



## Consultation on the transposition of the Fourth Money Laundering Directive

ICAEW welcomes the opportunity to comment on the Consultation on the transposition of the Fourth Money Laundering Directive published by HM Treasury on 15 September 2016, a copy of which is available from this [link](#).

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## MAJOR POINTS

1. In drafting legislation and guidance on due diligence, the Government should avoid the temptation to be too prescriptive, especially around enhanced due diligence and politically exposed persons, thereby detracting from a truly risk based approach.
2. We believe that, in the interests of transparency and consistency in the supervisory regime, all obligated entities should be subject to the same requirement regarding fit and proper and criminality checks.
3. We recommended in a [response to a previous consultation](#) that, in the interests of cutting red tape, the Government should have considered postponing some, or all, of the PSC register proposals to introduce them concurrently with the transposition proposals in this consultation. Further due process will be required given revisions to the Directive at an EU level. This is especially important in relation to trusts where the proposals will have a significant impact and currently lack clarity.
4. Ensuring the currency and reliability of the information on the PSC register at Companies House could be easily achieved by requiring Companies House to carry out basic due diligence checks on the information submitted to them, thus retaining control of such work at a central level and mitigating a key vulnerability in the UK financial system, as well as reducing the extensive duplication (and resulting increase in consumer costs) of such responsibilities in the private sector.

## RESPONSES TO SPECIFIC QUESTIONS

**Q1: Do you agree with the proposed turnover threshold of financial activity for obliged entities being set at £100,000 as one of the criteria to comply with in order to be exempt from the Directive? Please provide credible, cogent and open source evidence (where necessary) to support your response.**

5. We understand that the annual turnover threshold is just one of the criteria that must be met to qualify for an exemption, and does not apply to many in the regulated sector (including accountancy). However there is an argument for extending such a turnover threshold to wider range of regulated entities and exploring all opportunities to do so. This would exempt many smaller business from onerous and disproportionate regulation, whilst also ensuring that the UK has an approach to the regime that is truly risk based. Small businesses will still incur costs in monitoring adherence to the threshold.

**Q2: The government would welcome views on whether a maximum transaction threshold per customer and single transaction should remain at £836 (EUR 1,000). Please provide credible, cogent and open source evidence (where necessary) to support your response.**

6. We don't have any compelling evidence to suggest that a change is required.

**Q3: When do you think CDD measures should apply to existing customers when using a risk based approach?**

7. We are of the view that, following a risk based approach, there could be a number of situations that could trigger ongoing CDD measures. These could include unusual or significant transactions (whether individually or in a series), where there are doubts about identity or previous evidence provided, a significant change to the business or suspicious patterns of behaviour. There is not an exhaustive list, nor should the Government attempt to create one, thereby defeating the purpose of a risk based approach.

**Q4: What changes to circumstances do you think should warrant obliged entities applying CDD measures to their existing customers? E.g. name, address, vocation, marital status etc.**

8. Changes in circumstances have to be viewed in the context of existing knowledge about the client and a risk based approach. Reasons for a name change may be perfectly legitimate (e.g. marriage) or they may have no obvious explanation at all. A change of address may not prompt substantial CDD if merely to the next town (as opposed to a high risk third country), changes of vocation are common and 'red-flagging' a change in marital status might depend entirely on the new spouse. The Government should avoid the temptation to be overly prescriptive and ensure the regime remains as risk-based as possible.

**Q5: How much does it cost your business to carry out CDD checks? Please provide credible, cogent and open-source evidence to support your response.**

9. In many sectors it might be difficult to separate the costs of the AML regime from, for example, the costs imposed by other regulatory frameworks such as CRS and FATCA, or indeed commercial due diligence.
10. It is difficult for many to 'un-package' the costs of CDD from the costs of the organisation's AML infrastructure as a whole. Feedback from firms indicates that indirect costs outstrip direct costs such as screening software. Total costs also depend entirely on factors such as the size of the organisation and client base with estimates ranging from £200k to much higher. A larger firm might incur costs of at least £10m for staff time and costs, IT support and development, software subscriptions, training, external advice, supervisor visits, internal audit, review time etc.
11. Assuming a cost equivalent to staff charge out rates a firm could easily incur £750-£1,500 for a normal client take on. This will vary between London/regions and individuals/entities. High risk clients will take longer, possibly days.

**Q6: We welcome responses setting out how you have converted the Euro thresholds into GBP under the existing Money Laundering Regulations, for example, is the currency exchange the subject of a set policy? We would also welcome your views on what would be helpful to you when dealing with conversion from Euro to GBP**

12. Feedback suggests some members deal with this on a case by case basis and would normally use the prevailing exchange rate at the time.

**Q7: Do you agree that the government should remove the list of products subject to SDD as currently set out in Article 13 of the Money Laundering Regulations (2007)? If not, which products would you include in the list? Please provide credible, cogent and open-source evidence to support inclusion. What are the advantages and disadvantages of retaining this list?**

13. We agree with the approach of adhering to the non-exhaustive list of factors outlined in Annex II. Since this does not put an end to SDD, but ensures a risk based approach. Suggested examples can be the subject of sector specific guidance that can (and should) evolve over time.

**Q8: What are the money laundering and terrorist financing risks related to pooled client accounts and what mitigating actions might you take? Please provide credible, cogent and open-source evidence to support your response.**

14. We do not view the inherent money laundering and terrorist financing risks as being more significant simply because funds are in a pooled account. Such accounts are generally held by professionals that are not only themselves subject to AML regulations but will be adhering to regulations governing the holding of client money, including for

such a holding to be ancillary to another service being provided. Any concerns here might be addressed instead by ensuring that professional firms are on an equal footing when it comes to supervision e.g. fit and proper checks.

15. There are also concerns here that certain regulated sectors would be tasked with 'checking up' on the CDD performed by others, which is the domain of a supervisor.

**Q9: What would be the effect of the removal of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.**

16. A general criticism of the current regime is that it results in a considerable amount of duplicated effort. For example if a client enters into a transaction they may well employ the services of multiple regulated entities, all of which have similar client due diligence obligations resulting in duplicated work. The removal of specific simplification provisions for pooled client accounts exacerbates this since the account holder already has a legal obligation to carry out checks on the clients from which they are receiving such monies. It may also undermine client confidentiality.

**Q10: What are your views on the retention of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.**

17. We note that Article 15 still requires obliged entities to carry out sufficient monitoring of the transactions and business relationships to enable the detection of unusual or suspicious transactions, even where simplified due diligence has been applied at the outset. This obligation should therefore be sufficient to achieve the desired purpose of the legislation. Many professionals will no doubt seek to avoid (rather than mitigate the risk) by simply not holding client money. This is an example of a situation where over-regulation can lead to legitimate de-risking.

**Q11: What are your views on the situations described by the ESA's where SDD may be appropriate on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.**

18. We believe that simplified due diligence would be appropriate in the situations described.

**Q12: Are there any other factors and types of evidence from potentially lower risk situations, aside from those listed in Annex II of the Directive, that you think should be considered when deciding to apply SDD? How do you intend to interpret this requirement within the context of a risk-based approach? Please provide credible, cogent and open-source evidence to support your response.**

19. Adding to a non-exhaustive list of factors achieves little in practice, since the judgement of what constitutes low risk still rests with the individual making the decision. Furthermore, different regulated sectors will have different ideas of what low risk means for them, which will in turn depend on other factors such as the product being offered. Any additions to the factors already in the annexes are therefore to be considered in the drafting of sector specific guidance.

**Q13: Are there any other factors and types of evidence from potentially higher risk situations, aside from those listed in Annex III of the Directive, which you think should be considered when assessing ML/TF risks in respect of EDD? Please provide credible, cogent and open-source evidence to support your response.**

20. See our response to Question 12 regarding lists of factors and sector specific guidance.

**Q14: Are there any high risk products from sectors other than the Financial Services sector that you think should be included in the Regulations?**

21. No comment.

**Q15: What EDD measures do you currently apply to clients operating in high risk third countries, including those on FATF's black, dark grey and grey lists?**

22. Where clients are identified as high risk for money laundering purposes (including for the reasons given in this question), firms' procedures might include enhanced electronic due diligence checks, including checks against PEPs, sanctions and warnings lists, as well as adverse publicity checks and source of funds. As indicated above the costs associated with EDD can be significantly higher than for a normal/low risk client.

**Q16: How much does it cost your business to apply EDD measures? Please provide credible, cogent and open-source evidence to support your response.**

23. Please see response to question 5.

**Q17: What are your views on the meaning of a 'member organisation'? Please provide evidence in support of your answer.**

24. No comment.

**Q18: What are your views on the meaning of a 'federation'? Please provide evidence in support of your answer.**

25. No comment.

**Q19: If you are a financial institution, are there any additional institutions or persons situated in a Member State or third country that you think could be relied upon in order to help reduce the regulatory burden on businesses e.g. the third party applies due diligence and record-keeping requirements and are appropriately supervised in accordance with the directive?**

26. No comment.

**Q20: Do you rely on third parties to meet some CDD requirements? How much does this cost your business? Please provide credible, cogent and open-source evidence to support your response.**

27. We understand that provisions on reliance are not widely used. Many continue to collect data directly in order to meet CDD requirements. This is unsurprising given that responsibility for CDD still rests with enquirer. Furthermore there is no incentive for a regulated entity to consent to being relied upon.

**Q21: Should the government set a threshold of the size and nature of the business for the appointment of a compliance officer and employee screening? If so, what should the government take into account?**

28. No. The Directive already provides for a whole firm risk assessment and risk based response. Setting a threshold here would detract from that.

**Q22: What should be taken into account when screening an employee?**

29. No comment.

**Q23: Should the government set a threshold for the size and nature of the business that requires an independent audit function? If so, what should government take into account?**

30. No. There is significant overlap with the Code of Corporate Governance and UK company law in this area. The UK Corporate Governance already requires an audit committee to oversee and internal audit function in a number sectors including private sector listed entities, financial services, central government, education and housing. The requirements apply on a 'comply or explain' basis.

31. Many smaller companies will also have internal audit arrangements in place albeit without a formal, dedicated department carrying out such a function, with internal audit responsibilities 'shared out' amongst various employees.
32. Furthermore company law requires an external statutory audit when a company exceeds two of the three following thresholds: an annual turnover of £6.5 million, assets of £3.26 million, and more than 50 employees. International Standard of Auditing (ISA) 250 requires auditors requires certain procedures to help identify non-compliance with applicable laws and regulations and makes specific reference to money laundering offences.
33. We also believe, for the reasons above as well as wider confusion around what is meant by the term 'audit', that use of the word should be avoided as far as possible, as it implies something greater than what we believe is being proposed here, which is an independent review of procedures and controls.
34. The extant regime already has two important requirements to ensure that an independent review of such systems takes place. The first being the presence and duties of a Money Laundering Reporting Officer, the second being Anti-Money Laundering supervision.

**Q24: What do you think constitutes independent audit function?**

35. Independence is the perception of objectivity, and requires being free from facts and circumstances that might impair such objectivity. It is sometimes used in a variety of context to mean different things, and is sometimes confused with objectivity. For Companies Act purposes the auditor must be external. From a corporate governance perspective an internal audit function should report to the Audit Committee rather than, say, the executive directors. Other measures might include, for example, not allowing the auditor to assess systems for which they were involved in the implementation. We believe that the purpose of the legislation can be achieved through the responsibilities of the MLRO and their team/designates/deputies, to a large extent we believe that it already is.

**Q25: How many of the controls listed at paragraph 4.34 are you already carrying out and what is your assessment of the likely costs of these procedures?**

36. See response to question 5.

**Q26: Do you think that the government should consider exempting proven low risk providers of gambling services from the Regulations based on the gambling activity or by a complete sector (see the list at paragraph 5.8 or Annex C for information on how the sectors are split up) or both? Please explain the reasons behind your response.**

37. This is not an unreasonable consideration however it would seem inconsistent to exempt certain providers of gambling services as low risk, whilst not applying the same analysis to other regulated sectors.

**Q27: Which gambling providers or activities do you think should be classified as having 'proven' low risk and therefore should be exempt from the Regulations? Please provide credible, cogent and open-source evidence to support your response.**

38. 'Proven low risk' might be difficult to demonstrate without a track record of AML compliance.

**Q28: Should CDD requirements for the gambling providers or activities covered take place (i) on the wagering of a stake (ii) on the collection of winnings (iii) on the collection of**

**winnings and wagering of a stake (iv) of whichever is the latter? Please explain the reasons behind your response.**

39. It would be logical to apply CDD on the wagering of a stake as that is the point at which a transaction is entered into. If CDD requirements were to apply on collection of winnings then a successful criminal would never be identified as long as they remained an unsuccessful gambler.

**Q29: What do you think constitutes a 'linked transaction' for different types of gambling? Do you think 'linked transaction' should be defined in legislation?**

40. No comment.

**Q30: If covered by the Regulations, what costs and impacts would be incurred by the providers of the gambling services? Please provide sources for your data and suitable evidence. In particular, the government is keen to know what your initial transition costs would be, how much you would need to spend on staff training and how much it would cost to apply CDD measures.**

41. No comment.

**Q31: What advantages would there be for increasing the coverage of the Regulations to more than just casinos in the gambling industry?**

42. No comment.

**Q32: Do you believe that measures could be taken by the Gambling Commission under the Act that might have a bearing on whether you view a sector or activity as being proven low risk?**

43. No comment.

**Q33: How should the government apply the CDD exemptions in Article 12 of the Directive for electronic money?**

44. This would seem a proportionate approach with no obvious need to apply 'gold plating'.

**Q34: Should e-money products which do not meet the criteria for the CDD exemptions in article 12 of the directive be considered eligible for SDD under Article 15?**

45. There may be an argument here in favour of SDD in the case of certain e-money products, for example certain centralised digital currencies. However, whilst many digital currencies are not inherently anonymous (despite popular thinking) the transactions are capable of being anonymised with relative ease, which presents vulnerabilities.
46. Furthermore e-money products such as stored value cards are a particular threat in relation to terrorist financing, which may not necessarily involve large amounts of money.
47. Given the pace at which technology is moving in this area, the development of products which meet a specific set of criteria for SDD, at a vastly quicker pace than regulation is likely to be able to address loopholes, presents a further risk.

**Q35: Should the government exclude any e-money products from both the CDD exemptions in Article 12, and from eligibility for SDD in Article 15?**

48. No further comment.



**Q36: Should the government increase the maximum amount that can be stored electronically to £418 (EUR 500) for payment instruments that can only be used in the UK?**

49. No comment.

**Q37: Please provide credible, cogent and open source evidence of low risk posed by electronic money products, the efficacy of current monitoring systems to deal with risk and any other evidence demonstrating the position of low risk.**

50. No comment.

**Q38: E-money products with a maximum monthly payment transactions limit of £209 (EUR 250) will be exempt from some of the CDD measures, but only if they are used in that (one) Member State in which they were acquired. What do you think the likely customer behaviour response to this will be? Please provide credible, cogent and open-source evidence to support your response where possible.**

51. Such products may be easily exchangeable creating a loophole.

**Q39: The government welcomes views on the likely costs that may arise for the e-money sector in order to comply with the directive.**

52. No comment.

**Q40: What are your views on the regulation of lettings agents? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

53. Yes. Given the high value of UK property brought under criminal investigation, and the relatively low number of SARs from the rest of the sector, bringing letting agents into the scope of the regulations would seem to be a positive step. It is likely that many properties are purchased for investment purposes and therefore the lettings agent might represent an extra pair of eyes on the parties to such transactions.

**Q41: What other types of lettings activity exist, aside from those mentioned at paragraph 7.9? Of these activities, which do you think should be included in letting agent activity? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

54. No comment.

**Q42: Do you think HMRC alone or HMRC and self-regulatory bodies should be appointed supervisors of estate agents and letting agents? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

55. Many regulatory sectors are complex and diverse and a 'one size fits all' approach does not work. The AML regime should reflect that variety and all these nuances create the need for tailored supervision that facilitates proper application of the risk based approach. We recommend an approach similar to that of the accountancy sector, with HMRC as the default supervisor unless the agent is a member of a professional body.

56. Central regulators may well target their work less accurately, and may have lower standards, since they lack the motivating factor of trying to maintain the reputation of their members, as well as lacking the wider regulatory framework. Professional bodies, for example, have a wide range of mechanisms at their disposal, including for example formal training, client money regulations, quality control programmes and disciplinary

procedures, and in some cases codes of ethics. Sector by sector methodologies are therefore essential.

57. This may be appropriate given similar risk profiles and the fact that many agencies offer both sales and lettings services.

**Q43: Do you think that letting agents should apply CDD to both contracting parties?**

58. It is not unreasonable to suggest that criminals might rent properties as well as buying them. In fact, many police constabularies report organised gangs operating illicit drugs laboratories in rental accommodation across the country. Also, many agencies already routinely ask prospective tenants to provide identification. That said the simple collection of such evidence is not the same as carrying out an informed risk assessment, which should not be a barrier to the public accessing rental accommodation. It would be logical to require such due diligence prior to signing the tenancy agreement.

**Q44: The government would welcome views on when the establishment of a business relationship should commence with a) the tenant and b) the landlord (in regard to lettings activity).**

59. No comment.

**Q45: Should estate agency businesses apply CDD to both contracting parties in a transaction in which they act as intermediaries? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

60. No comment.

**Q46: Should sub-agents be able to rely on principal estate agents (see 7.16)? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

61. No comment.

**Q47: How much does it cost your business to apply CDD checks and what would the cost be if you were to apply them to both contracting parties in a transaction?**

62. No comment.

**Q48: What impact will implementing the definition of correspondent banking have on your firm's policies and procedures? What impact do you estimate these changes will have?**

63. No comment.

**Q49: Is there any further information that could be provided to ensure the adoption a risk-based approach when applying enhanced due diligence to correspondent relationships?**

64. No comment.

**Q50: How do you differentiate between risk management systems and risk based procedures?**

65. Our understanding is that the systems include the entity wide infrastructure designed to address risk whereas the procedures are the actual activities undertaken within that infrastructure to assess and address risk.

**Q51: Under the terms of the directive, all PEPs are considered to be high risk. However, obliged entities may use a risk-based approach to both the identification of a PEP and the depth of EDD measures that are applied to them. What risk factors do you think are relevant when deciding how to identify a PEP and adapt EDD measures to them? Would more clarity and guidance be helpful to avoid the disproportionate application of EDD measures to low-risk groups and their families?**

66. The Directive appears quite prescriptive about certain EDD processes that should be adopted when taking on a PEP as a client but we agree that the risk based approach allows scope for different degrees of further EDD under the new rules.
67. Risk may, for example, be mitigated based on geographical location or product being offered. Requiring a PEP screening every time any service is offered could quickly become very expensive for small or sole professional practitioner. There is also scope to apply differing degrees of scrutiny to source of wealth and funds under the risk based approach. This is especially important if the subject becomes an associate of a PEP simply by virtue of that person becoming politically exposed where they were not prior.

**Q52: The directive specifically applies to members of parliament or of similar legislative bodies and to members of the governing bodies of political parties. In the UK the Electoral Commission maintains two registers of political parties, one for Great Britain and a separate register for Northern Ireland. There are over 400 registered political parties, of which the vast majority are very small. Should there be some form of criteria or some examples set out in the guidance of the political parties to which this applies, e.g. those having elected members of Parliament, the European Parliament, or the devolved legislatures? If so, what is the reasoning behind the use of these particular criteria or examples? Would guidance on this issue assist and, if so, what should the guidance include to provide clarity?**

68. Principles based guidance would be extremely valuable in this area. Including not only the factors above but others such as the extent the PEP has control over public/party funds and spending.

**Q53: How will the express inclusion of members of parliament or similar legislative bodies and members of the governing bodies of political parties interact with the existing rules and regulations for political parties and elected representatives, in particular the Political Parties, Elections and Referendums Act 2000, and what steps should be taken to avoid duplicating these existing regimes?**

69. No comment.

**Q54: Does the extent of EDD on the family members of PEPs and individuals who are known to be close associates of PEPs correspond with the measures that are appropriate for the PEP themselves? Which risk factors do you think are relevant?**

70. As indicated above this is a contextual question, the assessment of risk being based on the risk presented by the PEP themselves, the nature of the connection and the circumstances in which it has arisen.

**Q55: How much does it cost to identify and apply EDD checks to PEPs? Please provide evidence to support your response.**

71. See response to Q5.

**Q56: Is the guidance sufficiently clear about how EDD should be applied to PEPs, their family members and their known close associates? If not, what should the guidance include to provide clarity? With regard to financial institutions, are there specific changes that**

could be made to the Financial Crime Guide or JMLSG guidance to clarify the treatment of PEPs? What specific changes could be made to the guidance in other regulated sectors?

72. The benefits of sector specific guidance should not be understated. Different sectors will be offering PEPs different products and services for different durations and different reasons, with varying impacts on risk assessment. A reflection of this in guidance in itself would be useful.

**Q57: The Financial Ombudsman Service has statutory powers to consider complaints from PEPs, their family members and their known close associates against financial service providers. Can this provide sufficient access to redress for PEPs? The government would be particularly interested to hear about cases where a PEP was treated unreasonably, where a PEP was refused a business relationship solely because they were identified as a PEP or where an individual was incorrectly classified as a PEP.**

73. This question appears out of place as it relates to a mechanism that exists outside of the AML regime and is designed to provide recourse in a wider range of situations. We know of no evidence to suggest that it would not provide adequate redress to a PEP who feels they have been wronged.

**Q58: Should the government explicitly include senior members of international sporting federations as a category of PEPs, along with their family members and known to be close associates? How many senior members (in line with the definition of senior management in Article 3(12) of the directive) of international sporting federations would you deal with, along with their family members and known to be close associates? Please provide a source for your estimation if this is not data that you already hold.**

74. Whilst we understand entirely the recent risks highlighted in relation to sporting federations we are concerned about this proposal. Firstly, we are not convinced that singling out a specific sector based on recent scandals is the most appropriate way to legislate, since the end result could well be exponential expansion of a particular category year on year in a prescriptive (not risk based manner). Secondly, we are not convinced that senior members of international sporting organisations are necessarily politically exposed but the risk based approach allows for the application of EDD in the absence of such exposure.

**Q59: How would you define an international sporting federation?**

75. No comment.

**Q60: The government welcomes any views on the issues highlighted in Chapter 10 and the PSC regime in itself.**

76. ICAEW have previously responded to Government consultations on beneficial ownership transparency (regarding beneficial ownership registers for UK Companies). These were submitted on 17 September 2013 and 17 July 2015. We queried both the necessity and the value of making such registers public and these considerations are also relevant to the proposals in this consultation, as are concerns around the operational practicalities and the of quality control over submitted information.
77. No quality assurance is to be undertaken on the information submitted to Companies House under the PSC regime. We would urge that a new approach is adopted here by requiring Companies House to carry out due diligence checks on the information submitted to them, thus retaining control of such work at a central level and mitigating a key vulnerability in the UK financial system, as well as reducing the extensive duplication (and resulting increase in consumer costs) of such responsibilities in the private sector. That said, ongoing reviews of the quality of information held on such a registry will

remain difficult since changes in ownership of companies cannot be easily monitored on a unilateral basis.

78. Given that the vast majority of entities listed in the consultation document will be highly unlikely to have a beneficial owner then, if they are to be brought in, a regime of reporting by exception would appear appropriate.
79. We remain concerned that many entities will have separate reporting requirements under other regulatory regimes that result in a duplication of costs when complying with the PSC regime.
80. It is difficult to suggest a suitable timeframe for the updating of such information without knowing what the impact might be on the prevention and detection of crime. An event driven process might therefore be appropriate.

**Q61: How often should a trustee be required to update the beneficial ownership information that they hold?**

81. No further comment.

**Q62: What other arrangements should the government consider as having a structure similar to express trusts?**

82. No comment.

**Q63: What other arrangements should the government not consider as having a structure that is similar to express trusts?**

83. No comment.

**Q64: Are there any further considerations that the government should take account of when developing the central register of trust beneficial ownership information?**

84. We understand that £10m is being spent by HMRC on creating a register of trusts with tax consequences. It is not clear what mechanisms will be in place to allow trustees to check the veracity of the information held and what processes there will be to update it. The consultation is also silent on this. There is a danger that the trust beneficial ownership register will suffer from similar issues as those identified in our response to Question 60 above.
85. It is likely that getting information on all the beneficiaries of, for example, pension or employee benefit trusts will be onerous. Even in the example of family trusts certain classes of beneficiary, eg. grandchildren, might be extremely difficult to locate. Some might not be aware that they are beneficiaries.
86. The consultation document is also silent on the EU proposals for public registers and definition of commercial or business-like activities. There will therefore need to be further consultation about what information has to be filed and made available.

**Q65: The government welcomes your views on the approach to beneficial ownership information as set out above.**

87. Prima facie this looks sensible but having to do it by the same deadline as submitting the tax return would increase the pressure around the 31 January deadline, especially on those that act for several trusts. We suggest that rather than impose extra pressure by

setting the same deadline, and as beneficial ownership information is not necessarily as time sensitive it would be helpful to allow some extra time.

**Q66: The government welcomes your views on clarifying, through appropriate guidance, that a one-off company set up is a business relationship that has an element of duration.**

88. The mischief that this proposal appears designed to address is the possibility that someone could set up a company via a company formation agent or TCSP without adequate CDD checks being carried out. However such guidance would not address the issue that applications can be made directly to Companies House who are not required to perform any checks on the veracity of the information submitted.

**Q67: The government welcomes your views on retaining documents necessary for the prevention of ML/TF for the additional 5 years. What do you think the advantages and disadvantages are of doing so?**

89. No. There is an ongoing balance to be struck between the conflicting priorities catching criminals and protecting the individual data of ordinary citizens. We know of no compelling evidence to suggest that a further shift away from the latter is required.

The following responses reflect the views of ICAEW as a regulator. ICAEW is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.

## MAJOR POINTS

90. We believe that, in the interests of transparency and consistency in the supervisory regime, all obligated entities should be subject to the same requirement regarding fit and proper and criminality checks. However, Government should explore optimal ways to enable any additional duties required by 4MLD to be performed without adding any unnecessary cost (time or expense).
91. As an AML supervisor ICAEW has no specific requirement placed upon it to carry out CDD checks in the same way that an obligated business might. That said it does incur significant costs in performing its supervisory responsibilities which, before any further requirements are added, include:
- a series of fit and proper checks on new members, new practice members and new registrants/licences, etc.;
  - Practice support, awareness/training, help and guidance;
  - Practice monitoring and quality assurance reviews; and
  - Complaints handling, investigations and managing disciplinary cases.

The cost of performing these responsibilities at ICAEW is estimated at over £900k pa. It is not possible to provide an accurate figure as AML supervision represents only part of the work performed by over 100 staff across several ICAEW teams.

## RESPONSES TO SPECIFIC QUESTIONS

**Q68: Do you think that where registration is a requirement, the supervisor should be given an express power to refuse to register or cancel an existing registration?**

92. Yes. Professional body supervisors already have and exercise this power. It is vital that all other supervisors are equally empowered and that an effective oversight function ensures consistent deployment of these powers.

**Q69: The government welcomes views on the reasons for a supervisor to refuse a registration or to cancel an existing registration. Are there any other reasons you think should be captured? Do you foresee any problems with the conditions identified?**

93. The key reasons for refusing membership and specialist registrations, licences, or certificates include:
- failure to complete training (or CPD),
  - failure to demonstrate competence or fitness and propriety,
  - Being convicted of a criminal offence; and
  - Being bankrupt/insolvent.

Similar reasons apply for withdrawal/cancellation but in addition failure to pay fees and failure to cooperate are further reasons referenced in our bye-laws and regulations.

**Q70: The government welcomes views on whether a supervisor should have the power to add conditions to a registration or whether they should have the power to suspend an existing registration.**

94. Yes. As for Q68.

**Q71: The government welcomes views on the test that should be applied by a supervisor when seeking to refuse to register, cancel an existing registration, add conditions to a registration or suspend an existing registration (see 12.8).**

95. See Q69 - the primary/common test used in relation to refusal would be ICAEW's 'fit and proper test', which underpins all ICAEW's registration/licensing/certification procedures.
96. Naturally, failure under ICAEW's fit and proper test will also result in cancellation or (rarely) suspension – but failure under the other headings noted in our answer to Q69 could also result in virtually automatic cancellation. However, there are no simple tests to apply as some examples of unethical or criminal behaviour would lead to immediate cancellation, while others may not – and where ICAEW can see evidence of both the ability and willingness of a member to resolve competence or quality issues, conditions could be applied. Different regulatory resolutions will turn on the facts of the case, the seriousness of the issues, the mind-set of the member and his/her attitude to fixing the problem. ICAEW's regulatory and disciplinary committees (as opposed to members of staff) make the final decisions.

**Q72: Where there is more than one supervisor, we welcome views on preventing the resubmission of an application for registration with another supervisor.**

97. Each application for supervision should be met with an enquiry of the applicant (and of the previous supervisor) as to supervisory history. This allows for the levying of fines if an individual should have been registered but wasn't as well as the opportunity to raise red flags. Where ICAEW members/firms are concerned, we will have or request a record of their supervisory history and will always confirm supervision where other bodies are referenced.

**Q73: Do you agree with the government's approach to a "person who holds a management function" in paragraph 12.13 – namely those who make decisions about a significant part of the entity's activities or the actual managing or organisation of a significant part of those activities? Do you think it will encompass all individuals that should be subject to a fit and proper test?**

98. Yes. In some cases it may be necessary to look not just at the managers but the beneficial owners too. Supervision, in accordance with MLR.07, applies to firms not just individuals. At ICAEW we require fit and proper tests for principals (partners, directors or 'members' of LLPs) and owners. Some care and clarity is required in determining the extent to which 'other managers' are also required to be tested – but this will depend on the nature of their role (eg. with reference the level of trust invested in them) and the extent of their authority (eg. the range of their sole signing limits).

**Q74: Should the government extend the fit and proper test to agents of MSB's? Please explain your reasons and provide credible, cogent and open source evidence where possible.**

99. Yes and indeed to any obliged person that it supervises. The government should also require all supervisors to carry out fit and proper tests on their supervised populations. These are known to be high risk entities.

**Q75: What are your views on the meaning of "criminals convicted in relevant areas"?**



100. In general “relevant areas” – in the context of AML - should be interpreted to include crimes traditionally regarded as financial. These would include bribery, corruption, money laundering, fraud, theft, competition offences, insider dealing and tax evasion (including aiding or abetting any of these offences). “Relevant areas” should also be extended to include offences involving dishonesty or which clearly demonstrate a lack of integrity. That said there may be some crimes (eg. ‘against the person’) that could be subject to supervisor or sector discretion - depending on the nature of the professional role and the activities undertaken - as different sectors are vulnerable to different risks of certain crimes (see also the answer to Q73).

**Q76: What are your views on the meaning of “associates”?**

101. This should be interpreted narrowly Without better intelligence sharing between law enforcement and the private sector ‘associates’ should only include those found to be associates of criminals and participating in, or demonstrably connected with criminal enterprise. A situation where an innocent individual is unable to build a business for themselves because their family has criminal history should be prevented.

**Q77: Do you agree the criminality test should be extended to High Value Dealers?**

102. Yes.

**Q78: What are your views on spent convictions and cautions being taken into account for those new sectors in paragraph 12.18, in particular estate agents, lettings agents, accountants, and if there is to be an extension, HVD’s? How would the disclosure of spent convictions and cautions maintain public confidence and mitigate risks to the public?**

103. Allowing supervisors to have access to information on spent convictions provides them with the flexibility to determine the seriousness with which they consider the original offence in the context of the expectations around behaviour within that specific sector. And we believe it is right to develop sector specific, risk based policies and criteria that take into account the relevance of the crime (to the sector) and the extent to which full rehabilitation is likely to have been achieved. Professional bodies take the reputation of their members very seriously and may, for example, view infractions that suggest dishonesty or a lack of integrity (one of the fundamental ethical principles of the accounting profession) more seriously than other supervisors. For example, it is vital to the credibility of a set of accounts that the honesty and integrity of the auditor is unquestionable. And similar confidence is essential where clients’ money, estate assets or corporate funds (in the context of insolvency) are under the personal control of a professional. Ignoring any past offences that could undermine confidence if disclosed would be a high risk strategy and there is far too much evidence to show that ‘leopards don’t change their spots’.

**Q79: Are there any specific offences you consider relevant in relation to the risk of money laundering and terrorist financing?**

104. The offences listed in our response to Q75 represent some of the most obvious predicate offences to money laundering. Terrorist financing is usually combined with the offences in the Terrorism Acts – but importantly, any offences or behaviour that points to radical views and aggressive or anti-social behaviour need special attention.

**Q80: Should the government extend the criminality test to other entities covered by the directive? Please provide credible, cogent and open-source evidence to support your response.**

105. A criminality test is unnecessary where a supervisor already carries out fit and proper tests which arguably go above and beyond simple criminality. Requirements should not be stacked on top of requirements. However, as noted, we believe sectors should be supported in drawing up their own criteria for assessing the specific threats and vulnerabilities relating to the work their members perform and the clients they service (particularly if these include vulnerable members of society, such as minors, the sick, the mentally disabled/impaired or the elderly).

**Q81: Do you think that a transitional period is needed to complete the criminality tests?**

106. If the intention is to establish a legal requirement for full DBS checks of all those supervised then yes but the Government must ensure that IT facilities and resources are provided to ensure that these checks are processed as efficiently as possible and at nil cost to the supervisors or members/firms. Current options are expensive and inefficient. Without this then the tests would need to be based on a power that doesn't require the permission of the member.

**Q82: Do you think that a transitional period of two years affords sufficient time to complete the criminality test on the appropriate existing persons who are already on the supervisors' registers?**

107. It remains unclear as to what is meant by 'criminality test'.

**Q83: What are the expected transitioning and ongoing costs in your sector/business for applying a criminality test?**

108. No additional costs predicted on the assumption that a fit and proper test is already adequate, as we believe should be the case, but please see above reference government provide facilities and resources if full DBS checks are expected for all owners and senior managers.

**Q84: What are your views on there being no upper limit on the imposition of an administrative pecuniary sanction?**

109. Agreed.

**Q85: Should the government consider whether additional sanctions and measures should be made available to those set out in 13.4 and 13.5?**

110. No mention is made of requiring improvement measures. A comprehensive and well informed programme of training, awareness, help and support is key to prevention and focusses on improving our overall response rather than simply punishing regulatory breaches. It is also vital that all those involved in driving the AML/CTF agenda share skills, experience and intelligence to ensure the programme is correctly focussed on the important areas of risk and knowledge gaps.

**Q86: Do you agree that the power to determine the measures and level of administrative sanctions related to breaches of the FTR should remain with the relevant supervisory authority?**

111. Yes.

**Q87: Do you have any further views not specifically requested through a question in this consultation that would help the UK provide effective protection for the financial system? Please provide credible, cogent and open-source evidence to support your views, where appropriate.**