

HM Treasury

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## **Reforming Anti-money Laundering and Counter-terrorism Financing Supervision - Response by the Legal Services Board**

1. The Legal Services Board (LSB) supports the government's efforts to improve Anti-money Laundering (AML) supervision and improve compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs). As oversight regulator of legal services in England and Wales, our response seeks to ensure that the reforms are compatible with existing legal sector regulation so that:
  - The legal sector plays its full role in making the UK a hostile environment for criminal finance;
  - The reforms are capable of implementation as intended; and
  - It is clear to regulated legal professionals and supervisors what is expected of them.
2. We are ready to play our part in making any of the proposed options work. However, any changes are likely to have the maximum impact where they leverage other complementary systems - like legal services regulation - in a holistic manner. We therefore encourage HMT to:
  - Make full use of the existing regulatory system and expertise in legal sector regulation that already exists;
  - Take into consideration the capability for action that legal sector regulators will receive through the *Economic Crime and Corporate Transparency bill* to tackle economic crime, including money laundering; and
  - Give full consideration for the implementation challenges associated with aspects of the proposed options.

3. The LSB response focuses on the aspect of the proposals which are not compatible with the statutory framework for legal service regulation in England and Wales.

### About the Legal Services Board

4. The LSB oversees the regulation of legal services in England and Wales. We are a statutory body created by the *Legal Services Act 2007* (the LSA) and are independent from both the legal profession and government.
5. We work for the public to ensure that regulation of legal services delivers the best outcomes for consumers, using a range of formal powers, including overseeing the performance of the eight regulatory bodies who carry out day-to-day frontline regulation of legal services, and less formal influence and advocacy.

### Regulation of Legal Services

6. To ensure strong and effective supervisory systems for both the prevention of money laundering, and legal services regulation more broadly, it is imperative that there is coordination and alignment in the government's overall approach. For this reason, and as set out more fully in this response, we favour an approach to AML supervision that complements the existing framework for the regulation of legal services by bringing responsibility for AML supervision for legal services within the Legal Services Board's existing oversight responsibilities.

### Overview

7. In England and Wales, under the regulatory framework established by the LSA, only **authorised persons**<sup>1</sup> may conduct **reserved legal activities**<sup>2</sup>. Authorised persons (individuals and entities) must be authorised by the **approved regulators**<sup>3</sup> to carry out reserved legal activities. Approved regulators are required to separate their representative functions from their regulatory functions and delegate their regulatory functions to an **independent regulatory body**<sup>4</sup>.
8. The LSB oversees the independent regulatory bodies, the regulatory arms of the approved regulators. The LSB uses several tools to hold regulators to account, including by: setting formal expectations/requirements (i.e., in the form of statutory policy statements and guidance), engaging in enforcement activities, conducting assessments (i.e., performance assessments of regulatory bodies) and using more informal influence (i.e., communications and the development of research and evidence). Please see Annex A for an overview of the legal services regulatory landscape.

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<sup>1</sup> Authorised persons include: Solicitors, Barristers, Chartered Legal Executives, Patent & Trade Mark Attorneys, Costs Lawyers, Notaries, Licensed Conveyancers and Accountants (for probate and administration of oaths)

<sup>2</sup> The six reserved legal activities that fall under the Act are: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

<sup>3</sup> There are nine approved regulators of legal services in England and Wales: The Law Society (TLS), Bar Council (BC), Master of the Faculties (MoF), Chartered Institute of Legal Executives (CILEx), Council for Licensed Conveyancers (CLC), Chartered Institute of Patent Attorneys, Chartered Institute of Trade Mark Attorneys, Association of Costs Lawyers, Institute of Chartered Accountants of England and Wales.

<sup>4</sup> There are eight regulatory bodies: Solicitors' Regulatory Authority (SRA), Bar Standards Board (BSB), The Faculty Office (FO), CILEx Regulation (CILEx Reg), CLC, Intellectual Property Regulation Board (IPREG), Costs Lawyer Standards Board (CLSB), Institute of Chartered Accountants of England and Wales

9. All of the LSB and approved regulators' work is underpinned by eight regulatory objectives set out in the LSA:
- protecting and promoting the public interest
  - supporting the constitutional principles of the rule of law
  - improving access to justice
  - protecting and promoting the interest of consumers
  - promoting competition in the provision of services
  - encouraging an independent, strong, diverse and effective legal profession
  - increasing public understanding of the citizen's legal rights and duties
  - promoting and maintaining adherence (by authorised persons) to the professional principles

## The interface between legal services regulation and anti-money laundering supervision

### *Supervision*

10. Lawyers (authorised persons) are subject to AML supervision as a result of their ability to conduct reserved legal activities, which are in some circumstances subject to the MLRs. All Professional Body Supervisors (PBS) of lawyers in England and Wales are identified as PBSs because they are already professional bodies within the legal sector. Legal sector PBSs are also statutory approved regulators under the LSA.<sup>5</sup> It is important to recognise that while the LSA designates approved regulators, where these bodies have representative functions (akin to trade bodies), there is a statutory requirement for regulatory functions to be carried out separately from their representative functions in order to ensure independent regulation. This is an important distinction and relevant to the feasibility of implementing some of the proposals contained in the consultation.

### *Enforcement powers*

11. Through our engagement with regulatory bodies who act as PBSs, we understand that given the limited tools for enforcement against those that act contrary to the MLRs, many make use of the powers provided to them under the LSA (e.g., disciplinary action, financial sanctions, etc.) as enforcement tools within the AML context. The LSB already has a statutory duty to approve the regulatory arrangements of the regulatory bodies, which could also be applied to AML supervision. In our view, this further strengthens the case for aligning the AML supervisory regime with the regulation of legal services by bringing AML supervision for legal services within the Legal Services Board's oversight responsibilities.

### *Proposed new regulatory objective on economic crime*

12. Upon the passing of *Economic Crime and Corporate Transparency Bill*, which is currently in the final stages of passing through parliament, it is expected that a new regulatory objective - **detecting and preventing economic crime** - will be added to the eight existing regulatory objectives under the LSA. The regulatory bodies and the LSB

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<sup>5</sup> In both the AML and legal services context, the approved regulators delegate their regulatory responsibilities to their independent regulatory body. The six approved regulators and their respective regulatory bodies that also act as PBSs are: The Law Society (TLS) / Solicitors' Regulatory Authority (SRA), Bar Council (BC) / Bar Standards Board (BSB), Master of the Faculties (MoF) / The Faculty Office (FO), Chartered Institute of Legal Executives (CILEx) / CILEx Regulation, Council for Licensed Conveyancers (CLC), Institute of Chartered Accountants of England and Wales.

will be required to act in ways compatible with this new objective.

13. While many regulatory bodies already take measures to ensure their regulated communities are not enabling economic crime, the new regulatory objective will place an explicit responsibility on the LSB and all regulatory bodies (not only those covered by the MLRs) to detect and prevent economic crime from being facilitated by their regulated communities. This responsibility would include legal services regulators who are responsible for ensuring that authorised persons uphold the rules and measures under the government's economic crime regime, including the MLRs.
14. In our view, this development puts beyond doubt the requirement for legal services regulators to actively take steps to ensure the prevention and detection of economic crime. It also puts beyond doubt that it is the LSB's role to ensure that they do this. In light of this, the government would be acting entirely consistently with its broader economic crime policy if it were to bring AML supervision for legal services within the auspices of the LSB.

## Comments on the proposed options

### General comments:

15. We agree with HMT that the selected option for reform should aim to achieve improvements to supervisory effectiveness and system coordination to achieve better compliance with the MLRs, but equally as importantly, changes should be feasible to implement, with benefits of the reform being realised in the immediate term as well as the longer term.
16. Given the complexities of the way that the LSA and the regulation of the legal sector works in practice, HMT may wish to consider the legal services sector separately in this reform, rather than aiming to implement a new supervisory system for all professional services.
17. In considering the proposals, we would also like to highlight that there may be opportunities within existing legal sector regulatory arrangements and AML regulatory arrangements that can be leveraged to improve supervisory effectiveness and encourage compliance with the MLRs with relative ease.
  - For example, the LSB has existing oversight powers that can be used to improve the efficacy of legal services PBSs in England and Wales and is thus well placed to support more effective AML supervision and improved system coordination in the legal sector, both in the interim to support transition to a new supervisory model, or over the longer term.
  - Similarly, as identified in the consultation document, providing OPBAS with additional oversight powers and resources can achieve improved supervisory effectiveness.
  - If LSB and an enhanced OPBAS or a similar AML oversight regulator were supported to work more closely together through these reforms, we could ensure

all tools available are used to improve AML supervision.

### Option 1 - OPBAS +

#### *System coordination*

18. System coordination can be improved by strengthening collaboration between OPBAS and the LSB and by formalising responsibility for AML supervision for legal services within the LSB's existing oversight responsibilities.

#### *Feasibility*

19. There are some proposals for additional powers under the OPBAS+ model that cannot be implemented in a way that is compatible with the statutory regulatory regime for legal services:
- As explained in paragraph 5, the PBS role is carried out by independent regulators - not membership bodies - who authorise to lawyers who practice specific legal activities (see footnote 2). Therefore, there could be no restriction of PBS' business activities based on performance (e.g., limiting the size of its supervisory population).
20. While the LSB does not have an issue with implementing fining powers against a PBS, HMT should be aware that in the legal sector regulators/ PBSs are levy funded by the entire profession so additional costs will be passed down to the entire regulated community, including those not subject to the MLRs and supervision by a PBS, which may be contentious.
21. While the LSB supports OPBAS and the role it plays, there is an alternative option for PBS supervision in the transfer of those responsibilities to the LSB. The LSB has considerable powers and the responsibility to oversee the performance of the legal services regulators and could bring greater consistency to AML supervision across legal services.

### Option 2 - PBS Consolidation

#### *Supervisory effectiveness*

22. We are not clear on the proposition in the consultation document that fewer PBSs for the legal sector would improve the ability to identify and manage "unsupervised firms" - those carrying out legal activities that are subject to the MLRs but are not supervised by any of the PBSs.
23. Under the LSA, the provision of reserved legal activities requires regulators to authorise individuals/firms in order for them to engage in reserved legal activities. Better oversight over unsupervised firms is not a substantial benefit of this model unless there is evidence that there are firms/professionals providing non-reserved legal activities that are subject to the MLRs and/or there are legal professionals/firms practising without authorisation, which is an offence under the LSA.

### *Feasibility*

24. There may be significant challenges with implementing a single legal services PBS for the UK, as it would layer a single supervisory body over three jurisdictions with distinct legal systems and differing legal sector regulatory arrangements.
25. The prospect of having a single regulator for legal services in England and Wales has historically received significant pushback. While we do not oppose this approach, HMT should be aware that it will likely receive a strong negative response from some parts of the sector. This concern applies to the Single Professional Services Supervisor model and Single Anti-Money Laundering Supervisor model as well.

### Option 3 - Single Professional Services Supervisor

#### *Supervisory effectiveness*

26. This model misses the opportunity to make full use of the existing expertise in legal sector regulation that regulators/PBSs and the LSB have and would instead require new capacity building in this area.
27. Some measures (e.g., “gatekeeping”) suggested under this model cannot be implemented within the legal services sector. As legal professionals are authorised to practise legal activities covered under the MLRs by regulators under the LSA, an SPSS could not prevent additional professionals/firms from providing legal services.

#### *System coordination*

28. With the introduction of the new regulatory objective related to economic crime, legal sector regulators will be engaged in AML activities. Under this model, there may be siloed and duplicative efforts to support AML efforts.

### Option 4 - Single Anti-Money Laundering Supervisor

#### *Supervisory effectiveness*

29. The points noted in paragraphs 26 and 27 apply to this model too.

#### *System coordination*

30. The point noted in paragraph 28 applies to this model too.

### **Comments on sanctions supervision**

*Given the change in the sanctions context in the UK since Russia’s invasion of Ukraine, have supervisors changed their approach to oversight of sanctions systems and controls amongst regulated populations? If so, what activity has this entailed?*

31. Within the legal services sector, the LSB has worked closely with regulatory bodies and key partners, such as MoJ, OFSI and OPBAS, to ensure that regulatory bodies understand how the sanctions apply to the legal sector and the new developments within the sanctions regime.
32. Regulatory bodies have implemented risk-based approaches to help ensure their regulated communities are acting in alignment with all existing sanctions. In the LSB’s oversight role we have set out expectations for and monitor the implementation of

regulatory bodies' plans for producing a risk profile, ensuring compliance and appropriately providing supervision and enforcement for their regulated community.

*Do supervisors need additional powers to monitor sanctions systems and controls effectively, or can this be done under existing powers? What would any new powers need to consist of?*

33. While the regulatory bodies are well placed to monitor compliance with the sanction regime using the current powers awarded to them through the LSA, greater information sharing and collaboration with regulatory bodies, law enforcement and other organisations would be beneficial.



## Annex A: Legal Services Regulatory Arrangement Overview

# OVERSIGHT MAP



## Regulators Map

