IMPROVING THE EFFECTIVENESS OF MONEY LAUNDERING REGULATIONS

BPF RESPONSE

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Introduction

The British Property Federation (BPF) represents the UK real estate sector, an industry that contributes more than £107bn to the economy and supports 2.3million jobs. Our members are invested in commercial and residential real estate in communities across the UK - revitalising our cities and shared spaces, re-imagining our town centres, and creating vibrant new places designed for the way we live today.

Our members invest and develop all kinds of commercial real estate from offices, retail and logistics properties to data centres, lab space and medical premises. Our members also invest in larger scale professionally managed residential rental asset classes - predominantly purpose built student accommodation and 'Build to Rent'.

We recognise the importance of effective anti-money laundering regulations and welcome the opportunity to feed into this consultation. We support the government's intention to implement a balanced and effective AML regime – which recognises the importance of integrity of the financial system; but also ensures that our regulations are proportional and considerate of the burden on business, ultimately supporting our economy.

Executive summary

The real estate sector covers a huge range of individuals and businesses – from an individual purchasing their first home; or a business letting new space - through to professional investors purchasing or letting large scale commercial property – and all the players and industries that support real estate business and transactions in a number of different ways, including: brokers, estate agents, letting agents, asset managers, lenders, lawyers etc.

While it is clear that classic estate agency and letting agency businesses are intended to be in scope of the money laundering regulations, the legal tests in the legislation are incredibly wide and significant time and resource is incurred by the sector to determine which businesses should be in scope of money laundering regulations. On top of this, there are often situations where there are overlapping business relationships which makes it difficult to determine:

(i) "what is the relevant business relationship" triggering client due diligence (CDD) checks for each relevant person; and
(ii) relatedly, who does the CDD need to be carried out on.

In addition, given the number of different parties that can be involved in a single real estate transaction, it is common for there to be significant inefficiencies from parties doubling or tripling up (or more) on adhering to AML regulations and CDD checks on the same parties to a transaction. As well as this being incredibly inefficient, this can also cause significant frustration to tenants/clients who are asked for the same or similar information multiple times.

There are clearly opportunities to improve efficiencies of the AML rules to reduce the administrative burden on the business community – without reducing the effectiveness of the rules at countering money laundering activity. Our overarching recommendations are that:

1. The AML regulations and guidance must be as clear and unambiguous as possible – it should be more straight forward to determine which parties are in scope of the rules, and to

understand what, and when CDD checks are triggered, without the need to spend significant time or incur significant legal fees.

2. Cases where duplications (or more) of the same AML checks are carried out must be addressed – this is completely inefficient and an unnecessary administrative burden.

We have taken the opportunity to set out more details in respect of possible improvements within our response to the consultation questions (see appendix 1). We have also included some comments on a number of other AML related issues which are not directly covered by the consultation within appendix 2.

We would be pleased to answer any questions - and would welcome the opportunity to discuss our response with officials in more detail.

Appendix 1: Responses to the consultation questions

Chapter 1:

Making customer due diligence more proportionate and effective

Customer Due Diligence Due diligence triggers for non-financial firms

Q1 Are the customer due diligence triggers in regulation 27 sufficiently clear?

"Business relationships" and "customers"

1. This question focusses on the triggers for *when* a regulated firm must carry out client due diligence ("CDD"), a key trigger being the establishment of a "business relationship" (as defined in regulation 4 of the Money Laundering Regulations 2017 ("MLRs")). In our experience however, there are situations where there are overlapping business relationships which makes it difficult to determine: (i) "what is the *relevant* business relationship" triggering CDD for each relevant person; and (ii) relatedly, *who* does the CDD need to be carried out on.

2. In the real estate sector there are often several MLR-regulated parties involved in a single transaction (e.g. buyers, sellers, lawyers, lenders, estate agents, asset managers), interacting multilaterally. Some entities might be carrying on MLR-regulated and non-MLR-regulated activities, carrying on different types of MLR-regulated activities or could be acting in multiple capacities.

3. The definition of a "business relationship" refers to a business, professional or commercial relationship between a relevant person and customer which "arises out of the business of the relevant person". However, it can be unclear what the relevant type of "business" is, which makes it difficult to determine which types of "business relationships" are relevant. Most firms interpret this as the relationships arising out of the MLR-regulated activities of the relevant person, but even scoping these kinds of relationships can be unclear especially as "customer" is not defined and the MLR-regulated business of the relevant person may inherently involve transacting with many types of counterparties and people interested in the transaction.

4. Industry guidance (for example, the Joint Money-Laundering Steering Group guidance) has been developed to clarify the approach for certain sectors. The guidance has been developed by different groups in different sectors and at different times – and there is a risk of inconsistent approaches in different sectors. The industry-specific guidance can also be very broad – for example the JMLSG guidance in respect of the private equity sector. This can lead to confusing outcomes where a firm is subject to multiple sets of sector-specific guidance. This is also the case in relation to industry guidance on "source of funds" checks – see the response in question 2.

5. The MLRs do contain specific instructions on the relevant business relationships and the "customer" for estate agents and letting agents (the MLRs specify that it is the buyer / seller and the lessee / lessor). While not all types of business relationships need to be defined in the regulations, we suggest that

those drafting industry guidance – and HMT when approving it – should be careful to deal consistently with the notion of "customer" and generally to limit it to the client or recipient of a service which prompts registration in the first place.

Customer due diligence by letting agents

6. Separately, in relation to regulation 27, MLRs, some of our member firms have encountered resistance from prospective tenants arguing that based on the current wording of regulation 27(7A), CDD checks are only required to letting "land" and therefore should not apply to leases of other property interests. It would be more helpful if the wording in 27(7B) used the term “property” or “land and property”, rather than just “land”.

Source of funds checks

Q2 In your view, is additional guidance or detail needed to help firms understand when to carry out ‘source of funds’ checks under regulation 28(11)(a)? If so, in what form would this guidance be most helpful?

7. The mention of SoF in 28(11)(a) feels late in the order of other requirements/priorities so perhaps clarifying and reprioritising it would be advisable.

8. We would suggest that the best place for guidance is in the sector guidance. In general, we think it would be helpful if the expectations are more prescriptive. We would also note the following:
   - Consistency across different businesses would be helpful (e.g. conveyancing solicitors, estate agents, lenders, asset managers.) Where there are differences across different businesses, there should be a reason for this inconsistency.
   - Some guidance on the number of months of bank statements which should be requested for a low-risk case would be helpful.

Verifying whether someone is acting on behalf of a customer

Q3 Do you think the wording in regulation 28(10) on necessary due diligence on persons acting on behalf of a customer is sufficiently clear? If not, what could help provide further clarity?

9. The current wording of regulation 28(10) MLRs could be clarified. Regulation 28(10) currently requires CDD checks on any person who "purports to act on behalf of the customer". In our experience, this phrasing has led to mixed practice and legal uncertainty as relevant persons have to decide whether regulation 28(10) MLRs requires CDD to be applied to: (i) natural persons representing a legal entity (e.g. a director or the entity's employees); and (ii) persons acting on behalf of another person (under a power of attorney or similar instrument) ("Agents"). We would suggest the better legal interpretation is that regulation 28(10) MLRs was only intended to capture Agents under situation (ii).

10. Interpreting Regulation 28(10) as applying to scenarios falling under situation (i) can be problematic, especially in commercial transactions where the relevant counterparties will predominantly be corporate entities represented by directors or employees. A mandatory requirement to apply CDD to all such entities' representatives adds considerable friction to the process, especially if foreign

identification documents are required. This seems disproportionate and unnecessary when a legal entity's directors could be confirmed by checking a public register extract (e.g. in the UK, Companies House). Relevant persons may also already benefit from legal protections (e.g. section 40, Companies Act 2006) which protect third parties dealing with a corporate entity in good faith from the risk of unauthorised representatives acting on behalf of a corporate entity.

11. We suggest that HM Treasury consider amending Regulation 28(10) to clarify that purporting to "act on behalf of the customer" does not include a person that can reasonably be regarded as acting internally to legal entity (e.g. a company director or employee). Relevant persons should still have the discretion to decide on the particular circumstances, whether any additional CDD or authorisation checks are required when dealing with a corporate representative - both from an AML and agency risk perspective.

Digital identity verification

Q4 What information would you like to see included in published digital identity guidance, focused on the use of digital identities in meeting MLR requirements? Please include reference to the level of detail, sources or types of information to support your answer.

No comment.

Q5 Do you currently accept digital identity when carrying out identity checks? Do you think comprehensive guidance will provide you with the confidence to accept digital identity, either more frequently, or at all?

No comment.

Q6 Do you think the government should go further than issuing guidance on this issue? If so, what should we do?

No comment.

Timing of verification of customer identity

Q7 Do you think a legislative approach is necessary to address the timing of verification of customer identity following a bank insolvency, or would a non-legislative approach be sufficient to clarify expectations?

No comment.

Q8 Are there other scenarios apart from bank insolvency in which we should consider limited carve-outs from the requirement to ensure that no transactions are carried out by or on behalf of new customers before verification of identity is complete?

No comment.

Enhanced Due Diligence

General triggers for enhanced due diligence

Q9 (If relevant to you) Have you ever identified suspicious activity through enhanced due diligence checks, as a result of the risk factors listed above? (Regulations 33(6)(a)(vii), 33(6)(a)(viii) and 33(6)(b)(vii)). Can you share any anonymised examples of this?

No comment.

Q10 Do you think that any of the risk factors listed above should be retained in the MLRs?

12. It is useful to have the issue of Golden Visa and passports in the legislation and guidance as a risk factor. It can be a useful reference point to support requests for the primary passport - which may have more useful information such as the name written in the original language, patronymic, city/town of birth rather than just the country.

Q11 Are there any risk factors for enhanced due diligence, set out in regulation 33 of the MLRs, which you consider to be not useful at identifying suspicious behaviour?

No comment.

Q12 In your view, are there any additional risk factors that could usefully be added to, for example, regulation 33, which might help firms identify suspicious activity?

13. EDD can be very challenging – additional examples of risk factors to consider would be helpful – for example:

    a. 1.53 does not identify where the customer is suspected of undertaking a club deal and gathering funds in third countries from unrelated transaction parties. Perhaps some sort of declaration on SoW and SoF should be mandatory from customers.
    b. Networks risk – or some historical patterns of bad or suspicious behaviours – and typologies and patterns of bad behaviours.

'Complex or unusually large' transactions

Q13 In your view, are there occasions where the requirement to apply enhanced due diligence to 'complex or usually large' transactions results in enhanced due diligence being applied to a transaction which the relevant person is confident to be low-risk before carrying out the enhanced checks? Please provide any anonymised examples of this and indicate whether this is a common occurrence.

14. See response to question 15.

Q14 In your view, would additional guidance support understanding around the types of transactions that this provision applies to and how the risk-based approach should be used when carrying out enhanced check?

15. See response to question 15.

Q15 If regulation 33(1)(f) was amended from 'complex' to 'unusually complex' (e.g. a relevant person must apply enhanced due diligence where... 'a transaction is unusually complex or unusually large'):

• in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.

• in your view, would this create any problems or negative impacts?

Responses to questions 13 to 15 combined:

16. We agree that the requirement to apply enhanced due diligence to 'complex or unusually large' transactions often results in EDD being applied to a transaction which the relevant person is confident will ultimately be assessed as low-risk.

17. It would be helpful if regulation 33(1)(f)(i) was amended from 'complex' to 'unusually complex'. Just because a transaction is "complex" or "large" does not necessarily mean it is high risk – for example, many commercial property transactions are, typically, large and complex. This could be accompanied by an amendment in the MLRs or HM Treasury guidance that what is "unusually" large or complex must be interpreted in the context of that sector or industry. Additionally, re-ordering the EDD triggers in regulation 33(1)(f), as follows, should help relevant persons to focus on the "no apparent economic or legal purpose" EDD trigger (which arguably encompasses the other two triggers):

    i. the transaction or transactions have no apparent economic or legal purpose;
    ii. there is an unusual pattern of transactions; or
    iii. the transaction is unusually complex or unusually large.

High Risk Third Countries

Q16 Would removing the list of checks at regulation 33(3A), or making the list non-mandatory, reduce the current burdens (cost and time etc.) currently placed on regulated firms by the HRTC rules? How?

Q17 Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?

Q18 Are there any High Risk Third Country-established customers or transactions where you think the current requirement to carry out EDD is not proportionate to the risk they present? Please provide examples of these and indicate, where you can, whether this represents a significant proportion of customers/transactions.

18. Yes, we consider that requiring EDD on the countries on the FATF "Jurisdictions under Increased Monitoring" list (the "Grey List") is not always proportionate.

Q19 If you answered yes to the above question, what changes, if any, could enable firms to take a more proportionate approach? What impact would this have?

19. We would suggest allowing relevant persons the discretion to apply EDD in relation to transactions with parties established in a Grey List country, on a risk-based approach. The current approach applies a blanket EDD requirement to all business relationships with customers (or transaction counterparties) established in Grey List countries. This does not take into account whether the transaction relates to a particularly high or low risk industry or sector in that Grey List country (for example, the precious metals or minerals sector of a Grey List country would probably have a very different AML risk profile vs. charities based in that country).

20. The above could be implemented by adding the fact that a customer is established in a Grey List country as a geographical risk factor under regulation 33(6)(c), MLRs. Alongside this, it would be extremely useful for the property sector (and other sectors) if HM Treasury could consider publishing guidance listing certain high risk sectors or transaction types, specific to each Grey List country. Assuming that relevant persons will be permitted to apply EDD to customers established in Grey Listed countries on a risk-based approach, country-specific guidance would be essential for relevant persons to understand exactly which types of customers and transactions linked to a Grey List country pose a higher AML risk.

21. Firms often use FATF reports to determine whether a transaction is subject to higher risk factors triggering the application of EDD and to decide what EDD measures to take. One issue with using FATF reports (generally, not just in relation to Grey List countries), is that firms often find that the FATF mutual evaluation reports are years out of date and do not provide specific enough practical guidance on why certain factors or issues in a certain country pose a higher AML risk. We would ask that HM Treasury or the government work with FATF to encourage the publication of more concise summary reports that are easier for relevant persons to use.

22. Finally, regulation 33(3) MLRs was recently amended to cross-refer directly to FATF's "High-Risk Jurisdictions" and "Call to Action" lists. These lists change from time to time and it can be very challenging for live transactions and business relationships when a country is added to a high risk list, and enhanced due diligence must be applied to new and existing customers with very little notice. To help alleviate this challenge, we would request that regulation 33(3) be amended to add a grace period (e.g. 3 months) for firms to reflect changes to the lists in their procedures. Even if the grace period were to only apply to changes in the Grey List, this would still be helpful for relevant persons.

Simplified Due Diligence

Pooled client accounts

Q20 Do you agree that the government should expand the list of customer-related low-risk factors as suggested above?

No comment.

Q21 Do you agree that as well as (or instead of) any change to the list of customer-related low-risk factors , the government should clarify that SDD can be carried out when providing pooled client accounts to non-AML/CTF regulated customers, provided the business relationship presents a low risk of money laundering or terrorist financing?

No comment.

Q22 In circumstances where banks apply SDD in offering PCAs to low-risk businesses, information on the identity of the persons on whose behalf funds are held in the PCA must be made available on request to the bank. How effective and/or proportionate do you think this risk mitigation factor is? Should this requirement be retained in the MLRs?

No comment.

Q23 What other mitigations, if any, should firms consider when offering PCAs? Should these be mandatory under the MLRs? Q24 Do you agree that we should expand the regulation on reliance on others to permit reliance in respect of ongoing monitoring for PCA and equivalent scenarios?

No comment.

Q25 Are there any other changes to the MLRs we should consider to support proportionate, risk-based application of due diligence in relation to PCAs?

23. Commercial property transactions often involve multiple MLR-supervised counterparties applying CDD measures to counterparties and multiple rounds of CDD requests and data-sharing throughout the process. We suggest that this could be made more efficient with certain amendments to the MLR provisions on simplified due diligence and reliance.

Simplified due diligence

24. We would suggest amending regulation 37 MLRs to permit relevant persons to apply simplified due diligence, by default, to UK listed companies and authorised firms (e.g. credit institutions and financial institutions). This could also be extended to companies listed or authorised in the EU and other jurisdictions which HM Treasury deems to apply equivalent AML standards. This would be a return to the previous position under the 3rd EU Money Laundering Directive (as implemented in the UK under the Money Laundering Regulations 2007). The only requirement for relevant persons should be to confirm the listed or authorised status of the relevant company or institution (for example by referring to relevant public registers). As always, relevant persons should be required to consider if, despite the listed or authorised status of the customer, there may be any higher risk factors present, triggering the application of a higher level of CDD.

Reliance

25. The reliance provisions in regulation 39, MLRs permit a relevant person to rely on a third party to apply the standard CDD measures or to report any discrepancies in beneficial ownership information. This is subject to: (i) the relying firm immediately obtaining the CDD and beneficial ownership information from the third party; and (ii) entering into arrangements with the third party to ensure that copies of identification, verification and beneficial ownership data can be obtained immediately on request and the information is stored by the third party for the relevant record-keeping period.

26. The requirement to immediately obtain all of the relevant information makes the reliance provision much less useful than it could be. As the relying firm is required to check that the third party has shared all the necessary information, little work is saved as this results in the relying firm carrying out a process similar to running the CDD checks itself. We would suggest amending regulation 39, removing this requirement and allowing relevant persons to rely on affirmations from the third party, that the third party has obtained all the necessary information. This could be caveated with a condition that the relying firm may only rely on (or continue to rely on) such an affirmation if, to the relying firm's reasonable knowledge, there is no reason to doubt whether the third party has collected the relevant information.

27. The JMLSG money laundering guidance provides relevant persons with pro-forma template certificates to put in place the relevant arrangements with third parties required under regulation 39(2), MLRs. The templates are drafted on a per-customer basis, providing the customer's identity and other CDD information as required under regulation 39(2)(a). We would request that HM Treasury consider publishing guidance or amending the MLRs to confirm that it is possible to put in place valid reliance arrangements under regulation 39(2) without necessarily obtaining all the information of each specific customer, for example under a general written affirmation. This should result in further efficiencies for the third party and the relying firm. The relying firm and third party would still of course have to agree on the group or scope of customers that the firm is relying on the third party to collect information from.

28. Finally, whilst the BPF supports retaining the requirements under regulation 39(2) to have suitable information-sharing arrangements in place with the third party, we would suggest removing the reference to "immediately" obtaining the relevant information under regulation 39(2)(a). It should be sufficient for the relevant person to put in place arrangements ensuring that customer information is shared promptly when requested.

Chapter 2:

29. We have not commented on the specific questions in chapter 2 – but we would broadly support greater collaboration between Government bodies and regulators – in particular where this supports an approach within Government to ask businesses for information only once.

Strengthening system coordination

Information sharing between supervisors and other public bodies

Q26 Do you agree that we should amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner?

No comment.

Q27 Should we consider extending the information-sharing gateway in regulation 52(1A) to other public bodies in order to support system coordination? If so, which public bodies? Please explain your reasons.

No comment.

Q28 Should we consider any further changes to the information-sharing gateways in the MLRs in order to support system coordination? Are there any remaining barriers to the effective operationalisation of regulation 52?

No comment.

Cooperation with Companies House

Q29 Do you agree that regulation 50 should be amended to include the Registrar for Companies House and the Secretary of State in so far as responsible for Companies House?

No comment.

Q30 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

No comment.

Q31 In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

No comment.

Regard for the National Risk Assessment

Q32 Do you think the MLRs are sufficiently clear on how MLR-regulated firms should complete and use their own risk assessment? If not, what more could we do?

No comment.

Q33 Do you think the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment (including the NRA)? If not, what more can we do?

No comment.

Q34 One possible policy option is to redraft the MLRs to require regulated firms to have a direct regard for the NRA. How do you think this will impact the activity of:
a) firms
b) supervisors?
Is there anything this obligation should or should not do?

No comment.

System Prioritisation and the NRA

Q35 What role do you think the NRA versus system prioritisation should play in the allocation of regulated firms' resources and design of their AML/ CTF programmes?

No comment.

Chapter 3: Providing clarity on scope and registration issues

30. We have only responded to question 39 within this chapter – and would suggest that if all currency references are changed to Euros in the MLRs, they should be done on a current average exchange rate – as this would be more aligned with the approach businesses are taking right now, if they need to convert the threshold into a local currency.

Currency Thresholds

Q36 In your view, are there any reasons why the government should retain references to euros in the MLRs?

No comment.

Q37 To what extent does the inclusion of euros in the MLRs cause you/your firm administrative burdens? Please be specific and provide evidence of the scale where possible.

No comment.

Q38 How can the UK best comply with threshold requirements set by the FATF?

No comment.

Q39 If the government were to change all references to euros in the MLRs to pound sterling which of the above conversion methods (Option A or Option B) do you think would be best course of action?

31. Option B – would suggest that if all currency references are changed to Euros in the MLRs, they should be done on a current average exchange rate – as this would be more aligned with the approach businesses are taking right now, if they need to convert the threshold into a local currency.

Q40 Please explain your choice and outline with evidence, where possible, any expected impact that either option would have on the scope of regulated activity.

No comment.

Regulation of resale of companies and off the shelf companies by TCSPs

Q41 Do you agree that regulation 12(2) (a) and (b) should be extended to include formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf?

No comment.

Q42 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons.

No comment.

Q43 In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

No comment.

Change in control for cryptoasset service providers

Q44 Do you agree that the MLRs should be updated to take into account the upcoming regulatory changes under FSMA regime? If not, please explain your reasons.

No comment.

Q45 Do you have views on the sequencing of any such changes to the MLRs in relation to the upcoming regulatory changes under the FSMA regime? If yes, please explain.

No comment.

Q46 Do you agree that this should be delivered by aligning the MLRs registration and FSMA authorisation process, including the concepts of control and controllers, for cryptoassets and associated services that are covered by both the MLRs and FSMA regimes? If not, please explain your reasons.

No comment.

Q47 In your view, are there unique features of the cryptoasset sector that would lead to concerns about aligning the MLRs more closely with a FSMA style fit and proper process? If yes, please explain.

No comment.

Q48 Do you consider there to be any unintended consequences to closer alignment in the way described? If yes, please explain.

No comment.

Chapter 4:

Reforming registration requirements for the Trust Registration Service

Registration of non-UK express trusts with no UK trustees, that own UK land

Q49 Does the proposal to make these trusts that acquired UK land before 6 October 2020 register on TRS cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

32. We understand that the proposed amendments to the TRS are intended to increase transparency in relation to certain higher risk trusts whilst reducing administrative burdens on low-risk trusts.

33. The primary unintended consequence of this measure is the significant administrative burden on a huge pool of trust structures – many of which may not be aware of changes to their reporting obligations since it only relates to non-UK trusts. We would suggest that a helpful approach to reduce administrative burdens for business, without reducing the transparency of information to Government, would be to ensure that trusts are not disclosable where their beneficial owners have already been disclosed under another transparency disclosure regime - such as the Person of Significant Control (PSC) or Register of Overseas Entities (ROE). This exception should apply to all non-taxable trusts to provide a consistent approach and minimise unnecessary red tape for businesses.

34. This would for example, exclude the limited partnerships set up so that the shares in the general partner are held (directly or indirectly) by the limited partners in the same proportion as their interests in the partnership (and any nominees are owned 100% by the general partner). In these scenarios the PSC register (for an English general partner/nominee) or the ROE (for an overseas general partner/nominee) should reveal the ultimate beneficial owners of the general partner/nominee who would also be the ultimate beneficial owners of the underlying property ensuring transparency over the ownership of the property.

35. Therefore, we recommend that for any nominee structure where the ultimate beneficial owners of both the trustees and beneficiaries are the same and revealed by the PSC/ROE records of the nominees – it should not be a requirement to disclose this information again by registering with the TRS.

Q50 Does the proposal to change the TRS data sharing rules to include these trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

No comment.

Trusts required to register following a death

Q51 Do the proposals to exclude these trusts for two years from the date of death cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

No comment.

Q52 Does the proposal to exclude Scottish survivorship destination trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

No comment.

De minimis exemption for registration

Q53 Does the proposal to create a de minimis level for registration cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

No comment.

Q54 Do you have any views on the proposed de minimis criteria?

No comment.

Q55 Do you have any proposals regarding what controls could be put in place to ensure that there is no opportunity to use the de minimis exemption to evade registration on TRS?

No comment.

Appendix 2: Other relevant points not directly captured by the consultation questions

Other points:

References to Annex I activities in the Money Laundering Regulations

The MLRs' scoping provisions have retained historic references to the "Annex I activities", for purposes of the definition of in-scope "institutions". The Annex I activities use various undefined terms derived from historic EU legislation (and are not well-aligned with the definitions of regulated financial services activities used in current UK legislation (e.g. under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) and licensing exemptions under the relevant legislation). It is sub-optimal to be relying on historic and undefined terms for fundamental provisions of the MLRs, especially when it is in the interests of the regulators and the industry to have clear scoping criteria. For example, real estate asset managers authorised as UK AIFMs, are not specifically listed under the Annex I activities. However, the list of Annex I activities includes "portfolio management" - which is undefined and yet many firms would presumably interpret as including "collective" portfolio management (and thus, sensibly, capturing UK AIFMs). The Annex I activities also do not include financial services licensing exemptions or other factors which limit the UK regulatory perimeter, which could lead to unintended results. We would suggest replacing the list of Annex I activities with definitions which more closely align with the current UK regulatory perimeter.

The definition of a beneficial owner in relation to trusts

The concept of a "beneficial owner" under regulation 6, MLRs refers to any "beneficiaries" of the trust, with no *de minimis* concept. This can be problematic for trusts with a significant number of natural person "beneficiaries", but do not have meaningful control over the trust of any vested interest in the trust's property. We would suggest a more practical approach to scoping the relevant "beneficiaries" of a trust which must be subjected to CDD, such as implementing a *de minimis* exclusion for certain beneficiaries, excluding certain types of trusts with many non-controlling / non-vested beneficiaries (e.g. occupational pension schemes) or excluding certain classes of beneficiaries.

Requirement to report discrepancies in beneficial ownership information

We would request that HM Treasury revisit the requirements for relevant persons to report "material discrepancies" under regulation 30A(2) and 30A(2B), MLRs. This requirement adds considerable burden to relevant persons who are required to consider whether a discrepancy is "material" or not and non-compliance is a potential criminal offence.

A "material discrepancy" is defined in Schedule 3AZA, MLRs as being a discrepancy which could reasonably be considered to be linked to money laundering, terrorist financing, or to conceal details of the business of a customer. It is often difficult for relevant persons to determine whether there is a material discrepancy when dealing with complex ownership structures. This is made more difficult by the different definitions used in the MLRs and the relevant public registers – a "person with significant influence or control" (a "PSC") is

defined differently from a "beneficial owner" under the MLRs. Regulation 5(2) and 5(3) MLRs helpfully clarify that PSCs of corporates and partnerships include registered PSCs, however this doesn't necessarily result in complete alignment between the PSC and beneficial ownership definitions.

Relevant persons therefore have a difficult balancing act between requesting additional information from the customer which could potentially explain a discrepancy, and avoiding "tipping off" the customer (if the reason for a discrepancy is genuinely due to attempted money laundering or other criminal misconduct). More innocuously, apparent discrepancies may be due to a relevant person's limited information about or misunderstanding of a customer's complex structure. Additionally, the relevant entities (especially non-UK entities) may have misfiled their information on the public PSC registers or may not have kept it up to date.

While the BPF understands the importance of maintaining accurate beneficial ownership data, we suggest that HM Treasury consider the extent to which the relevant public registries have actually used the material discrepancy reports submitted to them and how effective this has been in correcting incorrect registrations. This should be weighed up against the reporting burden (and potential criminal liability) placed on relevant persons under the MLRs. We would also request that HM Treasury consider publishing additional guidance on how firms should manage their obligations under the MLRs to determine whether a discrepancy is genuinely "material" or not, and potentially "tipping off" the customer.

Requirement to report changes in relation to UK corporate / trust information

Under regulation 43(4) MLRs, UK corporates must notify relevant persons of changes in the identities of individuals or other information previously disclosed to the relevant person under regulation 43(1). There is a similar requirement under regulation 44(3), MLRs for trustees to inform relevant persons of changes to information relating to the trust's beneficial owners. This requirement seems to be disproportionate (non-compliance is a potential criminal offence) and it is unclear from our perspective whether it is of much value. It can also be unclear applying it to certain relationships, e.g. inactive / dormant relationships with relevant persons. We would suggest that it is removed or amended so that updates only need to be provided when the relevant person carries out a periodic review of the corporate CDD information.

Conflict with Landlord & Tenant '54 act – lease renewals – we understand that the expectation would be that AML checks would not be required under a lease renewal – it would it be helpful if this can be explicitly clarified.