



SUBCONTRACTING ACCOUNTANCY SERVICES

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INTRODUCTION

This help-sheet covers subcontracting accountancy services to an accountancy firm, whether employing a subcontractor or as a subcontractor firm. In the appendices, there are checklists to help you identify the information needed to clarify your role, responsibilities and liabilities. There is also an outline of considerations to include in an agreement between a subcontracting firm and a subcontractor.

Members may also wish to refer to the following related helpsheet and regulations:

- [ICAEW statement on engaging in public practice](#)
- [ICAEW guidance: Setting up a practice](#)

LAYOUT OF THIS HELPSHEET

- [Acting as a subcontractor](#)
- [Obtaining the services of a subcontractor](#)
- [Appendix 1: Subcontractor checklist](#)
- [Appendix 2: Proforma summary about the subcontracting firm](#)
- [Appendix 3: Subcontracting firm checklist](#)
- [Appendix 4: Proforma summary about the subcontractor](#)
- [Appendix 5: Outline contract between firm and subcontractor](#)

Both subcontractors and subcontracting firms should consider the full helpsheet to understand both perspectives and there may be some relevant information that is not repeated elsewhere.

ACTING AS A SUBCONTRACTOR

Terminology

In this helpsheet reference to 'subcontractor' and 'subcontractor firm' means the party providing their accountancy services to another accountancy firm and 'the subcontracting firm' means the accountancy firm entering into a contract to obtain professional accountancy services from the 'subcontractor'.

Need for a practising certificate as a self-employed consultant to a practitioner

You are liable to disciplinary action if you do not hold a practising certificate where it is a requirement so to do.

A practising certificate is not required when you are a self-employed consultant (and not held out as a principal) to a public practitioner that takes responsibility for your work (see [ICAEW statement on engaging in public practice](#)).

The following are examples of situations where a practicing certificate is likely to be required. Refer to the statement to see a wider range of examples.

- You provide a specialist service to another firm which then passes that service on to its client
- You agree with the other firm to provide a service directly to their clients.

In both these scenarios you are likely to be acting as a principal, in the first case with the firm as your client and in the second with the firm's client as your client. See 'When am I held out as a principal?' in [ICAEW statement on engaging in public practice](#).

In these cases you will normally be considered as engaging in practice and will need to satisfy all the requirements relating to the [Practising certificate regulations](#), [Practice Assurance Regulations](#), [Professional indemnity insurance regulations](#), compliance with the [Money Laundering Regulations](#) and the [Anti-money laundering guidance for the accountancy sector and the guidance on setting up a practice](#).

Professional indemnity insurance when not engaging in public practice

In circumstances where your subcontracting activity falls outside the scope of engaging in public practice, you should still consider carefully your personal exposure to professional indemnity risks and if necessary take appropriate cover. Where you consider your work is covered by the professional indemnity insurance (PII) of the firm you are subcontracting to, then your name and status as a subcontractor must be advised to that firm's PII insurers. It is recommended that you have this confirmed in writing to you.

A member who provides accountancy services in circumstances where a practising certificate is not needed should inform the recipient of the accountancy services of the absence of their own PII (if this is the case).

Anti-money laundering

In broad terms, there are three different categories that a practitioner may fall into for AML supervision when subcontracting.

1) Acting for clients directly:

If acting for clients directly as a subcontractor you will need to comply with all the requirements of the anti-money laundering (AML) regulations including completing customer due diligence on those ultimate clients.

You will also be responsible for reporting any suspicions that may arise during the course of relevant business directly to your firm's MLRO or to the NCA.

As discussed in section 5.4 of the CCAB guidance, you may be able to place reliance on the customer due diligence work carried out by the accountancy firm on the clients but this will be dependent on the firm's agreement and consent and does not remove your responsibility for complying with your legal requirements.

2) Acting for the firm and outside the scope of AML regulation:

If you provide all of your services to accountancy firms that are supervised accountancy service providers then you will not require separate supervision, as long as you meet all of the following criteria:

- (i) all of the service you provide are to the firm (rather than providing services directly to the firm's clients as your clients),
- (ii) you are included in the firm's anti money laundering procedures, reporting and training programmes and
- (iii) you have a contract with the firm confirming that every aspect of the relationship between you meets all anti money laundering requirements.

This would mean that you only act as a subcontractor to supervised accountancy service providers and do not have any other clients. If this is the case, you may still wish to consider whether client due diligence procedures would be beneficial.

3) Acting for the firm but still requiring your own AML regulation:

Where you conclude that you are providing services to a supervised accountancy firm rather than to the ultimate clients, you can limit customer due diligence to documenting and checking the regulated status of the firm (see [B.3, Appendix C, Anti-money laundering guidance for the accountancy sector](#)).

However, you will still need to consider the nature of the ultimate clients and the services you are providing as this will feed into your risk assessment. Depending on that risk assessment you may feel it is necessary to still complete some client due diligence procedures over the ultimate clients – this will be a matter of judgement.

You must consider how you will fulfil your legal responsibilities to report any suspicious activity. In some cases, your subcontracting contract will require you to report to the MLRO of the subcontracting firm. If there is no such arrangement, you will need to make suspicious activity reports to the MLRO of your own practice, or directly to the [National Crime Agency](#) in order to fulfil your reporting obligations under POCA 2002.

You should also consider if, under the policies and procedures of your own firm, you also need to inform the MLRO of your own firm, as well as to the subcontracting firm's MLRO. Some examples are below:

Status of subcontractor	Reporting obligations
Sole practitioner where no AML supervision (see above for conditions).	Report to subcontracting firm's MLRO if contract requires.

Sole practitioner or other practice which is AML supervised.	Report to subcontracting firm's MLRO if contract requires. Additionally, employee of subcontractor firm to report to the MLRO of your own firm if required by the terms of employment.
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The money laundering regulations require **all firms** with relevant employees to have internal reporting policies and procedures. A subcontractor should consider whether its arrangements increase its exposure to AML risks and manage those AML risks accordingly, which may include formalising reporting arrangements between the subcontracting firm and itself.

Data protection legislation

The Information Commissioner's Office (the regulator for data protection legislation) says that the determination of whether a service is provided as a data controller or as a data processor should be assessed on a case by case basis. See our helpsheet [GDPR – Data processor or data controller?](#) In most situations a subcontractor would be a data controller. However, it may be possible in particular circumstances for you to arrive at the conclusion that the subcontractor is a data processor.

Depending on the wording of the subcontracting arrangement, an individual may be a data processor:

- if an individual provides services to a firm in circumstances where a practising certificate is not required (so the individual is not subject to Practice Assurance) and
- the individual comes under the professional indemnity insurance of the other firm (so no records are retained by the individual to protect themselves from a claim) and
- the firm takes responsibility for the work of the individual (so no personal data is held by the individual) and
- the individual only provides services to other accountancy service providers, and reports any suspicious activities through to MLRO of those firms in accordance with the contract.

If the professional relationship is that of a data processor providing services to a data controller then contractual terms are necessary to reflect this. Where the professional relationship is a data controller providing services to another data controller then, contractual terms are not required but it would be prudent to state in the contract, for the avoidance of doubt, that the subcontractor is a data controller. A data controller will need to send their privacy notice to the recipient of their services. See helpsheet [Engagement letters and privacy notices](#).

Both firms will need to be mindful of protecting personal data. See ICAEW helpsheets [GDPR – Communicating safely with clients](#) and [GDPR – Client files](#).

Employment status

This document does not consider the tax implications of these arrangements but subcontractors and subcontracting firms will need to give careful consideration to any personal tax and national insurance implications. Further guidance is on the [HMRC website](#).

Professional considerations

There may sometimes be potential for confusion over which party to the subcontracting contract, you or the engaging firm, is taking responsibility for the client service. Both parties must remember that they have a duty of care at least to each other and the client.

When accepting work as a subcontractor you should also consider matters such as client confidentiality, the existence of possible conflicts of interest and other factors that might affect your objectivity and/or independence, as well as the technical requirements of the work itself.

Where the work to be undertaken falls within a 'reserved' area of practice (Audit, ATOL Reporting, Investment Business Advice, Insolvency work or Probate), particular attention should be paid to matters such as confirmation of 'fit and proper' status and maintenance of competence, including the achievement of adequate continuing professional development (CPD). In many cases, as a subcontractor providing services in these areas, you will often be expected by the firm to meet the requirements made of employees in areas such as declarations of fit and proper status, independence, confirmation of CPD, etc. (as a member, you will already be complying with ICAEW's own CPD requirements).

OBTAINING THE SERVICES OF A SUBCONTRACTOR

Clarity of relationship

Common relationship scenarios include:

- the subcontracting firm retains responsibility for the client, services are passed on to the client by the firm
- services are provided directly by the subcontractor to the client,

In situations where you retain responsibility for the work of the subcontractor and services are passed on to the client by your firm, you are the client of the subcontractor.

Where you agree with the subcontractor that they provide the service directly to your clients, you are not necessarily involved in the service and your client becomes their client for the purposes of the service. This may have implications for the goodwill of your firm and you may wish to have clauses in place in the subcontracting agreement to protect your client relationship.

Always be clear about the respective responsibilities of the subcontractor and subcontracting firm. As the subcontracting firm you may be responsible for all aspects of the client service, but both of you must remember you have a duty of care to each other and potentially others, notably the client. When employing a subcontractor you should consider matters such as client confidentiality, handling confidential data, the existence of possible conflicts of interest, and other factors that might affect independence as well as the technical requirements of the work itself.

Anti-money laundering

From the perspective of the subcontracting firm, the subcontractor will be acting as a quasi-employee of the practice that is itself supervised for the purposes of money laundering regulations. All the responsibilities for complying with money laundering regulations in respect of the subcontracted work remain with the subcontracting firm. Therefore you would want to ensure that the subcontractor is contractually responsible for complying with the subcontracting firm's own procedures and for reporting any relevant suspicious activity to the MLRO.

The firm must ensure that it provides AML training to the subcontractor. In some cases, the subcontractor may already have undertaken relevant training. Businesses may rely on evidence of this training provided by the agent.

The firm should also include the sub-contractor in any employee screening procedures the firm has designed to comply with money laundering regulations.

Data protection legislation

If the subcontractor has assessed their status as a data processor then you will need to have clauses in your contract that reflect this. See helpsheet [Engagement letters and privacy notices](#).

Your documentation on data mapping will need to be revised and consider whether there are any training needs.

Specialist services

Where the work to be undertaken falls within a 'reserved' area of practice (Audit, ATOL Reporting, Investment Business Advice, Insolvency work or Probate), the firm should pay particular attention to matters such as confirmation of 'fit and proper' status and maintenance of competence, including the achievement of adequate continuing professional development (CPD). In many cases, the simple approach may be to consider the subcontractor to be like an employee and expect them to meet the requirements made of employees in areas such as declarations of fit and proper status, independence, confirmation of CPD, etc. The subcontractor should also have access to the firm's key policies and procedures.

Professional indemnity insurance

The subcontracting firm should expect the subcontractor's work to be covered by their professional indemnity insurance (PII). However, in order for the anti-subrogation clause of the policy to be extended to the subcontractor, their name and status as a subcontractor must be advised to the PII insurers.

Other considerations

The subcontracting firm should satisfy itself as to the skill set of the subcontractor and address practical issues of location and availability.

Obtain and document your understanding of the likely employment status of the subcontractor with regard to legal rights and taxation and consider any likely implications for your subcontracting firm.

IF IN DOUBT SEEK ADVICE

ICAEW members, affiliates, ICAEW students and staff in eligible firms with **member firm access** can discuss their specific situation with the Ethics Advisory Service on +44 (0)1908 248 250 or via **webchat**.

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