**CONSULTATION ON THE FOURTH MONEY LAUNDERING DIRECTIVE**

Members can use this template to respond to the consultation. The questions are listed towards the end of the document. Please copy the question(s) to which you wish to respond into the template table on page 2 and type in your response. Then copy the template table for each additional question you are responding to.

Direct responses to the consultation should be submitted by 11.45pm on 10th November 2016.  Responses can be emailed to [**aml@hmtreasury.gsi.gov.uk**](mailto:aml@hmtreasury.gsi.gov.uk) or to the postal address provided [on the consultation](https://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive).

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| **FROM**  **(Insert Firm Name)** |  |
| **FIRM CONTACT POINT**  **(Insert name, title, contact email etc)** |  |
| **GENERAL COMMENTS (IF ANY)** |  |

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| **Insert Chapter Title** |
| **Insert Question Number** |
| **Insert Response** |

**Full List of Consultation Questions**

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| **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. |
| 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 |
| **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? |
| 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. |
| 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. |
| 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. |
| **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? |
| **Chapter 4 – pooled client accounts** |
| 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. |
| **Chapter 4 – simplified due diligence (SDD)** |
| 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. |
| **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. |
| 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? |
| 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? |
| 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. |
| **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. |
| Question 18: What are you views on the meaning of ‘federation’? Please provide evidence in support of your answer. |
| 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? |
| 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. |
| **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? |
| Question 22: What should be taken into account when screening an employee? |
| 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? |
| Question 24: What do you think constitutes an “independent audit function”? |
| 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? |
| **Chapter 5 - gambling providers** |
| 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** |
| 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** |
| 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). |
| **Chapter 7 – due diligence and intermediaries** |
| 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** |
| 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? |
| 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? |
| 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? |
| 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? |
| 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? |
| Question 55: How much does it cost to identify and apply EDD checks to PEPs? Please provide evidence to support your response. |
| 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? |
| 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. |
| 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? |
| **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. |
| **Chapter 10 - requirements for trustees** |
| 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. |
| **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. |
| **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? |
| **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? |
| 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? |
| 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. |
| 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). |
| Question 72: Where there is more than one supervisor, we welcome views on preventing the resubmission of an application for registration with another supervisor. |
| **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? |
| 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. |
| **Chapter 12 - criminality test** |
| Question 75: What are your views on the meaning of “criminals convicted in relevant areas”? |
| Question 76: What are your views on the meaning of “associates”? |
| Question 77: Do you agree the criminality test should be extended to High Value Dealers? |
| 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? |
| Question 79: Are there any specific offences you consider relevant in relation to the risk of 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. |
| Question 81: Do you think that a transitional period is needed to complete the criminality tests? |
| 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? |
| Question 83: What are the expected transitioning and ongoing costs in your sector/business for applying a criminality test? |
| **Chapter 13 – administrative sanctions** |
| Question 84: What are your views on there being no upper limit on the imposition of an administrative pecuniary sanction? |
| Question 85: Should the government consider whether additional sanctions and measures should be made available to those set out in 14.4 and 14.5? |
| 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? |
| **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. |