

Consultation Response

*Financial Conduct Authority
Quarterly Consultation No. 28
Consultation Paper CP20/7*

July 2020

AIA Response: FCA Quarterly Consultation No.28

Changes to the Sourcebook for professional body anti-money laundering supervisors – criminality checks

Introduction

The Association of International Accountants (AIA) is responding to this consultation published by the Financial Conduct Authority in June 2020, on behalf of our members and in the wider public interest.

AIA is a professional body supervisor under Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLR”) and regulated by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). AIA supervises and monitors our members for compliance with the MLR and acts where necessary to remove the benefits of non-compliance and deter future non-compliance.

AIA is providing these comments to build upon and strengthen the United Kingdom’s fight against financial crime and counter the devastating effects of money laundering.

Executive Summary

In general AIA is supportive of measures taken to improve and strengthen barriers to entry for individuals who do not meet fit and proper tests at the point of application, however it is unclear at the present time how the amendments suggested to the Sourcebook will realistically offer additional protection in practice.

Relevant individuals and firms must already declare to professional body supervisors at any point when they receive a relevant conviction which would affect any fit and proper status. PBSs would continue to rely on self-declarations for a maximum of five years unless a significant evolution of intelligence sharing is undertaken whereby PBSs are informed by law enforcement or criminal justice networks when relevant individuals have received a relevant conviction.

Notwithstanding this restructure, an arbitrary time period of five years does not add additional reassurance that individuals have not been convicted of a relevant offence for the purposes of Regulation 26 should they have failed to declare this offence in the preceding five years.

AIA would also argue that placing additional administrative burdens on regulated firms continues to make more attractive operation outside of the regulated sector.

AIA Response

N.B.: AIA's response relates only to Section 4 of the consultation, 'Changes to the Sourcebook for professional body anti-money laundering supervisors – criminality checks' as the relevant section relating to AIA's responsibilities as a professional body supervisor under MLR2017, amended 2019.

Question 4.1: Do you agree with our expectations of the term 'sufficient information'? If not, why?

AIA agrees with the use of a Disclosure and Barring Service (DBS) Certificate as a mechanisms to demonstrate 'sufficient information' along with evidence of UK residency in the previous five years to ensure that the DBS check from the UK is appropriate.

However, AIA does not agree that placing an obligation on the supervised individual/firm to self-report presents an 'undue reliance' as all AIA members have membership obligations to provide updates to relevant information to AIA in the knowledge that failing to do so may result in disciplinary action including financial penalties, revocation of practising certificates, impositions of conditions or removal from membership. There are significant penalties associated with failing to provide information.

Monitoring or availability of information / intelligence as to whether a member is considered a fit and proper individual should not be limited to DBS checks received from PBSs on a five-yearly cycle.

Question 4.2: Do you agree with our expectations regarding applicants who are residing or have resided overseas? If not, why?

AIA agrees that it should be the responsibility of professional body supervisor to ultimately decide what constitutes as appropriate and acceptable evidence to assure itself that it is not approving Beneficial Owners, Officers and Managers (BOOMs) with relevant criminal convictions.

It is reasonable to consider that PBSs will maintain accurate and appropriate records of investigations made to assure fit and proper status of applicants.

Question 4.3: Do you agree with our expectations regarding the obligation and approach to the monitoring of criminality checks? If not, why?

AIA agrees that supervised firms should be responsible for ensuring that checks for all relevant BOOMs are current. AIA requires that DBS checks are submitted as part of any application process for Practising Certificates.

However, there should not be a mandatory requirement for new DBS checks to be required every five years, for any other specific time period, or on a risk-based approach.

As part of monitoring and supervision processes AIA reviews its supervised populations using additional intelligence services such as SIS and open source intelligence such as registers of disqualified directors to provide additional assurance of the fit and proper status of members.

Requiring the submission of additional DBS checks on a five-year basis or on a risk-based approach demonstrates an additional administrative burden which does not necessarily ensure that members are currently fit and proper. Should an individual commit an offence immediately upon submitting a DBS check the PBS would be unaware of any relevant conviction for a period of five years unless alerted by the supervised individual/firm, opensource intelligence or a law enforcement agency or criminal justice network.

Question 4.4: Do you agree with our expectation that the requirements in Regulation 26 are considered to apply to all existing BOOMs and relevant SPs? If not, why?

AIA agrees with this position and ensures its members are aware of the requirements for checking the fit and proper status of BOOMs as part of its practising certificate application process.

All current AIA members have submitted appropriate DBS checks to confirm fit and proper status in line with Regulation 26.

Question 4.5: Do you agree with our expectation that a PBS factors into its supervision the fact that an existing BOOM or relevant SP has chosen not to apply for approval under Regulation 26? If not, why?

AIA agrees that all professional body supervisors should have in place processes to ensure that individuals are unable to operate 'below the radar' at a firm without the proper authorisation as outlined in Regulation 26.

In practice AIA already has processes and information gathering in place to prevent this from occurring and it is considered that this is adequately covered within the Regulations.

AIA currently undertakes monitoring to ensure that DBS information is captured for all relevant individuals at a firm and this information is checked at the time of application and subsequently on a risk-based approach against publicly available data.

Question 4.6: Are there any other matters you wish to be considered for guidance on compliance with Regulation 26?

AIA takes its role in protecting the public interest seriously and makes every effort to ensure robust policing of the perimeter and to set barriers to the profession for individuals who are unable to demonstrate fit and proper status.

However, amendments to the Sourcebook do not make sufficiently clear that professional body supervisors form one part of a wider network.

Additional work should be undertaken on improving intelligence sharing between law enforcement agencies and the criminal justice network and identifying additional mechanisms where evidence of an individual's conviction or failure to pass fit and proper tests in relation to relevant convictions is known and can be shared with PBSs in a timely manner.

As outlined in AIA's response to question 4.3 there is a significant weakness in allowing any period of time to pass before an individual's status could change that is not necessarily overcome by relying on self-declaration as any individual who is content to operate with a relevant conviction would not necessarily be minded to declare it to their professional body supervisor.

About AIA

The Association of International Accountants (AIA) was founded in the UK in 1928 as a professional accountancy body and promotes the concept of 'international accounting' to create a global network of accountants.

AIA is recognised by the UK government as a recognised qualifying body for statutory auditors under the Companies Act 2006, across the European Union under the mutual recognition of professional qualifications directive and as a prescribed body under the Companies (Auditing and Accounting) Act 2014 in the Republic of Ireland. AIA also has supervisory status for its members in the UK under the Money Laundering Regulations 2017. AIA is a Commonwealth Accredited Organisation.

AIA believes in creating a global accountancy profession and supports the International Federation of Accountants (IFAC) in their vision of a global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets and economies. AIA has adopted IFAC's Code of Ethics for professional accountants and also incorporates IFAC's International Education Standards (IES) into its qualifications and policies.

AIA has members working throughout the whole spectrum of the accountancy profession. Many of our members are at the top of the accountancy industry, from senior management to director level. Conversely, significant numbers of our members work in small and medium sized businesses (SMEs) and we strive to champion the importance of SMEs and their needs.

Further Information

The above replies represent our comments upon this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

If you require any further information, please contact:

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