirmation that OPBAS cannot challenge a decision made by a PBS if that decision can be justified.

4.39 Supervisors need to be able to reject applications for AML supervision where high risk intelligence is received. Currently MLRs only permit supervisors to reject applications where the applicant has been convicted of a relevant offence. AAT has received applications for supervision where applicants have been subject to MLR investigation but under the current MLRs find it difficult to refuse on that basis.

4.40 AAT notes that information sharing between regulated firms has been introduced by the ECCT Act, however guidance has yet to be issued on this meaning that supervisors cannot support their regulated firms with the implementation of better information sharing practices.

4.41 In addition to AAT's observations above, AAT fully supports the points made in the AASG response submission covering the topics of:

- The requirement to be supervised
- Fines and sanctions
- Director verification

These represent areas that the consultation has not considered and that members of the AASG had hoped would be addressed as they would have significant impact in increasing the effectiveness of the UK's AL regime.

Further information

For more information, or if you have any queries on this submission, please contact Adam Harper, Interim Director of Policy at AAT: adam.harper@aat.org.uk