Association of British Insurers

ABI Response to HM Treasury Consultation on the draft UK Money Laundering Regulations 2017

Introduction

This paper provides the views of the Association of British Insurers (ABI) on HM Treasury's consultation on the draft UK Money Laundering Regulations (2017 MLRs) published on 15 March 2017.

The ABI is the voice of the UK insurance industry, representing general insurance, long-term savings and life insurers. Formed in 1985, it has over 250 members who account for around 90% of UK insurance premiums.

General comments

Timetable

The government's final policy decisions will be implemented through legislation to come into force on 26 June. It is not realistic to expect requirements necessitating changes to IT infrastructure to be implemented by 26 June.

Given that the 2017 MLRs were only issued in draft form on 15 March, it is not realistic to expect firms to be fully compliant before the end of June. We recommend that there should be a transitional period of at least six months.

Politically exposed persons

We welcome sectoral guidance and will be responding to the FCA consultation in regard to its proposed treatment of politically exposed persons (PEPs).

By way of a general comment, we agree with the FCA's overarching expectation that firms should meet obligations under the 2017 MLRs in a proportionate, risk-based manner and that the risk posed may differ between PEPs. However, the use of language which references some PEPs as 'lower risk' does not perhaps sit comfortably with the position under the MLRs that all PEPs are regarded as high risk. Where there is some overlap in guidance, in the interest of transparency and certainty, it is important that guidance is consistent.

Beneficial ownership

Feedback to the original HM Treasury consultation makes clear that respondents support a pragmatic approach whereby measures deliver greater transparency without placing an undue burden on entities.

We strongly assert that entities should be permitted to take a risk-based approach to verification. Regulation 28(4) of the 2017 MLRs is not clear on this issue and could be interpreted as requiring verification in each and every situation. In low-risk situations, a requirement to identify – but not necessarily verify – the identity of a beneficial owner would

support a risk-based approach (e.g. for group workplace pensions – verification of the identity of the company and identification of the beneficial owners e.g. Directors of the company).

Further, we assert that regulation 28(9)(iii) is overly-restrictive in that it prohibits an entity from placing reliance on the central Register of People with Significant Control. Where firms determine that business is low risk, we strongly assert that placing such reliance should be permitted, otherwise the rationale for having a central register is undermined. Moreover, the consultation paper explicitly states[1] that: "With many eyes viewing the data, errors, omissions, or worse can be identified and reported. This means that the information held on the register can be policed on a significant scale by a variety of users". If this is indeed the case, then it is bewildering that placing reliance is not permitted.

Beneficiaries

We strongly request that regulation 29(3) and regulation 35(7)(a) are clarified to meet the same requirement as regulation 30(7)(a), which would draw out that an insurer needs to verify the identity of the underlying beneficiary (including the PEP check), when the payment is to be made directly to the beneficiary, as opposed to the trustees or legal personal representatives.

The requirements for due diligence on beneficiaries should, as with all parties, be on a risk-based approach and as such should also cross refer to SDD (regulation 36) and not just EDD. Regulation 29 should also cross-refer to regulation 28(4)(b) which requires the relevant person to take 'reasonable measures' to verify the identity of the beneficial owner.

The requirements of regulation 29(3) and 35(7)(a) apply in respect of long-term insurance. For the avoidance of doubt, we seek clarification that critical illness and short period term assurance fall outside of scope.

Trust beneficial ownership

This section references providing compliance officers the tools they need to combat the misuse of trusts. We seek clarification as to whether this means that the government will permit obliged entities access to the central register of trust beneficial ownership?

We support access for obliged entities in the reporting sector. If such access is not permitted, this will give rise to adverse cost consequences and increase the risk taken on by entities.

Trustee obligations

In respect of Regulation 23, where there is a requirement to inform the FCA of 'trust or company service providers', clarity is required as to whether the requirements are in relation to the meaning of a 'trust' in Regulation 12, or also the meaning of 'relevant trusts' as defined by Regulation 44 (13)?

[1] Section 9.1: Company Beneficial Ownership

Data retention

Draft Regulation 39(4) requires entities ordinarily to delete personal data once the data retention period has expired.

We question why the government has decided to deal with this issue within the 2017 MLRs, rather than transposition of the EU General Data Protection Regulation, which must be achieved by 26 May 2018.

Moreover, we seek clarification as to whether it is the government's intention to apply this requirement retrospectively to existing records. We would caution against such a requirement, which would place a disproportionate burden upon entities, requiring significant IT investment not least to resolve substantive issues that arise as a result of IT legacy systems. At the very least, we would urge the government to provide a transitional period which would allow this requirement to be phased in.

Internal controls

We request that HM Treasury liaises with the JMLSG to provide further clarity on regulation 21.

Regulation 21(1)(a) requires the appointment a member of the board of directors to be responsible for compliance with the MLRs.

Guidance is required for large groups, as to whether the appointment of a member of the board, should be someone on the Group Board (such as for Whistleblowing), or someone on the board of each individual entity (as per Ireland's MLR requirements).

Regulation 21(1)(b) requires 'screening' of 'relevant employees'.

Guidance is required as to who are deemed to be 'relevant employees' in this context. For example, for FCA regulated firms, is this the approved person (the MLRO) plus their team, or all employees across a firm? Practical examples that would meet requirements around assessing skills, knowledge, expertise, conduct and integrity in relation to screening would also assist.

On-Going Customer due Diligence

Regulation 28(11)(b) would seem to require that firms ensure that they keep the underlying documentary evidence or information obtained for the purpose of applying customer due diligence measures up-to-date. This would be disproportionate and, in practice, impossible to comply with.

To reflect a risk-based approach, we suggest that CDD should be refreshed on the occurrence of trigger points or periodically. We assert that the requirement to conduct CDD in accordance with both regulation 27(6)(a) and (b), should only apply in high risk cases (e.g. corporate customers taking out a high-risk product) .

We agree with regulation 28(16), which requires firms to take an appropriate and risk- based approach to customer due diligence.

Timing of Verification

Regulation 30(4) provides: 'The verification by a credit institution or a financial institution of the identity of a customer (and any beneficial owner of the customer) opening an account may take place after the account has been opened provided that there are adequate safeguards in place to ensure that no transactions are carried out by or on behalf of the customer before verification has been completed.

Regulation 30(5) provides: For the purposes of paragraph (4) "account" includes an account which permits transactions in transferable securities'.

With the exception of business conducted on platforms, as the insurance sector does not have 'accounts' or transferable securities, for the avoidance of doubt we assume that regulation 30(4) does not apply to long-term insurance policies. We suggest that a definition of 'account' would help to clarify what is and is not included within scope. We note that the JMLSG Guidance currently retains the term 'Bank account'

Requirement to Cease Transactions

Regulation 31(a) and (b) appear contradictory as to whether funds can be returned (e.g. by an insurer) to the source bank account, if verification cannot be completed and there is no suspicion of ML/TF. This must be clarified.

Meaning of Beneficial Owner – Corporates

Regulation 5(1) provides: 'In these Regulations, "beneficial owner", in relation to a body corporate, means—

(a) any individual who exercises control over the management of the body corporate'

This is too 'wide'. 4MLD Article 3 references 'ultimate control'. We suggest regulation 5 should be amended to reflect Article 3 accordingly.

Response to HM Treasury Questions

1. The government is interested in views on its approach to one-off company formation, including under which circumstances it might be appropriate, as part of its risk-based approach, for a trust or company service provider to apply simplified due diligence where it concerns the formation of a single company

This question is not applicable to the insurance sector.

2. The government welcomes views on its approach to allow SDD only when firms providing pooled client accounts are low risk

Pooled client accounts (PCAs) are not especially common in the insurance sector. Where they are held for insurance purposes, they will be administered by regulated, reputable organisations.

We agree with the suggested approach that PCAs should not be automatically subject to SDD, but rather assessed on a risk-based approach.

3. The government would welcome views on whether the reference to "at the latest within two working days should be included and if not, how long third parties should be given to provide this information.

We are surprised by the assertion that reliance is very rarely used by obliged entities in the UK. In the life insurance sector, reliance is commonly placed upon third parties, such as financial advisers and electronic ID (E-ID) providers to meet CDD requirements, to reduce duplication of measures and improve customer experiences. As such, third parties play a crucial role in carrying out CDD checks.

In September 2014, the ABI and a number of other financial services representative bodies, issued joint guidelines on third party reliance, together with recommendations to ensure that the verification of customers' identity is conducted correctly.

We strongly oppose the suggested timescale of "at the latest within two working days". This is not pragmatic. It should be recognised that some IFAs retain source document information within central compliance functions. In practical terms, this means that individual advisers send the information they collect to their central function for assessment and storage. Given the two respective locations may be geographically removed, it is not practical to expect them to be able to retrieve this information and send it to the product provider within two working days. Furthermore, a two-day turnaround would require firms to update their contract arrangements and Service Level Agreements with third parties, thereby imposing unnecessary costs.

We suggest that the timescale should be amended to "within a reasonable time". It should be for the individual product provider to set this period taking into account the particular circumstances of reliance on a case-by-case basis.

It is worth noting that, in our experience, law enforcement rarely (if ever) request this information, so the need for urgency does not seem to be supported in practice. If a fixed time period was introduced, what would be the penalty for non-compliance?

4. The government would welcome views from the sector on the requirement for policies, controls and procedures to be documented

We agree that it is imperative that policies, controls and procedures are documented, either in 'hard copy' writing or electronically. This provides a robust framework for monitoring and evidencing compliance.

However, by way of caveat:

- It should be acknowledged that documentation cannot cover every aspect of the processes. For example, the decision to report suspicious activity will turn on each set of individual circumstances;

- In respect of regulatory requests for disclosure, we seek confirmation of our understanding that this should be restricted to higher level policies and procedures. For many firms, it would be a mammoth task to collate and submit all procedures, including those at a lower operational level. One firm has advised, for example, that it has in excess of one hundred separate procedures across all business lines. We assert

that it would impose an undue administrative burden, firstly, upon the regulated entity to disclose all such procedures and, secondly, upon the regulator to assess them.

We also seek clarification as to how regulators and supervisors will measure levels of compliance.

Association of British Insurers

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