



HM Treasury

Email only – [Anti-MoneyLaunderingBranch@hmtreasury.gov.uk](mailto:Anti-MoneyLaunderingBranch@hmtreasury.gov.uk)

11 October 2021

Dear Sir / Madam,

**AMENDMENTS TO THE MONEY LAUNDERING, TERRORIST FINANCING AND TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS 2017 STATUTORY INSTRUMENT 2022**

**CONSULTATION RESPONSE FROM INSOLVENCY AND RESTRUCTURING TRADE BODY R3**

**1. INTRODUCTION**

- 1.1 R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices.
- 1.2 The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet. Our members have direct experience of insolvencies and their impact on the UK economy and insolvent companies' stakeholders.
- 1.3 This response has been prepared by R3 in collaboration with members of its General Technical Committee and we thank them for their input. The committee deals with issues of general importance and significance to the profession in the United Kingdom, keeping under review all UK and EU legislation, prospective and other matters relating to insolvency law. The Committee is multi-disciplinary and is made up of representatives from across the insolvency and restructuring profession, including practising insolvency practitioners, lawyers, solicitors, academics, and others.
- 1.4 If you would like to virtually meet or if you have any other queries, please contact R3's Head of Technical, Ben Luxford, at [ben.luxford@r3.org.uk](mailto:ben.luxford@r3.org.uk) or on 020 7566 4218.

**2. RESPONSE**

**Box 3.A: Suspicious Activity Reports**

- 2.1** 13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

We have not seen anything to suggest that is the case, however, we recommend it is kept under review.

- 2.2** 14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

Yes, on the basis of present information.

- 2.3 15. In your view, would allowing AML CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why?

There are currently four Regulatory Professional Bodies ('RPB') which regulate Insolvency Practitioners ('IP') in the UK – two in England, one in Scotland and one in Northern Ireland. These are, in turn, regulated and regularly reviewed by the Insolvency Service, the Government's executive agency which acts as the oversight regulator for insolvency. Any IP regulated by an RPB will usually have that RPB as their AML Supervisor.

We are of the opinion that allowing AML supervisors access to the content of SARS would not assist the RPB's in their supervisory functions. The NCA already has the powers/controls to require MLRO's to provide more or better information and for the specific purposes it needs it. Users outside the NCA would not necessarily know what outcome the potential content was required for nor the detail needed.

- 2.4 16. Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

We are pleased to read that the proposal does not go so far as to include any additional specific legal obligation for the AML/CTF supervisor to review any SARs obtained from their supervised population for quality assessment purposes.

- 2.5 17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

No comment.

- 2.6 18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.

In the best interests of transparency and identification of trends, we do not have concerns with AML Supervisors accessing and viewing the content of their supervised populations SARs on the basis the content is used for these purposes only. If the content was to be used for other purposes IPs are likely to have concerns about potentially 'tipping off', which would need to be addressed in any guidance issued to accompany the proposed amendments.

Furthermore, there are cost implications to consider for IPs. Whilst we accept that the cost of providing a SAR to the AML Supervisor is relatively small; the potential costs in dealing with questions raised about the content by the AML Supervisor is uncertain. IPs are required to undertake a variety of statutory and regulatory tasks, which often remain unpaid, and adding another layer of cost for dealing with potential questions or further requests from the AML Supervisor would be cost burden on the IP. However, this cost burden would only come to fruition if the content was not used for transparency and identification of trends purposes.

**Box 4.D: Reporting of discrepancies: Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information**

2.7 41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

Overall, the approach to further enhancing the accuracy and reliability of the companies register to fight against economic crime is great news for everyone involved in the fight against fraud. A key role the UK insolvency and restructuring profession plays in tackling financial fraud. IPs are required to investigate a company's affairs and director conduct, in part by referring to the entity's books and records, in order to discharge their duties when appointed as office holders. Being able to access accurate corporate records and information about directors, or rapidly to identify where this information is missing or inaccurate, is an important component of the profession's ability to carry out statutory duties, and to pursue wrongdoers.

However, whether the obligation to report discrepancies in beneficial ownership should be ongoing is not something our members would entirely agree with, in particular for insolvency practitioners acting as office holders in terminal insolvency processes i.e. liquidation.

R3 has seen requests from the Registrar to IPs asking them to correct the register, as the liquidation has relieved the directors of their powers. However, it is not the liquidator's statutory duty to rectify the register. Rectifying the register could be viewed as inappropriate use of the funds in the insolvent estate by creditors. There is no benefit to creditors in rectifying the register.

Where a discrepancy is identified by an IP in their capacity as liquidator during the ordinary course of investigations, a PSC discrepancy report is usually submitted. Following submission the Registrar then requests the IP to correct the register rather than undertake the task themselves. As mentioned above, a liquidator does not have a statutory duty to rectify the register. In the absence of any person empowered and motivated to correct the register of a company in liquidation, such discrepancies will remain. In this scenario, it is difficult to see how an IP might meet an ongoing duty to report discrepancies. It is also difficult to see what purpose is achieved by continually reporting the discrepancy without the discrepancy being rectified the Registrar.

We suggest a compromise whereby relevant persons need only report new discrepancies, i.e. if an IP had already reported a PSC discrepancy and nothing had changed when they came to review it again, then they are under no obligation to repeat the report.

2.8 42. Do you consider there to be any unintended consequences of making this change? Please explain your reasons.

None in addition to those mentioned above.

2.9 43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

The Government must explore ways to improve director awareness and education, and R3 would be happy to work with the Government to do this. One option could be to use directors' regular statutory interactions with Companies House as an opportunity to provide directors with information and reminders of their duties.

2.10 44. In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

Specifically in relation to IPs –

Costs

Dependent on how often relevant persons would be required to carry out “ongoing monitoring” on this matter. Also, whether the relevant person is required only to report new discrepancies (per suggestion at Q41 above) or the same unremedied discrepancy every time.

Benefits to businesses

Enhancing the accuracy and reliability of the companies register must not be at the expense of creditors.

Wider impacts

To ensure “that the UK’s companies register is accurate and up-to-date”, then the reporting of PSC discrepancies by IPs needs to be actioned in some way by the Registrar. If these reports are actioned then there is no need for an IP to keep reporting the same discrepancies.

**Box 4.B: Extension of the terms ‘Trust or Company Service Provider’ and ‘business relationship’**

2.10 Whilst we do not provide answers to the questions posed in the consultation on this particular area. R3 submitted a response to the Government’s proposals for improving the transparency and integrity of the register. R3’s ‘*Response to further Corporate Transparency and Register Reform consultations*’ can be accessed [here](#), which you may find useful.

**3. CONCLUSION**

3.1 Should you wish to discuss any of the above responses, please do not hesitate to email Ben Luxford, Head of Technical, at [ben.luxford@r3.org.uk](mailto:ben.luxford@r3.org.uk)

Yours faithfully

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