

Harbour would suggest that the following be considered as an alternative interpretation on a person on whose behalf a transaction is conducted.

The AML/CFT Act is customer centric.

Section 11 states that CDD has to be completed on

(1)

- a) A customer
- b) Any beneficial owner of a customer
- c) Any person acting on behalf of a customer

(2) for the purpose of (1) (b) a customer who is an individual and who the reporting entity believes on reasonable grounds is not acting on behalf of another person is to be treated as if he or she were also the BO unless the reporting entity has reasonable grounds to suspect that that customer is not the beneficial owner.

The interpretation of a customer covers four points the one that interests us is

- A facility holder.

So we have to complete CDD on the beneficial owners (BO) of our customers.

The interpretation of a BO is,

beneficial owner means the individual who—

- (a) has effective control of a customer or person on whose behalf a transaction is conducted; or
- (b) owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted

Fact sheet para 13 splits this into three

- (a) has effective control of a customer
- (b) owns a prescribed threshold of the customer (more than 25%)
- (c) or person on whose behalf a transaction is conducted

Para 16 suggests that the underlying clients (investor) at the bottom of the chain will be the BO of each intermediary. This is the point that we should address. If this point falls over then the fact sheet has to be rewritten.

There is no argument that as it is currently written the fact sheet is not workable. It will be very difficult to change the Act so we should look to change how the FMA are interpreting the Act, specifically the BO interpretation.

Instead of looking at the BO interpretation as above consider splitting into three points,

- (a) has effective control of a customer
- (b) owns a prescribed threshold of the customer (more than 25%)
- (c) has effective control or owns a prescribed threshold of a person on whose behalf a transaction is conducted. (specifically looking at an individual)

Para 18 of the fact sheet goes a step too far. Section 11 (2) of the Act suggests that an individual who is a customer is the BO unless there are grounds to suspect that the individual is acting for another person. This means that they are a BO of themselves as a customer. They are not the BO of the person who is undertaking a transaction on their behalf (the intermediary)

A sensible and possibly an alternative interpretation that could work is.

If a managing intermediary (MI) is conducting a transaction on behalf of a customer that is an individual. The MI establishes if the customer is acting for themselves if they are then the individual is a BO of him/herself so CDD is completed on that individual. If it is noted that the individual is doing the transaction at a friend's direction or the funds are partly/wholly owned by a friend or business associate then the MI completes CDD on the third parties as well as the individual who is the customer. The individual will have CDD completed on them irrespective of whether they are in effective control of themselves, being in effective control of themselves does not make them a BO of anyone other than themselves.

If the RE is two removed from the investor. The RE completes CDD on its customer, the MI below them. That includes the BO's of the MI. Unless the investor owns 25%+ or controls the MI or is a facility holder with the RE then the Act does not require the RE to complete CDD on the investor.

With this interpretation the Act is not asking RE's to undertake CDD on the individual investor who originally asked for the transaction to be conducted.