By email: Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

9 June 2024

Re: Improving the effectiveness of the Money Laundering Regulations

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 600 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We are therefore grateful for the opportunity to provide feedback on the Government's proposals to improve the effectiveness of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**MLRs**"), as outlined in the February 2024 consultation, "*Improving the effectiveness of the Money Laundering Regulations*" (the "**Consultation**"). We recognise the role of the UK money laundering regime in providing appropriate safeguards against exposure to money laundering and terrorist or proliferation financing and welcome the Government's focus on both providing additional clarity to support compliance, and maintaining a balance between the requirements imposed on firms and the risks that those requirements are intended to address.

We recognise that our members – as with other financial services firms – should continue to be alive to the risks that they may be used to facilitate fraud, money laundering, terrorist financing, bribery and corruption, and that implementing effective systems and controls in place to mitigate such exposure is essential to preserving the integrity of the UK financial markets.

With this in mind, we are committed to providing the Government with constructive feedback on the Consultation proposals, and it is in this spirit that we have provided our technical comments below. We will continue to monitor with interest the proposed reforms to improve the effectiveness of the MLRs, together with other associated reforms to the AML/CTF regime.

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?

We agree that clear guidance is helpful in assisting firms to understand when to perform "source of funds" checks under regulation 28(11)(a). However, in our view, introducing further granular detail at the level of the legislation would risk "hard-wiring" checks that may have varying degrees of relevance to specific industries or sectors, may not be sufficiently comprehensive, and would risk becoming outdated. In our view, such additional detail would be better-placed in sector-specific guidelines that sit alongside the legislative requirements.

For private equity firms, we consider that the guidance produced by the Joint Money Laundering Steering Group is sufficiently clear in defining when private equity firms should perform "source of funds" checks under regulation 28(11)(a) (both in the fundraising and transactional contexts) and are comfortable that further additional guidance is therefore not essential from a private equity perspective.

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?

We consider that there is currently a degree of ambiguity as to how the requirement under regulation 28(10) applies when the customer is a corporate entity, which we expect could give rise to the perception that a wider range of scenarios would be captured than is necessary or intended.

In our view, such ambiguity would be most effectively resolved through clarificatory amendments to the legislation, to more clearly define the circumstances in which a person would be treated as "*acting on behalf of a customer*", for the purposes of regulation 28(10).

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'):

a. **in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.**
b. **in your view, would this create any problems or negative impacts?**

We agree that implementing a clarificatory amendment to regulation 33(1)(f) (such that enhanced due diligence must be applied where "a transaction is **unusually** complex or unusually large") would provide helpful clarity for the private equity industry.

We agree that what constitutes a "complex" transaction differs across industries and customer bases. We are in favour of narrowing the range of scenarios in which enhanced due diligence should be applied on the basis that, in the private equity context, the majority of transactions would arguably be considered "complex" – but not all would give rise to such high-risk exposure as would clearly warrant enhanced checks. The proposed clarification would therefore provide greater certainty for our members and would align the legislation more closely with the FATF standards and the policy intent underpinning the MLRs.

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?

Yes – we consider this to be a likely outcome given that High Risk Third Countries include both FATF High-Risk Jurisdictions subject to a Call for Action and the longer list of Jurisdictions under Increased Monitoring.

Q20. Do you agree that the government should expand the list of customer-related low-risk factors as suggested above?

Yes – we agree that expanding the list of customer-related low risk factors would help to provide greater certainty for firms, when determining the circumstances in which it would be appropriate to apply simplified due diligence – and we are supportive of the proposed amendments to regulation 37(3)(a) in that regard.

Yours faithfully

Tim Lewis

Chair, BVCA Regulatory Committee