



## **Bar Council response to the HM Treasury's (HMT) Consultation on Improving the effectiveness of the Money Laundering Regulations**

- 1) This is the response of the General Council of the Bar of England and Wales ("the Bar Council") to HM Treasury's Consultation entitled "Improving the effectiveness of the Money Laundering Regulations" (the "Consultation").
- 2) The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
- 3) A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented people from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board ("BSB").

### **Introduction**

- 4) The Bar Council welcomes the opportunity to provide responses to the questions raised in HM Treasury's Consultation.
- 5) As noted in the Ministerial Foreword to the Consultation at p.6 and the Executive Summary, a key principle in the UK's anti-money laundering and counter-terrorist financing legislative response is proportionality, with the Ministerial Foreword also rightly recognising the need to minimise regulatory burden so as to make regulation a last resort and not a first choice.
- 6) In order to contextualise the response of the Bar Council below, it is necessary to emphasise the large majority of self-employed barristers and advocates do not

undertake work that falls within the scope of regulated business for independent legal professionals as defined by regulations 3(1) and 12(1) of the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (as amended) (“the Regulations”). The work of barristers and advocates generally consists of advising on and conducting contentious litigation and thus falls outside the regulated sector.

7) Unlike solicitors, self-employed barristers and advocates rarely become involved directly in any transactional work and they are not permitted to receive, control or handle client money. Barristers and advocates do not, and are not permitted to, administer client accounts. They are only entitled to be paid for their services. As per self-employed barristers, the very small number of BSB regulated entities are not permitted to handle client money.

8) The AML/CTF risk associated with barristers and advocates has been consistently found to be “low”, see the HM Treasury and Home Office joint UK National Risk Assessments 2017 & 2020.<sup>1</sup>

9) The risk profile of barristers and advocates is entirely different from that of solicitors and other legal professionals who engage in the high-risk activities such as executing transactions, conducting conveyancing and offering client account services from which barristers and advocates are barred.

10) A few barristers in some specialist fields are involved in non-litigation work that might fall within the ‘regulated sector’ (e.g. tax barristers and chancery barristers involved in advising on trust documentation), but they are generally instructed by other professionals (usually solicitors) who will deal with the lay client and who will therefore have addressed any AML/CTF issues prior to counsel being instructed.

11) Having regard to the above, there are a substantial number of areas within the Consultation which do not apply to barristers. In respect of these areas the Bar Council does not consider an informed response can be provided. That said, the overarching position of the Bar Council in respect of the question of reform of the Regulations generally, is that wherever possible regulations should not obtrude unless it is necessary and proportionate for them to do so. As such, where the areas being

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<sup>1</sup> *National Risk Assessment of Money Laundering and Terrorist Financing 2017*: “In Scotland and Northern Ireland barristers and advocates are barred from direct public engagement, while barristers in England and Wales can only engage directly with the public following a strict authorisation process. Barristers in each jurisdiction are prohibited from executing transactions, conducting conveyancing and offering client account services. These factors are also judged to mitigate the risks involved.” (§74 & Footnote 2).

The 2020 *National Risk Assessment* found that there was “no evidence to suggest that the level of risk has changed since the last NRA.” (§10.14).

consulted upon do not apply to barristers, the Bar Council's position is that this should continue to be the case having regard to the nature of barristers' work and their correspondingly low risk profile.

## **CHAPTER 1: Customer Due Diligence**

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

12) To the extent that the customer due diligence triggers apply to barristers, the Bar Council considers that they are currently sufficiently clear.

### **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?**

13) Whilst the Bar Council believes that it would help to have more context on when it would be "necessary" to examine the source of funds, it does not think that scenarios should be included within Regulation 28(11)(a) or otherwise be introduced by amending the law. Such an approach runs the risk of suggesting that the specific scenarios are comprehensive, with legislative drafting unable to achieve this. The scenarios are also likely to become anachronistic unless regularly updated, and changing the law repeatedly for this purpose will both create uncertainty and impose a disproportionate burden in terms of keeping up to date.

14) The Bar Council therefore considers that, whilst some assistance could be given with definitions, the current approach should be maintained whereby illustrative scenarios are provided within sector-specific guidance (which, in the case of barristers, consists of Parts 1 and 2a of the Legal Sector Affinity Group Anti-Money Laundering Guidance for the Legal Sector (the "LSAG AML Guidance").

## **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?**

15) The Bar Council considers that the wording is sufficiently clear, and does not consider that Regulation 28(10) as drafted should create undue difficulty in the context of corporate customers. As explained at §6.6 and §6.14.9 and of Part 1 of the LSAG AML Guidance, questions of actual and apparent authority can readily be appraised on a risk sensitive basis, with instructions emanating from a senior employee or director of a company unlikely to be a matter of concern without more (and in any event can be verified with the entity in question).

## 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.

**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?

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

16) Having regard to the limited extent to which barristers are obliged to take steps in relation to Regulation 28, digital identity verification is not a widespread issue for barristers. Those barristers that do make use of digital identity verification services have not reported them giving rise to compliance issues or any inadequacy in the published guidance. In these circumstances, the Bar Council has no particular stance on Q4 and Q6 and is not in a position to give an answer to Q5 that reflects the view of the profession as a whole.

## 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?

**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?

17) These questions concern Regulation 30(4) which applies to credit or financial institutions verifying identity after an account has been opened. They are, accordingly, not matters of direct concern to barristers and the Bar Council does not consider that it can give an informed response to Q7 and Q8.

## 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?

18) The Bar Council is not able to give an informed answer to this question that would reflect the view of the profession as a whole.

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

19) The Bar Council has no direct evidence as to the degree to which the existence of life insurance (R.33(6)(a)(vii)); transactions associated with an application for residence rights (R.33(6)(a)(viii)); or transactions of the type set out in R.33(b)(vii) increase the risk of money laundering or terrorist financing (albeit that it is aware that these may be means by which money laundering and terrorist financing take place). Nor are these likely to be matters which barristers regularly have to take into account in the course of their work. The Bar Council accordingly does not consider that it is in a position to make an informed response as to the benefits and disbenefits of retaining these risk factors.

20) That said:

- a) The Bar Council would note that the mere existence of life insurance would seem to apply to a very broad range of persons without any conceivable link to money laundering or terrorist financing, and further notes that there is separate provision expressly addressing the steps that should be taken where a life insurance policy is in fact provided under Regulation 33(4A)-(4B);
- b) Conversely, there is likely to be a far lower incidence of persons being involved in transactions such as those stipulated by Regulation 33(6)(b)(vii) with the result that requiring such transactions to be taken into account is less likely to impose a disproportionate burden on those subject to the Regulations and more likely to identify customers where enhanced due diligence should be applied.

**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?**

21) While the same caveats as regards the lack of direct evidence and limited application to barristers set out in Q10 above apply, the Bar Council considers that the inclusion of "*new products and new business practices*" including new delivery mechanisms and the use of new or developing technologies as additional risk factors (R.33(6)(b)(v)) is overly broad and risks applying to a large array of entrepreneurial ventures where there is no connection of any sort with money laundering or terrorist financing. Accordingly, and unless there is a solid evidential case suggesting that this

is an area where there is a high prevalence of money laundering or terrorist financing, the Bar Council consider that this is not be a useful factor to include.

**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?**

22) The Bar Council has no suggestions in this regard.

**'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.**

23) The Bar Council has no direct experience of this, and cannot therefore give an informed answer.

**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?**

24) The Bar Council considers that additional guidance would be helpful having regard to the difficulties of interpretation referred to in the Consultation. However, in light of the correct observation at §1.58 that a transaction which may appear complex to an outsider is regarded as routine or straightforward to those within the industry, such guidance should be sector specific and should not be applied across the board. The Guidance should also reflect the response to Q15 below as regard the need for "complexity" and "value" to be appraised by reference to the particular transaction under consideration.

**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?**

25) The Bar Council considers that amending regulation 33(1)(f) from "*complex*" to "*unusually complex*" may not produce "*clarity of intent*", although it may serve to reduce concern about the provision by setting the bar higher for the assessment of

whether the transaction should attract enhanced due diligence in the first place. That would, however, potentially be counter-productive.

26) In the Bar Council's view the provision, in its original or proposed amended form, lacks clarity because it is not referable to the type of transaction under consideration. It would be more helpful to identify whether a transaction is unusually complex or unusually large for a transaction of its particular type (with any additional guidance reflecting this approach in a sector specific manner).

27) Further, it would be helpful to tether any assessment of complexity or size to an assessment of the *purpose* of the transaction. If the assessment was that, given the unusual complexity or unusually large size of the transaction, for a transaction of that particular type, that gave rise to a reasonable suspicion that it had no economic or lawful purpose and as such enhanced due diligence should be carried out.

### **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?**

28) Removing the mandatory list of checks at Regulation 33(3A) would reduce the current costs and time burdens by enabling regulated firms to take a risk-based approach, informed by the fact of the connection to a high-risk third country, but also informed by features specific to the client and transaction that reduce the risk posed.

29) Additionally, removing the mandatory list of checks might encourage regulated persons to take a holistic (rather than 'check-list') approach to risk assessment, and better target their compliance resources to transactions which do not have a connection to a high-risk third country but nonetheless pose money laundering risks due to other considerations.

30) Having regard to these considerations, in the Bar Council's view, it does not make much sense for the high-risk third country rules to impose a mandatory list of checks, but in language which does not specify mandatory content of items on the list. For example, there is a requirement to "obtain additional information" about the customer, their beneficial owner, and the intended nature of the business relationship, but precisely what information should be obtained is not specified. That seems to reflect the fact that a regulated person's compliance with the high-risk third country rules will necessarily be fact sensitive and risk-based. Removing the mandatory list of checks would be consistent with that position.

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

31) There is the potential of inconsistency in approach and outcome, insofar as different regulated firms choose not to adopt particular checks. However, the Regulations envisage that a correct approach to the obligations under the Regulations may result in differing, but compliant, decisions as to the appropriate checks for a particular client and a particular transaction. That reflects the fact that a regulated person's compliance with the high-risk third country rules will necessarily be fact sensitive and risk-based. The same potential for differing outcomes is to some extent inevitable in circumstances where the mandatory list of checks applies, but it is left to the regulated person to determine precisely what "additional information" about the customer, their beneficial owner, and the intended nature of the business relationship should be obtained.

**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.**

**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?**

32) The Bar Council is not in a position to provide profession-representative answers in relation to particular customers or transactions.

**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?**

33) The Bar Council considers that broadening of SDD in the five situations given as examples in paragraph 1.77 of the consultation would be sensible. Given that regulated firms will likely not, for example, be in a position to verify the precise contents of equivalent legislation overseas, we consider that it should be sufficient that the regulated firm believes in good faith that a particular factor is established.

**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?**



**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?**

**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?**

**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?**

34) The Bar Council does not consider that it can give informed answers to Questions 21 to 25. This is because barristers are, by their rules of professional conduct, barred from operating any form of client account, pooled or otherwise.

## **CHAPTER 2: 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?**

35) The Bar Council is not in a position to provide an informed response to this question and therefore takes a neutral stance in relation to it.

**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.**

36) If improved co-ordination helps root out bad actors then it should be permitted and encouraged. However, as the Bar Council is not in a position to provide an informed response to this question, it takes a neutral stance in relation to it.

**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?**

37) The Bar Council is not in a position to provide an informed response to this question and therefore takes a neutral stance in relation to it.

## 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?**

38) The Bar Council takes a neutral stance in relation to this question.

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

39) The Bar Council has no observations to make in respect of this question.

**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.**

40) In our view, supervisors would be likely to require additional resources to adequately and effectively adapt their systems and procedures.

## 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?**

41) In our view, the requirements are clearly codified in the Regulations, which are widely publicised and well understood.

**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?**

42) In our view, this is sufficiently codified in the Regulations. For example:

- a) Regulation 17(1) provides for risk assessment by supervisory authorities and obliges them to take into account any report prepared by the Treasury and the Home Office under Regulation 16;
- b) Regulation 17(9) provides that if information from the risk assessment carried out under paragraph (1), or from information provided to the supervisory authority by the Treasury or Home Office pursuant to Regulation 16(8), would assist relevant persons in carrying out their own money laundering and

terrorist financing risk assessment, the supervisory authority must, where appropriate, make that information available to those persons; and

- c) Regulation 18(1) provides for risk assessments by relevant persons and Regulation 18(2) requires them to take into account information provided by the supervisory authority under regulation 17(9).

**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?**

43) The Bar Council observes that, in relation to the NRA, at §2.18 of the Consultation, it is stated that it is the “stocktake of the UK’s collective knowledge of money laundering and terrorist financing (now including proliferation financing) risks” and was the third such document produced on a previous three-year cycle.

44) We further observe that the NRA is currently specifically interpreted by the Bar Standards Board, as the profession’s Professional Body Supervisor (PBS), for the LSPs it regulates<sup>2</sup> and underpinned by the current LSAG edition of the Part 2a Guidance Document, plus addendums.<sup>3</sup>

45) As a result, in our view, there would be neither a major impact upon, nor would it be likely to change, the processes undertaken by either the PBS, individual Barristers or Chambers, in their interpretation or application of the Regulations.

46) However, if the NRA is the ‘stocktake’ document, then it is our view that it should be produced on a regular and frequent cycle, ideally no longer than every other year with interim annual updates, where required.

### **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?**

47) The Bar Council’s response to Q.34 notes that the NRA is considered to provide a stocktake (Consultation §2.18) and observes that it has a significant role as a foundation document.

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<sup>2</sup> BSB Website, 29 March 2023, <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/anti-money-laundering-counter-terrorist-financing/money-laundering-risk-assessment.html>

<sup>3</sup> [lsag-anti-money-laundering-guidance-part-2a-barristers-treasury-approved-2022.pdf](#)

48) The Bar Council observes that system prioritisation, as set out in §2.23 to 2.26 of the Consultation, intends to ‘drill down’ from the NRA to establish agreed priorities to harness AML efforts to maximise impact at all levels – both PBSs and LSPs.

49) The proposed drilling down process is important to the Bar. The NRA references an ‘intelligence gap’ in relation to the services provided by barristers (NRA 2020 at §10.14), but any such gap is required to be understood in the context of the contentious and advocacy based legal services provided by the Bar not falling within the scope of the Regulations. Further work should promote a greater understanding of the nature of the services provided by barristers in private practice and therefore a more informed risk appreciation.

50) As a result, our view is that the NRA and system prioritisation should work in tandem but if the NRA is not updated regularly, then system prioritisation itself must assume the regular ‘stocktake’ role provided by the NRA and practitioners will have to give priority to their own risk assessments.

### **CHAPTER 3: Providing clarity on scope and registration issues**

#### **Currency Thresholds**

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

51) The Bar Council is neutral in relation to this question although it would observe that it is not aware of an appreciable administrative burden to its members should references to euros be replaced by pounds sterling (“Sterling”).

**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.**

52) The Bar Council is not in a position to provide an informed response to this question and therefore takes a neutral stance in relation to it.

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

53) The Regulations contain 20 thresholds denominated in Euros (€) rather than Sterling (8 for €10,000; 5 for €1,000; 2 for each of €2,000, €150, and €50; and 1 for €15,000).

54) If the Government is committed to expressing the thresholds in Sterling, then the UK can best comply with threshold requirements set by the FATF by ensuring that

the new thresholds expressed in Sterling do not fall below the thresholds set by the FATF. As to how this can be achieved, please see the answer to Question 39 below.

**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?**

55) The Bar Council considers that Option B (converting the references to Euros into Sterling using an average exchange rate and rounding down) is the better course of action for three reasons.

56) Although this lowers some of the thresholds, it is preferable to Option A, which would have the effect, via the raising of some of the thresholds, of the UK not complying with the FATF requirements.

57) The lowering of thresholds caused by Option B would not be a significant concern as FATF thresholds are single numbers expressed in both US Dollars (US\$) and Euros and the revised Sterling thresholds would be higher than the FATF US\$ thresholds. The consultation gives the example of a threshold set at €10,000 being converted to £8,666 and then rounded down to £8,000. That is approximately €9,391, i.e. c. €600 under the FATF Euro threshold. However, it is also about US\$10,174, so about US\$ 174 above the FATF US\$ threshold.

58) Finally, using an average exchange rate would minimise the need for future changes to ensure alignment, whereas Option A would require more frequent changes.

**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.**

59) The Bar Council is not in a position to provide an informed response to this question.

#### **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?**

60) The Bar Council takes the view that the proposed changes to Regulation 12(2)(a) and (b) of the Regulations will be unlikely, in reality, to affect and/or impact

many of its Barrister practitioners because there will be only a small number who offer TCSP services in addition to their services as members of the Bar of England & Wales.

61) The Bar Council considers that there is a wider, non-barrister specific, risk that an aspect of the services TCSPs offer could be used to make transactions and the ownership or control of property more complicated, thus increasing anonymity. That in turn could lead to making the source of funds used in a transaction more difficult to identify and/or verify.

62) In those circumstances the Bar Council sees merit in efforts to remove potential layers of unnecessary complexity or anonymity. A requirement to perform CDD and the further checks required by the Regulations to customers and agents acting on behalf of a customer of a trust or company formation agent could assist in providing scrutiny of those involved in such processes in a transaction chain. In that respect, the Bar Council observes that the proposals are in line with the objectives and purposes of the Regulations and the UK's anti-money laundering and counter-terrorist financing laws.

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

63) It is likely that the proposed changes (if implemented) will increase the detail of record-keeping required by TCSPs.

64) If the definition is extended in Regulation 12(2)(a) and (b) as proposed, the Bar Council's view is that it is likely to increase the number of factors that TCSPs are required to consider when assessing the AML/CTF risks in their practices and the work they undertake for their clients.

65) It is likely that firm-wide systems will also need to be updated to reflect the potential change in the Regulations and accommodate any mandatory checks required to be undertaken with respect to the further information about additional persons acting in a transaction such as a company purchase.

**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.**

66) The Bar Council's view is that, as proposed, the amendment would have a limited impact on a small number of practitioners.

## 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.

**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.

**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.

**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.

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

67) The Bar Council is not in a position to give an informed answer to questions 44-48.

## 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.

**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.

**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.

**Scottish survivorship destination trusts**

**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.

***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.**

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

**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?**

68) The Bar Council is not in a position to give an informed answer to questions Q49-55.

**Bar Council  
5<sup>th</sup> June 2024**

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