THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW Representation

ICAEW REP 53/09

HOUSE OF LORDS SELECT COMMITTEE ON THE EUROPEAN UNION SUB-COMMITTEE F (HOME AFFAIRS)

INQUIRY INTO MONEY LAUNDERING AND TERRORIST FINANCING

Supplementary evidence submitted in April 2009 to the House of Lords Select Committee on the European Union Sub-committee F (Home Affairs) in connection with their inquiry into EU and international cooperation to counter money laundering and the financing of terrorism. This evidence was prepared for the Committee, to respond in written form to queries raised by the Committee in oral evidence. This paper is the property of the Committee.

Contents	**Paragraph**
Introduction	
o Guidance available to the Accountancy Sector	1-3
o The Consent Regime	4-6
o Beneficial Ownership	7-9
o The Current Regime and its Cost Effectiveness	10-13

INTRODUCTION

The Institute of Chartered Accountants in England and Wales (ICAEW) would like to thank the Committee, for the opportunity to provide oral evidence in connection with their Inquiry into Money Laundering and the Financing of Terrorism. We are writing with this follow up memorandum, to respond to points raised but not fully resolved at the oral session.

Guidance available to the Accountancy Sector

1. Comprehensive, formal, guidance was published for the accountancy sector in December 2007, prior to the coming into force of the Money Laundering Regulations 2007. This was reissued in August 2008 with minor changes, having been granted Treasury approval. Under the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002, this gives the Guidance formal legal recognition which will result in it being taken into account by the Courts in determining whether our members and other accountancy service providers have complied with certain of their obligations under the law. We attach a copy of our formal Guidance to this evidence.

2. The formal Guidance is also available from our web site at www.icaew.com/moneylaundering, together with other less formal guidance, the background to the legislation, and ICAEW representations in relation to the requirements.

3. Sections 6 and 7 of the formal Guidance covers the suspicion reporting requirements. We have not included copies of standard suspicion reporting forms with the Guidance, since these are designed and issued by SOCA in a form which makes them compatible with their recording system. The forms are available from SOCA's web site, together with guidance on completing them, at https://www.ukciu.gov.uk/(g0yssc45v4icbe55m10janej)/saronline.aspx. We have a Money Laundering Helpline available to our members, should they wish for assistance in filling out the forms.

The Consent Regime

4. The Home Office carried out an extensive consultation on the consent regime, in December 2007. We attach a copy of our response to this consultation. Further copies are available from our web site at http://www.icaew.com/index.cfm/route/164127/icaew_ga/Technical_and_Business_Topics/Topics/Law_and_regulation/Obligations_to_report_money_laundering_The_constent_regime__Law_and_Regulation__ICAEW/pdf

5. We sympathise with the problems that many banks have with complying with the current consent regime, especially in combination with the prohibition on "tipping off" which means that they are unable to explain to their customers the reason for the delay in carrying out instructions. An amendment to the legislation to allow Pre-Event Notification ("PEN") of a transaction which might otherwise be within the definition of money laundering could assist them in carrying out their normal business without breaking, or undermining, the anti-money laundering legislation. However, it is important that any changes do not either undermine the usefulness to Law Enforcement of the consent regime, nor prejudice the position of either:

   - those who wish to seek consent as a legitimate means of obtaining a defence to accusations of money laundering; and

   - those engaged in legitimate commercial transactions where the conduct of another party has introduced the need to consider seeking consent, eg in a corporate finance transaction where the target and/or its owners are suspected of having benefitted from criminal behaviour and the related proceeds. Without the certainty of consent, parties may be

extremely reluctant to continue to invest their own resources and those of their professional advisers in a transaction whose final consummation may be influenced by other than normal commercial considerations. The PEN system must necessarily be accompanied by the possibility that implied permission to transact may subsequently be withdrawn, for law enforcement purposes. This is likely to adversely impact the reputation and utility of the City of London as a corporate finance centre of excellence.

6. SOCA have considerably improved the speed with which consent to carry out a transaction can be provided and their flexibility in providing consent to carry out a series of related transactions (which can be necessary, for example, in carrying on business in a company which includes in its funds some which are tainted with criminality). On the whole, we believe that accountants working in practice find the current regime broadly and usually workable in practice, and justified in the public interest in effective law enforcement. It is important to avoid any reform which risks upsetting this balance, and improves the operation of the consent regime in some sectors, while worsening it in others.

Beneficial Ownership

7. We consider it an important element of the current AML regime in the UK that entities within the regulated sector (including both lawyers and accountants) should know the identity of the beneficial owners of their clients when carrying out any business within the scope of the Money Laundering Regulations. Further, this is an irreducible requirement of the international Anti-Money Laundering obligations issued by the Financial Action Task Force and hence a treaty obligation of the UK. Without this information, entities' staff and Money Laundering Reporting Officers would be seriously handicapped in forming money laundering suspicions, and would not be able to provide comprehensive and useful suspicions reports to SOCA backed by the necessary identification information. Further, compliance officers in professional firms are likely to need this information anyway, in order to consider reputational issues, avoid conflicts of interest and, in the case of auditors, to ensure no breach of strict independence requirements and to audit the disclosure of related party transactions.

8. We understand the difficulties that some firms have in resolving the concerns of clients over the security of their personal information, but believe that these concerns can almost always be resolved by careful examination of the issues involved and any legitimate concerns e.g. in relation to vulnerable parties, including minor children, by restricting the number of people who know the identities of the beneficial owners. Where there are exceptional needs for privacy, it may be possible to very severely restrict information to only senior compliance and risk personnel within a firm rather than, as would be normal, allowing the information to be held by client serving staff as well as compliance and risk. Clearly, nothing in any such arrangement can override the need and duty to disclose to SOCA and other authorised agencies in response to exercise of legal powers.

9. We do not think that it would be appropriate for the beneficial ownership of companies or trusts to be required to be filed on a register open to inspection by the whole of the regulated sector. We support the right to privacy in that it should not be compulsory to disclose sensitive information widely, whilst fully supporting the absolute need for such information to be made available to regulated persons when their services are required. We believe that the current system supplies an appropriate balance between the rights of the client and the needs of law enforcement where a suspicion report is made, providing as it does a measure of due diligence by the service provider when a client is first taken on, and thereafter on a continuing basis as necessary.

The Current Regime and its Cost Effectiveness

10. We would welcome consideration of any improvements in the current regime that reduced compliance costs without undermining its effectiveness. Any such improvements would be likely to be incremental, and should be introduced with care to avoid unanticipated damage to the value of the current regime to law enforcement, and hence to the reputation of the UK and the safety of its citizens. We are not convinced that any changes apart from minor ones would be useful to the regulated sector, and radical changes could effectively seriously damage the value of the current regime to law enforcement.

11. The costs of the regulated sector are increased every time there is a significant change to the regime, due to the cost of training to ensure that relevant staff have achieved an appropriate level of understanding – this is significantly more than is needed on a routine basis as a periodic reminder of continuing requirements. We would prefer a period of stability of the Anti-Money Laundering Regime, with improvements focussing on better use of suspicion reports and better feedback to the regulated sector. We believe that this would be greatly preferable to significant changes to the requirements on the regulated sector, even where these purport to decrease the requirements but which may further complicate the regime.

12. In particular, our members in practice tell us that they would find it more laborious in practice to have to make a judgement on the nature of the predicate offence which led to suspected money laundering (in order to judge whether or not it is serious) than it is to report all suspicions. Further, we understand that some very important criminal investigations have been triggered by suspicion reports of activities which at first sight appear relatively minor if not trivial. SOCA is in a better position to judge the usefulness of suspicion reports than members of the regulated sector.

13. We welcome any well conducted research into the costs and benefits of the regime. In evaluating research, however, it is important that the cost/benefit ratio takes into account not just the benefits in terms of criminal proceeds recovered, but also the cost savings in terms of more efficient criminal investigations, the improved reputation of the UK as a safe place to do business and the saving of the potential costs of crime which is averted as a result of better criminal intelligence. I attach a copy of the results of the academic research that we sponsored in conjunction with the City of London and which was published in June 2005. The conclusion of this research at the time was that the requirements in the UK are set at a broadly appropriate level – and significant improvements have been introduced since that time, both reducing the costs borne by the regulated sector and improving the use that is made of suspicion reports. Further copies of the research report are available from our web site at http://www.icaew.com/index.cfm/route/112460/icaew_ga/en/Technical_and_Business_Topics/Thought_leadership/Anti_money_laundering_requirements_costs_benefits_and_perceptions.

FURTHER CONTACT DETAILS

Please do contact the ICAEW if you require any further information:

Felicity Banks
Head of Business Law
ICAEW
T: +44 (0)20 7920 8413
E: felicity.banks@icaew.com

Tom Frackowiak
Public Affairs Manger
ICAEW
T: +44 (0)20 7920 8732
E: tom.frackowiak@icaew.com