REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007:
THE GOVERNMENT'S RESPONSE

THE IPA'S CONSULTATION RESPONSE

Introduction

The Insolvency Practitioners Association is a membership body recognised by the Secretary of State for Business, Innovation & Skills ("BIS") for the purposes of authorising insolvency practitioners under the Insolvency Act 1986 and has its own dedicated regulation team carrying out complaints handling, desk-top monitoring and on-site inspections. The IPA has approximately 2,000 members, of whom more than 500 are currently licensed insolvency practitioners.

We have experienced a steady growth in the number of appointment-taking insolvency practitioners in particular (up around 40% since 2008); we currently license nearly a third of the UK's appointment-taking insolvency practitioners and actively monitor 34% of all appointment-takers as a consequence of our contract to carry out inspection visits for the Law Society (Solicitors Regulation Authority), one of the other recognised professional bodies under the Insolvency Act.

This movement has been in part the product of insolvency practitioners exercising their right to choose a regulator that has been innovative in its development of regulatory processes, not least its monitoring procedures (implementing the Government's Better Regulation principles). The IPA aspires to be, and is rapidly becoming, the regulator of choice for UK insolvency practitioners; in terms of the number of authorised insolvency practitioners, it is currently the second largest of the recognised professional bodies.

Our monitoring programme is more focussed on substantive issues (i.e. those affecting creditors - quality, efficiency, value and outcomes), rather than pure technical compliance, and arguably as a consequence has become better able to protect creditors' interests while at the same time genuinely adding value to insolvency practitioners' practices. It has been recognised by insolvency practitioners for its constructive approach, something achieved not least by the regulation team's annual engagement with insolvency practitioners. This not only helps insolvency practitioners to manage risk, but also improves the quality of outputs to the benefit of stakeholders in the insolvency cases administered. Our regulatory activity is subject to oversight and inspection by BIS and the DETI Insolvency Service in Northern Ireland.

As the only one of the recognised bodies solely involved in insolvency, for fifty years the IPA is proud to have been at the forefront of a number of significant developments in the insolvency profession, including the establishment of the Joint Insolvency Examination Board and the formation of what is now R3, the profession's trade body. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for insolvency practitioners, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and understanding, and encouraging those involved in insolvency case

administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills. Given our unique focus on insolvency, we believe that we also make a distinctive contribution to consultations and discussion groups such as the Anti-Money Laundering Supervisors' Forum.

In addition to its recognition under the Insolvency Act for the purpose of licensing insolvency practitioners, the IPA is a Competent Authority approved by the Official Receiver for the purpose of authorising intermediaries to assist with debtors' applications for Debt Relief Orders.

The IPA also carries out monitoring for a voluntary registration scheme for fixed-charge property receivers. This involves inspection visits to property receivers registered with either the IPA or the Royal Institution of Chartered Surveyors. The IPA also undertakes monitoring visit work for the Debt Resolution Forum which sets standards for those involved in providing non-statutory debt solutions to insolvency individuals. These programmes extend regulatory rigour into insolvency-related areas of activity not subject to any regular statutory monitoring – further evidence of the IPA's commitment to improving standards in all areas of insolvency work.

We welcome the Government's review of the Money Laundering Regulations 2007 ("MLR07") and we are in full support of the application of the risk-based approach to this field as well as to regulation in general. Whilst the MLR07 have been in existence for a relatively short period of time, we support some of the Government's proposals for change, although in some other respects we would suggest that further time might be allowed to enable systems to bed down fully and to improve communication so that all parties are comfortable and confident in applying the risk-based approach that is currently generally well-described in the Regulations.

We have limited our answers to the consultation questions that are of most significant relevance to the IPA and our members and have used the question numbers as described in the consultation document.

Consultation Questions

1. Should the existing criminal sanctions be wholly or partly repealed?

We note that the Government proposes to remove the criminal penalties from the Regulations in order to send a strong message that businesses should have confidence in implementing a fully risk-based approach.

Insolvency is a highly regulated profession and the IPA, in common with all other professional bodies that license insolvency practitioners, has regulatory and disciplinary structures that we believe work effectively to ensure high levels of compliance and professional standards. We do not believe that our regulated members' behaviours are significantly influenced by the existence of criminal sanctions. However, the threat of criminal sanctions may be a valuable deterrent to businesses supervised by bodies that do not have membership structures to address non-compliance.

We suggest that, if some regulated businesses are taking an excessively cautious approach, the appropriate response would be to improve communication of acceptable standards and application of the risk-based approach, rather than abolish criminal sanctions which may, on very rare occasions, be necessary to deal with serious cases of non-compliance.

2. Should new powers be granted to supervisors allowing them to order or require actions by businesses to mitigate the potential negative impacts from the loss of criminal sanctions?

As described above, we do not believe that the repealing of criminal sanctions is an appropriate response to address the perceived need of encouraging confidence in implementing a fully risk-based approach.

If criminal sanctions are abolished, we do not believe that the IPA requires statutory powers to assist us in dealing with instances of serious non-compliance by our regulated members, as our membership rules provide us with the powers described in paragraph 3.60 of the Government's Response. However, we envisage that some statutory powers of this type may prove valuable to bodies that are not already provided with these powers by non-statutory means.

3. Do you agree that the current distinction between Parts 1 and 2 of Schedule 3, e.g. for reliance purposes, should now be removed?

We note that the Government's Response states that "in 2006/07… there was relatively little experience of working with some supervisors", but we are pleased to note that, now that the Government has worked closely with all supervisors for several years, it has concluded that the distinction between bodies listed in Part 1 and 2 is no longer appropriate.

We strongly support the proposal to remove the distinction, as we feel it has hindered regulated businesses from taking a fully risk-based approach.

The current distinction also leads to some illogical consequences. The IPA is listed under Part 2 of the MLR07 and it is a recognised professional body ("RPB") under the Insolvency Act 1986 for the purpose of authorising insolvency practitioners. As such, the IPA's continued recognition is monitored by the Insolvency Service by means of a Memorandum of Understanding encompassing all RPBs, which include the ACCA and Law Society, bodies listed under Part 1 of the MLR07. Thus, all RPBs are subject to the same principles and standards for regulating insolvency practitioners. However, the distinction existing in the MLR07 results in a disparity in treatment of an insolvency practitioner depending on his/her licensing body. For example, it is not uncommon for insolvency practitioners to succeed others in successive insolvency proceedings. If an insolvency practitioner were to succeed an IPA-licensed insolvency practitioner as office-holder, he/she could not rely on the previous office-holder's due diligence on the insolvent entity, but if the previous office-holder were licensed by the Law Society, reliance would be available. Given that all insolvency practitioners are monitored to the same regulatory standards, this distinction on the basis of identity of licensing body is unreasonable.

We have confidence in HM Treasury to monitor the activities of all supervisory authorities and expect them all to apply the same principles and standards regardless of their designation as either a Part 1or Part 2 body. Removal of the distinction will confirm to regulated businesses that HM Treasury's supervision of the supervisory authorities is effective and consistent.

5. Should there be a general de-minimis exclusion for very small businesses (e.g. those below Euro15,000 VAT-exclusive turnover pa) or a reduction in the requirements placed on such businesses?

We believe that all businesses conducting regulated activities should be subject to supervision, regardless of their turnover. As a supervisory authority, the IPA applies a risk-based approach to our supervision and therefore we adjust our monitoring processes to account for the regulated member's risk profile, which comprises a number of factors. The introduction of a threshold for supervisory purposes is contrary to the application of a risk-based approach to regulation.

It does not necessarily follow that the risk of exposure to money laundering activities increases as turnover increases. In addition, we believe that the introduction of a threshold below which businesses would be exempt from requirements under the MLR07 would increase the risk that those parties intent on money laundering would target exempt businesses.

Even if there were reason to believe that very small businesses should be exempt from supervision and/or some of the MLR07 requirements, a threshold based upon the past year's turnover might not be an appropriate measure of the business' activity in the current year. It would also give rise to questions such as: if a business' turnover exceeded the threshold, would it need to review all its existing client relationships to ensure compliance with the MLR07 requirements of due diligence?

We also envisage a number of practical difficulties in supervising businesses according to a turnover threshold. It is likely that the costs of assessing whether and when a member exceeds the threshold and ensuring that new regulated businesses are sufficiently aware of the MLR07 obligations would be close to, if not greater than, the costs of supervising that member on a continual basis. This is the case particularly for the IPA and other supervisory authorities who combine supervision under the MLR07 with other monitoring and regulatory processes, which are carried out regardless of a member's turnover albeit on a risk-based approach. Supervisory authorities would need to divide their members into supervised and exempt categories and regularly review members operating close to the threshold to ensure that they are transferred in or out of the "regulated" category immediately on meeting the criteria; this would result in some members moving in and out of the "regulated" category repeatedly and would interrupt efficient and effective monitoring processes.

Businesses operating close to the threshold would also need to regularly monitor whether they exceed the threshold and, if they do so, they would need to amend their processes to ensure immediate compliance with the MLR07. Given the costs to businesses of carrying out these reviews and changes to internal processes, likely it would be more cost-effective for such businesses simply to comply with the MLR07 even if they, at some time, fell into the non-regulated category.

For the reasons set out above, we believe that the Impact Assessment's statement that the costs associated with exempting persons with very low turnover "are expected to be minimal and transitional only" is incorrect; we believe that there will be ongoing costs to both supervisors and businesses in monitoring turnovers close to the threshold and in taking action when a business moves either above or below the threshold.

11. Should supervisors be given new powers to impose penalties for the unreasonable failure to allow a supervisor to enter their businesses' premises?

12. Should there be penalties for the unreasonable failure to provide information?

13. Should supervisors be given additional powers to enforce the payment of fees or charges payable under a supervisory arrangement, for example by ensuring all supervisors have powers to de-register a business where there is sustained non-payment?

14. Should supervisors be given strengthened powers to de-register a business, where a registration has been obtained by other than bona fide means, or no longer serves the public interest?

15. Should supervisors have clear powers to make enquiries of persons who reasonably appear to be relevant persons?

We believe that the IPA's existing powers – both under statute and by reason of our membership rules and regulations – are sufficient to enable us to supervise our regulated members successfully. However, we appreciate that the powers of the non-membership supervisors are defined by statute alone and therefore we feel it would be appropriate to introduce such statutory powers as are necessary for these bodies to supervise their regulated persons to a similar degree.

16. Should the ability of supervisors to exchange information with each other for the purposes of discharging their AML supervisory functions be strengthened, if necessary by the creation of new 'gateways' to allow for the exchange of information?

As a professional body recognised under the Insolvency Act 1986, the IPA has become accustomed to operating under a Memorandum of Understanding between the other RPBs and the Insolvency Service, which provides a regulator-to-regulator gateway for the exchange of information to assist in the effective regulation of insolvency practitioners.

Whilst the successful operation of information gateways is largely dependent upon the wording of such memoranda, we support the principle of exchange of information between MLR07 supervisors and we welcome opportunities to engage in such gateways. We understand that the ability of some supervisors to enter into such arrangements is dependent upon statutory provisions and therefore, to enable all supervisors to be included in appropriate gateways, we support the introduction of statutory powers in this regard.

17. Should HMRC or other supervisors have powers to limit or prescribe the language used by regulated businesses to describe their relationship with their AML supervisor?

All IPA members are required to comply with the Insolvency Code of Ethics that includes principles governing appropriate advertising and marketing. We believe that this Code, together with our disciplinary powers, enables us to take action in the event that a regulated member uses inappropriate language in its communications. Whilst we do not believe the proposed power is necessary for the IPA, we appreciate that some other supervisors, most particularly HMRC, may welcome such a power.

The IPA's Comments on the Government's Response not addressed by Consultation Questions

The Government's Response covers and raises many other issues and we should like to take this opportunity to make some additional observations.

Paragraph 3.38 "Views are welcomed on whether written policies and procedures should be considered as a statutory requirement in the future. If there should be a requirement, should an exception be made for the smallest businesses? Or should supervisors be given the power to require some or all businesses to adopt written policies and procedures?"

Whilst the IPA endorses the general principle that written policies and procedures are valuable tools in assisting businesses to apply consistent standards of practice, the inclusion of such a requirement in statute would seem to be contrary to the principles of Better Regulation. We believe that it is the responsibility of supervisors to communicate to their regulated members the requirements of the MLR07, which may include recommendations to assist compliance, but members should be free to decide how to meet those requirements.

Paragraph 5.19 "The Government does not believe there are significant changes available to improve the regime relating to reliance. It will work with supervisors to improve guidance."

We welcome the Government's proposal to work with supervisors to improve guidance on the reliance provisions. We too believe that there is little that can be done to improve the regime, although removal of the distinction between Part 1 and Part 2 bodies will allow reliance to be considered more frequently.

The Impact Assessment suggests that the increased use of reliance will lead to cost savings. We believe that following the reliance provisions results in negligible cost savings. Even if reliance is used, a business must carry out some checks in order to identify its client; the business also incurs costs in communicating with the other regulated business to ensure that reliance is both appropriate and acceptable. Thus, whilst it may be that reliance leads to less costs for clients, it is likely that this saving is off-set in full by costs incurred by the regulated businesses in applying the reliance provisions. It is likely that these additional costs inhibit the use of reliance to a greater extent than the threat of criminal sanctions for breaches of the MLR07.

Paragraph 8.6 "There is a sense that more could be done, particularly around consistency of supervision… for industry sectors with more than one supervisor and strengthening a risk-based, proportionate and effective approach."

Paragraph 8.24 "Where multiple supervisors have jurisdiction, the Government will work with supervisors to ensure agreement is reached on a methodology for assigning a single lead supervisor."

Over the past four years since the supervisory regime first came into existence, the IPA has grown in knowledge and understanding of the perspectives of the other supervisory authorities whose regulated businesses conduct a vast range of regulated activities. Whilst there may be some instances where the perception, if not the reality, is that supervision in terms of guidance, monitoring and enforcement lacks consistency, we suggest that supervisors have had relatively little time to achieve full consistency. Indeed, it is only over the past two years that HM Treasury has required supervisors to report on their activities.

We welcome the Government's plans to work with the supervisors in improving consistency and cooperation amongst the supervisors.

Since 1986, several professional bodies and competent authorities have been involved in the regulation of insolvency practitioners. As insolvency practitioners are individually authorised, it is not unusual for firms to be monitored by more than one regulatory body. Over the years, these bodies have developed cooperative approaches to successfully monitoring their individual authorisation-holders whilst minimising the disruption and associated costs to the firm. The fact that the insolvency practitioners of many firms choose to continue to be authorised by different bodies indicates that there is no need to agree on an assigned "lead regulator" to regulate insolvency practitioners successfully. We believe that, in a similar manner, the MLR07 supervision of firms that involve supervisory overlaps can be achieved successfully without the need to assign a single lead supervisor.

A number of supervisors have agreed arrangements under Regulation 23 of the MLR07 in relation to supervisory overlaps and we understand that further arrangements are under consideration. We believe that such voluntary cooperation should be allowed to develop; we do not believe that supervisors should be forced to agree that, in every case where there are multiple supervisors involved in a regulated business, a single lead supervisor should be assigned. However, we believe that HM Treasury is well-placed to assist supervisors in applying the principles of Better Regulation in minimising regulatory burdens.

Insolvency Practitioners Association
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