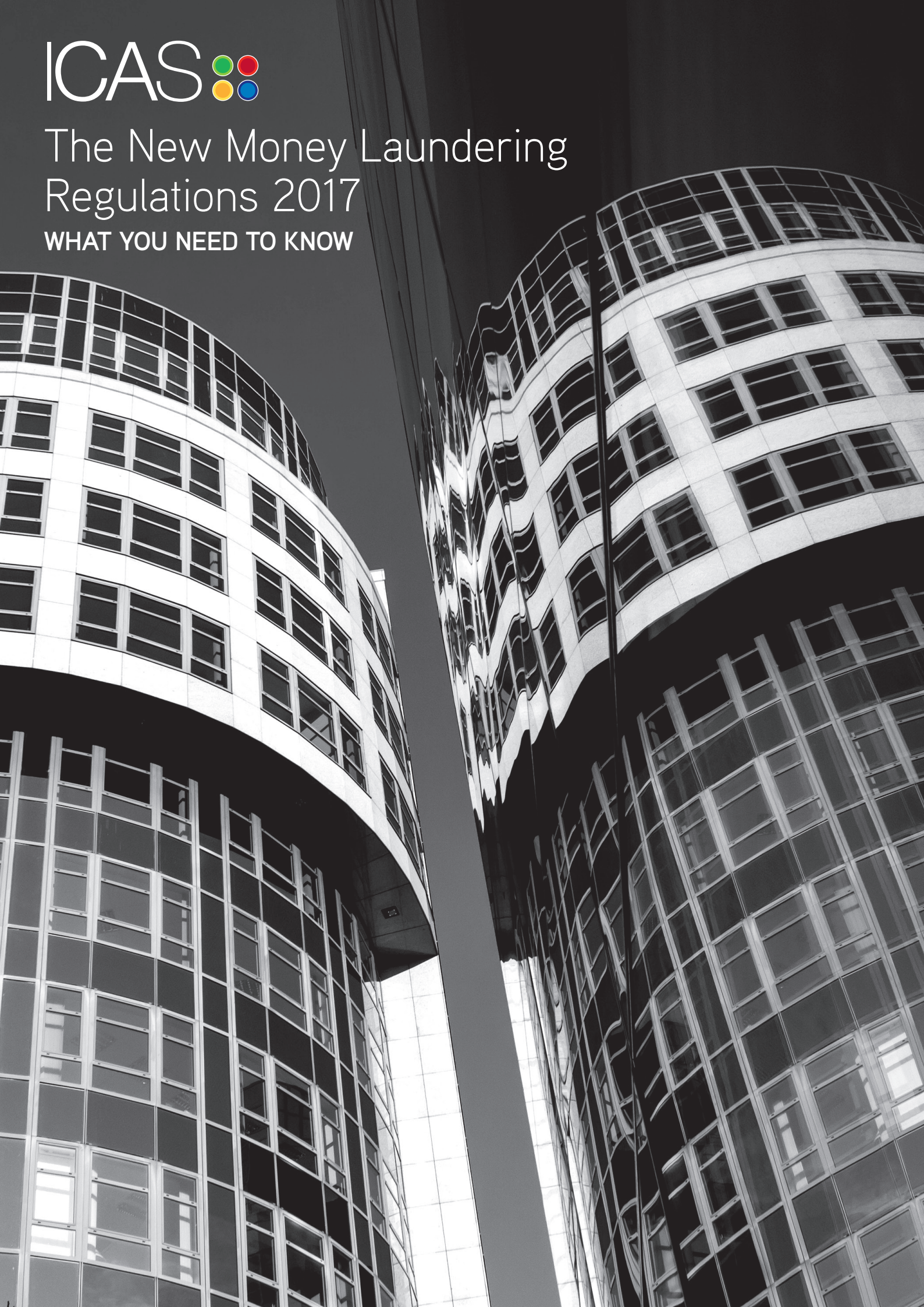




The New Money Laundering Regulations 2017

WHAT YOU NEED TO KNOW



Date of publication: 26 June 2017

THE NEW MONEY LAUNDERING REGULATIONS 2017

Why is the AML regime changing in the UK?

The UK Government has made a number of important changes to the UK Anti-Money Laundering (AML) regime, for the following reasons:

- New regulations are needed to bring in the EU 4th Money Laundering Directive. These are called The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "Money Laundering Regulations 2017" for short).
- The UK is about to receive a Financial Action Task Force (FATF) mutual evaluation. This means the UK will shortly be assessed for its effectiveness in combatting money laundering and terrorist financing. The evaluation will commence in the summer of 2017 and complete during 2018. The UK Government is therefore taking a number of actions in advance of this evaluation to strengthen the UK AML regime.
- In addition, the accountancy sector has come under recent increased scrutiny. This resulted in the Government issuing a Call For Information during 2016, for which it issued a formal response in March 2017. The Government response included a number of widespread changes to accountancy sector supervision.

When do the new regulations take effect?

The regulations came into force on 26 June 2017.

What are the main changes?

The next two schedules explain:

- Table 1: The key changes affecting firms; and
- Table 2: The key supervision changes.

These are short summaries aimed at providing you with an overview of the main changes. For a fuller understanding please read the regulations. The link is:

http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf.

Table 1: What are the main changes? Changes affecting firms

Changes	Implications
<p>Politically Exposed Persons</p> <p>(Source: Regulation 35)</p>	<ul style="list-style-type: none"> • Removal of 'non-UK', this means PEPs now include domestic UK PEPs. • This is a person in a prominent public function but not a middle ranking or junior position. • Prominent public function is defined Regulation 35(14)* • The PEP definition includes: <ul style="list-style-type: none"> ○ Family member – spouse, children and parents; and ○ And known close associates (as publicly available). <p>*Includes:</p> <ul style="list-style-type: none"> • heads of state, heads of government, ministers and deputy or assistant ministers; • members of parliament or of similar legislative bodies; • members of the governing bodies of political parties; • members of supreme courts, of constitutional courts or of any judicial body the decisions of which are not subject to further appeal except in exceptional circumstances; • members of courts of auditors or of the boards of central banks; • ambassadors, charges d'affaires and high-ranking officers in the armed forces; • members of the administrative, management or supervisory bodies of State-owned enterprises; and • directors, deputy directors and members of the board or equivalent function of an international organisation.
<p>Beneficial Owners (BOs)</p> <p>(Source: Regulations 5, 6, 28, 43, 44, 45)</p>	<ul style="list-style-type: none"> • There is a shift in Customer Due Diligence (CDD) emphasis. • Previously you needed to know who BOs are – now you require to verify the identity of the BOs. • For Bodies corporate and partnerships there has been no significant change in definition, although it now includes reference to the Scottish Partnerships (Register of People with Significant Control) Regulations 2017. • BO still means persons with 25% of the shares/voting rights (or additionally in relation to partnership 25% share of profits/capital) or persons who exercise control over management of entity. • Reliance on the PSC ("People with Significant Control) register alone is not sufficient. Identification checks are required. • For trusts – the definition of BO now includes: <ul style="list-style-type: none"> ○ the Settlor; ○ the Trustees; ○ the Beneficiaries or class thereof; ○ any person exercising control; and ○ Executor; meaning verification needs to cover these persons. • Regulation 45 covers the register of beneficial ownership re trusts.
<p>High Value Dealers (HVDs)*</p> <p>(Source: Regulation 14)</p>	<ul style="list-style-type: none"> • The de-minimis to be classed as an HVD has been reduced. This was €15,000, is now €10,000. • Approx. £9,000 but will fluctuate. • This has no direct impact on ICAS firms. • Firms should check that their clients who fall into the definition of HVDs are registered with HMRC for AML supervision (this is particularly important for audits, where firms are responsible for considering the impact of "laws

Changes

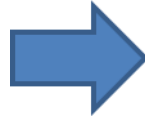
Implications

and regulations” on the audit).

*means a firm or sole trader who by way of business trades in goods (including an auctioneer dealing in goods) where there are payment or payments in cash of at least 10,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked

Firm’s risk assessment

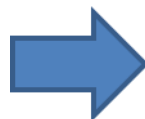
(Source: Regulation 18)



- Firm are now required to conduct an overall risk assessment of their AML threats, taking into account:
 - Customers;
 - Geographic areas in which it operates;
 - Its products and services;
 - Its transactions;
 - Its delivery channels.
- This must be provided on request to the firm’s supervisor.

Policies, controls and procedures

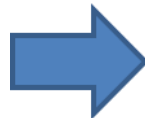
(Source: Regulation 19)



- The firm must establish and maintain policies, control and procedures.
- They must be regularly reviewed and updated.
- They must be:
 - appropriate to size and nature of business; and
 - be approved by senior management.
- There must be a written record of (a) the policies, controls and procedures (b) any changes as a result of the review and update and (c) the steps taken to communicate those policies, controls, & changes within the business.
- They must include risk, internal controls, Customer Due Diligence (“CDD”), reporting and records, compliance monitoring; internal communication.
- This must include policies for enhanced risk situations.
- These must take into account sector guidance such as CCAB guidance.
- Regulation 20 covers group situations.

Internal controls

(Source: Regulation 21)



Where appropriate having regard to the size and nature of business, a firm must:

- Appoint a board level (or equivalent) or senior management level person (BSMLP “board or senior management level person”) responsible for compliance (may be MLRO but not necessarily).
- Screen “relevant employees” initially and on an ongoing basis.
- Establish an independent audit function* to:
 - Assess adequacy of policies and controls;
 - Make recommendations thereon; and
 - Monitor compliance.
- Appoint an MLRO (Money Laundering Reporting Officer) – no change to this requirement.
- Inform ICAS of:
 - identity of BSMLP and MLRO; and
 - any subsequent changes within 14 days.

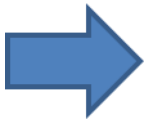
The above requirements don’t apply to sole practitioners with no staff and no subcontractors.

Additionally, firms must have systems which enable it to respond fully and rapidly to enquiries about business relationships from:

Changes

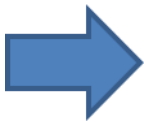
Implications
<ul style="list-style-type: none"> • Financial crime investigators authorised under POCA 2002; • Agents acting on behalf of Scottish Ministers in their capacity as an enforcement authority under POCA 2002; • Other law enforcement officers. <p>*We are awaiting clarification what “internal audit” means compared to an annual compliance review which is our current requirement. The final regulations did not clarify this requirement.</p>

Simplified due diligence (SDD)
(Source: Regulation 37)



<p>SDD is optional if:</p> <ul style="list-style-type: none"> • Low risk per risk assessment. Specifically the following risk assessment factors should be considered: <ul style="list-style-type: none"> ○ Customer factors such as public administration, PLC, financial institution; ○ Nature of product or service; ○ Geographic factors. • SDD is not available if <ul style="list-style-type: none"> ○ There is doubt on veracity of documents; ○ The clients is not overall assessed as low risk; ○ Money Laundering is suspected; ○ The higher risk conditions in S33(1) in relation to EDD apply.

Enhanced Due Diligence (EDD)
(Source: Regulations 33, 34, 35, 36)

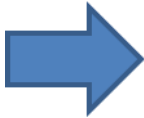


<ul style="list-style-type: none"> • EDD is mandatory for all cases where there is a high-risk of ML including: <ul style="list-style-type: none"> ○ Transactions/relationships involving persons in high-risk third countries; ○ Correspondent relationships (defined in Regulation 34); ○ Where a customer has provided false or stolen identification; ○ PEPs (& family members/associates); ○ Complex/unusually large/unusual pattern transactions; or transactions with no apparent economic or legal purpose; ○ any other higher risk situations. • Regulation 35 deals with PEP considerations including the need for senior management approval to establish/maintain the business relationship. • EDD measures must include: <ul style="list-style-type: none"> ○ As far as possible examining background to and purpose of transaction; ○ Increased degree and nature of monitoring to determine if the transaction/relationship is suspicious. • When assessing whether there is a high risk, firms should consider these risk factors (more information is provided for each risk type in the regulations): <ul style="list-style-type: none"> ○ Customer risks; ○ Product/service risks; and ○ Geographic risks. • EDD may include (subject to requirements of case): <ul style="list-style-type: none"> ○ Additional independent verification; ○ Taking additional measures to understand the background, ownership and financial resources of customer & other parties; ○ Further checks on purpose and nature of business relationship; and ○ Increased monitoring and greater scrutiny of activities.
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Changes

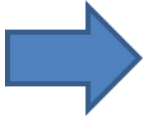
Implications

Relevant employees and training (Source: Regulation 24)



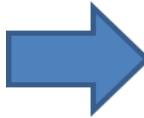
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| <ul style="list-style-type: none">• This is a regulatory obligation.• There is a requirement to make staff aware of laws and regulations re money laundering, terrorist financing and data protection.• Regularly provide training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.• Ensure appropriate to size and nature of firm and accordance with industry guidance. |
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Reliance (Source: Regulation 39)
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| Reliance on third parties (for CDD): <ul style="list-style-type: none">• This is not widely used – and is optional.• You are still liable for any failure.• An agreement is required with an immediate request to the third party and an immediate response. |
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Recording Keeping & Data protection (Source: Regulations 40 & 41)



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| <ul style="list-style-type: none">• Data obtained may only be processed for AML/law enforcement purposes.• Your firm will require to consider your registered sources and disclosures.• Firms must provide new customers with the following information before entering into a business relationship or occasional transaction: Info required is identity of data controller and purposes for which data will be processed.• Your firm must delete data files 5 years after end of relationship/conclusion of transaction.• This may have implications where files are scanned or stored electronically with documentation which should be held for longer under different legislation (e.g. tax records). |
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Table 2: What are the main changes? Supervision changes

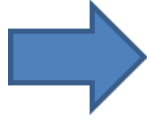
Changes	Implications
<p>New regulator: OPBAS</p> <p>Office of Professional Body Anti Money Laundering Supervision</p> <p>(Source: Response to Call for Information published 15 March 2017)</p>	<ul style="list-style-type: none"> • Covers accountancy & legal sector. • Operational 1 January 2018 (consulting on various issues in June 2017). • Excludes HMRC – the accountancy default supervisor. • OPBAS will sit within Financial Conduct Authority. • Approximately 15-20 staff expected. • FCA intends to pass on costs of OPBAS to supervisors. ICAS may require to recover these costs from our supervised population. • More data will be required by OPBAS – therefore more data provision required by firms. • OPBAS will issue a ‘rulebook’/manual to supervisors. <p>*Supervisor – means accountancy supervisors such as ICAS.</p>
<p>Approval process: no person may be the beneficial owner, officer or manager of a firm, or a sole practitioner, unless that person has been approved by the supervisory authority of the firm.</p> <p>(Source: Regulation 26)</p>	<ul style="list-style-type: none"> • Initial approval process to be completed by 25 June 2018. • This will cover principals, managers*, and beneficial owners. • An update process will be required for principal, owner & management changes. • Application will be made in a manner to be directed by the supervisor (& with the information required). • It will be a criminal offence to act without approval. • Supervisors must grant approval unless the applicant has been convicted of a relevant offence (see below). • The supervisor may grant approval for a restricted time period only. • Any approval is invalid if a person has been convicted of a relevant offence or ceases to be valid if they subsequently are convicted of a relevant offence. • Where convicted of a relevant offence an approved person must notify the supervisory authority within 30 days of the conviction. • The firm must also notify the supervisory authority within 30 days of being made aware of the conviction. <p>* manager – a person who has control, authority or responsibility for managing the business of that firm, and includes a nominated officer</p>
<p>Criminality checking</p> <p>(Source: Regulation 26 & consultation with HM Treasury)</p>	<ul style="list-style-type: none"> • Rather than relying on self-declarations, the UK Government requires a criminal disclosure check be conducted on each of the above persons as part of the approval process. • Schedule 3 to the regulations: defines Relevant Offences (35 of them!). • Offences include Data Protection Act i.e. data breaches. • If owner commits relevant offence, a supervisor can apply to Court to order sale of beneficial interest.
<p>Supervisor risk assessment</p> <p>(Source: Regulations 17 & 46)</p>	<ul style="list-style-type: none"> • Supervisor needs to risk assess each relevant person or cluster. • Supervisors are required to use a risk-based approach to monitoring based on the risk profiles (& take measures to encourage self-reporting of breaches). • Supervisors are required to review firm’s own risk

Changes

Implications
assessments.

Trust & Company Service Providers – register to be kept by HMRC

(Source: Regulation 54)



- Register to be maintained by HMRC.
- Supervisors will require to notify HMRC of our firms who are TCSPs*.
- Firms will require to notify ICAS – we may therefore require to include this in the approval process previously mentioned.
- We will also require a notification process for changes.
- This will apply to all firms doing any TCSP services – even where incidental to other services.
- This will result in more questions on the Firms Annual Return.
- This will be a key area on monitoring visits going forward.

*Defined Section 12(2) Money Laundering Regulations 2017 as any firm:

- Forming companies or other legal persons (e.g. LLPs, Scottish Limited Partnerships);
- Acting, or arranging for another person to act, as: a director or secretary of a co., partner, similar position of other legal entities;
- Providing registered office, business address, correspondence or administrative address or other related services
- Acting, or arranging for another person to act as: trustee of an express trust or similar; nominee shareholder for a person other than a company whose securities are listed on a regulated market.



CA House 21 Haymarket Yards Edinburgh EH12 5BH
enquiries@icas.org.uk +44 (0)131 347 0100 icas.org.uk