
CHIEF EXECUTIVE

David Mulholland

Consultation on Transposition of 4MLD
Sanctions and Illicit Finance Team
1 Blue, HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

11 April 2017

Dear Sir/Madam,

Consultation on Money Laundering Regulations 2017

The Bar Council welcomes the opportunity to comment on HM Treasury's consultation on the Money Laundering Regulations 2017. We previously responded to the consultation on transposition of the Fourth Money Laundering Directive in December 2016. Given the nature of the consultation, the Bar will provide commentary on the aspects of direct application and relevance to the legal profession.

Due diligence requirements and reliance

The Bar endorses the application of customer due diligence measures to existing customers using a risk-based approach as set out in paragraph 3.1 which is reflected in the draft regulations. We also welcome the suggestion that further sector-specific guidance will be determined by the supervisors who best understand their individual and sector risk profiles given that the factors affecting risk vary widely and too much prescription in legislation could lead to a flawed and forced "one size fits all" approach.

The Bar also notes paragraph 3.5 in relation to reliance on third parties in order to meet the CDD requirements. We would highlight that in the legal sector in Northern Ireland, the Bar remains an independent referral Bar with no form of direct public access. The relationship with lay clients is managed by the instructing solicitor, who is primarily responsible for confirming compliance with due diligence requirements. Consequently, solicitor firms will be managed through their own supervisor by way of the Law Society in this jurisdiction.

Reporting Obligations

We also observe the reporting requirements outlined at paragraph 10.2 in regard to disclosures under the Proceeds of Crime Act 2002 concerning money laundering offences which all barristers are obligated to abide by. In terms of our own members, every

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barrister called to the Bar of Northern Ireland is subject to the Bar's Code of Conduct which sets out the standards of professional conduct and practice required of barristers in this jurisdiction. This can be viewed in full at: <http://www.barofni.com/page/code-of-conduct>

Section 16.7 of the Code highlights that: *"A barrister must not divulge, without the consent of the lay client, confidential information entrusted to him unless: b) the circumstances give rise to a public or statutory duty of disclosure"* which highlights that our members are expressly required to make a disclosure where required under relevant legislation, which includes the Proceeds of Crime Act 2002.

More broadly, our members are also subject to *"an over-riding duty to the court to ensure the proper administration of justice"* under section 4.1 of the Code. Furthermore, any member who fails to comply with any of their duties or the standards required may be referred to the Professional Conduct Committee for professional misconduct under Section 8 of the Code which can impose a range of penalties, including significant fines and suspension or disbarment from practice.

Supervision of obliged entities

The Bar also welcomes the recognition at paragraph 11.2 that the UK's supervisory regime is a *"highly diverse group"* with large global professional bodies, smaller professional and representative bodies as well as public sector organisations. The Bar accepts the point at paragraph 11.3 that the new regulations place a requirement on supervisors to identify and assess the international and domestic ML/TF risks associated with persons in their sector. However, we would also highlight that the procedures within the legal sector will subsequently be reviewed in light of HM Treasury's separate ongoing consultation relating to the anti-money laundering supervisory regime with the establishment of a new Office for Professional Body AML Supervision.

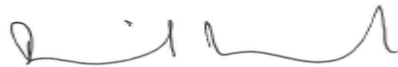
Finally, we note the point at paragraph 11.6 that Article 47(3) introduces a new criminality test for three sectors that are not subject to fit and proper tests, including independent legal professionals. It is worth stating that the Bar's Code of Conduct already requires at section 8.8 that *"where a barrister has pleaded guilty to or has been convicted of a criminal offence for which he was liable to be sentenced to a term of imprisonment or which might otherwise bring the profession into disrepute... he must report these details promptly to the Professional Conduct Committee"*. Consequently, the Bar as the professional body supervisor will become aware of any conviction relevant to the risk of money laundering of terrorist financing.

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If I can be of any further assistance in this matter, please do not hesitate to contact me.

Yours sincerely,



David Mulholland
Chief Executive