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Consultation: Improving the effectiveness of the Money Laundering Regulations

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements, which includes the implementation of the money laundering regulations. They are therefore well placed to understand many the issues raised by this consultation document and we have focussed our response on those specific issues. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

General comments

This is an important consultation about an important subject, and we share HMT's desire for the appropriate balance to be found between protecting the UK and others from the impacts of money laundering and the burden that such protective measures impose on both businesses and individuals. We do not yet have the balance right.

As the consultation document itself states (paragraph 1.1) customer due diligence (CDD) "is the first line of defence against money laundering and terrorist financing in the UK" but regular reports in the press suggest that it is not always effective in preventing economic and financial crime. Furthermore, (paragraph 1.2) "the way in which due diligence requirements are applied [is felt] to be burdensome [and/]or … the requirements lack purpose." HM Treasury indicates (paragraph 1.3) that the 'risk-based approach' is intended to mitigate this challenge, but (paragraph 1.2) "some firms may choose to over-comply, by taking a blanket or overly risk-averse approach, for fear of falling foul of the law or supervisory expectations. In addition, consumer feedback indicates that customers often feel that checks are intrusive, administration-heavy or don't reflect their understanding of the risks they pose." This is an almost inevitable outcome of placing the responsibility for setting 'appropriate' CDD on organisations, many of which will, for reasons of cost and administrative efficiency, seek to make their process as streamlined as possible. This risks the law falling into public contempt and consequently it seems necessary for the government to provide create some safe harbours on which organisations may rely. Only if these are stated in law or regulation will risk averse organisations apply them in their CDD process.

The Economic Crime and Corporate Transparency Act 2023 has introduced significant new powers for Companies House, powers which many of us have argued for some years it should have, turning it from a repository of documents into an effective regulator of companies. Part of this is the introduction of an identification and verification (ID&V) process for directors and those lodging documents at Companies House, so that UK companies can no longer be used as a front for bad actors. No longer will names like "Adolf Tooth Fairy Hitler" be registered as directors of UK companies. This change creates an opportunity for the UK to lead the way in joined-up regulation. If individual directors and company secretaries have been through a formal ID&V process with Companies House as an executive body of the UK government, surely this should be sufficient evidence for them to be exempt from further CDD checks by any other firm with whom they interact. Including that provision in the MLRs will remove an enormous amount of unnecessary work from the customer on-boarding process.

Specific questions asked in the consultation document

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

Yes, but it is not the triggers that are the issue; rather the steps that are taken to undertake CDD.

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?

No comment.

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?

It might be helpful for the regulations to be clear that :

- a director or company secretary is always authorised to act on behalf of a company;
- the registration of that person with Companies House is sufficient evidence of such authority; and
- where a company is registered at Companies House it will (subject to the implementation of the Electronic Crime and Corporate Transparency Act 2023) have gone through the appropriate ID&V checks and so no further checks on the identity of its directors or company secretary are necessary.

Many organisations, when undertaking their CDD process, do not understand these basic concepts and much time is consequently wasted on both sides.

Q4 -Q6

We have no view on these questions other than to observe that the government should be careful to ensure that government and regulation is joined up to the maximum possible extent and that the use of electronic identification – for example UK passports and driving licences – should be facilitated as far as possible.

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?

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?

Surely there is a much simpler solution here – and one with much wider application. Where an individual has been through the CDD process for a UK bank and has a UK bank account, that should be acceptable as sufficient evidence of identity for any other organisation's CDD purposes. It is hard to discern a public benefit in a situation where an individual wishing to use the services of a solicitor or estate agent has to go

through that organisation's CDD process in order to make a payment to it from a UK bank account. Such an approach seems aligned with the government's strategy in paragraphs 1.48 and 1.49, but it is unlikely that organisations will take what they perceive to be this risk without clear and unequivocal regulatory sanction.

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?

Not applicable.

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

We question the relevance of "where 'the customer is the beneficiary of a life insurance policy'" as surely many people benefit from these through their employment contracts.

Q11 - 19

No comment.

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

Yes. As noted above, this list should be broadened to include those who have been through the ID&V / CDD process to be registered as a company director or secretary at Companies House and those with a UK bank account.

Q21 -25

No comment

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

Yes.

Q27 & Q28

No comment.

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?

Yes.

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

No.

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.

None.

Q32 - 35

No comment.

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

No.

Q37 – 40

No comment.

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?

Yes.

Q42 – Q55

No comment.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

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