

# Review of the UK's AML/CFT regulatory and supervisory regime

A call for evidence issued by HM Treasury (**HMT**)

Comments from ACCA

14 October 2021

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## GENERAL COMMENTS

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ACCA is a Professional Body Supervisor (**PBS**) for anti-money laundering (**AML**) in the UK. We welcome the opportunity to contribute to the government's review of the UK's AML/CTF regulatory and supervisory regime. Our response to this call for evidence has been informed by input obtained from our supervised population and discussions with other accountancy PBSs.

ACCA fully supports the development of an effective UK AML regime that provides confidence in the UK as a safe, transparent and compliant jurisdiction to conduct business in. We believe that a robust and effective framework to tackle economic crime will help improve and facilitate further commercial activity for businesses in the UK.

The call for evidence focusses on the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**MLRs**) and The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017. ACCA recognises that these regulations form an important component of the UK's overall AML/CTF regime. However, we believe the government should not consider these two areas in isolation. We would support a holistic and co-ordinated review of all the relevant economic crime legislation that underpins the UK's economic crime framework in the UK (such as Terrorism Act 2000; Proceeds of Crime Act 2002; Serious Organised Crime and Police Act 2005; Bribery Act 2010; Crime and Courts Act 2013; Serious Crime Act 2015; and Criminal Finance Act 2017), as the creation of a clear and co-ordinated single legislative instrument would aid the fight against economic crime.

## AREAS FOR SPECIFIC COMMENT

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### Recent improvements to the regulatory and supervisory regimes

#### 1. What do you agree and disagree with in our approach to assessing effectiveness?

ACCA broadly agrees with the approach to assessing effectiveness. However, we believe there are some key areas missing that would warrant further exploration and discussion. For example, clarity should be provided in the OPBAS Sourcebook on how effectiveness is assessed in its regulated population. The Proceeds of Crime Act 2002 (**POCA**) and law enforcement agencies are mentioned in the call for evidence as being a critical element in the UK's response to money laundering and terrorist financing (**MLTF**) and there should be consistency and clarity on how the effectiveness of this legislation and the agencies is measured and assessed.

In respect of the specific points highlighted in the call for evidence, ACCA agrees with the following:

- MLRs need to be well designed and clearly drafted with unintended consequences considered.
- Non-compliance should be proportionately and persuasively dealt with by supervisors.
- We should be reducing administrative burdens as far as possible.

However, ACCA disagrees with the following specific points:

- The words 'suspicious transactions' may be confusing and problematic for the accountancy sector where a transaction is regarded as a monetary payment that a bank will process. Therefore, there is a risk that our supervised firms do not recognise 'transactions' as relevant in the accountancy service they provide. We would suggest that the term 'suspicious transactions' is replaced by a broader term such as 'suspicious activity'.
- Confusion may also arise from the term 'prevent'. Our supervised population is responsible for identifying and reporting suspicious activity to the relevant law enforcement agency. If this report leads to an investigation by law enforcement and prosecution, it may prevent criminal activity. Our supervised population, therefore, supports prevention by disrupting criminals through the identification and reporting of suspicious activities. Accordingly, ACCA believes that it could be more appropriate to reflect the 'disrupt' element rather than solely 'prevent'.

## 2. What particular areas, either in industry or supervision, should be focused on for this section?

ACCA believes that the regulations should be drafted so that the intended action is clear for regulated firms to follow and implement. ACCA believes that having clear requirements and expectations set out will allow the supervised population to implement a risk-based approach that meets the requirements and removes the unintended consequence of them adopting a 'tick box' approach as they are not sure what they need to do. Clear regulations will also assist supervisors in taking consistent action when non-compliance is found, as ambiguity can potentially lead to misinterpretation by the supervised population.

The requirements should fully consider any unintentional consequences and should not place an unnecessary administrative or financial burden on firms. The requirements must have a purpose that will have an impact on economic crime. If they are too complex it will be challenging for firms to manage the compliance burden placed on them. Therefore, the requirements need to be clear and simple to follow with a demonstrable impact.

Alignment with other economic crime legislation is also an important consideration and the regulations should not create conflicting requirements or confusion.

## 3. Are the objectives set out above the correct ones for the MLRs?

ACCA broadly agrees that the primary objectives are appropriate. However, we have identified potential improvements to the objectives in the following areas:

- As outlined in our response to Question 1, we believe the use of the term 'prevent' could be confusing. Our supervised population supports prevention by disrupting criminals through the identification and reporting of suspicious activities, but it is ultimately the responsibility of law enforcement to take action, which prevents criminal activity through prosecutions. As noted in our response to Question 1, ACCA believes that it could be more appropriate to reflect the 'disrupt' element rather than solely 'prevent'.
- The use of the term 'suspicious transaction' could be an issue for the accountancy sector, due to the nature of accountancy services that tend to focus on a range of services and activities. The term 'suspicious transactions' is more focussed at those in the financial sector and ACCA believes that a broader term such as 'suspicious activity' should be adopted.
- The secondary objective of the regulated sector working with government to ultimately provide valuable information to law enforcement should be expanded to a two-way sharing

of information. For example, in the accountancy sector there is much to be gained from having comprehensive and timely information on emerging threats and risk areas to inform the AML work undertaken by the sector and supervisors.

ACCA also believes that there is potentially a missing objective. Accountants play a key role as gatekeepers by adopting a risk-based approach to client due diligence (**CDD**) requirements. This is done at both the client 'take on' stage and through the ongoing monitoring of clients. Effective, risk-based CDD will help identify and report suspicious activity to law enforcement.

#### **4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?**

Supervisors are able to share intelligence between each other using gateways in the MLRs.

The accountancy supervisors work collaboratively via forums such as the Intelligence Sharing Expert Working Group (**ISEWG**) to share trends and typologies, and the AML Accountancy Supervisors' Group (**AASG**) to develop and share best practice on supervision. We believe there should also be reciprocal and timely information shared with supervisors by law enforcement. This will strengthen the objectives of the MLRs and inform the supervisory frameworks.

Law enforcement should build on the work already undertaken to develop their understanding of the accountancy sector and issues that are faced. This will enhance the quality, type and frequency of information they share.

At present, there is no explicit requirement for an accountancy provider to register for AML supervision. This requirement should be clearly defined as currently it can prevent supervisors from taking effective action when cases are identified.

#### **High-impact activity**

#### **5. What activity required by the MLRs should be considered high impact?**

ACCA notes that in the call for evidence there is no definition of what activity is considered high impact, nor how this is measured. In our response to this question, we have defined high impact activity as requirements in the MLRs that make a firm better placed to identify suspicious activity

and report to law enforcement; help prevent/deter criminals from using the firm's services; and help the firm fully understand the risk of money laundering to their business.

ACCA considers that activities conducted by firms such as a firm-wide risk assessment (**FWRA**); CDD and ongoing monitoring have a high impact. When these activities are done correctly, they help firms to understand the risks their clients pose so they can effectively mitigate these risks and implement the right level of controls. They also help firms to understand their clients' 'usual' activity and identify and investigate 'unusual' activity that may be suspicious. The firm can then submit a high quality suspicious activity report to law enforcement.

ACCA believes that specific AML training is a vital component of a firm's AML controls and should be considered a high impact activity. When staff are well trained and up-to-date, they understand the risks posed and are more able to identify and report suspicious activity.

The risk-based approach should also be considered a high impact activity as this provides the supervised firms with the ability to apply appropriate controls and systems after fully understanding and assessing their ML/TF risk.

Intelligence sharing amongst PBSs within the accountancy is another effective measure as it allows AML supervisors to share intelligence about supervised members and make informed decisions where a breach of the MLRs has been found or is suspected.

## **6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?**

As noted in our response to Question 5 above, in the call for evidence there is no definition of what activity is considered high impact, nor how this is measured. In our response to this question, we have defined high impact activity as requirements in the MLRs that make a firm better placed to identify suspicious activity and report to law enforcement; help prevent/deter criminals from using the firm's services; and help the firm fully understand the risk of money laundering to their business.

In our role as a supervisor, ACCA conducts specific AML compliance reviews of the firms we supervise. Through the reviews we ensure that firms understand the requirements placed upon them and how they are measured to ensure that they are complying. Where we have found cases of non-compliance or partial compliance, ACCA issues reports requiring the firm to remediate and provide evidence. We also have a disciplinary process and sanctions available to us when we uncover non-compliance. They are publicly available on ACCA's website and can

be found at the following link: <https://www.accaglobal.com/gb/en/about-us/regulation/disciplinary-and-regulatory-hearings/guidelines-disciplinary.html>.

The accountancy supervisors work collaboratively and this has led to a better understanding across the sector of the ML/TF risks we face. Supervisors also share intelligence through the gateways available in the MLRs and this prevents potential subjects of disciplinary action for ML reasons from moving to another supervisory body.

## **7. Are there any high impact activities not currently required by the MLRs that should be?**

ACCA believes the following activities should be included as high impact:

- An explicit requirement for relevant people to register for AML supervision. This is a significant gap in the current requirements.
- The role of law enforcement, the UK Financial Intelligence Unit (**UKFIU**), HMRC and others sharing information to supervisors. Currently it only focusses on supervisors sharing.
- Protection of the term 'accountant'.
- A central register of government certified third party CDD technology providers.

## **8. What activity required by the MLRs should be considered low impact and why?**

ACCA believes the following activities should be considered low impact:

- The requirement for supervisors to upload a Trust or Company Service Provider (**TCSP**) Register to HMRC. It is unclear why the register is purely for TCSPs or what activity is currently conducted by HMRC or law enforcement with the data we upload. This appears to be purely an administrative exercise with no impact on combatting economic crime, and there is a lack of communication and feedback to supervisors. ACCA believes that the register should be a wider, publicly available register of all supervised individuals (similar to the registers for audit or insolvency practitioners) as this will provide transparency and clarity on who is supervised.
- The requirement for sole practitioners with no relevant staff to have a documented AML policy and procedure. Supervisors test the effectiveness of the controls through monitoring activity and therefore the requirement for sole practitioners to document AML policy and

procedure is not proportionate and creates an administrative burden. In addition, whole firm compliance reviews may also be unnecessary for sole practitioners with no relevant staff.

- Regulation 26 and the requirement for a Beneficial Owner, Officer or Manager (**BOOM**) to submit disclosure certificates. This activity creates an increased administrative burden and cost for both accountancy firms and supervisors, with limited benefit. To date no evidence has been provided on cases where this disclosure exercise has had a positive impact.

## National Strategic Priorities

### 9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?

At present the AML landscape is complex and demanding with a number of meetings, projects and working groups all ongoing. In addition, there are various AML publications that supervisors and practitioners need to be aware of and/or adhere to (such as the MLRs, CCAB guidance, OPBAS Sourcebook, National Risk Assessment, Economic Crime Plan, HM Treasury report, Public Private Threat Updates, Financial Action Task Force evaluations). We would therefore welcome clarity on how a new publication would fit in with, and complement, these existing activities and publications.

We recognise that published National Strategic Priorities to combat economic crime would provide a more consistent focus on those areas of high priority and maximum impact. However, while we are supportive in principle and can see benefits, ACCA believes this is an area that needs further exploration to ensure there are no unintended consequences from publishing this document.

For example, we would welcome further exploration and clarity of the following areas:

- Would the Strategic National Priorities AML/CTF take precedence over the National Risk Assessment (**NRA**)?
- Would supervisors or our accountancy firms be able to disregard activity not in the Strategic National Priorities AML/CTF? If so, what legislative changes will be brought in to facilitate this, as the UK operates an 'all crimes' approach in its AML legislation.
- How frequently will the document be published? Economic crime evolves rapidly and criminals are very fluid in their methods. The Strategic National Priorities AML/CTF will need to be produced in a timely manner and regularly updated to ensure it is relevant and focussed.

- Has there been an assessment of the resource required to produce the Strategic National Priorities AML/CTF?
- How would this be aligned with the government's Economic Crime Plan?
- Has there been any engagement with counterparts in the United States of America to understand if a similar publication has had an impact on economic crime in this jurisdiction? If so, are there any lessons that can be learned from their experience?

## **10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?**

As outlined in our response to Question 9, ACCA believes there are some uncertainties that need to be resolved in order to fully understand the impact of this proposal and provide an informed response.

However, whilst there are a number of uncertainties, we believe that Strategic National Priorities would offer the following benefits:

- It would provide clarity above the NRA on what government and law enforcement are prioritising. This would allow supervisors to focus their resources to address these areas in their activities.
- This would lead to increased prioritisation on a clearly defined risk.

## **11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?**

As outlined in our response to Question 9, ACCA believes that further discussion is needed to explore and address the issues we have identified.

We are concerned that the publication of Strategic National Priorities risks providing criminals with an insight into government and law enforcement priorities. This may have the unintended consequence of driving criminals to exploit areas of weakness that are not covered in the Strategic National Priorities and regarded as a priority.

In addition, we are concerned that the creation of a further document in an already busy landscape could cause confusion for supervisors and those who are supervised on the outcomes they are assessed against.

## Extent of the regulated sector

### **12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?**

ACCA believes that the evidence that sectors are liable to exploitation for the purposes of economic crime needs to be assessed. If a sector is deemed liable to exploitation, then the impact of bringing them into scope of the regulated sector needs to be assessed in terms of its effectiveness in preventing economic crime. This information is likely to be drawn from law enforcement investigations.

### **13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?**

ACCA has no changes to suggest at this time.

### **14. What are the key factors that should be considered when amending the scope of the regulated sector?**

In our opinion, there should be a full impact assessment to gain a better understanding of how amending the scope of the regulated sector will reduce economic crime in the UK. Any changes should be based their impact on reducing economic crime.

ACCA believes that any changes must be proportionate and there must be a clear and demonstrable risk of the sector brought into scope being used and exploited for the facilitation of economic crime.

## Enforcement

### **15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?**

ACCA believes that the current powers of enforcement provided in the MLRs are sufficient for supervisors.

However, there is one element that presents difficulties for supervisors and should be addressed. We believe the absence of an explicit requirement to register for AML supervision creates challenges for supervisors when taking enforcement action against members who have not registered for AML.

**16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?**

ACCA believes that the application of enforcement powers is adequate and allows for procedures to be put in place and applied by supervisors in relation to breaches of the MLRs. However, we note that each supervisor will apply these powers in the context of their own regulatory framework and this may create inconsistencies between supervisors in the application of enforcement powers.

**17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?**

ACCA has established disciplinary powers and specific sanctions guidance to identify and dissuade breaches of the MLRs. We also publish decisions of disciplinary action taken.

The majority of transgressions identified by ACCA during an AML compliance review are not indicative of our supervised population facilitating or ignoring money laundering or terrorist financing. Therefore, we believe that in the context of the MLRs the enforcement powers are sufficient.

As an AML supervisor, ACCA is not empowered to undertake criminal prosecutions. Therefore, we are unable to comment on how dissuasive the MLRs are for money laundering or terrorists that are the subject of law enforcement investigations and prosecutions.

ACCA believes that, in order to achieve consistency and transparency, there may be a benefit in setting a common minimum sanction standard. An example of where this works well is the Insolvency Service Common Sanctions Guidance.

**18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?**

ACCA is disappointed to note that the accountancy sector is deemed as high risk for money laundering in the NRA given that the volume of prosecutions and evidence of law enforcement investigations in relation to money laundering in the sector are so low.

Criminal prosecutions and the associated publicity should play a part in an effective enforcement regime. They raise awareness of the consequences of economic crime to those in the supervised population who may, for various reasons, be tempted to facilitate or engage in money laundering.

Supervisors can actively share information on prosecutions with their supervised populations to highlight and raise awareness of the consequences of economic crime, in order to further discourage criminality or regulatory breaches. However, the current lack of prosecutions in the accountancy sector means that supervisors are not in a position to comment on the impact and it is not within our power to rectify.

### **Barriers to the risk-based approach**

**19. What are the principal barriers to relevant persons in pursuing a risk-based approach?**

Whilst the MLRs encourage a risk-based approach (**RBA**), ACCA considers that the complexities and costs that a firm may face to implement an RBA and replace existing practices and systems present a barrier, particularly for smaller practices or sole practitioners. The flexibility built into the regulations to allow for an RBA is positive, but it can also create subjectivity and inconsistencies in pursuing an RBA. There is a risk that firms may consider the requirements and, rather than implement an RBA, adopt an approach where they implement everything, believing it is better do more than they need to. This creates the risk of relevant persons adopting defensive AML/CFT frameworks, due to their incomplete understanding of the reality of risk and how the regulations apply, as well as concerns they may be disciplined by a supervisor when reviewed.

The supervised population does not always understand that the RBA is not an approach that results in no risk at all, but rather a way to identify the risks faced and to have appropriate controls and procedures in place to mitigate the risk. It is acceptable across the supervised

population to have different levels of risk appetite as long as the controls are in place to address and manage the risks identified.

ACCA has also observed that, because of the way the MLRs are currently drafted, some of the supervised population acting as a sole practitioners believe they are not relevant to them and cannot understand how they apply. A clearer interpretation for those operating as a sole practitioner or in a smaller firm would be beneficial.

There is currently a lack of up-to-date detail and specific information on trends provided to the sector from law enforcement and this hinders supervisors in applying this information to their RBA.

## **20. What activity or reform could HMG undertake to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?**

ACCA believes that HMG should facilitate and encourage more proactive and timely sharing of intelligence and risks identified in the accountancy sector from law enforcement and government agencies. This will allow supervisors to use timely intelligence to inform our approach to supervision.

We believe an important step that HMG could take is to facilitate discussions to change the mindset of law enforcement and government in relation to their use of the term ‘accountant’. It would be beneficial when they refer to ‘accountants’ in publications to differentiate between accountants supervised by the professional bodies, and those supervised by HMRC, and also to provide data to show what is relevant and relates to each supervised population.

## **21. Are there any elements of the MLRs that ought to be prescriptive?**

ACCA can see some value in a standard, prescriptive approach to CDD across the board. This allows everyone to operate to a common standard and prevents criminals using firms perceived to be of ‘least resistance’ (ie those that do not conduct thorough CDD). A common standard would also make it easier to take disciplinary action when a firm has no CDD in place. However, ACCA can see that there may be an unintended consequence in that providing a prescriptive approach could result in CDD becoming just a ‘tick box’ exercise. There may be important things that are missed because it is not one of the elements of the CDD.

## **Understanding of risk**

### **22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?**

ACCA has found from its AML compliance reviews that in general our firms have a good understanding of their clients and an awareness of the typical issues that are higher risk, such as cash based businesses or operating for a certain jurisdiction. However, we have identified weaknesses around the documenting of this risk in the client files or within the mitigating actions in the FWRA.

As outlined in our response to Question 20, we believe that a more proactive and timely sharing of intelligence and risks from law enforcement would enhance the sector's ability to identify and adapt to risks.

### **23. What are the primary barriers to understanding of ML/TF risk?**

Economic crime is rapidly and constantly evolving. However, the emerging trends are not communicated to supervisors and sectors by law enforcement on a frequent and timely basis. ACCA believes that market intelligence should be shared with supervisors more immediately as this will allow us to incorporate the information in our RBA and also better inform our supervised firms.

ACCA believes that a lack of training undertaken in our supervised firms is a potential barrier to increasing awareness of ML/TF risk.

### **24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?**

ACCA believes that the most effective actions that the government can take are:

- Improve the speed and quality of information shared by law enforcement with supervisors.
- Improve and enhance the NRA so that conclusions for sectors are supported with transparent data and derived from engagement with the relevant sectors to fully understand how they operate and any distinctive features.
- Produce current case studies relevant for the sector that highlight the ML/TF risk.

## Expectations of supervisors to the risk-based approach

### 25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?

ACCA conducts specific AML compliance reviews of its supervised firms. The reviews fully test a firm's AML framework to ensure it is compliant with the MLRs.

In our response to this question, ACCA has interpreted the term 'discretion' to mean the firm's discretion to apply what it considers as relevant ML risk ratings to its clients and the respective activities it conducts for each. During an AML compliance review, we aim to understand the methodology applied and seek evidence of this in practice. Whatever approach the firm adopts, it must be driven by their understanding of ML risk as documented in the FWRA and AML policies and procedures.

### 26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?

ACCA has no examples.

### 27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?

ACCA continually reviews and assesses its RBA using intelligence developed as part of our supervisory framework or relevant publications, such as the NRA and reports by other organisations.

### 28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?

ACCA believes that a published definition of AML/CTF compliance programme effectiveness may be helpful. However, we are conscious that at present the AML Guidance for the

Accountancy Sector (**AMLGAS**) sets clear standards of how the MLRs should be applied by adopting an RBA.

There is a potential unintended consequence that, by setting a definition, it could encourage a 'tick box' approach to AML/CFT rather than the adoption of tailored policies and procedures based on risk.

ACCA believes that effectiveness should not be driven by the provision of high-value intelligence to law enforcement alone. Whilst this is a factor, we believe that the key focus of the AML regulations is to prevent criminals from doing business in the UK. Any effectiveness measures should be focussed on the achievement of this aim.

We would welcome further discussions between government, the supervisors and wider stakeholders in the AML/CFT regime in order to reach an agreed and realistic definition of effectiveness.

## **29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?**

ACCA believes a clear definition of compliance programme effectiveness is an essential step forward and would provide clarity on the measurement of outcomes to demonstrate effectiveness and impact.

However, alongside producing a definition, we believe there must also be a clear system that measures the inputs, activities conducted, and the outputs together with their impact, in order to measure effectiveness.

Furthermore, there should be a system in place for periodic review of effectiveness to ensure the definition remains relevant, given the dynamic and ever evolving nature of economic crime.

## **Application of enhanced due diligence, simplified due diligence and reliance**

### **30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?**

ACCA believes that the requirements are appropriate and proportionate for our supervisory activity.

**31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?**

ACCA would welcome further details from law enforcement to understand if enhanced due diligence (**EDD**) has identified ML/TF activity, or if there have been investigations where a firm undertaking EDD would have prevented ML/TF occurring.

It should be noted that many firms undertake more CDD on particular clients than is required under a risk-based approach.

**32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?**

ACCA has not identified firms applying simplified due diligence (**SDD**). In our experience, firms apply a normal level of CDD except for when EDD is applied.

**33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?**

The majority of ACCA's firms deal with clients where normal CDD or EDD is applied.

**34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?**

ACCA has found that it is extremely rare for our firms to use reliance and in general they undertake the CDD themselves rather than rely on another person/organisation to do this for them. This is because any liability for the CDD still remains with the firm that relies on the CDD.

**35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?**

ACCA has found that firms rarely use reliance and in general they undertake the CDD themselves.

**36. Are there any changes to the MLRs which could mitigate de-risking behaviours?**

ACCA is unable to comment on this question as it is more relevant for financial institutions.

### **How the regulations affect the uptake of new technologies**

**37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?**

ACCA believes that it is difficult to assess this area as the current MLRs have limited reference to new technologies and it is unclear to what extent technology can be relied upon to fully discharge AML/CTF responsibilities. That said, accountability and responsibility for compliance with AML/CTF rests with the firms and technology can provide an effective way to achieve this.

Technology covers a broad spectrum from digital ID, electronic CDD solutions through to AI. ACCA believes that further discussion and clarity is needed to understand how new technologies should be applied, including the benefits and costs.

ACCA's Professional Insights team published a report exploring how accountants can use technology in regard to their due diligence on clients (KYC - Know Your Client) called: *KYC: Is it time to digitalise the first line of defence?* This report can be accessed here:

<https://www.accaglobal.com/hk/en/professional-insights/risk/kyc-time-to-digitalise-.html>.

**38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?**

As outlined in our response to Question 37, ACCA believes that this area requires further consideration. We believe the MLRs should be more explicit about the safe and effective use of digital identity technology, for example there is a lack of clarity as to how much reliance can be placed on E verification. In addition, many smaller firms are reluctant to invest in technology at this stage when it is not clear whether the packages being offered satisfy the requirements of the MLRs.

**39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?**

ACCA believes that new technologies to combat economic crime should be embraced and fully explored.

The government should coordinate with the Digital Identity and Attributes consultation when reviewing this aspect of the MLRs to ensure there is a consistent approach.

There are many third party providers that sell their solutions to firms/members in the sector and we believe it would be beneficial for the government to engage with these companies to understand each product and ensure it meets the standards expected and has outcomes aligned with the MLRs. The government could also consider applying a certification to the providers. A government standard would ensure consistency and provide firms with the confidence and assurance they need to embrace new technologies.

**SARs reporting****40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?**

ACCA believes there are barriers within the accountancy sector that currently hinder the effective reporting of SARs. We have identified the following areas of concern:

- The lack of feedback from law enforcement on current and emerging trends in the sector to supervisors. Such feedback would allow supervisors to engage with firms to raise awareness of the risks and improve engagement with the SARs regime.
- The lack of feedback from the UKFIU when a SAR is submitted can give the impression that it is not acted upon and the UKFIU places little value on SARs. Positive feedback loops would be welcomed as this would dispel any preconceptions and encourage the submission of SARs.
- The SARs online system is tailored to financial institutions and not aligned to the accountancy sector. This makes reporting very difficult for the sector. However, the SARs reform programme should address this.

**41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?**

ACCA is supportive of supervisors considering SARs as part of their supervisory framework and this activity forms part of our current AML compliance reviews. We believe this is an important element of an effective risk-based approach to supervision.

This activity allows us to understand the quality of SARs that are being submitted and identify potential emerging risk trends that can be shared with the wider supervised population and factored into our own supervisory framework. For example, we may decide to conduct a thematic AML review on an emerging trend or produce an article for members on a specific issue.

**42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?**

Whilst we are supportive of supervisors reviewing the SARs submitted by their supervised population, ACCA believes that the MLRs should provide a clear and explicit provision for supervisors to undertake this activity. This would provide supervised firms with clarity around concerns they may have on tipping off or confidentiality.

Any explicit legal requirement should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the National Crime Agency (**NCA**).

The requirement must clearly state that it is to allow supervisors the right to access SARs and there is no requirement to view every SAR submitted. Supervisors should be allowed to incorporate this review into their own risk-based approach.

#### **43. What else could be done to improve the quality of SARs submitted by reporters?**

ACCA would welcome further discussions to fully understand how ‘quality’ is currently assessed. We believe it is important to have a clear measure to judge the quality of SARs so that appropriate guidance can be produced.

In our opinion, the following actions could improve the quality of SARs submitted by reporters:

- The use of a reporting system that is tailored to the reporter’s sector.
- A process for reporters to receive feedback.
- A section for the inclusion of glossary codes in a drop down format.
- Consideration of a mandatory requirement to include the reporter’s AML supervisor so that targeted statistics and examples can be retrieved from the system.

#### **44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?**

ACCA would welcome further clarity on the use of the term ‘high value intelligence’. For example, is the intelligence only high value if an investigation commences? Every SAR that is submitted is only ‘information’ until it has been further analysed by law enforcement. We believe the focus should be on reporters providing good quality information to law enforcement.

We are concerned that the focus on high value intelligence may promote the belief that the submission of SARs indicates that a firm is effective. However, this could take the focus away from other areas in the MLRs. For example, a firm with a robust AML framework that identifies risks with clients and has an effective CDD process may decline to take on clients that pose a money laundering risk. This firm would be protecting the UK and not facilitating criminal activity, but if it submits a low number of SARs it may be regarded as failing to meet this objective. A further unintended consequence is that a firm may file SARs unnecessarily.

**45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?**

As an AML supervisor ACCA monitors its supervised population through our AML compliance reviews. These are conducted in accordance with our risk-based approach and when we identify non-compliance, we take enforcement action. ACCA considers this an appropriate level of monitoring.

### **Gatekeeping tests**

**46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?**

ACCA believes that there should be a single test that covers the gatekeeping requirements. It is ineffective to have two separate regulations that apply to different parts of the AML regulated sector, with no reference to the relative risks within those sectors. We believe that a single and concise set of requirements would provide a common entry standard across the AML regulated sector and ensure a consistent approach.

**47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?**

ACCA believes that the factors set out in paragraph 4 of Regulation 58 are an effective basis from which to draw gatekeeper judgement. However, as noted in the call for evidence, professional body supervisors also consider a wider range of factors, including fit and proper requirements. Therefore, the requirements in Regulation 58 form a consistent minimum standard and allow sectors to consider any additional factors.

ACCA would encourage the government to consider the removal of Regulation 26 as it has no impact (ie adds no real value) other than creating an administrative burden for supervisors and firms. We believe that Regulation 58 is a more effective mechanism to achieve the objectives of the MLRs.

**48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?**

ACCA agrees that the current obligations and powers support an effective gatekeeping system.

**Guidance****49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?**

ACCA believes that clear, comprehensive sector specific guidance is crucial. However, the current regime does not support the issuing of timely guidance. We comment on this further in our responses to questions 50 and 51 below.

**50. What barriers are there to guidance being an effective tool for relevant persons?**

ACCA is a member of the Consultative Committee of Accountancy Bodies (**CCAB**) that drafts the updated AMLGAS.

The process of updating this guidance is complicated by the way in which MLRs are drafted. For example, there is often no consolidated version of the updated MLRs, only the statutory instrument, or the changes are not available until publication.

The guidance itself is drafted by a large working group that incorporates a number of specialist volunteers from the sector. This results in high quality, comprehensive guidance but, given the size of the group, it is a very time-consuming exercise.

Furthermore, there are insufficient resources in HM Treasury to review and approve the guidance. For example, the latest AMLGAS that incorporates January 2020 amendments was sent to HMT in August 2020 but is still awaiting approval.

**51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?**

ACCA believes that the main barrier is the time taken by HM Treasury to review and approve the AMLGAS.

To overcome this issue, we believe it would be beneficial for a central co-ordination point in HM Treasury with the specific responsibility and accountability for the process across all sectors. A timetable should be agreed by all relevant parties in order to ensure the production of timely guidance that is consistent across all sectors.

### **Structure of the supervisory regime**

#### **52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?**

ACCA believes that a key strength of the UK supervisory regime is the fact that the sectors are supervised by those with expertise in the sector. This enables the supervision to be conducted by those with the best understanding of their population, and to effectively assess the money laundering risk posed by those they supervise.

Supervision is close to the supervised population and this minimises the potential for misunderstanding and inaccurate assessment of money laundering risk. Accountancy is a very diverse sector and a supervisor with no experience of the sector may not be able to fully assess and identify money laundering risks.

Furthermore, ACCA has regulatory oversight of other regulated activities. The responsibilities for monitoring are therefore embedded in our framework and this allows us to take consistent and effective enforcement action against non-compliance in all regulated activities, including the MLRs.

The government benefits from the support and input from the various AML supervisors into consultations on AML legislation and policy. The support provided as part of an AML supervisor's role adds no extra cost for the government. The supervisors provide a broad range of views that represent the diverse populations we supervise, in particular sole practitioners and small firms.

ACCA considers that the fact that OPBAS does not have oversight of all AML supervisors is a weakness in the system. For example, it does not have oversight of HMRC who also supervise accountants. We believe that greater consistency and higher standards would be achieved if a single authority had oversight of all AML supervisors.

**53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?**

ACCA is unable to comment on other sectors. However, in respect of the accountancy sector, we are concerned that accountants that are supervised by HMRC are not subject to the same requirements as those that are members of a professional body. In addition, OPBAS has no oversight of HMRC.

**54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?**

ACCA believes that the status quo should be maintained. While we recognise that there are some areas in the current regime that require improvement, we are of the view that the current regime works and there are a number of strengths that we have outlined in our response to Question 52.

All supervisors have taken steps to enhance their supervisory capabilities and invested significant resources in developing their supervisory frameworks. Any changes to this approach could present risks to the knowledge and experience within the sector, as well as the working relationships between the supervisors and other agencies.

ACCA is concerned that the investment and resource that would be required to create a new single supervisor would place an additional financial burden on firms in the regulated sector. In addition, an unintended consequence could be that the sector is exploited by organised crime who take advantage of the lead time (potentially several years) for a new system to be fully operational and effective.

**55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?**

ACCA would welcome further discussions on the consolidation of supervision into fewer supervisor bodies, including an understanding of any analysis undertaken to evaluate if fewer supervisors are more effective in achieving the aim of the legislation. For example, are there any international examples of this model in practice? We believe it would be beneficial for the government to understand the effectiveness of the current supervision arrangements before

considering an optimum number of supervisors. This exercise would need to benchmark clear standards of effective supervision so that meaningful analysis can be conducted.

In our opinion, the government should seek to achieve optimum effectiveness and not an optimum number of bodies.

ACCA, together with the other accountancy supervisors, is an active participant in the AASG. The engagement amongst supervisors within this group ensures a broad consistency of approach.

In our opinion, the arguments for the consolidation of supervision into fewer supervisor bodies are:

- Potential increase in the consistency of regulation.
- A single regulator for law enforcement and other agencies to interact with.

However, we believe the benefits of consolidation are outweighed by the following disadvantages:

- Supervisors have an in-depth knowledge of those they supervise and are able to identify risks and also communicate more effectively with their supervised population.
- Monitoring already forms part of the supervisor's framework for other regulated activities.
- There would likely be an increased cost of supervision for relevant persons to reflect additional set-up costs.
- Loss of knowledge that is held in the current supervisors.
- Some supervisors regulate small firms who, when included with all other accountancy providers in the sector, may be so small they are not monitored or supported by a single supervisor.
- There will be a less knowledgeable oversight body for the diverse group of the relevant population.

## Effectiveness of OPBAS

**56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**

ACCA believes that for supervisors to maintain a consistent and high standard of AML supervision it is critical that OPBAS provides supervisors with clear guidance, shares best practice, and sets transparent and consistent definitions of what is meant by high standards.

We note that in the most recent annual OPBAS report<sup>1</sup> there was no definition of effectiveness nor a consistent level of description. For example, various levels of effectiveness were used in the report such as 'limited effectiveness' (2.12), 'generally effective' (2.16) 'low effectiveness' (2.17), 'fully effective' (3.8) but no parameters for these measures were issued in any guidance to supervisors.

There is also a discrepancy between the terms used in the OPBAS report<sup>1</sup> and the OPBAS Sourcebook. For example, 3.61 states that supervisors 'should gather member views on money laundering risk and share an anonymised summary to members'. However, the Sourcebook states 'can'. Similarly, in 3.68 'PBSs should request feedback from their staff to ensure their views are reflected for future training' but there is no reference to this in the Sourcebook. We would welcome clear and transparent guidance as there is currently a perception that supervisors are being assessed on requirements they are unaware of.

There is also no benchmarking against supervision by public bodies, for example how unqualified accountants are supervised by HMRC.

OPBAS has conducted two cycles of supervisory visits to all the bodies falling under its remit. However, ACCA notes that the OPBAS Sourcebook has not been updated since its initial publication in January 2018.

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<sup>1</sup> [OPBAS Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and themes our 2020/21 supervisory assessments \(September 2021\)](#)

**57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?**

ACCA believes that the accountancy supervisors work well together through forums such as the AASG and ISEWG. There are designated points of contact in each body and information is shared between the bodies. Where there is a need to represent the sector on various initiatives, such as the public private threat groups, the supervisors play an active role.

We suggest it would be beneficial to assess the impact OPBAS has had on law enforcement sharing intelligence through feedback with supervisors. This is an area that supervisors do not receive information on, and it is something that we have been seeking for a number of years.

ACCA would also welcome information on the benefits arising from the use of SIS and FIN-NET. For example, has there been an impact on economic crime due to supervisors using either system? OPBAS has indicated that all supervisors need to subscribe to these services by paying an annual subscription to the FCA. However, supervisors are awaiting guidance from OPBAS on the consistent use of these services, as well as the benefits and examples. In addition, HMRC does not use SIS and this creates inconsistencies across the sector.

### **Remit of OPBAS**

**58. What if any further powers would assist OPBAS in meeting its objectives?**

ACCA believes that OPBAS has sufficient powers. However, we are of the opinion that OPBAS should have oversight of all AML supervisors. For example, it is difficult to demonstrate consistency within the accountancy sector when OPBAS's remit does not include HMRC.

As highlighted in our response to Question 56, we believe there should be greater transparency from OPBAS in how it assesses supervisors.

**59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?**

ACCA believes that extending OPBAS's remit would drive consistency across sectors. However, it should be matched with clear and transparent measures from OPBAS as outlined in our response to Question 56.

### **Supervisory gaps**

**60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?**

ACCA is not aware of any such businesses.

**61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?**

ACCA has no comments in respect of this question.

**62. How should the government best ensure businesses cannot conduct regulated activity without supervision?**

ACCA believes that the government should explore the possibility of protecting the title of accountant to ensure high standards in the sector.

We would also support the publication of a register of all AML supervised entities. This would introduce greater transparency across the sector of the entities registered for AML supervision and their supervisor.