

Customer Due Diligence – Sole traders and partnerships

This fact sheet is to be read in conjunction with the beneficial ownership guideline.

Businesses can take many forms and may vary in size and complexity. This fact sheet focuses on the three business types below.

A sole trader is a person trading on their own and is not incorporated.

Partnerships can be two or more persons who have an agreement to run a business. Many partnerships are established with a formal agreement.

A limited partnership is incorporated as a separate legal arrangement that has two types of partners; general and limited partners. The difference between general partners and limited partners is that limited partners are only liable to the extent of their financial contribution to the partnership. They also have restrictions on involvement in management and the activities that they can undertake within the partnership.

Introduction

Section 11 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act) requires you to conduct customer due diligence (CDD) on:

- a) a customer,
- b) any beneficial owner of a customer, or
- c) any person acting on behalf of a customer.

Customer Identification for standard CDD

a) On the sole trader, partnership or limited partnership.

The information required for identification is:¹

- full legal name,
- full trading name (if different),
- principal business address/registered office address,
- identifier or registration number (if applicable), and
- any additional information prescribed by regulations. At the time of publication no additional information had been prescribed.

You are required to obtain information on the nature and purpose of the business relationship you will have with the customer.² If you are conducting enhanced CDD, you

¹ The appropriate level of CDD required will depend on the circumstances.

² Section 17 of the Act.

will also be required to obtain information on the source of funds or wealth of the customer.

b) On the beneficial owners of the sole trader, partnership or limited partnership:

A beneficial owner is an individual who satisfies any one element, or any combination of the three elements, of the definition of a beneficial owner in section 5 of the Act. You must identify all beneficial owners. The information required to identify the beneficial owners is:

- full name,
- date of birth,
- address, and
- any information prescribed by regulations. At the time of publication of this guidance no additional information had been prescribed for sole trader, partnerships and limited partnerships.

For sole trader, partnerships and limited partnerships, the beneficial owners may include general and limited partners. Consideration should also be given to circumstances where a third party is making decisions for the business, particularly in the case of a sole trader.

c) On the persons acting on behalf of the sole trader, partnership or limited partnership:

Acting on behalf of the customer is when a person is authorised to carry out transactions or other activities on behalf of the customer. This includes persons who have authority to act on behalf of the business, for example an accountant or persons able to transact on the business account.

The information to identify the persons acting on behalf of the sole trader, partnership or limited partnership is:

- full name,
- date of birth,
- address,
- the relationship to the customer,
- company identifier or registration number (if applicable), and
- any additional information prescribed by regulations. At the time of publication no additional information had been prescribed.

The person acting on behalf of the sole trader, partnership or limited partnership must be a properly authorised representative.

Money laundering or financing of terrorism (ML/FT) risks

While sole traders and many partnerships are simple transparent structures, such structures do not necessarily minimise ML/FT risks. Consideration should be given to the geographical location of the business and its activities, including whether it is an overseas partnership operating in New Zealand, or if the partnership based in New Zealand is doing business overseas.

A business may be higher risk if it is cash-intensive as this can lead to the placement of illicit earnings mixed with legitimate funds. Also consider the type of activity the business

undertakes. Higher risk activities include: foreign exchange brokers, pawn brokers, auctioneers and jewel/precious metal dealers.

You may also decide that enhanced CDD should be carried out if the level of risk involved is warranted.

Verification

The sole trader, partnership and limited partnership structure and arrangements should be verified using documents, data or information issued by a reliable and independent source. This may require the provision of a formal agreement (if applicable), certificate of registration or copies of trade registers and bank statements. An internet search of the business name will reveal information from trade and other directory websites.

In some instances there may not be enough information available on the business, for example it may be a new partnership. If you have decided that the available customer information is insufficient, you should consider what further steps you may need to take and record why you have taken those steps. This may also influence the reasonable steps you choose to take in establishing the beneficial ownership information. Your AML/CFT programme will outline the criteria for what action to take.

An individual's authority to act on behalf of a sole trader, partnership or limited partnership should be verified as well as their identity. Depending on the level of risk, authority to act may be verified by contacting the business.

You are required to take reasonable steps to verify the identity information you have obtained. The information gathered will assist you with ongoing account monitoring.

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Disclaimer: This fact sheet is intended to be read in conjunction with the AML/CFT guidelines from the AML/CFT supervisors. While reasonable measures have been taken to ensure the quality and accuracy of the information contained in this fact sheet, it does not replace information contained in the Act or related provisions and regulations. This fact sheet is for general information only and is not a substitute for independent, professional legal advice.

