

23 October 2006

Our ref: ICAEW Rep 58/06

MLD3 Consultation
Financial Crime team,
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HM Treasury
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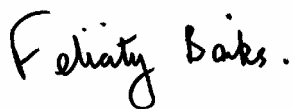
By email: MLD3consultation@hm-treasury.x.gsi.gov.uk

Dear Sirs

IMPLEMENTING THE THIRD MONEY LAUNDERING DIRECTIVE

I attach a copy of the response of the Institute of Chartered Accountants in England & Wales, to this consultation. If you have any queries, or any matters that you would like to discuss further, please let me know.

Yours sincerely

A handwritten signature in black ink that reads 'Felicity Banks.' The signature is written in a cursive, flowing style.

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ICAEW REP 58/06

**IMPLEMENTING THE THIRD MONEY LAUNDERING
DIRECTIVE:**

A CONSULTATION DOCUMENT

Memorandum of comment submitted in October 2006 by the Institute of Chartered Accountants in England and Wales, in consultation with the Consultative Committee of Accountancy Bodies, in response to the consultation document issued by HM Treasury in July 2006

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales ('the Institute') welcomes the opportunity to respond to the Treasury Consultation Paper "Implementing the Third Directive: a consultation document" issued in July 2006.
2. The Institute has a public interest mandate and has been a leading contributor in the policy debate over the fight against financial and economic crime over the last decade or longer. As an accounting professional body, we are particularly aware of the damaging social and economic effects that are caused by money laundering and other financial crime.
3. Accountants make up the largest professional group of FTSE 100 chief executives, with 24 of the UK's largest companies having an accountant as CEO, and over 60% of FTSE Finance Directors are members of the Institute. As the largest accountancy body in Europe, the Institute's 128,000 members run and advise businesses of all sizes across virtually every economic sector.
4. We set out below the main points we would like to make, followed by our responses to the specific questions raised in the consultation.

MAJOR ISSUES AND GENERAL COMMENTS

Supervisory and Monitoring

The Professions of Accountancy and Tax in the UK

5. There are six major professional bodies for accountants in the UK, which bodies are members of the Consultative Committee of Accountancy Bodies (the CCAB) and act under the oversight of the Professional Oversight Board (POB) an operating body of the Financial Reporting Council (FRC). It is offensive, as well as inaccurate, to describe members of two of these bodies, the Chartered Institute of Management Accountants (CIMA) and the Chartered Institute of Public Finance and Accountancy (CIPFA), as "unqualified accountants". Nor should they be treated as such.
6. As we understand it, the reason why the Designated Professional Bodies (DPBs) listed under Part XX of the Financial Services and Markets Act 2000 were identified as supervisory authorities under paragraph 2(7) of the Money Laundering Regulations 2003 was not because of any judgement on the bodies themselves, or their members, but because the provision of financial services under the supervision of a professional body, rather than the FSA, was seen as a potential high risk category in that it could be used to act as a gate-keeper to the financial system. As they are not DPBs, it is therefore inappropriate to require accountancy firms which are members of CIPFA and CIMA to seek additional and duplicated supervision, by a body other than their professional body.

7. Article 37(5) of the Third Directive gives clear authority for supervision to be carried out by relevant professional bodies in the case of tax advisers as well as auditors, accountants, notaries and other independent legal professionals, provided those bodies have adequate powers and resources to carry out their functions. There is also a reputable body for tax advisers in the UK, the Chartered Institute of Taxation (CIOT). Consideration should be given for allowing member firms of the CIOT to act under the supervision of their professional body, rather than having to seek additional regulation from an alternative supervisor. This should be subject to the CIOT demonstrating adequate resources to monitor their member firms, and a Government decision on whether the professional bodies given this responsibility should be subject to an oversight regulator. In this context, the CCAB bodies are already subject to oversight by the POB, and law firms are expected to shortly be subject to the oversight of the Legal Services Board (subject to the passage of legislation on the regulation of legal services, by the Department of Constitutional Affairs (DCA)).

Supervision by HMRC and the OFT

8. We recognise the difficulties of setting up new regulatory authorities and new categories of regulated person. We also agree that the maximum benefit should be utilised, from existing knowledge and supervisory arrangements, in respect of the categories of undertaking that will be drawn into the scope of monitoring and supervision. We will do our best to support the AML activities of whatever regulatory authority or authorities are decided upon by the Government.
9. However, we are not convinced that HMRC is necessarily the best organisation to monitor unqualified accountants, tax advisers, or even the money service businesses and high value dealers that they currently regulate. HMRC has clear and important objectives in the areas of the assessment and collection of tax and the enforcement of tax legislation, in the UK, which mainly concerns dealing with the tax affairs of individual legal and natural persons. This is very different from the monitoring of businesses for compliance with the anti-money laundering requirements. The Government should seriously consider whether the inclusion of this disparate function within the tax authority will enable a clear and appropriate focus on the AML supervision of those parts of the regulated sector which are, or which are proposed to be, supervised by HMRC.
10. In September 2006, HM Treasury issued a consultation paper, in furtherance of its commitment to carry out a review of the regulatory regime for Money Service Businesses. This consultation includes a number of proposals which indicate that the current arrangements are perceived as inadequate. We suggest that plans for improvement could include more radical reforms, including the separation of the regulation of money service businesses from its current position within HMRC. A divided focus is always more difficult to maintain.
11. Whilst we would assume that HMRC has already put in place strict ethical walls between its revenue collection function and its AML supervisory function, the separation of the supervisory unit from HMRC would also remove any potential concerns over breach of such ethical walls. This is important so that taxpayers may be assured that HMRC may not access tax papers through a function

unrelated to revenue collection that they would otherwise not be entitled to without going through the appropriate processes under the Taxes Management Act.

12. The current regulatory functions of the OFT is similarly very different from the functions of an AML supervisor, being focussed on consumer protection, not the rather different functions of AML prevention and detection. We suggest that AML compliance by estate agents should be undertaken by the separate AML regulator, which we propose should be separated out from HMRC in the above paragraphs. Personnel with knowledge and experience of the regulation of estate agents should be seconded or transferred from the OFT to the new regulator, to enable a swift and effective assumption by it, of responsibility for this area.
13. Any disadvantages which could be anticipated, by the setting up of a new and independent AML supervisor would be further minimised, by the implementation of the Home Office proposals for the sharing of information from public sector data bases, for the purposes of crime prevention and detection (as set out in the recent Home Office consultation “New Powers against Organised and Financial Crime”).
14. All AML supervisors should be required or encouraged to work together, to minimise unnecessary regulatory burdens. This should include provision for whoever is ultimately responsible for the regulation of unqualified accountants to work with the CCAB bodies, for the provision of consistent Guidance for the providers of accountancy services. The Guidance produced by the CCAB bodies, is currently addressed to all accountants, though it can only be enforced against member firms of the CCAB bodies. Our preference would be for the CCAB Guidance to represent the standard against which all accountancy service providers are judged.

Gold Plating of the Money Laundering Directives

15. Paragraph 1.18 of the consultation document mentions the Government’s commitment not to gold plate EC law, unless there is an exceptional reason to do so. This is welcomed. We note that the UK has, in past implementations, exceeded the requirements of the directives insofar as they relate to the crimes covered by the regime, and the breadth of the money laundering offence.
16. In implementing this directive, we urge the Government to be constantly aware of the need to ensure that anti-money laundering responsibilities are imposed on the regulated sector only where there is a positive cost benefit outcome in terms of fighting financial crime.
17. In addition, where it is concluded that our stronger provisions are in the public interest, the UK should seek to ensure that they are implemented throughout the EC, and indeed on a global basis.

RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

Chapter 1: Introduction

Compensatory simplification measures

The Government would welcome any comments on the proposals for compensatory simplification measures and suggestions for further simplifications

18. We have no suggestions to make at this time, but see our comments above, under “gold plating”.

Devolved Administrations

The Government would welcome any proposals for issues that need to be considered in respect of implementation of the Third Money Laundering Directive in devolved administrations.

19. We are not aware of any issues requiring separate consideration in relation to Scotland, Wales or Northern Ireland.

Chapter 2: Scope and definitions

Defining the scope of the regulated sector in the Money Laundering Regulations

The Government would welcome your views on whether the Government should define the scope as a list of categories or whether the Government should keep the current activity approach.

20. The current activities based approach to the definition of the regulated sector promotes a fair and equitable spread application of the requirements between competitors who are equally vulnerable to use by money launderers, though they may be structured differently, or have different qualifications and professional or other oversight (or none). This is especially apparent in the market for accountancy services, where practising accountants who are members of professional bodies act in competition with unqualified accountants and also with former members of professional bodies. Were the scope of the regulated sector to be defined in terms of membership of particular professional bodies, for example, this would result in practitioners being able to avoid regulation by resigning their membership, but otherwise continuing their practice as before, with adverse consequences for proper monitoring of professional services, as well as for a fair competitive environment. Similar effects could arise from definition of firms or services in terms of management consultancy, or similar services closely aligned with professional services.
21. We agree with the current distinction between practising firms of accountants and lawyers who would fall within the scope of the regulated sector, and accountants

and lawyers employed outside it, who would not. It would not be proportionate to draw in those employed outside the regulated sector into the regulated sector.

22. It is unclear from the wording of the consultation document, whether consideration is being given to extending the scope of the Regulations so that they apply directly to individuals employed in practice as well as practising firms (including sole practitioners). At present, the Money Laundering Regulations apply to entities carrying on relevant business, while the offences that can be committed under Section 330 of the Proceeds of Crime Act apply to individuals. This distinction enables an appropriate degree of personal responsibility to be held by individuals, while not imposing on them the procedures, systems and control responsibilities, which are the main thrust of the Regulations, and which are the proper responsibility of the business as a whole, not the individual. Such a change would be unnecessary, does not follow from a change in the underlying directive requirements, and would be very burdensome in terms of individual record keeping. This lack of clarity in the wording of the consultation document is also apparent in Chapter 10, on monitoring and supervision of professionals – similarly, in provisions introduced in respect of those proposals should focus on the monitoring and supervision of firms, not individuals.
23. The consultation document does not discuss the position of insolvency practitioners, who are currently within the scope of the regime. Insolvency practice within the UK is currently carried out by accountants, lawyers, or by persons who are neither, but have a qualification in insolvency practice alone. It is important for fairness, and for equal competition in the market for insolvency services, that these categories are treated equally. For this reason, the status quo should either be retained, where all insolvency practitioners are included within the regime, or it should be clear that the insolvency activities of lawyers and accountants are excluded.

The definition of Financial Institutions

Do you agree with the Government's approach of clarifying which firms fall within the definition by excluding certain categories where there are clear grounds for doing so? Do you have any examples of such persons or undertakings?

24. We are not aware of any problems with the current definitions of financial institutions, as contained in the current Money Laundering Regulations, or with the Government proposals.

Financial activity on an occasional and limited basis

Do you agree that the UK should implement the Article 2.2 of the Third Directive and exclude financial activity that is on an occasional and limited basis and represents a low risk of money laundering and terrorist financing?

If you think that the Government should, what are the benefits of doing so, and if you think that the Government should not, what are the concerns with doing so?

Do you agree with the thresholds the Government proposes using for criteria b (the financial activity is limited to transactions of less than Euro 1,000) and c (the financial activity is limited to 5% of the total turnover of the business)?

Do you have any examples of legal or natural persons that meet the Commission's criteria? For each example please give reasons why this would meet the Commission's criteria.

25. As a general policy position, the Institute is strongly averse to unnecessary or ineffective regulation. We therefore agree that any sector which is not required to be regulated under the terms of the Directive, and which represents a low risk of money laundering, should be excluded.

Additional changes to the scope of the regulated sector

Do you agree that the Government should not extend the Regulations to any other sectors other than those listed in the Directive?

26. We agree that the Government should not extend the Regulations to any other sectors, other than those listed in the Directive. To do so would effectively represent gold plating, and impose additional burdens in the UK, that would not necessarily be imposed in other European states.
27. However, it must be recognised that organisations outside the regulated sector will be used by money launderers, especially as awareness and effective enforcement is improved within the regulated sector. This may be particularly apparent in organisations with a high use of cash such as gambling establishments other than casinos, businesses with a high cash turnover (including pubs and restaurants) and high value cash service providers. However, any list of likely targets will be incomplete – any business can be used for laundering purposes. While it would not be proportionate to extend the regulated sector, the Government should try and ensure that wide publicity is given to the risks that businesses face, of being targeted by money launderers, with a consequent risk of facing a charge of being involved in one of the primary money laundering offences under Sections 327 to 329 of the Proceeds of Crime Act, and how those risks can be addressed.

Other Matters

28. We agree with the conclusion of the Government, expressed in paragraphs 2.32 to 2.34 of the consultation paper, that the definition of “business relationship” is not intended to produce a significant difference in effect. However, if the definition is incorporated into the UK legislation in its current form, this could have the effect of extending the requirements to relationships other than between the regulated business and its customers, such as relationships with suppliers, sub-contractors, joint venture partners or persons to whom a duty of care is owed. Since the Third Directive only uses the term in the context of “customer due diligence” this extension is clearly not intended, and should not be inadvertently introduced into the UK legislation.

Chapter 3: Customer due diligence

Beneficial ownership

Would you be in favour of including a specific exclusion for situations of trust that arise in the bond market and if so, how does this exclusion need to be framed? Are there any other commercial products where a situation of trust arises that the Government needs to consider.

29. We agree that bond trustees should not be required to verify the identity of bond holders, but we consider that this should be a general consequence of the risk based approach, rather than being a consequence of corporate bonds being structured in trust form. Similar issues arise for accountants and lawyers who act for public companies, as for the trustees of their bonds - risks are low, because ownership is generally widely spread and influence diluted, making these relatively unattractive as active vehicles for use in money laundering schemes.

Customer due diligence requirements for casinos

30. We have no comments we wish to make, on customer due diligence requirements for casinos.

Chapter 4: Simplified and Enhanced Due diligence

Simplified due diligence

Do you agree that a category for simplified due diligence is necessary and useful or would you wish all customers and products to undergo some form of customer due diligence but on a risk based approach?

31. We would prefer all the categories of customer listed to undergo some form of customer due diligence, but on a risk based approach. This is preferred, if only to control the risk that a potential client may present themselves as a member of a low-risk category, when they are not. In addition, to identify particular categories but not others could undermine the risk based approach, suggesting that low risk entities or persons who are not included on the list should undergo full due diligence.
32. We also agree that customer due diligence requirements for very low risk savings products such as those listed in the Directive should be minimal or non-existent, but again, we would prefer this to be a general consequence of the risk-based approach, rather than being a result of specific provisions.

Even if you agree with the category of simplified due diligence are there any of the examples listed in the Directive that you think should not be included in the updated Money Laundering Regulations?

33. See above.

The Commission's implementing measures for simplified due diligence

What are the examples of customer, products or transactions that you believe meet the Commission's criteria?

34. We would prefer all products or transactions to be subject to the requirements for customer due diligence, but for recognition that these will be requirements will be minimal for products coming within these criteria as a general consequence of the risk based approach,

PEPs

Is there any further information from the Government, law enforcement or supervisors that could be provided to ensure that firms adopt an effective and proportionate approach to identifying politically exposed persons?

35. We support the approach being taken, in that the provisions for PEPs should be approached very much on a risk based approach, and this should be clarified in Treasury approved industry guidance.

Chapter 5: Third Parties and Reliance

Who should be a third party?

Do you agree with the Government's proposed approach to implementing the reliance provisions of the Directive? Namely a staged approach to which sectors can be relied upon.

36. We are broadly content with the proposed approach to the implementation of the reliance provisions of the Directive. In particular, we agree with the proposal that professional firms of lawyers and accountants should be treated on an equal basis with financial institutions regulated by the FSA.
37. However, we do retain some concerns over the fact that reliance can only be partial at best, due to the retention of ultimate responsibility by each regulated entity, as set out in paragraph 5.24 of the consultation. This will be an aspect of the requirements which will ultimately depend on a risk judgement by the responsible entity. Risk will be mitigated by the provision of the entity on which reliance is being placed of certified copies of the evidence which they themselves have obtained. Industry guidance should help to promote the speedy and effective sharing of certified copies of documentary evidence.

Chapter 6: Equivalence and subsidiaries in third countries

Equivalence

Do you believe that the provisions should be kept at a high level allowing someone in the regulated sector to make a decision on equivalence taking into account the

equivalence lists produced by the UK (and any other lists in a cross-border transaction), or that the Regulations should require firms to only treat those countries as equivalent that appear on the UK's lists?

What types of information would be helpful for industry, in order for them to be confident that another jurisdiction could be classified as equivalent?

38. We have no strong opinions on whether the requirements are kept at a high level, or whether a requirement is made that decisions on equivalence should be made on the basis of a specific list. However, in either case, it is vital that lists are maintained on a regular and reliable basis, are easily accessible by UK organisations and can be relied upon by them as providing valid evidence of compliance with the requirements.

Chapter 7: Reporting Obligations

Consent

Have circumstances arisen where the regulated sector have concluded that refraining from carrying out a transaction is “likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation?” Do you think that the UK needs to take further action to give effect to Article 24.2? If so, what measures should be taken?

39. The Home Office have recently consulted on possible changes to the consent regime, as part of their consultation “New Powers against Organised and Financial Crime”. In our response to that consultation we make the point that it needs to be understood that there is no way of suspending normal commercial activity in a manner that does not cause suspicion and/or frustration in clients and which may therefore undermine any investigation which requires the suspect to remain unaware of the situation. We would welcome further action taken, to minimise this possibility.

Protection of Employees

Do you think that the UK needs to take further action to ensure effective implementation of Article 27? If you think that the Government should, what action should be taken and what are the benefits of doing so. If you think that the Government should not, what are the concerns with doing so?

40. We strongly welcome the actions that have been taken by both the Home Office and SOCA, for preserving the confidentiality of SARs. However, we are still of the view that a Statutory Code of Conduct governing the confidentiality of SARs would assist in ensuring the protection of both employees and other individuals that might be identified from SARs information.

Tipping off

Do you think that Article 28 requires amendment to section 333(3) or section 342(4) of the Proceeds of Crime Act 2002 (defences for professional legal advisers for tipping off offences).

Do you think that the UK needs to take further action to give effect to Article 28.1? If so, what measures should be taken?

41. We agree with the Government's provisional view that no amendment is required, to the current provisions on tipping off. Continued attention must be taken to ensure that an over-rigorous interpretation of the tipping off provisions do not lead to inadvertent adverse reactions, which could be counter-productive in preventing and investigating crime (as happened, in relation to the data protection provisions). For example, it would be helpful if, in Guidance approved by the Treasury, reference was made back to the specific provisions of Article 28.6, regarding advice to the clients of lawyers, accountants and tax advisers, on dissuading clients from engaging in illegal activities.

Chapter 8: Record Keeping, internal procedures and training

Record keeping

The Government would welcome your comments on whether the Regulations should either offer an open choice of whether copies or references should be kept as records, or explicitly require that when documentation is taken, copies should be kept unless it is not practicable to do so in which case the references of the evidence required will be sufficient. In providing your response the Government would welcome any information on the relative costs of the two options.

42. We would prefer the Regulations to retain a free choice as to the form in which records of documentation is retained. The preferences of law enforcement in this matter should not be ignored, but this should be a matter for industry guidance, rather than for the law.

Chapter 9: Requirements on Government and its agencies

43. We recognise and welcome the efforts that are currently being made by SOCA and other Government agencies, to improve the feedback to the regulated sector. This will assist in ensuring UK compliance with these requirements of the Directive.

Chapter 10: Monitoring and Supervision

Model of supervision

Do you agree with the suggested model of supervision?

44. We agree that monitoring by supervisors should be carried out on a risk based approach, in accordance with the Hampton Review recommendations.
45. We note that (as set out in paragraph 10.13 of the consultation) the Government envisages the model of monitoring to include:
- the right to require annual returns and/or statements of compliance;
 - the right to conduct assurance visits on the basis of risk; and,
 - where appropriate, enforcement action such as issuing of penalties where there is non-compliance.
46. It should be clear from the framing of the requirements whether supervisors will or will not be required to back these rights with actual implementation. For example, will annual returns or statements of compliance be required, or a comprehensive programme of monitoring visits? If this is not clear from the framing of the requirements, this risks unnecessary confusion and the potential for inequitably imposed burdens on some parts of the regulated sector.
47. A potential area for duplicated and unnecessarily onerous regulation would be the situation where any entity operates in more than one category of the regulated sector and was required to seek AML monitoring from more than one supervisor as a result. It should be clear from the UK implementation that where any entity is adequately monitored, by any of the bodies authorised to monitor AML compliance, that they should not be required to register with another. Where appropriate, AML supervisors should be required to coordinate their activities, to minimise unnecessary regulatory burdens.

Annex 1 Financial Institutions

Do you agree with the Government's proposals as to who should take on monitoring of these institutions?

48. We agree that those financial institutions that are currently regulated by the FSA should continue to be monitored for their AML compliance by the FSA.
49. We are not convinced that either HMRC is the best supervising authority for money service businesses, or the OFT for consumer credit organisations. Please see our comments under "Major Issues" above.

Estate Agents

Do you agree that the OFT with support from Local Authority Trading Standards is the most appropriate body to take on the supervision of estate agents for money laundering purposes?

50. We are not convinced that the OFT is the best supervising authority for estate agents. Please see our comments under "Major Issues" above.

Legal professionals

Do you agree that the listed professional bodies will monitor their members that fall under the Money Laundering Regulations, for compliance with those Regulations?

Are there any notaries or other legal professionals that do not fall under the membership of such organisations that fall under the Money Laundering Regulations and therefore will need a monitoring body?

51. The Treasury will be aware that the Department of Constitutional Affairs (DCA) is currently undertaking a major reform of the provision of legal services, and their regulation. As well as activities carried out by the members of the bodies listed in paragraph 10.29 of the consultation document, the DCA reform process also extends to the following services and membership of the following professional (or semi-professional) bodies:
- Institute of Legal Executives (a few of which practice in their own right, rather than as employees of solicitors);
 - Institute of Trade Mark Attorneys;
 - Chartered Institute of Patent Agents;
 - Provision of immigration advice; and
 - Claims management.
52. There are also a number of other professional, semi-professional or trade bodies for persons providing unregulated legal services, such as the Institute of Will Writers. The Government should ensure that it has adequately considered the money laundering risks associated with these categories of legal service providers, as well as to potential anti-competitive effects of including some of these within the scope of the Regulations but not others, before making their final decision.
53. As an additional element of their reform, the DCA is also proposing to proceed with the development of “Alternative Business Structures” (ABSs) under which, in due course, accountants and lawyers may practice together, in a single firm. It will be important to structure the supervisory requirements in a way that will not result in unnecessary and onerous duplication of supervision for such entities. We believe that where an ABS is a member firm of one of the listed professional bodies for lawyers or accountants, then that professional body should have the sole responsibility for monitoring for compliance with the AML requirements for the whole firm.

External Accountants, Tax Advisors and Auditors

Do you agree with the proposals to list the above bodies as those that will monitor their members that fall under the Money Laundering Regulations, for compliance with those Regulations?

54. We agree that practicing firms of accountants which are members of reputable professional bodies should be able to be monitored for AML compliance by that body. However, it is not appropriate to distinguish the five bodies listed from other professional bodies which are also of good repute and which also act under

the oversight of the Professional Oversight Board (an operating body of the Financial Reporting Council). Please see our comments under “Major Issues” above.

Do you agree that HMRC should take on the monitoring of external accountants, tax advisors and auditors that are not members of the listed bodies?

55. We are not convinced that HMRC is the best supervising authority for unqualified accountants or tax advisers, let alone practising member firms of the CCAB bodies. Please see our comments under “Major Issues” above.

Trust and Company Service Providers

Do you agree with the Government’s proposal that HMRC should the role of supervision of trust and company service providers?

56. We are not convinced that HMRC is the best supervising authority for trust and company service providers. Please see our comments under “Major Issues” above.

57. We welcome the confirmation set out in paragraph 10.38 of the consultation document that legal and accountancy professionals will continue to be subject to supervision by their professional body, in respect of trust and company services provided by their practising firms, and will not need to seek additional regulation. This should apply to legal and accountancy practices, rather than to individual legal and accountancy professionals, to ensure adequate supervision of employees who do not have an appropriate professional qualification, and to avoid unnecessary duplication of supervision in firms with many individual professionals working for them.

58. Some banks and other financial institutions already regulated by the FSA are also providers of trust and company services. Provision should be made, to ensure that they can be monitored for AML compliance by the FSA, in these functions, as well as the rest of their business.

Definition of a trust and company service provider

Do you agree with the Government’s proposals as to who could and could not fall within the definition. What other activities do you think could possibly fall within the above definition? When listing these, if you do not think it is the intention of the Directive to include them, please give your reasons.

59. We have no additional suggestions to make on categories of person who should fall within the definition of trust and company service provider. One of the important characteristics of the definition is that it should be very clear which persons fall within or without the definition. Rather than saying that the categories of persons listed in paragraph 10.49 are unlikely to count as trust or company service providers, the Government should provide that they definitely do not, unless they are providing other services which represent a higher risk. We also consider that it should be clear that recruitment agencies are excluded when they act in the recruitment of directors or company secretaries. Organisations which

supply directors or company secretaries on a continuing basis, for example by means of secondment, might be included.

60. As well as considering whether activities are likely to have been intended by the Directive to fall within the definition of trust and company service providers, the Government should also consider the risks of individual categories to exploitation by money launderers, and the likelihood of their being included by other Member States, in their implementation of the Directive. Where categories of person are low risk, and are unlikely to be included by other Member States, their inclusion in the UK would represent unnecessary and anti-competitive over-regulation, regardless of the original intention of the Directive.

Fit and proper test for trust and company service providers and money service businesses

What model of fit and proper test would you prefer?

61. The model for assessing the fitness and propriety for trust and company service providers should be kept flexible, to enable their supervisory authority to adapt their procedures according to experience.

Chapter 11: Penalties and Status of Industry Guidance

62. We are content with the proposals set out in this section of the consultation paper.

FJB/20.10.06