ALL CHANGE FOR AML

Lesley Byrne explains how the new anti-money laundering regulations will affect firms
VER THE next year there will be significant changes to how firms are supervised for anti-money laundering (AML). These changes have been brought about mainly by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Money Laundering Regulations 2017” for short), which came into force on 26 June 2017.

These changes have come about because of the following factors:

- **Europe**: The largest changes are being driven by the UK’s implementation of the EU Fourth Money Laundering Directive.
- **The FATF mutual evaluation**: The UK’s progress in AML is about to come under scrutiny in the form of a “mutual evaluation”, commencing this summer and going on into 2018, by the Financial Action Task Force. The FATF was founded in 1989 on the initiative of the G7, with the aim of developing policies to combat money laundering and terrorism financing. The UK Government has introduced a significant number of changes in advance of the UK evaluation.
- **HM Treasury call for information**: The accountancy sector has come under increased scrutiny in the run-up to the FATF mutual evaluation. The Government has expressed concern at the large number of accountancy supervisors in the UK (13 accountancy bodies plus HMRC). There is also significant concern over the number of unqualified operators in the accountancy sector, and meanwhile tax avoidance has become a high-profile issue. In the most recent UK National Risk Assessment in 2015, the accountancy sector was assessed as the second highest risk sector after banking. The Government’s response, in March 2017, included a number of widespread changes to accountancy sector supervision, which are reflected in the new AML regulations.
- **Supervision**: More on that later.

**WHAT ARE THE MAIN CHANGES FOR FIRMS?**

The new requirements directly affecting firms are relatively straightforward (see “The top five changes” above). Most of them will be easy to address by implementing updated checklists and procedures.

In addition to the top five in the table, there are a number of other changes affecting firms:

- **Politically exposed persons (PEPs)**: Enhanced due diligence is required for PEPs, who are defined as prominent public figures in a senior role. The definition of a PEP has been widened to include domestic PEPs, that is those based in the accountant’s own country (in this case the UK). The regulation includes family members and known associates of PEPs.
- **Policies, procedures and internal audit**: For all firms (other than sole practitioners without staff), AML policies/procedures will require to be approved in writing by a senior manager. There is also a requirement to regularly review and update these procedures and communicate them within the firm. Firms above a certain size should have an independent audit of the firm’s compliance with its policies and procedures. ICAS is seeking clarification on this, and how it differs from the previous “internal compliance review” requirement.
- **Simplified due diligence (SDD)**: SDD is optional in situations identified as low risk following a risk assessment (factors include whether clients are in public administration or publicly owned, ples, or financial services).

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**AML AND FIRMS: THE TOP FIVE CHANGES**

1. **Risk assessments**
   - Your firm will be required to carry out an overall firm-wide AML risk assessment (taking into account customers, geography, products and services, transactions and delivery channels).
   - On request, your firm will submit this to your AML supervisor.

2. **Board or Senior Management Level Persons (BSMLPs)**
   - Your firm must appoint a person from the firm’s board, or senior management (the “Board or Senior Management Level Person or “BSMLP”), responsible for compliance with the regulations. This may be a different person from the MLRO.
   - Any changes to BSMLPs and MLROs will need to be notified to your AML supervisor.

3. **Beneficial owners (BOs)**
   - As well as identifying the BOs for each client, you will now have to conduct identity checks (reliance on the persons of significant control register is not enough).

4. **Enhanced due diligence (EDD)**
   - EDD is mandatory for all cases assessed high risk (including persons in high-risk third countries; politically exposed persons (PEPs) and family members/associates; complex/unusually large/unalusual pattern transactions; or transactions with no apparent economic or legal purpose).
   - High-risk situations are identified via a risk assessment of customers, products and services, and geography.
   - EDD measures must include examining the background to, and purpose of, a transaction/service and there should be increased ongoing monitoring.
   - Other EDD measures are included in the regulations.

5. **Data protection**
   - Your firm must use data only for AML/law enforcement purposes.
   - New clients must be informed how their data is handled.
   - Firms need to delete data five years after the client relationship ends or the transaction is completed.

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is director of regulatory monitoring with ICAS.
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> institutions; the nature of services provided; and geography). SDD must not be applied if a situation has not been assessed as low risk.
> Relevant employees and training: Staff should be made aware of laws and regulations in relation to money laundering and data protection. Training, appropriate to the size and nature of the firm, should be provided in how to recognise and deal with transactions and other activities that may be related to money laundering or terrorist financing.
> Third party reliance: If your firm is reliant on third parties for customer due diligence an agreement is required with that third party, with an immediate response. Your firm is still liable for any failure.
> High value dealers: Firms are advised to check that any client trading in goods where there is a payment of cash of at least €10,000 in one transaction, or a series of linked transactions, is supervised for AML purposes.

WHAT ARE THE MAIN SUPERVISION CHANGES AFFECTING FIRMS?
The supervision changes are far more widespread. There is significant work ahead for AML supervisors, such as ICAS, and this will also affect firms and how we interact with you. The main changes include a new approval/licensing process for firms and you are likely to see an increase in our monitoring activities and the data we request from you. These changes apply across the profession.
> ICAS, and all other supervisors, will operate an approval process to approve all principals, owners and management in the firms we supervise from an AML perspective. After 25 June 2018 it will be an offence for a firm to operate without applying for this approval.
> HM Treasury is requiring all principals, owners and managers (as defined) in firms to have been “criminal checked” by 25 June 2018. This is likely to involve Disclosure Scotland checks or similar.
> Supervisors must notify HMRC of all firms that are trust and company service providers (TCSPs) for inclusion on a public register, which needs to be up and running by 25 June 2018. TCSP services include, for example: company formation; acting, or arranging for another person to act, as a director or secretary of a company; acting, or arranging for another person to act as a trustee or nominee shareholder; or providing a registered office or a business, correspondence or administrative address.
> The new regulator, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) will be responsible for the accountancy and legal sectors. It will operate from the Financial Conduct Authority (FCA) from 1 January 2018. The FCA intends to pass the costs on to the AML supervisors.
> AML supervisors must obtain and review risk assessments from each supervised person, and to assess each relevant person or cluster. Monitoring needs to be based on this risk assessment.
> Further changes are expected once OPBAS is established and there are various consultations expected on this over the summer.

WHAT IS ICAS DOING?
ICAS and the other accountancy sector supervisors are extremely disappointed that the Government has disregarded our concerns over unqualified accountants, currently default supervised by HMRC, who will not come within the oversight of the new OPBAS regime. We believe this seriously undermines the effectiveness of the UK AML regime and creates an unlevel playing field. We will continue to lobby on this issue, including during the FATF evaluation.

In recognition of the significant impact on firms, we intend to set up an AML working party of practitioners, with representatives from firms of different sizes, who can engage with ICAS in deciding how best to implement these changes.

We are keeping member firms updated and have recently written to all firms, via the money laundering reporting officers (MLROs), notifying them of the key changes. To keep up with developments, go to our web page, icas.com/amlnews.

The AML training session in the mandatory ICAS Practice Management course highlights the key changes. If you would like to find out when our courses are, please search for “Practice Management” at icas.com.

All Practice Monitoring visits include a discussion on the AML changes and we will continue to update you via the monthly email Practice Update.

We will notify the MLROs in due course, to clarify when they need to start submitting applications or risk assessments. For now, key priorities for firms should be: training; ensuring that procedures are up to date; and ensuring that software updates are in place, as and when they are issued. CA

LESLEY BYRNE IS DIRECTOR OF REGULATORY MONITORING WITH ICAS

If you would like to get involved in the AML working party, contact Lesley Byrne, director of regulatory monitoring by emailing lbyrne@icas.com. We would particularly like to hear from sole practitioners. If your firm has not yet subscribed for your free General Practice Procedures Manual (GPPM), you can register at https://www.icas.com/member-benefits/general-practice-procedures-manual. GPPM will be updated in due course for these changes.