Sanctions and Illicit Finance Team
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By email to: aml@hmtreasury.gsi.gov.uk

10 November 2016

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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BAR STANDARDS BOARD

REGULATING BARRISTERS

Consultation on Transposition of the 4th Money Laundering Directive

Chapter 3 - setting an absolute turnover threshold

Question 1: Do you agree with the proposed turnover threshold of financial activity being set at £100,000 as one of the criteria to comply with in order to be exempt from the directive? Please provide credible, cogent and open-source evidence (where necessary) to support your response.

No comment given that our regulated community of independent legal professionals carrying out activities that fall within the requirements of Article 2 (1) cannot be exempted.

Question 2: The government would welcome views on whether a maximum transaction threshold per customer and single transaction should remain at £836 (EUR 1,000). Please provide credible, cogent and open-source evidence (where necessary) to support your response

No comment given that this relates to persons trading goods, which is not relevant to our regulated community.

Chapter 4 – customer due diligence (CDD) measures

Question 3: When do you think CDD measures should apply to existing customers while using a risk-based approach?

We think that this should be determined case-by-case by the barrister/authorised body in relation to the type of the client, the relationship and the instructions, rather than according to a prescriptive set of circumstances. The focus is likely to be on material changes. Guidance for barristers is published by the Bar Council here http://www.barcouncil.org.uk/media/412333/money_laundering_and_terrorist_financing.pdf provides some examples:

Para 109: “You will also need to monitor your relationship with your client as it progresses. If you are undertaking public and licensed access work you will need to remain particularly alert to any change in the nature of that relationship. You will also need to keep under review the information that you hold with regard to the identification or verification of your client (i.e. previous CDD documentation), and consider whether it remains satisfactory.”

Para 111: “CDD applies to both new and existing customers…. such as a solicitor who has instructed you in the past, at appropriate times and on a risk-sensitive basis. For example, if a partner in a firm who has instructed you in the recent past wishes, on behalf of the same firm, to instruct you again, and in relation to a low-risk matter, it would not be necessary to apply CDD again.”

Question 4: What changes to circumstances do you think should warrant obliged entities applying CDD measures to their existing customers? E.g. name, address, vocation, marital status etc.

Please refer to our response to question 3.

Question 5: How much does it cost your business to carry out CDD checks? Please provide credible, cogent and open-source evidence to support your response.

Costs will vary according to the client. The vast majority of instructions to barristers are received via other legal professionals (who are subject to the Money Laundering Regulations) rather than directly from members of the public. (Less than 5% of work carried out by barristers is generated from instructions received directly from members of the public). Therefore, whilst retaining ultimate responsibility for knowing their lay client and understanding their business, barristers should be able to place reliance on the CDD procedures carried out by the referring professional, and therefore keep costs to a minimum. However, see question 20 below.

Question 6: We welcome responses setting out how you have converted the Euro thresholds into GBP under the existing Money Laundering Regulations, for example, is the currency exchange the subject of a set policy? We would also welcome your views on what would be helpful to you when dealing with a conversion from Euro to GBP.

Bar Council guidance provides values in Euros:
http://www.barcouncil.org.uk/media/412333/money_laundering_and_terrorist_financing.pdf

Chapter 4 – simplified due diligence (SDD) measures

Question 7: Do you agree that the government should remove the list of products subject to SDD as currently set out in Article 13 of the Money Laundering Regulations (2007)? If not, which products would you include in the list? Please provide credible, cogent and open-source evidence to support inclusion. What are the advantages and disadvantages of retaining this list?

Risk levels assigned to specific products may change over the lifetime of regulations. New financial products will be designed in that period. As a regulator, it is more important to work with the law enforcement agencies in order to have a shared view of the high risk products that are currently being targeted by criminals, rather than to work from a checklist that is fixed at a particular point in time. This provides the advantage of flexibility and agility in responding to emerging risks.

Chapter 4 – pooled client accounts

The following questions are N/A to barristers or BSB authorised bodies, as under our regulations they are not permitted to hold client money.

Question 8: What are the money laundering and terrorist financing risks related to pooled client accounts and what mitigating actions might you take? Please provide credible, cogent and open-source evidence to support your response.

Question 9: What would be the effect of the removal of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.

Question 10: What are your views on the retention of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.

Question 11: What are your views on the situations described by the ESA's where SDD may be appropriate on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.

Question 12: Are there are any other factors and types of evidence of potentially lower risk situations, aside from those listed in Annex II of the directive, that you think should be considered when deciding to apply SDD? Please support your response with credible, cogent and open-source evidence where possible.

No.

Chapter 4 – enhanced due diligence (EDD)

Question 13: Are there any other products, factors and types of evidence of potentially higher risk situations, aside from those listed in Annex III of the directive, which you think should be considered when assessing ML/TF risks in respect of EDD? Please support your response with credible, cogent and open-source evidence where possible.

Bar Council guidance includes examples of "alarm bells/ red flags" in paragraphs 202 to 215: http://www.barcouncil.org.uk/media/412333/money_laundering_and_terrorist_financing.pdf

Question 14: Are there any high-risk products from sectors other than the Financial Services sector that you think should be included in the Regulations?

We have views on where there is risk in the market currently and we are happy to share this with the law enforcement agencies and with other regulators under our information sharing protocols. As noted above, as a regulator, it is more important to work with the law enforcement agencies in order to have a shared view of the high risk products that are currently being targeted by criminals, rather than to work from a checklist that is fixed at a particular point in time. This provides the advantage of flexibility and agility in responding to emerging risks.

Question 15: What EDD measures do you currently apply to clients operating in high-risk third countries, including those on FATF's black, dark grey and grey lists?

This is not currently specified in the Bar Council guidance.

Question 16: How much does it cost your business to apply EDD measures? Please provide credible, cogent and open-source evidence to support your response.

We have not collected specific data on this.

Chapter 4 – Reliance on third parties

Question 17: What are your views on the meaning of a 'member organisation'? Please provide evidence in support of your answer.

We think that reliance is likely to be sought rarely from member organisations in the Bar, but for information:

The Bar Council represents barristers in England and Wales and is the "member organisation" for barristers: http://www.barcouncil.org.uk/

The Bar in England and Wales is divided into six regions, known as "Circuits". The Circuits provide advice and representation for barristers practising in those areas. They are represented on the Bar Council through the Circuit Leaders.

- Midland
- Northern
- North Eastern
- South Eastern
- Wales and Chester
- Western
- European

http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/circuits/

There are 24 Specialist Bar Associations for specific practice areas and geographical regions:

- Administrative Law Bar Association
- Bar Association for Commerce Finance and Industry
- Bar Association for Local Government and the Public Service
- Bar European Group
- Chancery Bar Association
- Commercial Bar Association
- Criminal Bar Association
- Employment Law Bar Association
- Family Law Bar Association
- FDA
- Intellectual Property Bar Association
- London Common Law and Commercial Bar Association
- Midland Chancery and Commercial Bar Association
- Northern Chancery Bar Association
- Northern Circuit Commercial Bar Association

- Parliamentary Bar Mess
- Personal Injuries Bar Association
- Planning and Environmental Bar Association
- Professional Negligence Bar Association
- Property Bar Association
- Public Access Bar Association
- Revenue Bar Association
- Technology and Construction Bar Association
- Western Chancery and Commercial Bar Association

http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/specialist-bar-associations/

Also, anyone wishing to join the Bar must join one of the four Inns of Court, which are responsible for "Calling" barristers to the Bar:

- Lincoln's Inn
- Inner Temple
- Middle Temple
- Gray's Inn

http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/inns-of-court/

The Institute of Barristers' Clerks (IBC) is the professional body for barristers' clerks in England and Wales. http://www.ibc.org.uk/

The Legal Practice Management Association is a networking forum for barristers' support staff involved in legal practice management.
http://www.lpma.org.uk/about-us/introduction-225/

Question 18: What are you views on the meaning of 'federation'? Please provide evidence in support of your answer.

This is not a term that we use. See question 17 in relation to Circuits.

Question 19: If you are a financial institution, are there any additional institutions or persons situated in a Member State or third country that you think could be relied upon in order to help reduce the regulatory burden on businesses e.g. the third party applies due diligence and record-keeping requirements and are appropriately supervised in accordance with the directive?

N/A

Question 20: Do you rely on third parties to meet some CDD requirements? How much does this cost your business? Please provide credible, cogent and open-source evidence to support your answer.

The vast majority of instructions to barristers are received via other legal professionals (mainly solicitors who are "obliged entities" subject to the Money Laundering Regulations) rather than directly from members of the public. (Less than 5% of work carried out by barristers is generated from instructions received directly from members of the public). Therefore, whilst retaining ultimate responsibility for knowing their lay client and understanding their business, barristers should be able to place reliance on the CDD procedures carried out by the referring professional. The Bar Council has raised a concern from their members that solicitors are not

always willing to provide CDD confirmation because, perhaps understandably, of the risk that that actively providing consent is judged to give rise to. This means that there are additional costs being incurred by both barristers and clients, duplicating CDD procedures. We have agreed that this is an area that we will explore further with you.

Chapter 4 – Assessment of risks and controls

Question 21: Should the government set a threshold of the size and nature of the business for the appointment of a compliance officer and employee screening? If so, what should the government take into account?

The vast majority of practising barristers are self-employed, which means that they do not work from companies to which such thresholds are likely to be most relevant. Most barristers practice from chambers to which they pay rent in order to share office facilities, administration and marketing support. Most chambers operate with a small team of clerks and administrators and the management committees usually comprise self-employed barristers:

As at 1 December 2015, there were 15,899 barristers, of whom 12,757 were self-employed. The majority of these were working from chambers (409 chambers as at 1 December 2015) and the remainder (529 barristers) were working as sole practitioners.
https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/
https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/chambers/

There were 61 BSB authorised bodies as at 4 November 2016:
https://www.barstandardsboard.org.uk/regulatory-requirements/entities,-including-alternative-business-structures/about-bsb-entities/
The majority of these are sole traders or micro entities under the definition here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533350/GP2_Life_of_a_company_Part_1_v4.6-ver0.1-6.pdf

Paragraphs 174-175 of the Bar Council's guidance http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/money-laundering-and-terrorist-financing/ says that there is no requirement for self-employed barristers to have a nominated officer. However, the Bar Standards Board requires chambers to nominate a regulatory contact for the purposes of supervision. This is usually a chambers director, the senior clerk, or a self-employed barrister on the management committee. BSB authorised bodies must designate a Head of Finance and Administration (HOFA) and a Head of Legal Practice (HOLP). These are reasonable proxies for a compliance officer.

All barristers, whether practising or unregistered, are subject to Core Duty 10 of the BSB Handbook: "You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations".

Question 22: What should be taken into account when screening an employee?

The BSB authorised body application process has the following controls in place, through which key employees are effectively screened:

- All entities must be owned and managed by authorised individuals (i.e. lawyers), with a current practising certificate (rS84 of the BSB Handbook). This ensures that all owners and managers must be in compliance with their respective regulators' code of conduct.
- There are targeted questions in the application process to confirm whether any owners, managers or employees have been subject to any pending or previous investigation by the Legal Ombudsman or any statutory, regulatory or governing body, or been disqualified or suspended by such a body. If an applicant has, they are expected to provide details. Assessors risk assess information on a case-by-case basis. This feeds into an overall risk rating, when determining whether to authorise the entity.
- All owners must provide evidence of ID.
- Entities must designate a Head of Finance and Administration (HOFA) and a Head of Legal Practice (HOLP). They must provide detailed information to enable us to assess whether the individuals are "fit and proper" to occupy the position and ultimately whether the entity is suitable to be regulated (rS110 of the Handbook). Questions include:
    - "Have you ever been disqualified from being a director or a member of a Limited Liability Partnership (LLP)?"
    - "Have you ever been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1) (d) of the Charities Act 1993?"
    - "Are you currently charged with an indictable offence, or have you ever been convicted of an indictable offence, any dishonesty offence or any offence under the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006?"
    - "Have you ever been disqualified from being a HOLP, HOFA, manager or employee of a licensed or authorised body, either by the BSB or another approved regulator?"
    - "Have you ever had an investigation or disciplinary proceeding pending against you and/or professional conduct findings, either under the disciplinary scheme for barristers or otherwise?"; and
    - "Have you ever been involved in other conduct which calls into question your honesty, integrity or respect for the law?"

If an applicant answers "Yes" to any of these questions, they are expected to provide details. When determining whether to authorise the entity, this feeds into the overall authorisation decision and risk rating.

Following authorisation, if there is a material change in the entity (a change to the responses in the application), the owners and managers are under a regulatory and contractual obligation to advise us so we can assess the impact of the change.

The BSB is currently awaiting designation as a licensing authority for Alternative Business Structures. In addition to the specific requirements set out in the Legal Services Act 2007 we will extend the measures above to include these bodies (see Part 3, Section E5 of the BSB Handbook).

Question 23: Should the government set a threshold for the size and nature of the business that requires an independent audit function? If so, what should the government take into account?

Please refer to our response to question 21 concerning the predominantly self-employed/micro enterprise structure of the Bar.

Question 24: What do you think constitutes an "independent audit function"?

An independent audit is an examination of (in this context) internal policies, controls, procedures and risk management.

The term "independent auditor" is sometimes used to refer to a specialist auditor who is not an employee of, and not otherwise related to, the entity they are auditing.

The role of an internal audit function is also to provide independent assurance that an organisation's risk management, governance and internal control processes are operating effectively. Independence is safeguarded by appropriate reporting lines, such as to the chair of the audit committee, where there is one. An internal audit function may be staffed in-house or outsourced to specialist providers.

As described in question 21, given the size of chambers and bodies authorised by the BSB to date, we would not expect them to have an independent audit function. However, it may be appropriate for them to employ specialist consultants to review their policies and procedures and risk management. We are aware that some chambers that carry out work that is subject to the Money Laundering Regulations have done so.

Question 25: How many of the controls listed at paragraph 4.34 are you already carrying out and what is your assessment of the likely costs of these procedures?

We supervise barristers, chambers and BSB authorised bodies to assess whether they take appropriate steps to identify and assess the ML/TF risks, taking a risk-based approach. The amount of work that we carry out in this area varies from year to year. The processes are subject to ongoing internal review based on evidence to ensure we target the relevant risks.

The Bar Council's guidance http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/money-laundering-and-terrorist-financing/ (paras 172-173) describes the arrangements that barristers should have in place. We have not collected information about the costs.

Chapter 5 - Gambling providers

These questions are not relevant to the remit of the Bar Standards Board.

Question 26: Do you think that the government should consider exempting proven low risk providers of gambling services from the Regulations based on the gambling *activity* or by a complete sector (see the list at paragraph 5.8 or Annex C for information on how the sectors are split up) or both? Please explain the reasons behind your response.

Question 27: Which gambling providers or activities do you think should be classified as having 'proven' low risk and therefore should be exempt from the Regulations? Please provide credible, cogent and open-source evidence to support your response.

Question 28: Should CDD requirements for the gambling providers or activities take place: (i) on the wagering of a stake; (ii) on the collection of winnings; (iii) on the collection of winnings and the wagering of a stake; or (iv) or whichever is the latter? Please explain the reasons behind your response.

Question 29: What do you think constitutes a 'linked transaction' for different types of gambling? Do you think 'linked transaction' should be defined in legislation?

Question 30: If covered by the Regulations, what costs and impacts would be incurred by the providers of the gambling services? Please provide sources for your data and suitable evidence. In particular, the government is keen to know what your initial transition costs would be, how much you would need to spend on staff training and how much it would cost to apply CDD measures.

Question 31: What advantages would there be for increasing the coverage of the Regulations to more than just casinos in the gambling industry?

Question 32: Do you believe that measures could be taken by the Gambling Commission under the Act that might have a bearing on whether you view a sector or activity as being proven low risk?

Chapter 6 - Electronic money

These questions are not relevant to the remit of the Bar Standards Board.

Question 33: How should the government apply the CDD exemptions in Article 12 of the directive for electronic money (e-money)?

Question 34: Should e-money products which do not meet the criteria for the CDD exemptions in Article 12 of the directive be considered eligible for SDD under Article 15?

Question 35: Should the government exclude any e-money products from both the CDD exemptions in Article 12, and from eligibility for SDD in Article 15?

Question 36: Should the government increase the maximum amount that can be stored electronically to £418 (EUR 500) for payment instruments that can only be used in the UK?

Question 37: Please provide credible, cogent and open source evidence of low risk posed by electronic money products, the efficacy of current monitoring systems to deal with risk and any other evidence demonstrating the position of low risk.

Question 38: E-money products with a maximum monthly payment transactions limit of £209 (EUR 250) will be exempt from some of the CDD measures, but only if they are used in that (one) Member State in which they were acquired. What do you think the likely

customer behaviour response to this will be? Please provide credible, cogent and open-source evidence to support your response where possible.

Question 39: The government welcomes views on the likely costs that may arise for the e-money sector in order to comply with the directive.

Chapter 7 – Estate agents and lettings agents

These questions are not relevant to the remit of the Bar Standards Board.

Question 40: What are your views on the regulation of lettings agents? Please explain your reasons and provide credible, cogent and open-source evidence where possible.

Question 41: What other types of lettings activity exist, aside from those mentioned at paragraph 7.9? Of these activities, which do you think should be included in letting agency activity? Please explain your reasons and provide credible, cogent and open-source evidence where possible.

Question 42: Do you think HMRC alone or HMRC and self-regulatory bodies should be appointed supervisors of estate agents and lettings agents? Please explain your reasons and provide credible, cogent and open-source evidence where possible.

Question 43: Do you think that lettings agents should apply CDD to both contracting parties?

Question 44: The government would welcome views on when the establishment of a business relationship should commence with a) the tenant and b) the landlord (in regards to lettings activity).

Question 45: Should estate agency businesses apply CDD to both contracting parties in a transaction in which they act as intermediaries? Please explain your reasons and provide credible, cogent and open-source evidence where possible.

Question 46: Should sub-agents be able to rely on principal estate agents (see 7.16)? Please explain your reasons and provide credible, cogent and open-source evidence where possible.

Question 47: How much does it cost your business to apply CDD checks and what would the cost be if you were to apply them to both contracting parties in a transaction?

Chapter 8 – Correspondent banking relationships

These questions are not relevant to the remit of the Bar Standards Board.

Question 48: What impact will implementing the definition of correspondent banking have on your firm's policies and procedures? What impact do you estimate these changes will have?

Question 49: Is there any further information that could be provided to ensure the adoption of a risk-based approach when applying enhanced due diligence to correspondent relationships?

Chapter 9 – Politically exposed persons (PEPs)

Question 50: How do you differentiate between risk management systems and risk-based procedures?

Rule rC89.8 and rC94.11 of the BSB Handbook says that barristers and BSB authorised bodies must take reasonable steps to ensure that appropriate risk management procedures are in place in chambers/the authorised body and are being complied with.

Guidance on this is available in the Supervision strategy: https://www.barstandardsboard.org.uk/media/1617759/supervision_strategy_and_guidance_for_website.pdf Supervision review whether there are appropriate governance arrangements and policies in place, and whether they are underpinned by documented procedures and training, so that barristers and staff in chambers/authorised bodies understand what they need to do to comply with the regulations.

As noted in question 21, the vast majority of barristers are self-employed and therefore have personal responsibility for compliance. Whilst some chambers have collective business plans, hold specialist practice review meetings to decide where marketing efforts will be focussed, and use management committees to review areas of risk, the specific requirement in the Directive to obtain senior management approval to establish or continue a business relationship will not be relevant.

Question 51: Under the terms of the directive, all PEPs are considered to be high risk. However, obliged entities may use a risk-based approach to both the identification of a PEP and the depth of EDD measures that are applied to them. What risk factors do you think are relevant when deciding how to identify a PEP and adapt EDD measures to them? Would more clarity in guidance be helpful to avoid the disproportionate application of EDD measures to low-risk groups and their families?

Whilst guidance would be helpful, so that we all have a shared understanding of where efforts should be focussed, risk levels identified in such guidance may change over the lifetime of regulations. As a regulator, it is more important to work flexibly with the law enforcement agencies in order to have a shared view of the areas of high risk that are currently being targeted by criminals, rather than to work from a checklist that is fixed at a particular point in time.

Question 52: The directive specifically applies to members of parliament or of similar legislative bodies and to members of the governing bodies of political parties. In the UK the Electoral Commission maintains two registers of political parties: one for Great Britain and a separate register for Northern Ireland. There are over 400 registered political parties, of which the vast majority are very small. Should there be some form of criteria or some examples set out in guidance of the political parties to which this applies, e.g. those having elected members of Parliament, the European Parliament, or the devolved legislatures? If so, what is the reasoning behind the use of these particular criteria or examples? Would guidance on this issue assist and, if so, what should the guidance include to provide clarity?

Risk-based guidance from HM Treasury would be particularly helpful for smaller chambers and sole practitioners accepting public access instructions (i.e. directly from members of the public without the involvement of a solicitor or other obliged entity) who are less likely to have access to subscription databases in order to identify PEPs, so that efforts are appropriately targeted and proportionate.

Question 53: How will the express inclusion of members of parliament or of similar legislative bodies and members of the governing bodies of political parties interact with the existing rules and regulations for political parties and elected representatives, in particular the Political Parties, Elections and Referendums Act 2000, and what steps should be taken to avoid duplicating these existing regimes?

Regulated transactions in the Political Parties, Elections and Referendums Act 2000 comprise granting of loans and credit facilities, which is unlikely to involve barristers directly.

Question 54: Does the extent of EDD on the family members of PEPs and individuals who are known to be close associates of PEPs correspond with the measures that are appropriate for the PEP themselves? Which risk factors do you think are relevant?

For barristers, the focus will be on understanding the business reason (whether it is bona fide) for the transaction/instruction, the source of funds and the ultimate beneficial owner.

Question 55: How much does it cost to identify and apply EDD checks to PEPs? Please provide evidence to support your response.

We have not collected data to identify the costs. Access to databases to check whether a customer is a PEP, a family member or a close associate need to be cost effective for small chambers/BSB authorised bodies and sole practitioners, to prevent loss of access to justice, which is reflected in the regulatory objectives under the Legal Services Act: http://www.legalservicesboard.org.uk/about_us/

Question 56: Is the guidance sufficiently clear about how EDD should be applied to PEPs, their family members and their known close associates? If not, what should the guidance include to provide clarity? With regard to financial institutions, are there specific changes that could be made to the Financial Crime Guide or the JMLSG guidance to clarify the treatment of PEPs? What specific changes could be made to the guidance in other regulated sectors?

Guidance, case studies and information from law enforcement agencies about current areas of high risk, are all essential in order to maintain a proportionate approach to compliance and to ensure that practitioners are not penalised where they fail to identify a family member or close associate, or fail to apply sufficient EDD.

Question 57: The Financial Ombudsman Service has statutory powers to consider complaints from PEPs, their family members and their known close associates against financial service providers. Can this provide sufficient access to redress for PEPs? The government would be particularly interested to hear about cases where a PEP was treated unreasonably, where a PEP was refused a business relationship solely because they were identified as a PEP or where an individual was incorrectly classified as a PEP.

Note that the Legal Ombudsman accepts complaints from customers of legal service providers: http://www.legalombudsman.org.uk/helping-the-public/

Question 58: Should the government explicitly include senior members of international sporting federations as a category of PEPs, along with their family members and known to be close associates? How many senior members (in line with the definition of senior management in Article 3(12) of the directive) of international sporting federations would you deal with, along with their family members and known to be close associates? Please provide a source for your estimation if this is not data that you already hold.
Question 59: How would you define an international sporting federation?

Article 3(9)(h) of the Directive refers to international organisations in the context of PEPs. As a regulator, it is more important to work with the law enforcement agencies in order to have a shared view of the areas of high risk that are currently being targeted by criminals, rather than to work from a checklist that is fixed at a particular point in time.

Chapter 10 – Beneficial ownership of legal entities

Question 60: The government welcomes any views on the issues highlighted in Chapter 10 and the PSC regime in itself.

The regime relies on the accuracy of information on the register at Companies House. If the services of a Trust or Company Service Provider have been used, due diligence procedures will be carried out. If an applicant registers with Companies House directly, it is not clear that equivalent due diligence procedures are carried out. Furthermore, as a regulator, it can be difficult to report any concerns to Companies House. This appears to create a vulnerability in the ML/TF controls as a whole, not just in relation to beneficial ownership.

In order for obliged entities to rely on information held on the register, it needs to be updated when ownership changes. The costs of updating the register therefore need to be proportionate for small companies.

Chapter 10 - Requirements for trustees

We have no comment on the following questions.

Question 61: How often should a trustee be required to update the beneficial ownership information that they hold?

Question 62: What other arrangements should the government consider as having a structure that is similar to express trusts?

Question 63: What other arrangements should the government not consider as having a structure that is similar to express trusts?

Question 64: Are there any further considerations that the government should take account of when developing the central register of trust beneficial ownership information?

Chapter 10 – Trust beneficial ownership

Question 65: The government welcomes your views on the approach to beneficial ownership information as set out above.

This approach appears to be the most practical.

Chapter 10 – One-off company formation

Question 66: The government welcomes your views on clarifying, through appropriate guidance, that a one-off company set up is a business relationship that has an element of duration.

Please refer to our response to question 60.

Chapter 11 – Data protection

Question 67: The government would welcome your views on retaining documents necessary for the prevention of ML/TF for the additional 5 years. What do you think the advantages and disadvantages are of doing so?

We have no information from law enforcement agencies as to how often there is a need to extend the retention of records to 10 years. Retention would need to comply with the Data Protection Act.

As noted in question 21, in most cases the onus (and consequent costs) would fall on individual barristers. The costs of storage would in particular need to be proportionate for sole practitioners who practise from home.

Chapter 12 – Supervision of regulated sectors

Question 68: Do you think that where registration is a requirement, the supervisor should be given an express power to refuse to register or to cancel an existing registration?

For clarity, registration and revocation processes are already in place in relation to barristers and BSB authorised bodies, and are described below; no further powers are needed:

1. Unregistered barristers:
   A person who has successfully completed the Bar Professional Training Course is “Called to the Bar” and can provide any legal services that are not reserved legal activities. There is no restriction on referring to yourself as a barrister if it is not in connection with the supply of legal services. It should be noted that unregistered barristers are “Called to the Bar” by the Inns of Court not by the Bar Standards Board. They, and not the BSB, are responsible for carrying out checks on barristers prior to Call, although barristers have a Duty to Report certain matters to the BSB under rC65 of the BSB Handbook, including being charged with an indictable offence, a criminal conviction and disciplinary action by another regulator:

https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/ . Further information about unregistered barristers is available on our website:
https://www.barstandardsboard.org.uk/media/1731668/guidance_for_unregistered_barristers___holding_out.pdf

2. Practising barristers:
A person practises as a barrister if either they hold themselves out as a barrister or exercise a right that they have by reason of being a barrister, in connection with the supply of legal services. A practising certificate is required to practise as a barrister. In order to become qualified to take up a practising certificate as a barrister, and so become a practising barrister, a person must complete (or be exempted from) the Professional Stage of training (pupillage). They are then placed on the register of practising barristers by the BSB.

   The Enforcement Regulations set out in Part 5 of the BSB Handbook https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/ cover the powers of the BSB's Professional Conduct Committee to consider external complaints or complaints raised on behalf of the BSB and whether they amount to a potential breach of the BSB Handbook or a potential case of professional misconduct. The PCC has the power to bring and prosecute charges of professional misconduct, which can result in suspension or disbarment/revocation upon a finding against those we regulate, or make an application for disqualification of employees before Disciplinary Tribunals. This applies to both unregistered and practising barristers. After we have investigated a complaint, if the matter is serious enough we may pass the case on to the Bar Tribunals and Adjudication Service (BTAS). BTAS is an independent organisation that arranges the disciplinary tribunals. Sentencing guidance is available here: http://www.tbtas.org.uk/wp-content/uploads/2014/06/Sentencing-Guidance-2014.pdf

3. BSB authorised bodies:
The Entity Regulation Policy Statement https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf sets out the factors that the BSB will consider to determine whether an entity is appropriate to be regulated. Should the entity fall outside the policy (taken holistically and on a case-by-case basis) authorisation will be refused. On authorisation by the BSB, all entities are issued with a letter outlining the conditions and terms of authorisation, including compliance with the Handbook.

   Part 3 of the BSB Handbook covers the revocation or suspension of authorisation under rS113 and rS117, which includes suspected dishonesty of any manager or employee, or other public interest. The BSB may revoke an authorisation granted to an entity (rS117 of the BSB Handbook):
   - In the event that they no longer comply with the mandatory requirements as set out at in rules rS83 and rS84 of the BSB Handbook;
   - if its circumstances have changed in relation to the issues considered by the BSB;
   - if revocation appears appropriate, taking into account the Regulatory Objectives of the BSB; or
   - where the conditions in rS113.5 of the Handbook are met.

   The BSB may also suspend an authorisation granted to an entity to investigate whether or not an authorisation should be revoked (rS117.2 of the BSB Handbook).

In addition, the same powers following investigation and prosecution of any complaints against authorised bodies, as set out above, are available.

In March 2016, the Legal Services Board approved the BSB's application to be designated a licensing authority under Part 5 of the Legal Services Act. Should Parliament approve the designation, the BSB will be able to license Alternative Business Structures ("ABS"), also known as licensed bodies, which include non-lawyer managers and owners. At the same time, the BSB will also acquire statutory powers of intervention in relation to these bodies. These powers are set out at Schedule 14 to the Legal Services Act. The BSB is seeking similar powers of intervention in relation to other authorised persons (both barristers and entities) through an order under section 69 of the Legal Services Act.

Question 69: The government welcomes views on the reasons for a supervisor to refuse a registration or to cancel an existing registration. Are there any other reasons you think should be captured? Do you foresee any problems with the conditions identified?

Please refer to question 71.

Question 70: The government welcomes views on whether a supervisor should have the power to add conditions to a registration or whether they should have the power to suspend an existing registration.

The Enforcement Regulations allow for the imposition of conditions to a practising certificate, for example prohibition from accepting public access instructions directly from lay clients.

The Entity Application and Authorisation rules allow for the imposition of conditions on BSB bodies (rule rS112.2). See also question 71.

Question 71: The government welcomes views on the test that should be applied by a supervisor when seeking to refuse to register, cancel an existing registration, add conditions to a registration or suspend an existing registration (see 12.8).

Refer to question 68. In addition, note that tribunals must apply a criminal standard of proof for disqualification decisions (rule rE143 of the BSB Handbook): https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/

Question 72: Where there is more than one supervisor, we welcome views on preventing the resubmission of an application for registration with another supervisor.

Under rule rC65 of the BSB Handbook: https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/ barristers have a Duty to Report to the BSB under a number of circumstances, including disciplinary action by another approved regulator.

During the entity application process, applicants are asked whether they have been subject to another regulator previously.

We have Memoranda of Understanding in place with some other regulators, enabling us to share information in the public interest where it is appropriate to do so.

Note that levels of risk may not be directly comparable. For example, barristers are not permitted to hold client money, so a person considered unsuitable to practise as a solicitor may not necessarily be considered unsuitable to practise advocacy as a barrister.

Chapter 12 – Fit and proper test

Question 73: Do you agree with the government's approach to a "person who holds a management function" in paragraph 12.13 - namely those who make decisions about a significant part of the entity's activities or the actual managing or organising of a significant part of those activities? Do you think it will encompass all individuals that should be subject to a fit and proper test?

This question concerns currency exchange and cheque cashing offices and trust or company service providers and is not relevant to the remit of the Bar Standards Board.

Chapter 12 - Extending fit and proper test to the Money Service Business (MSB) sector

Question 74: Should the government extend the fit and proper test to agents of MSB's? Please explain your response and provide credible, cogent and open-source evidence where possible.

This question is not relevant to the remit of the Bar Standards Board.

Chapter 12 – Criminality test

Question 75: What are your views on the meaning of "criminals convicted in relevant areas"?

BTAS sentencing guidance already addresses the issue of criminal convictions (not just those in areas relevant to the Directive) http://www.tbtas.org.uk/wp-content/uploads/2014/06/Sentencing-Guidance-2014.pdf:

- Any dishonesty on the part of a member of the Bar, in whatever circumstances it may occur, is a matter of great seriousness. It damages the reputation of the profession as a whole, quite apart from its effect on the reputation of the individual barrister. Dishonesty is incompatible with the duties placed on barristers to safeguard the interests of their clients and their overriding duty to the court. Public interest requires, and the general public expects, that members of the Bar are completely honest and are of the highest integrity. Therefore, in cases where it has been proved that a barrister has been dishonest, even where no criminal offence has been committed, disbarment will almost always have to be considered.
- In general, a criminal conviction is a serious matter for barristers given their role in the administration of justice and the need to maintain public confidence in the profession.
- Dishonesty is not compatible with practice in a profession which requires exceptional levels of integrity. The general starting point should be disbarment unless there are clear mitigating factors that indicate that such a sanction is not warranted.

These guidelines are not intended to be exhaustive and apply to the most common types of cases that are brought before the tribunal. For convictions which do not relate to dishonesty, generally a starting point of disbarment will apply where the conviction results in a custodial sentence.

Whilst the Directive refers to preventing criminals convicted in relevant areas from "holding a management function or being the beneficial owner of an obliged entity", as set out in question 21, most barristers are self-employed. Notwithstanding this, where an employee contributes to a breach by a relevant person (including a BSB authorised body) then they can be disqualified from working in legal practice. This could arise from relevant criminal convictions.

Refer to question 22 for the fit and proper person tests for authorisation of BSB bodies. In the entity application process, applicants are asked to declare a criminal conviction.

Question 76: What are your views on the meaning of "associates"?

We understand this to mean persons associated with the criminal activity rather than the wider definition of associates used in Article 3 of the Directive.

Question 77: Do you agree the criminality test should be extended to High Value Dealers?

This question does not fall within the remit of the Bar Standards Board.

Question 78: What are your views on spent convictions and cautions being taken into account for those new sectors in paragraph 12.18, in particular estate agents, lettings agents, accountants, and if there is to be an extension, HVD's? How would the disclosure of spent convictions and cautions maintain public protection and mitigate risks to the public?

Rule rS110.3 and guidance GS21.1 in the BSB Handbook says that the BSB may reject an application for authorisation of a BSB body if it is not satisfied that an individual meets the HOLP or HOFA suitability requirement. This may include where an individual has been committed to prison in civil or criminal proceedings where any conviction is unspent within the Rehabilitation of Offenders Act 1974 (as amended). Disclosure is not required for spent convictions unless the Exceptions Order applies.

Question 79: Are there any specific offences you consider relevant in relation to the risk of money laundering and terrorist financing?

The Bar Council guidance refers to the Proceeds of Crime Act 2002, The Terrorism Act 2000 and the Money Laundering Regulations: http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/money-laundering-and-terrorist-financing/

Question 80: Should the government extend the criminality test to other entities covered by the directive? Please provide credible, cogent and open-source evidence to support your response.

As outlined in questions 68 and 75 above, the Duty to Report requirement, the Enforcement Regulations in the BSB Handbook, the BTAS Guidance and the entity application process already address criminality (not just in relation to areas relevant to the Directive). Any additional requirements should be based on risk prioritisation, taking into consideration that the Directive does not apply to all work in the Bar; as not all barristers practise in areas to which the Directive applies, it could be a complex administrative process to define to which persons an additional test would apply.

Question 81: Do you think that a transitional period is needed to complete the criminality tests?

A transitional period would be needed if requirements were different from those already in place.

Question 82: Do you think a transitional period of two years affords sufficient time to complete the criminality test on the appropriate existing persons who are already on the supervisors' registers?

This would depend on the requirements, as explained above.

Question 83: What are the expected transitioning and ongoing costs in your sector/business for applying a criminality test?

This would depend on the requirements, as explained above.

Chapter 13 – Administrative sanctions

Question 84: What are your views on there being no upper limit on the imposition of an administrative pecuniary sanction?

We use the term "administrative sanction" in relation to low to medium risk issues that are dealt with by the BSB rather than determined by a disciplinary tribunal. The power to impose an administrative sanction lies with the BSB's Professional Conduct Committee (PCC). However, staff within the BSB's Professional Conduct Department are authorised by the PCC to take decisions to impose administrative sanctions. In most cases the decision will be taken by authorised senior staff in the PCD. Further information is available here: https://www.barstandardsboard.org.uk/media/1590719/150330_-_administrative_sanctions_-_imposing_warnings_and_fines_-_leaflet___colour_-_version_2_-_final.pdf
Administrative sanctions are not published because they are not regarded as disciplinary findings.

Available sanctions for barristers and BSB authorised bodies through the tribunals are set out here: http://www.tbtas.org.uk/wp-content/uploads/2014/06/Sentencing-Guidance-2014.pdf

The Legal Services Act and the Regulators' Code requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted.

Question 85: Should the government consider whether additional sanctions and measures should be made available to those set out in 13.4 and 13.5?

Refer to question 84.

Chapter 13 – Breaches of the Fund Transfer Regulations (FTR)

Question 86: Do you agree that power to determine the measures and level of administrative sanctions related to breaches of the FTR should remain with the relevant supervisory authority?

This question does not fall within the remit of the BSB.

Chapter 13 – Further views

Question 87: Do have any further views not specifically requested through a question in this consultation that would help the UK provide effective protection for the financial system? Please provide credible, cogent and open-source evidence to support your views, where appropriate.

The BSB, the Legal Services Board and the Ministry of Justice place emphasis on outcomes-based regulation. As noted in a number of questions, we will be most effective and proportionate if we are able to assess and respond to our sector-specific risks flexibility.