



Response by TISA to HMT's Consultation on Improving the effectiveness of the Money Laundering Regulations

Sophie Legrand-Green

Policy Executive

June 2024



About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry**. We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **financial inclusion, consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **Governance, Conduct and Culture, Consumer Duty, MiFID II, CASS, ESG/RSI, Operational Resilience, Financial Crime Prevention**, and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.



Contents

Responses to Consultation Questions 4



Responses to Consultation Questions

Chapter 1: Making customer due diligence more proportionate and effective

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

Broadly yes, although 27(9)(a) is ambiguous in that determining if the identity of the customer/beneficial owner “has changed” could be interpreted as whether the person has changed, or whether any aspect of the person’s identity (e.g. name/address) has changed. This results in some firms re-applying CDD upon a customer change, whilst others do not. Propose the insertion of a definition in Regulation 3 to define the requirement more clearly.

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?

No.

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?

Broadly yes, although there is a potential for the current regulation to be interpreted to mean that verification of the third party negates the need to verify the underlying customer, so for the avoidance of doubt, we recommend inserting something to the effect of “(in addition to identifying and verifying the customer” .

The consultation refers to some potential confusion about unnecessary application of CDD checks on underlying beneficial owners of corporate customers, but we consider that Regulations 5 + 6 clearly define such beneficial owners and therefore the extent of CDD required upon them.

However, clarification is required on whether this applies to day-to-day "authorised signatories" (employees) of regulated financial services firms executing day-to-day customer investment instructions (without discretion). Member firms have reported inconsistencies with fund managers requirements, some of whom ask us to provide our evidence of our employees' identities and some of whom do not.

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.

We have very clear industry guidance within JMLSG on what physical documents should be obtained to in order to identify and verify the identity of a client, but the detail is somewhat higher level / principle based for electronic identification within 5.3.51-53.

We can infer from the guidance around documentary evidence, but we think it would be useful to have more concrete guidance around digital identity verification. For example, are there any particular sources we should be using/trusted/preferred vendors? What is deemed to be a good enough match against digital records? Is a single address match and a single DOB match sufficient? What is considered a partial match against digital records and in those instances what additional information should we request to supplement the partial match?

This additional guidance should cover the following items:

- Identity proofing:
- Authenticator and ID management requirements:



- Specification of Authenticators that are suitable for high trust in financial services including 2-factor authenticator combinations, authenticator binding, management and replacement.
- Rules for keeping IDs up to date over time, such as how expired evidence must be replaced, and how often a digital ID must be re-verified.
- Rules to be applied when a user wishes to change their name or address and how are these new pieces of data verified.
- Fraud control requirements:
 - Fraud threat assessment
 - Control requirement at the point of ID creation, assertion and update
 - Help desk fraud controls
 - Data sharing and shared signals
 - Investigation procedures
- Evidence / data requirements:
 - Evidence / Data requirements for record keeping purposes and to ensure consistency of evidence supply across identity providers
- Technical and security requirements to ensure:
 - Secure connections between parties
 - Parties are verified as being genuine actors in the ecosystem
 - Data is encrypted at rest and in transit
 - High grade security management procedures, requiring ISO27001 certification and adherence to other common standards and approaches in financial services.

Given the highly technical nature of digital identities and the importance of interoperability, security and trust in this framework, we think it is likely that any guidance will be highly detailed. TISA has a subsidiary called Select ID which has a wealth of expertise and knowledge about how existing financial services guidelines can be met by adopting the Government Digital Services issued Good Practice Guide 45 (GPG45). Select ID has also identified areas of conflict between the GPG45 requirements and existing financial services regulations (for example, some proofing data that is commonly used in financial services is not accepted under GPG45 (e.g. the electoral roll)). This drives the need for specific guidance to clarify what financial services firms should and should not in respect of digital identities.

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?

None of the membership currently indicated acceptance of digital identity for ID&V checks. Each firm currently adopts various methods of ID verification on a case by case basis, including use of biometric ID solutions that they have implemented and configured themselves.

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

No.

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?



We consider a legislative approach would be preferable because the existing language within Regulation 39 puts the liability on the acquiring bank in all instances, even though this scenario is different to a voluntary acquisition for instance, so would not be reasonable. An enhancement to Regulation 39 could be made to cover this scenario such that the acquiring bank would be protected against CDD failures by the ceding bank for a defined period, provided these issues were not known at the point of acquisition.

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?

Yes. JMLSG Part 1 guidance 5.3.21-5.3.22 covers the scenario of one firm acquiring the customers of another, but doesn't appear to have supporting legislation for it. Regulation 39 appears to be currently focused on scenarios where there is an ongoing relationship with the party that performed the CDD. It would be helpful for this scenario to be specifically identified and specified.

Also Regulation 39(4) provides clarity that reliance is not permitted for customers in a high risk third country - but is silent on other HR scenarios. We recommend that this approach is extended so that it is clear that reliance is not applicable for EDD in any HR circumstances.

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, although we would also observe that under Reg 33(6)(a)(vii) it is not clear why the beneficiary of a life insurance policy automatically represents a higher risk? (isn't the intention that the requirement should be to ensure the beneficiary is subject to an appropriate level of CDD and the overall risk considered, rather than for all beneficiaries to be HR by default)? Hence shouldn't this section be better placed in Regulation 28?)

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

Yes. Existing detail and context are useful (subject to comments in Q9/Q11)

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?

Reg 33(6)(a)(viii) - firms are unlikely to be informed (and unable to identify independently) if an individual meets these criteria (i.e. golden visa) so either re-word to "becomes aware of..." or remove altogether.

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?

Firms currently take different approaches in respect of adverse media screening. Current regulations are ambiguous on the requirement to perform adverse media screening. i.e. is it an additional step required as part of EDD measures (where the customer has already been identified as presenting a higher risk) or is it required for all clients as part of CDD measures (to determine if higher risk factors are present, in order to determine whether EDD is required.) If the intent is the latter, inserting into Regulation 33 would make this clear. (Consider that it could have significant financial consequences for industry to implement/adopt.)

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.

The existing language enables each firm to define 'complex and/or unusually large' in accordance with their own RBA. We think this is a reasonable approach that is functioning well. We do not have any material concerns about the current requirement as documented.

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?

No. We believe it would be difficult to try and provide concrete guidance. What is complex or unusual usually hinges on more than one factor and is usually dependent on a number of fact patterns, including taking into account the client's background and profile. Would likely end up as a more generic list of potential factors to consider, which remains open to interpretation.

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?**

Although the firm can currently define 'complex' for themselves, we think that this proposal would provide clarity on the intent and reduce concern.

We do not currently foresee this creating problems or negative impacts.

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?

Yes. Both grey and black FATF lists require EDD measures which ultimately means that North Korea, being on the black list, and Gibraltar being on FATF's grey list up until Feb 2024, were put on the same footing, which is not proportionate. It also negates the ability for firms to apply proportionate checks when EDD would be excessive/unreasonable - e.g. low value accounts/low risk products etc.

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

Yes. Existing language is clear so should be retained (notwithstanding the comments in Q16.)

Whilst there might be some inconsistent between lists, the list of checks under regulation 33(3A) provides clarity and a form or standardization for country risk management. Removal of such lists, or making them non mandatory would create a pool of varied interpretation and implementation across firms, potentially creating vulnerability.

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.

Broadly the volume is affected customers/transactions in 'Grey' listed countries represents a tiny proportion of the overall population, with those in 'black' listed countries being a tiny subset of those.



Often the customer population are former UK residents/nationals who have relocated to such countries, rather than natives/residents of those countries since the commencement of the relationships.

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?

A differentiation should be made between jurisdictions on the grey list vs black list. Presence in the grey list should only mean that this is one of the factors to be taken into account when assessing whether EDD is required by obliged entities, versus presence on the blacklist being a default EDD requirement.

In addition, a review of the MER/FUR of a grey list country itself can help better inform the nature of the deficiencies and thus the nature of the risk presented, and whether EDD is required or not to mitigate the risk, and if so, the level of EDD required (if 33(3A) was not mandatory, as per Q16).

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

Yes.

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?

Yes.

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. This requirement should not be retained. It unnecessarily duplicates the existing regime. If HMT feels that the levels of checks done by PCAs is insufficient, they should address that issue directly, rather than layering.

Q23. What other mitigations, if any, should firms consider when offering PCAs? Should these be mandatory under the MLRs?

N/A

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. The reliance placed on PCA providers should be the same as for Nominee relationships. However, the feasibility of this proposal is significantly hampered by two existing JMLSG Guidance points:

1) Many regulated firms operating PCAs already place reliance on IFAs to verify some or all of their underlying customers. JMLSG Part 5.6.11 states "Firms may also only rely on verification actually carried out by the firm being relied upon. A firm that has been relied on to verify a customer's identity may not 'pass on' verification carried out for it by another firm. "

2) Under JMLSG Guidance 5.6.10 - the relied upon party must have completed at least Standard Due Diligence on every underlying customer in the PCA.



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?

No.



Chapter 2: Strengthening system coordination

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

Yes.

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.

Yes - sharing data will enable faster responsiveness to risk mitigation / controls. This might include repeat offender data as well as thematic / anonymised information. Also recommend data sharing with Companies House and fraud data providers such as CIFAS to further prevent abuses, subject to them being sufficiently armed/prepared to utilise that data for its intended purpose.

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

N/A

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?

Yes.

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

No. The Companies House registrars need to adopt some of the best practices long-implemented in the private sector, which should include assessing data from negative news sources - including those indicated here. This should be a top priority for the Government, as the reputation of UK as a place to do business will continue to suffer if this is not addressed.

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.

This will inevitably add additional cost to the process/Companies House transformation, but necessarily so.

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?

Yes.

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?

Yes.

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?



The group had a mixed response to this question. Some considered making it specific/mandatory would ensure a fully informed RBA. Others already do this on the basis of Regulation 18, hence did not consider further detail to be necessary.

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?

N/A

Chapter 3: Providing clarity on scope and registration issues

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

No.

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.

None/minimal.

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

The adoption of blanket GBP equivalent value that takes into account potential range of FX would be simplest for all concerned. The approach taken in the Windsor Agreement to FX ranges may be a helpful precedent.

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?

Option B.

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.

Customers appreciate simplicity and majority of members' clients transact in GBP, so a rounded GBP figure would be easier to understand. Practically speaking, firms rarely determine whether to perform CDD/EDD purely related to transaction values, because relationships are usually for a duration so this would be a marginal impact.

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?

Yes. Absolutely in agreement that bad actors should not be able to escape the same level of scrutiny with a resale than would otherwise happen with a new formation.

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

Potentially the reduced attractiveness of the anonymity offered by the current resale process may result in an increase in new company formations.

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.

The overall impact would depend on the volume of resales taking place (which the group are not sighted on) although it is recognised that those additional checks would incur effort/costs for either the acquiring firm or the TCSP handling the resale, in addition to the Companies House fees for making those changes.



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.

Yes.

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.

Ideally, changes should be done at once, in a consistent way providing firms with confidence that policy is being made in a joined up fashion. This will also avoid the potential for conflicts between the MLRs and FSMA changes.

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.

Yes.

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, but as a general rule, we think it would be helpful for HMT to consider the following factors:

- The extent of retail investor base
- The potential for individuals to self-custody cryptoassets in 'hot' or 'cold wallets'
- The impact of the High Net Worth Individual threshold implemented by the FCA
- The prominence of digital customer journeys and app-based interactions
- The security opportunities afforded by Digital IDs
- The transparency afforded by blockchain technology
- The price volatility associated with this asset class
- How desirable the UK intends to be as a location for doing crypto-related business and investment
- How best to target the population of crypto-users that HMT is most concerned about
- How best to identify holders of privacy coins (very likely self-custodied), such as Monero and zCash

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

No.



Chapter 4: Reforming registration requirements for the Trust Registration Service

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.

Not necessarily an unintended consequence, but changes to TRS Reporting requirements need to be properly communicated to all relevant trustees (who are mainly non-professionals) in order to ensure a timely registration. Consideration also needs to be given to non-UK trustees who may require legal advice. Regulated firms saw challenges with trustee interpretation of the 2020 TRS requirements and its expansion in 2022, so any information/guidance will need to be clear and descriptive.

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.

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.

Potentially - firms expect some challenges by non-professional executors in understanding their obligations and ensuring timely registration. The two-year period is necessary to allow for estate assets to be sold with proceeds being passed to trustees to give them time to invest or to allow time for the estate assets to be transferred to the trust. Usually when a Will trust has been drafted there is a solicitor dealing with the estate and they will have an awareness of the 2-year timescale.

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 (limited numbers anticipated within the member group).

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.

A de minimus is welcome, but group membership includes asset managers, where the value of the estate may fluctuate over time. Recommend the value is linked to the value at date of death rather than being open-ended to avoid unnecessary tracking and administration.

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

The difficulty here is for members that are not trust experts and are therefore reliant on the trustees of their trust clients making the assessment for being in scope / out of scope. The TRS guidance would need to be clearer on these points.

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?

An alternative would be not having a de minimus and requiring all trusts to register on TRS, but indicating as whether in scope / out of scope accordingly - such an approach would then enable HMRC to grant secure access to interested parties (e.g. regulated firms) to view the Trustee declarations directly, negating the need to implement alternate forms of declaration of exemption reason(s).