

Sanctions and Illicit Finance Team
1 Blue
HM Treasury
1 Horse Guards Road
London
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By email to: aml@hmtreasury.gsi.gov.uk

12 April 2017

Dear Sir/Madam

Consultation on Transposition of the 4th Money Laundering Directive

Please find attached our response to the above consultation. If you have any questions, please contact me.

Yours sincerely

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Consultation on Transposition of the 4th Money Laundering Directive

- 1. The government is interested in views on its approach to one-off company formation, including under which circumstances it might be appropriate, as part of the risk-based approach, for a trust or company service provider to apply simplified due diligence where it concerns the formation of a single company.**

The government has set out in the new Regulations that when a trust or company service provider (“TSCP”) is asked to form a company, this is to be treated as a business relationship whether or not the formation is the only transaction being carried out for that customer. It has been decided that HMRC will act as the registry authority for all TCSPs who are not registered by HMRC or the FCA.

HMRC has said that it is of the view that all legal regulators have TCSPs among their regulated community and are therefore requiring us to provide them with a list of TCSPs that we regulate – including unregistered barristers. We do not think that there are many (if any) practising barristers or authorised bodies who, by way of business, provide TSCP services, as defined in the Regulations, so to date we have not compiled a list. Furthermore, we do not actively supervise unregistered barristers (other legal sector regulators have raised a similar issue with HM Treasury).

We want to engage with HM Treasury and HMRC on the practicalities of this requirement and our suggested approach, which is as follows:

Practising barristers

In future, we want to collect information on activity as part of the annual Authorisation to Practice process. This will provide an opportunity to collect information about TCSPs. This is subject to a consultation process.

Authorised bodies – entities and licenced bodies

We currently ask at authorisation if bodies carry out work that engages the Regulations. We are reviewing whether this, and the annual renewal process, is sufficient to specifically address TCSP activity.

Unregistered barristers

The place of unregistered barristers is an anomaly in our regulatory regime that stems from the definition of a barrister in the Legal Services Act. Whilst the BSB Handbook largely applies to unregistered barristers, they are not subject to active supervision.

It is not feasible to require unregistered barristers to tell us if they are acting as TCSPs as we do not require them to provide us with an up to date contact address; it would be very

hard to reach them. When the Standards Committee reviewed this in 2014, it was thought that it would be disproportionate to require them to register up to date contact information and have a big impact on our resources. There is also an issue about how it would be funded, given that unregistered barristers do not pay the Practising Certificate Fee.

We think that it would be more proportionate to require any unregistered barristers to register directly with HMRC or the FCA, if they have not already done so.

2. The government welcomes views on its approach to allow SDD only when firms providing pooled client accounts are low risk.

This is not relevant to the Bar as barristers are not permitted to hold client money.

3. Reliance on third parties: The government would welcome views on whether the reference to “at the latest within two working days” should be included and if not, how long third parties should be given to provide this information.

A timeframe is helpful. However, this does not address the point that we raised in our response to the last consultation; solicitors (as the main source of instructions) are not always willing to provide CDD confirmation because of the risk that it creates for them. We said that, together with the Bar Council, we would be interested in exploring this further with HM Treasury, given the impact on consumers. There may be an opportunity for the Bar Council to review this with the Law Society, given the new requirement for the legal sector to develop joint guidance.

4. The government would welcome views from the sector on the requirement for the policies, controls and procedures to be documented.

We think that this is sensible and will help us to supervise barristers, chambers and authorised bodies.