HM Treasury

Public consultation on the Transposition of the Fifth Money Laundering Directive.

A response by
CILEx Regulation

10 June 2019

Introduction

This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing around 20,000 members and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation has demonstrated its emphasis on economic growth, as it aims to capture a wider range of individuals and entities within its regulatory remit.

CILEx became an approved supervisory authority for money laundering on 6 February 2015.Its authorised entities are supervised by CILEx Regulation as the independent regulator of CILEx members, CILEx Practitioners and entities.

CILEx Regulation is a member of the Legal Sector Affinity Group and the AML Supervisors forum. We support the aims of reinforcing a risk-based approach across all sections of the anti-money laundering and counter-terrorist finance regime.

Our authorised entities and a small number of individuals working as sole practitioners are supervised for money laundering compliance.

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Response to HM Treasury consultation

1. We are pleased to have the opportunity to respond to this consultation and to consider the impact on our firms and members.

2. We are supportive of strengthening the AML/CTF regime but hope that HM Treasury (HMT) remain mindful of the overall impact the changes proposed will have on those carrying out AML checks. We support the strengthening of the role of Companies House and the proposal to increase the transparency of UK corporate entities that the Department for Business, Energy & Industrial Strategy are currently consulting on as we believe that this has potential to assist relevant persons with the checks they are required to carry out.

3. Within this consultation there are several areas that 5MLD requires significant changes to, where they are assessed under the National Risk Assessment as being low risk. We hope that HMT ensure that any proposals are introduced on a risk sensitive basis to ensure that what is required does not become onerous in relation to the risk being addressed. Clearly the more requirements that are being put in place will eventually become a cost to the consumer. We do welcome that technology is starting to address these concerns.

4. We also believe that this consultation again raises questions about the scope of the Money Laundering Regulations (MLR), especially in looking at non MLR supervised firms, where it would appear that the opportunity for AML/CTF risk is the same but they do not have the same requirements on them as a supervised firm.

Response to questions

Expanding the scope in relation to tax matters

1 What additional activities should be caught within this amendment?

We do not have the specific experience and knowledge in this area to suggest additional activities to be subject to this amendment.

2 In your view, what will be the impact of expanding the definition of tax advisor? Please justify your answer and specify, where possible, the costs and benefits of this change.

Without the knowledge and experience in this sector, we are unable to quantify any changes.

Letting agents

3 What are your views on the ML/TF risks within the letting agents' sector? What are your views on the risks in the private landlord sector, especially comparing landlord-tenant to agent-landlord-tenant relationships? Please explain your reasons and provide evidence where possible.

We are not involved directly in the letting sector but would support the adoption of the 5MLD recommendations as being a sensible approach to extending the reach of the MLR's to this sector.

4 What other types of lettings activity exist? What activities do you think should be included or excluded in the definition of letting agency activity? Please explain your reasons and provide evidence where possible.

We are not able to comment.

5 Should the government choose a monthly rent threshold lower than EUR 10,000 for letting agents? What would the impact be, including costs and benefits, of a lower threshold? Should the threshold be set in euros or sterling? Please explain your reasoning.

We would support the adoption of the proposed threshold, although would suggest that the threshold is set in sterling for clarity.

6 Do letting agents carry out CDD checks on both contracting parties (tenants and landlords) when acting as estate agents in a transaction?

We are not able to comment.

7 The government would welcome views on whom CDD should be carried out and by what point? Should CDD be carried out before a relevant transaction takes place (if so, what transaction) or before a business relationship has been established? Please explain your reasoning.

We would support CDD being carried out on the customer (e.g. the landlord) and believe that this should be before a business relationship is established, similar to other professional sectors

8 The default supervisor of relevant letting agents will be HMRC, but professional bodies can apply to OPBAS to be a professional body supervisor. Are you a member of a professional body, and would this body be an appropriate supervisor? If this body would be an appropriate supervisor, please state which professional body you are referring to.

We are not a member of a professional body, so are not able to comment.

9 What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, training staff etc.)? Please provide figures (even if estimates) if possible.

We are not able to comment.

10 Should the government extend approval checks under regulation 26 of the MLRs to letting agents? Should there be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, managers and officers)?

We would support the adoption of similar standards to that required by other sectors for checks under regulation 26. This provides a consistent approach.

11 Is there anything else that government should consider in relation to including letting agents under the MLRs?

We are not able to comment.

Cryptoassets

12 5MLD defines virtual currencies as "a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically". The Government considers that all relevant activity involving exchange, security and utility tokens should be captured for the purposes of AML/CTF regulation and seeks views on this approach. Is the 5MLD definition appropriate or does it need to be amended in order to capture these three types of cryptoassets (as set out in the Cryptoassets Taskforce's framework)? Further, are there assets likely to be considered a virtual currency or cryptoasset which falls within the 5MLD definition, but not within the Taskforce's framework?

This is not an area of risk to which our firms are currently exposed, but we recognise that there are inherent ML/TF risks with virtual currencies which need to be addressed. We therefore support bringing them in to regulation as recommended by 5MLD but beyond that we do not have direct experience on which to base any suggestions.

13 5MLD defines a custodian wallet provider as "an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies". The Government considers that all relevant activity involving exchange, security and utility tokens should be captured for the purposes of AML/CTF regulation and seeks views on this approach. Is the EU Directive

definition appropriate or does it need to be amended in order to capture these three types of cryptoassets (as set out in the Cryptoassets Taskforce's framework)? Further, are there wallet services or service providers likely to be considered as such which fall outside this Directive definition, but should come within the UK's regime?

We are not able to comment.

14 Should the FCA be assigned the role of supervisor of cryptoasset exchanges and custodian wallet providers? If not, then which organisation should be assigned this role?

Whilst we have limited knowledge of cryptoassets, the FCA would seem the most appropriate supervisor.

15 The government would welcome views on the scale and extent of illicit activity risks around cryptoassets. Are there any additional sources of risks, or types of illicit activity, that this consultation has not identified?

We are not able to comment.

16 The government would welcome views on whether cryptoasset ATMs should be required to fulfil AML/CTF obligations on their customers, as set out in the regulations. If so, at what point should they be required to do this? For example, before an 'occasional transaction' is carried out? Should there be a value threshold for conducting CDD checks? If so, what should this threshold be?

We are not able to comment.

17 The government would welcome views on whether firms offering exchange services between cryptoassets (including value transactions, such as Bitcoin-to-Bitcoin exchange), in addition to those offering exchange services between cryptoassets and fiat currencies, should be required to fulfil AML/CTF obligations on their customers.

We are not able to comment

18 The government would welcome views on whether firms facilitating peer-to-peer exchange services should be required to fulfil AML/CTF obligations on their users, as set out in the regulations. If so, which kinds of peer-to-peer exchange services should be required to do so?

We are not able to comment.

19 The government would welcome views on whether the publication of open-source software should be subject to CDD requirements. If so, under which circumstances should these activities be subject to these requirements? If so, in what circumstances should the legislation deem software users be deemed a customer, or to be entering into a business relationship, with the publisher?

We are not able to comment.

20 The government would welcome views on whether firms involved in the issuance of new cryptoassets through Initial Coin Offerings or other distribution mechanisms should be required to fulfil AML/CTF obligations on their customers (i.e. token purchasers), as set out in the regulations.

We are not able to comment.

21 How much would it cost for cryptoasset service providers to implement these requirements (including carrying out CDD checks, training costs for staff, and risk assessment costs)? Would this differ for different sorts of providers?

We are not able to comment.

22 To what extent are firms expected to be covered by the regulations already conducting due diligence in line with the new requirements that will apply to them? Where applicable, how are firms conducting these due diligence checks, ongoing monitoring processes, and conducting suspicious activity reporting?

We are not able to comment as none of our firms are currently involved with cryptoassets.

23 How many firms providing cryptoasset exchange or custody services are based in the UK? How many firms provide a combination of some of these services?

We are not able to comment.

24 The global, borderless nature of cryptoassets (and the associated services outlined above) raise various cross-border concerns regarding their illicit abuse, including around regulatory arbitrage itself. How concerned should the government be about these risks, and how could the government effectively address these risks?

We are not able to comment.

25 What approach, if any, should the government take to addressing the risks posed by “privacy coins”? What is the scale and extent of the risks posed by privacy coins? Are they a high-risk factor in all cases? How should CDD obligations apply when a privacy coin is involved?

We are not able to comment.

Art intermediaries

26 What are your views on the current risks within the sector in relation to art intermediaries and free ports? Please explain your reasons and provide evidence where possible.

With no direct knowledge of this sector or the risks posed, we are not commenting on the questions in this section.

27 Who should be included within the scope of the term ‘art intermediaries’?

We are not able to comment.

28 How should a ‘work of art’ be legally defined, do you have views on whether the above definitions of ‘works of art’ would be appropriate for AML/CTF? Please provide your reasoning.

We are not able to comment.

29 How should art intermediaries be brought into scope of the MLRs? On whom should CDD be done and at what point?

We are not able to comment.

30 Given that in an auction, a contract for sale is generally considered to be created at the fall of the gavel, what are your views on how CDD can be carried out to ensure that it takes place before a sale is finalised? How should the government tackle the issue around timing of CDD given the unpredictability of the sale value, and linked transactions which result in the EUR 10,000 threshold being exceeded?

We are not able to comment.

31 Should the government set a threshold lower than EUR 10,000 for including art intermediaries as obliged entities under the MLRs? Should the threshold be set in euros or sterling? Please explain your reasoning.

We are not able to comment.

32 What constitutes ‘a transaction or a series of linked transactions’? Please provide your reasoning.

We are not able to comment.

33 What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, providing information to a supervisor, training staff etc.)? Please provide statistics (even if estimates) where possible.

We are not able to comment.

34 What do you see as the main benefits for the sector and your business resulting from art intermediaries being regulated for the purposes of AML/CTF?

We are not able to comment.

35 Should the government extend approval checks, under regulation 26, to art intermediaries? Should there be a “transition period” to give the supervisor and businesses time to complete relevant approval checks on the appropriate existing persons (beneficial owners, managers and officers)? 36 Is there anything else that government should consider in relation to including art intermediaries under the MLRs e.g. how reliance could be used when dealing with agents representing a buyer or seller.

We are not able to comment.

Electronic money

37 Should the government apply the CDD exemptions in 5MLD for electronic money (e-money)?

We have limited experience of e-money through our firms but as a risk was identified in the 2017 NRA, we would support the government on its approach to the full transposition of 5MLD for e-money products. We have not commented on the following questions.

38 Should e-money products which do not meet the criteria for the CDD exemptions in Article 12 4MLD as amended be considered for SDD under Article 15?

We are not able to comment.

39 Should the government exclude any e-money products from both the CDD exemptions in Article 12, and from eligibility for SDD in Article 15?

We are not able to comment.

40 Please provide credible, cogent and open-source evidence of the risk posed by electronic money products, the efficacy of current monitoring systems to deal with risk and any other evidence demonstrating either high or low risk.

We are not able to comment.

41 What kind of changes, if any, will financial institutions and credit institutions have to implement in order to detect whether anonymous card issuers located in non-EU equivalent states are subject to requirements in their national legislation which have an equivalent effect to the MLRs?

We are not able to comment.

42 Should the government allow payments to be carried out in the UK using anonymous prepaid cards? If not, how should anonymous prepaid cards be defined?

We are not able to comment.

43 The government welcomes views on the likely costs that may arise for the e-money sector in order to comply with 5MLD.

We are not able to comment.

Customer due diligence

44 Is there a need for additional clarification in the regulations as to what constitutes "secure" electronic identification processes, or can additional details be set out in guidance?

As a supervisor we would welcome further clarification and/or guidance on what constitutes 'secure' electronic identification processes for the purposes of compliance with the MLRs. We have already been party to discussions amongst other supervisors, including those statutory supervisors, as to what standards need to be in place to enable this type of software to be adopted and relied upon. This will need to be set and agreed across all sectors.

45 Do you agree that standards on an electronic identification process set out in Treasury-approved guidance would constitute implicit recognition, approval or acceptance by a national competent authority?

We believe that the standards set should be the same across all sectors for the adoption of an electronic identification process, so this needs to be agreed at an appropriate level. Treasury approved guidance is submitted by the various sectors, so there would need to be consideration given as to how this can be overseen. If Treasury are happy to set the standards, then that would be acceptable.

46 Is this change likely to encourage firms to make more use of electronic means of identification? If so, is this likely to lead to savings for financial institutions when compared to traditional customer onboarding? Are there any additional measures government could introduce to further encourage the use of electronic means of identification?

We believe that there will be a greater move to the use of electronic means of identification through increased use of Lawtech in the future, where they will be looking to embed this type of electronic identification in other technology solutions, for example, third party managed client accounts, changes to HM Land Registry processes, etc. This should allow some time and cost saving as well as increasing the standards of checks by making more e-checks accessible to all sizes of firms.

47 To what extend would removing 'reasonable measures' from regulation 28(3)(b) and (4)(c) be a substantial change? If so, would it create any risks or have significant unintended consequences?

We do not believe that it would be a substantial change as it seems reasonable that a relevant person should have knowledge of which law applies.

48 Do you have any views on extending CDD requirements to verify the identity of senior managing officials when the customer is a body corporate and the beneficial owner cannot be identified? What would be the impact of this additional requirement?

We would agree that in these specific circumstances it is an appropriate action in managing risk to extend this CDD requirement to the identity of senior managing officials. We would view that the need to have to rely upon this would be very much by exception so should have a minimal impact.

49 Do related ML/TF risks justify introducing an explicit CDD requirement for relevant persons to understand the ownership and control structure of customers? To what extent do you already gather this information as part of CDD obligations?

We believe that most relevant persons do understand the ownership and control structure of customers. However, 5MLD is implying a requirement of the understanding of the nature of a customer's business possibly at a level that would not currently be held nor in many cases appropriate. In most cases and sectors, we do not believe that this level of understanding would be appropriate where a customer is requesting a single transaction, rather than an ongoing relationship. Clearly for the Banking sector then this is a necessity to understand the transactions that will be passing through a bank account. We think there should be careful consideration as to the impact of this change and whether it is necessary across all sectors.

50 Do respondents agree we should clarify that the requirements of regulation 31 extend to when the additional CDD measures in regulation 29 and the EDD measures in regulations 33-35 cannot be applied?

We would support this additional clarification.

51 How do respondents believe extending regulation 31 to include when EDD measures cannot be applied could be reflected in the regulations?

We do not have any suggestions to make.

52 Do respondents agree the requirements of regulation 31 should not be extended to the EDD measures which already have their own 'in-built' follow up actions?

We would support this approach.

Obliged entities: beneficial ownership requirements

53 Do respondents agree with the envisaged approach for obliged entities checking registers, as set out in this chapter (for companies) and chapter 9 (for trusts)?

We do believe that there might be a contradiction between the requirements under this section and the fact that under Chapter 8 it states that whilst an obliged entity may utilise the Companies House Register, it cannot rely solely on this information.

We understand that there are proposals for changes to the responsibilities of Companies House on owners, and therefore, for clarity this should state that there remains a requirement to verify the identity of the beneficial owner of the customer.

54 Do you have any views on the government's interpretation of the scope of 'legal duty'?

We believe that the interpretation may be improved by providing examples of when UK Law requires this to occur.

55 Do you have any comments regarding the envisaged approach on requiring ongoing CDD?

We think that there would be a benefit in reaffirming the obligations of an obliged entity to apply CDD measures on a risk-sensitive basis, including when the relevant circumstances of a customer change. Otherwise there may be a risk that the ongoing CDD is only envisaged as being required under UK Law.

Enhanced due diligence

56 Are there any key issues that the government should consider when defining what constitutes a business relationship or transaction involving a high-risk third country?

We do not have any suggestions to make.

57 Are there any other views that the government should consider when transposing these Enhanced Due Diligence measures to ensure that they are proportionate and effective in combatting money laundering and terrorist financing?

We do not have any suggestions to make.

58 Do related ML/TF risks justify introducing 'beneficiary of a life insurance policy' as a relevant risk factor in regulation 33(6)? To what extent is greater clarity on relevant risk factors for applying EDD beneficial?

We do not have sufficient knowledge of the risks to make any suggestion.

Politically exposed persons: prominent public functions

59 Do you agree that the UK functions identified in the FCA's existing guidance on PEPs, and restated above, are the UK functions that should be treated as prominent public functions?

We do not have any additional suggestions to make.

60 Do you agree with the government's envisaged approach to requesting UK headquartered intergovernmental organisations to issue and keep up to date a list of prominent public functions within their organisation?

We would support this approach.

Mechanisms to report discrepancies in beneficial ownership information

61 Do you have any views on the proposal to require obliged entities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

As Companies House is confident of the robustness of its data, and therefore any reporting by obliged entities should not be very frequent, we support the requirement to advise any identified discrepancies to Companies House. Given the perceived quality of existing data, we would hope that the absence of reporting will not be treated as noncompliance with this requirement by obliged entities, especially as any monitoring will need to be on a risk based and proportionate basis.

We would wish to see a move towards obliged entities being able to rely upon this information, contrary to 8.8 but accept this might be part of wider changes to Companies House and the register.

62 Do you have any views on the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

As Companies House is confident of the robustness of its data, and therefore any reporting by competent authorities should not be very frequent, we support the requirement to advise any identified discrepancies to Companies House.

63 How should discrepancies in beneficial ownership information be handled and resolved, and would a public warning on the register be appropriate? Could this create tipping off issues?

Having considered the likely scenarios and when these checks are carried out, we do not believe that there would be many instances of tipping off. We would hope that Companies House will be publishing clearly to firms that any discrepancies will be identified and

Trust registration service

64 Do respondents have views on the UK's proposed approach to the definition of express trusts? If so, please explain your view, with reference to specific trust type. Please illustrate your answer with evidence, named examples and propose your preferred alternative approach if relevant.

Given that trusts are considered a low risk area, we believe that the definition should be as clear as possible to those creating a trust, as to their obligations to register it.

There will clearly be a large number of trusts in place where the trustees will have no understanding that there are going to be additional requirements on them to have details registered. We recommend that there is further discussion on the numbers of these types of trusts and the practical requirements around collection and registration of the information required, especially if there is potential for penalties for non-registration.

We would support further guidance being provided as indicated to ensure that the actions required to meet 5MLD remain proportionate.

65 Is the UK's proposed approach proportionate across the constituent parts of the UK? If not, please explain your view, with reference to specific trust types and their function in particular countries.

We do not have any comments to make on this.

66 Do you have any comments on the government's proposed view that any obligation to register an acquisition of UK land or property should mirror existing registration criteria set by each of the UK's constituent parts?

This would seem to be a sensible approach.

67 Do you have views on the government's suggested definition of what constitutes a business relationship between a non-EU trust and a UK obliged entity?

We do not have any comments to make on this definition.

68 Do you have any comments on the government's proposed view of an 'element of duration' within the definition of 'business relationship'?

We would recommend that it is confirmed whether this definition applies in all instances for a business relationship.

69 Is there any other information that you consider the government should collect above the minimum required by 5MLD? If so, please detail that information and give your rationale.

Given that trusts are considered a low risk area, we believe that the information requested should be kept at the minimum required by 5MLD.

70 What is the impact of this requirement for trusts newly required to register? Will there be additional costs, for example paying agents to assist in the registration process, or will trustees experience other types of burdens? If so, please describe what these are and how the burden might affect you.

As outlined in other question responses, we believe that further discussion is required around the impact and the requirements.

71 What are the implications of requiring registration of additional information to confirm the legal identity of individuals, such as National Insurance or passport numbers?

This needs to be in line with information requested under other sections of the MLR, and the new requirements being brought in under 5MLD, to ensure that the risks identified through trusts, which are low-risk, are being dealt with in a proportionate manner.

72 Does the proposed deadline for existing unregistered trusts of 31 March 2021 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

We are concerned that the has been little discussion around the implications of this change and the practical requirements of carrying out retrospective identification and registration. It is unclear where the responsibility for this would sit – the trustees or the agents involved? It is assumed that a number of these trusts would have been in place for some time and the relationship between the trustees and agents may have finished or changed. Where then does the relationship rest for registration?

73 Does the proposed 30-day deadline for trusts created on or after 1 April 2020 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

This would appear to be a sensible timeframe for registering a new trust.

74 Given the link with tax-based penalties is broken, do you agree a bespoke penalty regime is more appropriate? Do you have views on what a replacement penalty regime should look like?

We would like to know whether this penalty would apply to missing a deadline for existing trusts as well, given the issues raised above.

75 Do you have any views on the best way for trustees to share the information with obliged entities? If you consider there are alternative options, please state what these are and the reasoning behind it.

The way proposed would seem to be the most sensible and proportionate.

76 Do you have any comments on the proposed definition of legitimate interest? Are there any further tests that should be applied to determine whether information can be shared?

We agree that trusts need to be protected from speculative enquiries to maintain the valuable role that they play. We believe that the definition should be clarified as to

whether to have a legitimate interest requires someone to meet one or all three bullets.

We would suggest that it is clarified further what having an active involvement in anti-money laundering or counter-terrorist financing activity means, for example, would a journalist specialising in this field meet the first part of the definition?

77 Do the definitions of 'ownership or control' and 'corporate and other legal entity' cover all circumstances in which a trust can indirectly own assets through some kind of entity? If not, please set out the additional circumstances which you believe should be included, with rationale and evidence.

We are unable to suggest any other circumstances.

78 Do you have any views on possible definitions of 'other legal entity'? Should this be defined in legislation?

We do not have any comments to make on this definition.

79 Does the proposed use of the PSC test for 'corporate and other legal entity', which are designed for corporate entities, present any difficulties when applied to non-corporate entities?

We are unable to comment.

80 Do you see any risks or opportunities in the proposal that each trust makes a self-declaration of its status? If you prefer an alternative way of identifying such trusts, please say what this is and why.

We do not have any comments to make on this.

81 The government is interested in your views on the proposal for sharing data. If you think there is a best way to share data, please state what this is and how it would work in practice.

We are unable to comment.

National register of bank account ownership

82 Do you agree with, or have any comments upon, the envisaged minimum scope of application of the national register of bank account ownership?

We agree with the minimum scope suggested.

83 Can you provide any evidence of the benefits to law enforcement authorities, or of the additional costs to firms, that would follow from credit cards and/or prepaid cards issued by e-money firms; and/or accounts issued by credit unions and building societies that are not identifiable by IBAN, being in scope of the national register of bank account ownership?

As this is not in our sector, we are not able to provide any evidence.

84 Do you agree with, or have any comments upon, the envisaged scope of information to be included on the national register of bank account ownership, across different categories of account/product?

We believe that the minimum information necessary to enable the register to function properly for law enforcement should be included in the scope of information held and that the purpose of the register should be extended beyond that to which it is intended.

85 Do you agree with, or have any comments upon, the envisaged approach to access to information included on the national register of bank account ownership?

We believe it is important that access should be limited to the minimum number of organisations to enable the register to function properly. Will there be any issue with the other obligations on reporting discrepancies to Companies House as set out in this consultation and/or Companies House accessing information?

86 Do you have any additional comments on the envisaged approach to establishing the national register of bank account ownership, including particularly on the likely costs of submitting information to the register, or of its benefits to law enforcement authorities?

We do not believe that we can comment on the costs or benefits.

87 Do you agree with, or have any comments upon, the envisaged frequency with which firms will be required to update information contained on the register? Do you have any comments on the advantages/disadvantages of the register being established via a 'submission' mechanism, rather than as a 'retrieval' mechanism?

We do not have any experience of the impact or volumes of the information concerned to say as to whether the frequency is acceptable and which mechanisms will be most appropriate.

Requirement to publish an annual report

88 Do you think it would still be useful for the Treasury to continue to publish its annual overarching report of the supervisory regime as required by regulation 51 (3)?

We believe that there needs to be an overarching report of the supervisory regime in the UK as this is the opportunity for government to set out its view of the activities of all the AML supervisors and what priorities should to continue to improve the regime.

However, with the requirement for all self-regulatory bodies to publish an annual report, and OPBAS publishing its own report, there needs to be a consistent approach to the data provided.

We believe that by reverting to reporting at year end rather than the end of tax year would enable a more consistent and timely approach to the information being provided. We would also wish to see the data requested be agreed and set before the end of the next reporting year to enable Treasury to report more promptly than is currently the case.

Other changes required by 5MLD

89 Are you content that the existing powers for FIUs and competent authorities to access information on owners of real estate satisfies the requirements in Article 32b of 4MLD as amended?

The existing powers appear to satisfy Article 32b.

90 Are you content that the government's existing approach to protecting whistle-blowers satisfies the requirements in Article 38 of 4MLD as amended?

The existing approach appears to satisfy Article 38.

Pooled client accounts

91 Are there differences in the ML/TF risks posed by pooled client accounts held by different types of businesses?

As a supervisor we have both regulated firms and individuals operating non-MLR regulated businesses (the business is unregulated for legal services) within the membership. They will often be working in very similar areas of law and will have client accounts (or secondary accounts used as such). With a move towards more firms in the legal sector working unregulated, we believe that there needs to be a consistent application of the MLRs, with the requirements for criminality checks, risk assessments etc, applied to all firms operating a client account. Otherwise this creates an advantage for those firms operating unsupervised in terms of cost & resource and in future may make these firms more attractive to criminals.

We believe that the ML/TF risks posed by these non-MLR supervised businesses, which are unregulated in this sector, must be higher as there is no regulatory oversight to protect consumers.

92 What are the practical difficulties banks and their customers face in implementing the current framework for pooled client accounts? Which obligations pose the most difficulties?

We would not be able to comment on this.

93 If the framework for pooled client accounts was extended to non-MLR regulated businesses, what CDD obligations should be undertaken by the bank?

If the operation of a pooled client account is seen as a high risk, rather than impose greater requirements on the banks and given that other sectors that use client accounts are being brought under the MLRs by 5MLD, we believe that a simpler approach should be to restrict access to a pooled client account only to firms that have an AML supervisor, and so have the obligations to comply with the MLRs on the firm itself.

Additional technical amendments to the MLRs

94 Do you agree with our proposed changes to enforcement powers under regulations 25 & 60?

We would support these proposed changes.

95 Do you agree with our proposed amendment to the definition of "officer"?

We would support the proposed amendment to the definition.

96 Do you agree with our proposed changes to information-sharing powers of regulations 51,52?

We would support these proposed changes.

97 Do you have any views on this proposed new requirement to cooperate?

We would support the proposed requirement to cooperate on the basis that this specifically relates to a PBS's AML function. The example provided would relate to regulation of all activities by the FCA. OPBAS does not regulate a PBS for all its activities but is the supervisor for AML.

98 Do you agree with our proposed changes to regulations 56?

We would support these proposed changes.

99 Does your sector have networks of principals, agents and sub-agents?

We have no experience of this.

100 Do complex network structures result in those who deliver the business to customers not being subject to the training requirements under the MLRs?

We are not able to comment.

101 Do complex network structures result in the principal only satisfying himself or herself about the fitness and propriety of the owners, officers and managers of his or her directly contracted agents, and not extending this to sub-agents delivering the business?

We are not able to comment.

102 If you operate a network of agents, do you already provide the relevant training to employees? Do you ensure the agents who deliver the service of your regulated business are ‘fit and proper’?

We are not able to comment.

103 What would be the costs and benefits to your business of the regulations clarifying intention to extend requirements to layers of agents and subagents?

We are not able to comment.

104 Do the proposed requirements sufficiently mitigate the risk of criminals acting in regulated roles?

All BOOMs in our firms are checked prior to being granted their authorisation but we then rely upon self-declaration on an ongoing basis. We would be reluctant to see a move away from this approach. We do not believe or have evidence that criminals apply to act in a regulated role; they are invariably a fit and proper person who subsequently becomes involved in criminal activities whilst in a role.

105 Should regulation 19(4)(c) be amended to explicitly require financial institutions to undertake risk assessments prior to the launch or use of new products, new business practices and delivery mechanisms? Would this change impose any additional burdens?

We are not able to comment.

106 Should regulation 20(1)(b) be amended to specifically require relevant persons to have policies relating to the provision of customer, account and transaction information from branches and subsidiaries of financial groups? What additional benefits or costs would this entail?

We are not able to comment.

Further information

5. Any questions relating to this consultation response can be directed to David Pope, Entity Authorisation & Client Protection Manager (david.pope@cilexregulation.org.uk).