ICAEW
REPRESENTATION 54/24

IMPROVING THE EFFECTIVENESS OF THE MONEY LAUNDERING REGULATIONS

Issued 6 June 2024

ICAEW welcomes the opportunity to comment on the *Improving the effectiveness of the Money Laundering Regulations* consultation published by HM Treasury on 11 March 2024, a copy of which is available from this link.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 169,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

This ICAEW response of 7 June 2024 reflects consultation with ICAEW's Economic Crime sub-Committee, which is a sub-committee of the Business Law Committee, the ICAEW Tax Faculty and the ICAEW Professional Standards Department. The Economic Crime sub-Committee is responsible for ICAEW policy on economic crime issues and related submissions to legislators, regulators and other external bodies.

ICAEW
Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

1. ICAEW broadly agrees with the suggested measures and areas for change that have ben identified in the consultation document and recognise the need to ensure that the MLRs do not create regulatory burden and that the requirements under the MLRs are proportionate to the identified risk.
2. However, we have identified the following areas that we believe would have a high impact in increasing the effectiveness of the UK's AML regime:
    a) **Requirement to be supervised** - The MLRs don't explicitly require relevant persons to be supervised. The MLRs set out which businesses are in scope, and which organisation is the supervisory authority for each category of relevant person but there is no express requirement for those relevant persons to apply / register with a supervisory authority. Such explicit wording would help the PBSs stop members that look for loopholes because they don't want to be supervised – we have cases where practitioners with robust legal counsel have found a way out to exploit this.
    b) **Fines and sanctions** - For accountancy professional bodies, our most serious sanction is to exclude a member but because 'accountancy' isn't a reserved term, these individuals may continue to offer accountancy services. There seems to be a disconnect with the professional body's desire to remove such accountants from professional body membership and HMRC's obligations as default supervisor - HMRC sees that they have only a limited number of circumstances where they can refuse supervision – and we believe that the MLRs could be amended to allow HMRC to consider professional body exclusion, or AML misconduct, as a relevant factor to refuse supervision.
    c) **Director verification** - The MLRs require the relevant person to take reasonable measures to determine and verify the full name of the board of directors for a body corporate. In the accountancy sector guidance ('AMLGAS'), it explains that this means the relevant person must confirm the director is who they say they are (ie, normal identity checks on the individual such as a obtaining a passport) but this may be done on a risk-basis. Although HM Treasury has approved this guidance, and therefore requirement, the equivalent wording is not included in JMLSG or the legal sector guidance. We therefore ask that government re-considers the wording of Regulation 28 (3) (b) (ii) to make it clear whether the verification checks on a director should be the equivalent to the verification checks on a beneficial owner. It is important that we have consistent approaches on director verification across all regulated sectors.

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?

3. Yes, we think the application here is clear and that the trigger point is when an accountancy firm begins work for a client. However, the phrase 'element of duration' creates some confusion and ambiguity. We have some limited evidence that a small minority of firms believe that one-off tax advice isn't 'of duration' as there is a single piece of advice and no duration of service. Regarding the element of duration, we believe that this isn't always clear for firms to interpret. There could be a case made to remove it to simplify the criteria of a business relationship. In addition it may also be helpful to include other characteristics that define a business relationships (or client relationship as it would most commonly be understood in the accountancy sector) such as contractual / fee paying arrangements.
4. We believe that the Consultative Committee of Accountancy Bodies (CCAB) AML guidance for the accountancy sector (AMLGAS) is clear on this, or could be amended to address this and provide additional clarity on the point by which CDD must be completed. There may be scope for more clarity on the 'of duration' clause, however we would likely be able to amend this in the AMLGAS.

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?

5. As above, while additional guidance on points such as source of funds may be helpful, we do not view it as a requirement for HMT to issue separate guidance. As above, this could be covered by including the JMLSG scenarios, adapted for the accountancy sector as appropriate, in the AMLGAS which is then approved by HMT.

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?

6. There is sufficient clarity in the AMLGAS guidance as this concerns someone acting as an agent rather than as an employee.

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.

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?

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

7. In the accountancy sector there is a generally less reliance on digital identity as clients are often met in-person. However, there is pressure on the regulated sector from firms enquiring as to the viability of a particular system and whether or not the standard/checks provided matches the requirements of the MLRs. It would be useful for Government to perhaps provide some sort of certification of a particular system so that firms can have greater

confidence in using this system for digital identity. Additionally, the regulations could be modified such that a firm isn't penalised if the firm uses a certified provider. This is one of the challenges today as to why firms are reluctant to use digital service providers because they may not feel equipped to establish whether the digital service provider has appropriate controls in place on which they can place comfort. The certification approach has been taken by the government in the past eg, when providing a list of businesses which can support with customs declarations.

8. There are also challenges with some digital identity software providers falsely claiming that digital identity verification is compulsory to comply with the MLRs. While individual bodies can issue our own communications to refute this, a clear message from Government that makes this clear would be welcome.

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?

9. The non-legislative approach making use of present provisions seems sufficient and most efficient. It does however call into question who's responsible and/or subject to punitive measures in the interim if money laundering is facilitated by the incumbent bank, but on the premise of a pass from the failed bank's AML.

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?

10. We don't have any examples to add.

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

11. We think that it would be prudent to remove the 'life insurance' point, but the others should be retained.

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?

12. No, we think that these all are likely to have a potential role in identifying suspicious behaviour.

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?

13. We would question the premise of adding extra high-risk factors and the rationale of doing so, for example there are well-known high-risk factors, such as complex corporate structure, which are not included. If the purpose of adding these is to aid in the identification, then this may have some use, as part of the broader assessment process. However, if more risks are added then we are concerned that there may be the inference by firms that this is an 'exhaustive' list which sets out all risks which need to be considered. As this would not be the case given the nature of assessing risks in each case, this would need to be clearly explained.

14. A secondary challenge is that risks tend to evolve and change much faster than regulation can be updated to reflect them, again reinforcing the need to highlight that examples of risks are not intended to be the framework for a complete assessment of suspicious activity.

15. It may be that we can include a list of risk factors in sector guidance, co-ordinated across the sectors, so that we can react to the speed with which risks evolve.

'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.

16. The answer would very much depend on the size of business and their level of experience ie, what is out of the ordinary for one firm, may be routine and normal business activity for another. With both firms looking at the same transaction, you could easily arrive at different answers as to whether it's complex. Notwithstanding the above, basic indicators could include transactions involving multiple parties, spanning multiple jurisdictions with the transaction being divided into a number of phases.

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?

17. Yes, we think that this is necessary to ensure the consistency of application but also to prevent accountancy firms including transactions which are not intended to be in scope.
18. We think that it would be better placed if added to the existing AMLGAS guidance, which received Government approval. There is the danger of confusion if several different pieces of guidance are issued and referred to.

Q15 If regulation 33(1)(f) was amended from 'complex' to 'unusually complex' (eg, 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?***

19. We do not think that the amendment would be overly beneficial, as it appears to simply create another term to define, including new parameters for assessment against this term.

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?

20. We judge that this step would likely be beneficial in reducing burdens on firms. The mandatory list of checks appears to be based on the premise of someone being high-risk on the basis of being based in an HRTC, and this is not necessarily the case. The challenge is that navigating and mitigating jurisdictional risk in HRTCs can be difficult – many verification procedures won't reduce the risk associated with that HRTC. The FATF doesn't include all of the checks outlined in regulation 33(3A), and while some countries don't have robust enough AML measures to be removed from the 'grey list', it doesn't necessarily mean that they are actively engaging in money-laundering, so taking a more flexible risk-based approach to HRTCs could be beneficial.
21. Additionally, the risks posed across different sectors are not the same, so it does not seem appropriate to have such prescriptive requirements across all sectors. For example, a firm providing accounting or audit services to a customer located in South Africa would have a different risk profile compared to that of a financial institution, who is providing cross border transactions for the same customer.

22. It is important to remember that while the number of customers impacted by HRTC is relatively low, the operational burden can fluctuate significantly depending on the additions to the list. For example, the recent addition and removal of the UAE. If the requirements were replaced by industry guidance, it would also be important for HMT to ensure that the guidance is industry appropriate and not seen to be contradictory in nature. We also believe industry guidance could be updated to outline expectations for third parties to a transaction. The regulations suggest that EDD measures may also need to be applied for third parties based in HRTCs but it is unclear how this would apply to non-financial sectors.

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

23. Removal of the regulation entirely may prove challenging for firms to understand the basis on which they need to carry out EDD. It is helpful for firms to have a clear indication of the type of checks that they should be doing, and a regulation rather than just guidance provides more certainty. If, for example, 'source of wealth checks' were to be removed then they should be outlined somewhere else, for example in the AMLGAS. Making the list non-mandatory would present a good compromise, as the need to be proscriptive on checks just for HRTCs doesn't seem consistent with the other regulations.

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.

24. Overall we would highlight an occasional lack of consistency between the UK NRA and FATF lists. For example, China and Hong Kong are included in the NRA but not on FATF lists. The requirement to carry out EDD on High Risk Third Country established customers is generally disproportionate as it does not take into account the wider customer risk assessment. Currently, this provision requires the application of EDD to large listed banks, for example, purely on the basis of their country of establishment which is disproportionate given the risk posed by such companies. With a true risk based approach, the risk should be determined on a blend of factors and not an individual factor in its own right. Applying such a binary approach also doesn't take account of mitigation eg, in the case of a listed company, the independent disclosure obligations to an independent listing authority.

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?

25. Yes, we see no issues in including these new factors.

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?

26. In the case that these are low-risk, then we judge this would be a useful gateway. One area of ambiguity for accountancy firms is what constitutes a business relationship and when does the relationship technically begin. We believe the guidance around entering into a business relationship could be made clearer, taking into account a number of factors which may help firms to determine whether or not a business relationship is being entered into i.e does the relationship begin when a contract is signed or when contact is first made with a client and there is a clear duty of care in place?

27. In addition, the guidance around subcontracting could be enhanced to include examples of when a relationship is formed with an underlying party, particularly where assistance is provided with tax services. Scenarios of what would not constitute a business relationship might also be useful, such as the firm not contracting or taking instructions from the underlying client.

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?

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

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?

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?

28. While reasonable considerations, these measures would likely require a contractual arrangement to be in place. We welcome any changes that would allow accountancy firms to access PCAs to ensure that client's money is ring fenced and protected and not the property of the firm. JMLSG could also look at other regulatory frameworks to assess whether SDD is appropriate eg,, ICAEW's Client's Money Regulations require AML to be completed before receipt of client's money into the client's money account.

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?

29. Yes. We do not see any reason why the FCA should not share relevant information with the Financial Regulators Complaints Commissioner.

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.

30. We are not aware of any other public bodies that should be included under regulation 52.

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?

31. We would welcome a provision in the MLRs that requires supervisory authorities to publish a full list/register of their supervised population. Because of the make-up of some accountancy firms, and that some firm names may include personal data, supervisory authorities may have to obtain consent to publish details of a firm in the public domain. By including a requirement to publish a list/register of their supervised population in the MLRs, supervisory authorities will overcome this data protection issue supporting system coordination by ensuring that other public bodies have easy access to which supervisor supervises which firm.

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?

32. Yes. Although we believe that the accountancy sector professional body supervisors do cooperate with Companies House on relevant matters, we do agree there would be benefit in extending Regulation 50 to include Companies House.

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

33. We are not aware of any – the provisions of Regulation 50 are clear that they apply to policies to counter money laundering and terrorist financing only, so there is no danger of scope creep.
34. This is due to the fact that as regulated firms have an obligation to report material PSC and ROE discrepancies, it would be appropriate that supervisors and law enforcement also have an obligation to cooperate with Companies House for the purpose of coordination, policy-making and implementation of AML/CTF financing measures.
35. Building on this point however, we believe that an area which would improve the effectiveness of the MLR's would be centred around the discrepancy reporting regime. Currently where firms raise discrepancies, they do not receive any feedback on whether or not the matter raised is considered a true material discrepancy. The absence of any feedback could lead firms to have a false sense of comfort that no issues have been identified with the reporting of the discrepancy. We believe that feedback where appropriate, would help to strengthen the discrepancy reporting regime. This would provide a level of comfort for firms that their approach is correct, especially where there is an apparent ML/TF risk.

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.

36. We are not aware of any - we believe that the accountancy sector professional body supervisors already cooperate with Companies House on areas such as the Register of Overseas Entities and Authorised Corporate Service Providers, which are policy areas to counter money laundering and terrorist financing.

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?

37. Yes. Currently, regulated firms must perform a firm-wide risk assessment, which must be informed by the supervisor's risk assessment, which is in turn informed by the NRA. Sector guidance provides more granularity on how to implement the regulatory requirement in practice and the supervisors provide help sheets and templates on how to perform the firm-wide risk assessment under Regulation 18.

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?

38. Yes. Risks flow from the NRA to the supervisor assessment and then into the firm's own risk assessment. However, there is a chance that the firm may not understand the risks that have flowed from the NRA as opposed to the risks identified by the sector.

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?

39. The benefit of including a specific requirement for regulated firms to use the NRA to inform their firm-wide risk assessment, is that each regulated firm would read the NRA themselves and understand the wider picture of threat and vulnerabilities that the UK is subject to.

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?

40. We would welcome the publication of system priorities for AML/CTF but we believe this should be supported by a coherent system overview and responsibility that drives the design of the MLRs, POCA and Companies House legislation. By identifying the strategic national priorities across all these frameworks, government could design a coherent approach to the fight against economic crime and, in turn, supervisors (and regulated firms) could apply their resources to the areas that are most important to the UK government. This may be through thematic reviews or other research projects to understand the threat; or identifying training and guidance resources for their supervised population to focus the efforts of the regulated sector on these priority areas.
41. It is unlikely that system priorities would have much impact on the accountancy's sector ability/capability to pursue a risk-based approach – the work a firm performs at take-on, or during ongoing monitoring, is determined by the firm's firm-wide risk assessment and mitigating policies and procedures.
42. System priorities would provide structure and focus to law enforcement, government agencies and supervisory authorities in focussing their effort and resources. This structure and focus should result in a deeper understanding of a particular risk area – and this information would be fed down to the relevant persons.
43. Such structure and focus would provide additional clarity on how the MLRs apply for each regulated sector, and a message from government that the regime is focussed on real areas of ML activity rather than just compliance would also help firms to focus on the riskiest areas. It would be equally important to highlight when a priority is not considered to manifest in a particular regulated sector so that there is a clear steer to that sector that there are no expectations for action.

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?

44. We do not assess that there are any reasons why references to euros should be retained.

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.

45. We do not have any issues with this.

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

46. Nothing to add.

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?

47. Nothing to add.

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.

48. Nothing to add.

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?

49. We think it would be worthwhile to include these areas.

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

50. We do not assess there would be any negative consequences.

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.

51. Nothing to add.

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.

52. Given the amount of time that has elapsed since 6 October 2020, many non-UK express trusts with no UK trustees that owned UK land on 6 October 2020 may have subsequently disposed of their interest in UK land. This disposal may well have prompted TRS registration as a taxable trust in any event. Therefore, ICAEW recommends that any extension should be limited to non-UK trusts that continue to hold UK land on the date the extension becomes effective.

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.

53. As highlighted in this consultation, there has been a recent consultation on the Transparency of land ownership involving trusts. ICAEW responded to that consultation in ICAEW REP 21/24. ICAEW called for a period for appropriate reflection so that one consolidated system can be established for trusts owning UK land.

54. While ICAEW supports measures that support the fight against money laundering and terrorist financing, we do not think that it is beneficial to have many overlapping registers that must be considered where a trust owns UK land. Registering more than once is burdensome for trustees, and different information is required by different registers, increasing complexity

and administration. However, perhaps more importantly, it is not helpful for those in law enforcement to have to consult multiple registers.

55. ICAEW reiterates concerns raised previously concerning the prejudicial nature of the weaker criteria for access to the beneficial ownership information where the trust holds a controlling interest in an offshore (non-EEA) company.

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.

56. This would be a sensible alignment of deadlines and in respect of the co-ownership trusts would reduce unnecessary short-term registrations.

57. ICAEW suggests that awareness of the current two-year exemption needs to be raised more generally – particularly as delays at the probate registry mean that estate administration now often exceeds two years.

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.

58. ICAEW does not have any specific comments on this proposal.

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.

59. Having a de minimis level for registration is a pragmatic proposal for small trusts that do not fit any of the existing exemptions (for example bare trusts of investment portfolios for a minor child) and where the onerous registration requirements are disproportionate to the asset base and income.

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

60. The £5,000 asset value is too low, and there are unlikely to be many trusts that are below this de minimis limit. ICAEW suggests that a higher de minimis limit would be more appropriate.

61. Consideration should also be given to the distribution threshold and whether it should apply to distributions made when the trust comes to an end. Taking the example of a bare trust holding an investment portfolio for a minor that is below the proposed registration thresholds, registration could suddenly be triggered when the child turns 18 and the investments are transferred to them outright (if more than £2,000 is then distributed in a 12-month period). However, the trust would then immediately de-register as the trust is wound up. This seems disproportionate to any ML/TF risk.

62. De-minimis thresholds should be assessed periodically (annually on 5 April would seem sensible) to determine if a trust is registerable, rather than having to monitor on an ongoing basis. Otherwise, the burden of monitoring the thresholds would outweigh the benefit of introducing a de minimis exemption.

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?

63. ICAEW suggests that the rules should be drafted so that any financial limits apply on both a trust and settlor basis. However fragmenting trusts to stay below such a low de minimis threshold simply to avoid registration seems unlikely in ICAEW's experience.