

**Spotlight on Corruption’s submission to HM Treasury’s consultation:
‘Improving the effectiveness of the Money Laundering Regulations’**

7 June 2024

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Chapter 1: Making customer due diligence more proportionate and effective

General triggers for enhanced due diligence

Question 10: *Do you think that any of the risk factors listed above should be retained in the MLRs?*

We support the retention of all three of these risk factors in the MLRs. We have found in the course of our investigative work and monitoring of economic crime court cases that third country nationals applying for residency by investment schemes pose a significant risk of money laundering, while transactions involving oil, arms and precious metals feature prominently and consistently in the international corruption and cross-border money laundering cases we follow. While we have not encountered similar patterns in relation to life insurance policies in the course of our work, we understand this may be a serious risk area arising from fraud.

Question 11: *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?*

No. We note our disappointment, however, with the recent legislative change that requires domestic PEPs to be treated as lower risk than foreign PEPs. We consider this to be a poor decision in light of the significant risks of domestic corruption and the current crisis of public trust in political integrity (see: <https://www.spotlightcorruption.org/uk-tackle-political-integrity-crisis/>).

Question 12: *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?*

In the course of our work, we have observed increased risks around the use of correspondent banking to exploit weaker compliance systems and controls in order to launder funds into the UK. We therefore recommend that correspondent banking be added as an express risk factor listed in regulation 33 to account for this emerging area of concern.

'Complex or unusually large' transactions

Question 14: *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 checks?*

Yes, we support the provision of additional guidance to provide greater clarity to firms about proportionate due diligence on complex transactions, rather than amending regulation 33(1)(f) in a manner that may cause firms to overlook the need for EDD on complex transactions which are inherently high-risk by their nature.

Question 15: *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?*

We do not support this proposed amendment. While the changed language would help clarify that the complexity of a transaction poses a particularly high risk when it is an unusual feature, we do not consider this to be exhaustive of the intention behind FATF’s Recommendation 10 or of the MLRs in its current form. This is because even routine complex transactions in certain industries or circumstances may pose an inherently high risk of money laundering.

The complexity of transactions remains one of the key markers of money laundering – this is not to suggest that all complex transactions pose money laundering risks, but rather that complexity is an important and persistent feature of money laundering arrangements and processes. Routinely complex transactions are by no means immune from these risks – on the contrary, they may simply make money laundering more difficult to detect.

High Risk Third Countries

Question 16: *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?*

Removing the checks in regulation 33(3A) or making the list non-mandatory may possibly reduce the compliance burden for firms by eliminating the need for comprehensive checks in all cases requiring EDD relating to High Risk Third Countries (HRTCs). However, these gains are likely to be marginal while this shift in approach may generate uncertainty by widening the discretion that firms have to determine what checks are appropriate. To effectively protect the UK from money laundering risks posed by HRTCs, it remains essential that firms properly apply EDD and this will likely justify the checks listed in regulation 33(3A).

Question 17: *Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?*

We note that this shift in approach would place greater reliance on firms to exercise discretion when applying EDD relating to HRTCs. If the list in regulation 33(3A) is removed or made non-mandatory, we would recommend that guidance is issued to help clarify what checks may be appropriate in different kinds of situations or contexts to ensure the change does not result in firms simply failing to apply adequate due diligence in relation to HRTCs.

Chapter 2: Strengthening system coordination

Information sharing between supervisors and other public bodies

Question 26: *Do you agree that we should amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner?*

Yes, we support the proposed amendment of the MLRs to enable the FCA to share AML/CTF-related information with the Financial Regulators Complaints Commissioner (FRCC). The inclusion of the FRCC would be in keeping with the rationale for the information-sharing gateways under regulation 52 and regulation 52A, and ensure the FRCC is equipped with the relevant information to independently and effectively investigate complaints about regulators of the financial services. In our view, this would increase public confidence in the FRCC's role and enhance the accountability of the financial services regulators.

Question 27: *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.*

We invite the government to consider extending the information-sharing gateway to the Electoral Commission, subject to consultation with the Commission. As the body which oversees elections and regulates political finance in the UK, the Electoral Commission has a vital role to play in protecting the integrity of our electoral system. Yet a chorus of independent expert bodies has warned that the UK's electoral finance system is vulnerable to undue influence - and that there are serious problems with both the law and the enforcement regime.

In their submission to the Committee on Standards in Public Life's (CSPL) review of electoral regulation, the Electoral Commission said they would welcome: (1) powers to obtain information outside of a formal investigation in order to assess allegations more quickly and determine whether an investigation is necessary; and (2) explicit powers to share information with the police or other regulators, rather than relying on current general powers and data protection law which makes working with partner agencies complex and slow (see further: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905688/CSPL_Regulation_of_election_finance_-_written_submissions_1_-_20.pdf). The Met supported this position in their own submission to CSPL's review.

These recommendations were taken up by the CSPL in their 2021 report, and have also received broad support from academics and civil society organisations (see further: <https://www.spotlightcorruption.org/wp-content/uploads/2024/05/Key-Electoral-Reforms-Recommended-by-Independent-Experts-public-version.pdf>).

During the passage of the National Security Bill, the government committed to consult on information-sharing between relevant agencies or public bodies, focusing on the question of how they "can obtain and share information relating to the provenance of a donation, which might not be available to the recipient of a donation" (see Hansard, House of Lords debate on the National Security Bill, 4 July 2023: <https://hansard.parliament.uk/Lords/2023-07-04/debates/6D17164E-6335-4DCF-B9B6-11F51DB2C855/NationalSecurityBill>). While this review was framed in relation to impermissible donations from foreign powers given the particular focus of the National Security Act 2023, the information-sharing under consideration is equally important for mitigating the risks of

illicit money being laundered into and within the UK through political donations. This is particularly important given gaps in the legal framework, with the Electoral Commission highlighting in 2019 that UK elections law “*is silent on whether or not money obtained from crime would make a political contribution unlawful*”; and weaknesses in the regime for enforcement of serious crime in political finance (see: www.spotlightcorruption.org/nca-political-finance-enforcement).

The Electoral Commission may not itself investigate a breach of the MLRs and its power to bring criminal proceedings was removed in the Elections Act 2022, but the inclusion of the Commission in information-sharing gateways under regulation 52(1A) would help join up the system. It would also bolster the Commission’s role as the regulator of political finance - and so better safeguard our democracy - and enable the Commission to make any necessary referrals to relevant AML-related intelligence collected in the course of its duties.

Question 28: *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?*

We strongly support the recent reforms under the Economic Crime and Corporate Transparency Act 2023 (ECCT Act) and the policy ambitions set out in the Economic Crime Plan 2023-2026 to unlock more effective information- and intelligence-sharing gateways across the AML system. We also welcome that this is a strong focus of the National Economic Crime Centre’s Cross-System Professional Enablers Strategy 2024-2026.

In identifying areas for improvement, we would stress the importance of facilitating an effective feedback loop to supervisors on Suspicious Activity Reports (SARs). The current lack of information and intelligence reaching supervisors, particularly Professional Body Supervisors, is a serious constraint on their ability to form an accurate, up-to-date and nuanced understanding of the money laundering risks facing their supervised populations. SARs provide a rich source of real-time intelligence on the risks facing the regulated sector, and allowing supervisors to tap into this data could be a game-changer for the effectiveness of their risk-based approach to supervision.

In our view, supervisors should not only be allowed to access specific sector reports, but also benefit from broader analyses of SARs data that may indicate sector-specific trends, new or emerging threats, and patterns of high-risk behaviour by particular firms or individuals within a sector. Supervisors also have a valuable role to play in developing these analyses by bringing their sector-specific knowledge and experience to bear on the intelligence derived from SARs. We therefore urge the government to develop information-sharing mechanisms that will not only enable supervisors to request specific SARs, but also access a broader base of SARs data.

To ensure the effective operationalisation of regulation 52, it is crucial that the attention moves beyond putting legal gateways in place to focus on embedding a culture and routine practice of information- and intelligence-sharing. Given the fragmented and uneven AML supervisory landscape, the barriers to information-sharing are not just about a lack of legal gateways but also about a lack of trust between law enforcement and supervisors in the handling and use of sensitive data, even though conditions on the use of such data may be in place. For example, some supervisors are better equipped to hold sensitive intelligence securely, with the result that law enforcement may be reluctant to share this data without reassurance that it will be handled appropriately. This poses a real risk that some supervisors, particularly smaller and weaker PBSs, may be left behind as only the supervisors perceived to be the strongest or most reliable are brought into the fold of new information-sharing practices.

We hope that pending AML supervisory reforms will address weak links in the supervisory regime and improve system coordination through a single professional services supervisor. However, these structural reforms should be accompanied by a commitment to fostering greater trust between law enforcement and supervisors in order to drive a strong culture of information-sharing and routine collaboration (see further: <https://www.rusi.org/explore-our-research/publications/policy-briefs/anti-money-laundering-supervision-professions-uk-four-key-challenges-and-how-address-them>).

Finally, we wish to highlight a further way in which system coordination could be strengthened through information sharing. Currently the FCA is legally obliged to publish a register of its regulated population, with the Financial Services Register being an invaluable, publicly-accessible database. We recommend that all supervisors, including PBSs, should be subject to a legal obligation to publish and maintain a public register of their regulated members. Given the very fragmented supervisory regime, this would be a significant way to improve the consistency and coordination of this information in the public domain and effectively create a consolidated register of the regulated sector.

Cooperation with Companies House

Question 29: 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, we agree that regulation 50 should be amended to ensure that the set of authorities with whom supervisors are obliged to cooperate mirrors the set of ‘relevant authorities’ who engage in information-sharing in terms of regulation 52. The EECT Act set the framework for much-needed reforms to Companies House, but the challenge ahead lies in properly resourcing and supporting the Registrar to be a more proactive and reliable custodian of company data.

Supervisors need to be mobilised to facilitate this transformation of Companies House. This not only requires information-sharing to be permitted, but also an express duty on supervisors to cooperate more broadly to ensure Companies House operates effectively as part of an integrated system that works to combat money laundering. The information-sharing powers in regulation 52 and the duties of cooperation in regulation 50 therefore go hand-in-hand to help achieve the shared aim of tackling the abuse of corporate structures which has left the UK vulnerable to money laundering.

Question 30: Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons.

We have not identified any negative unintended consequences that should preclude making this proposed change to the MLRs. On the contrary, there may well be unintended benefits gained as a byproduct of including Companies House within the scope of regulation 50, as suggested in question 31 below.

Question 31: In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

The more comprehensive basis for cooperation envisaged by this amendment is likely to result in more routine collaboration and greater reliance by Companies House on supervisors. This increased

engagement may stretch the resources of some supervisors, particularly smaller PBSs, but it is also possible that the proposed change helps develop more streamlined processes for cooperation which are ultimately more efficient than ad hoc information-sharing and engagement.

Even if the amendment does increase the workload of supervisors, it may still be more cost-effective and efficient for Companies House to rely on supervisors who are best-placed to plug information gaps than resort to alternative data sources or authorities. The impact of this change for supervisors, including costs implications, should therefore be considered within a whole system assessment of what is required to ensure Companies House can step up to fulfil its transformed role. In our view, Registrar cannot achieve this in isolation, but must be supported by supervisors and law enforcement across the system.

While the proposed amendment will most directly help Companies House, closer collaboration may also have the beneficial byproduct of helping supervisors – particularly smaller PBSs – become more proactive and trusted partners in information-sharing arrangements more generally. In this way, ongoing cooperation between supervisors and Companies House may help foster a stronger culture and practice of information-sharing across the system.

Regard for the National Risk Assessment

Question 32: *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?*

The MLRs currently provide only the bare bones of what regulated firms are required to do in carrying out their own risk assessments. Regulation 18 is crafted in very general terms to accommodate the diversity of the regulated sector, but this opens up considerable scope for ambiguity and leaves much up to the discretion of individual firms.

For example, there is no express provision in regulation 18 that regulated firms must not only carry out but also *maintain* their own risk assessment. Rather than relying only on supervisors to spell this out, we recommend that regulation 18 expressly require firms to keep their risk assessments up to date.

The lack of specificity and clarity in regulation 18 also means that regulated firms are heavily reliant on information provided by their supervisors. Given the uneven performance of supervisors, particularly among the PBSs, this means that regulated firms will not receive equally comprehensive, accurate and up-to-date guidance on carrying out their own risk assessment.

We also observe that the main challenges concerning the effectiveness of the MLRs arise from poor implementation by firms and a lack of robust enforcement by supervisors and law enforcement, rather than weaknesses or ambiguity in the legislative framework itself.

Question 33: *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?*

Regulation 18 is clear that firms *must* take into account information from their supervisors, but there is some ambiguity about what sources of information should or may draw on to carry out its own risk assessment. This is because regulation 18(2)(a) does not identify any particular sources of information directly but rather points to the supervisor as the body which will provide that clarity.

For firms to understand how the NRA should inform their own risk assessment, regulation 18 has to be read in the context of the broader scheme of chapter 2 of the MLRs which sets out how the NRA fits together with the risk assessments undertaken by supervisors and firms. In particular, regulation 18 relies on firms understanding that supervisors are legally obliged to consider the NRA in their sectoral risk assessments with the result that the NRA should be reflected in information made available to firms under regulation 47. We recommend that regulation 18(2)(a) clarify the NRA's role, even if the MLRs are not redrafted to require firms to have direct regard for the NRA as envisaged in question 34.

Question 34: 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?

We would support the proposed amendment to require regulated firms to have direct regard for the NRA, as this would help clarify the importance of the NRA for their own risk assessment. In doing so, however, we would emphasise the importance of ensuring firms understand the role of the NRA as an overarching stocktake of collective risks across the system and do not lose sight of the need to give close attention to the more specific and emerging sectoral risks identified by their supervisors.

With regard to (a), there is a risk that by requiring direct regard for the NRA, firms fail to look beyond very generalised, broad-brush risks identified in the NRA and give insufficient regard to more up-to-date and finer-grained risk assessments and guidance provided by supervisors that is tailored to their specific sector. This is particularly important given the broad discretion afforded to firms under regulation 18 to determine what steps to take in carrying out their own risk assessment.

By way of example, the NRA identifies certain services (such as conveyancing) as being higher risk but it does not provide the kind of detail that a firm requires to assess its risks in any meaningful way – such as the type of clients, the size of the firm and the nature of the work. Meanwhile, these factors are directly relevant to a firm determining what steps are appropriate under regulation 18(3) and assessment of risk in terms of regulation 18(2)(b).

Conversely, and with regard to (b), there is also a risk that direct regard to the NRA may make supervisors more complacent in ensuring their information to firms is comprehensive, accurate and up-to-date.

We therefore recommend that the redrafting of the MRLs to require direct regard for the NRA does not displace or distract from the need for firms to take account of more nuanced, dynamic and detailed sectoral and cross-sectoral risk assessments and guidance, and for supervisors to meet this need.

System Prioritisation and the NRA

Question 35: 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?

We welcome the commitment in the Economic Crime Plan 2023-2026 to follow a more integrated, whole system approach to economic crime which includes a greater focus on system prioritisation.

We believe a more dynamic, responsive and flexible approach to prioritising risks across the system is essential to effectively tackle threats that are constantly evolving and cut across sectors.

The NRA is too static (and now outdated, being four years old) to direct a more dynamic approach in which resources could be dialled up or down to respond to emerging and evolving threats in real-time. However, it is difficult to comment on how firms should balance systemic prioritisation against the NRA without further detail about how the collaboration underpinning system prioritisation would be implemented in practice. In particular, there is currently a lack of transparency about what these priorities are and how this prioritisation is done across the system.

While appreciating the logic and efficiency of systemic prioritisation, we would also caution against an approach that leads to significant sectoral risks being downplayed or under-resourced because attention is diverted to a few pressing priorities. We are particularly concerned that firms in the professional services sectors may not be able to respond with the same agility as the financial sector in dialling up or down their response to fast-evolving risks. There is a danger that the incremental progress made to strengthen systems and controls may be lost if certain areas are deprioritised.

While sounding this caution, we recognise that there could be significant benefits to system prioritisation influencing how firms allocate resources and design their AML/CTF programmes. While the NRA takes a sector-specific approach, we believe it is essential that firms also understand how these risks fit within a broader 'ecosystem' of services that are at risk of enabling economic crime. A greater emphasis on system prioritisation should help target high-risk activity where there is a particular need to break down sectoral silos and focus resources on cross-cutting collaboration.

It is also increasingly clear that the work undertaken by firms in the regulated sector is more fluid across sectors than the NRA currently captures. For example, a 2023 report by Transparency International analysing data from 78 cases of illicit financial flows from 33 African countries reveals that lawyers are by far the most common type of professional enabler by profession, yet the services they provide are also the most wide-ranging, from transactional work and conveyancing to offshore company formation and reputation management (see 'Loophole Masters: How enablers facilitate illicit financial flows from Africa': <https://www.transparency.org/en/publications/loophole-masters>).

We also wish to highlight specific emerging areas of higher risk activity that we urge the government to consider in preparing the next NRA and in its approach to system prioritisation. First, the NRA should be updated to reflect certain high risk activities in sectors already regulated but which currently slip through the cracks of the MLRs – property development and litigation financing. Second, the NRA should address emerging sectors of high risk which currently fall outside the scope of the MLRs entirely:

- Private schools and universities (see for example, the NCA's amber alert on the risks facing independent schools to legitimising the proceeds of bribery and corruption: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/486-necc-bribery-corruption-risks-to-uk-independent-schools-alert/file>)
- The PR industry (see for example, Tom Mayne's 2024 report 'What's the Risk? PR and Communications Agencies and Kleptocracy': <https://fpc.org.uk/publications/whats-the-risk-pr-communication-agencies-and-kleptocracy/>)
- Private intelligence firms (see for example, the report by The Bureau of Investigative Journalism: <https://www.thebureauinvestigates.com/stories/2023-03-11/the-spies-stalking-british-justice/>)

Finally, we note that there are several areas in which the EU's latest package of AML legislative reforms, adopted by the European Council on 30 May 2024, diverges from the MLRs. We particularly highlight the risk of a regulatory gap opening up between the EU and the UK in relation to luxury vehicles, yachts and aircraft.

Chapter 3: Providing clarity on scope and registration issues

Regulation of resale of companies and off the shelf companies by TCSPs

Question 41: *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, we strongly agree that regulation 12(2)(a) and (b) should be extended to cover the sale of off the shelf companies. This is currently a major loophole in the TCSP regime that undermines the effectiveness of the MLRs and the impact of the significant reforms in the Economic Crime and Corporate Transparency Act to deter the abuse of UK corporate structures.

We also wish to note our support of the more detailed submission by Transparency International UK on this issue, which draws on their specialist expertise and long track record of exposing vulnerabilities in the TCSP regime.

Chapter 4: Reforming registration requirements for the Trust Registration Service

Registration of non-UK express trusts with no UK trustees, that own UK land

Questions 49-50:

We note our support for the recommendations on greater transparency around trust ownership made in the submission by Transparency International UK, based on their leading expertise in this area.