

# Guidance: Customer Due Diligence – Sole traders and partnerships

*This guidance should be read together with the Beneficial Ownership and Enhanced Customer Due Diligence guidelines.*

## Background

1. This guidance assists reporting entities<sup>1</sup> to conduct customer due diligence (CDD) under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 (the Act) on their customers who are sole traders, partnerships, or limited partnerships.
2. A sole trader is a person trading on their own and is not incorporated.
3. Partnerships can be two or more persons who have an agreement to run a business. Many partnerships are established with a formal agreement.
4. 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.
5. These three business types can vary in size and complexity – from sole traders and many partnerships with simple and transparent structures, to limited partnerships, which can have more complex structures. Limited partnerships also have some similar characteristics to companies which may make them attractive to criminals.
6. In New Zealand, both New Zealand based limited partnerships, and overseas limited partnerships that carry on business in New Zealand are required to be registered on the New Zealand Limited Partnerships Register.
7. CDD is a cornerstone of your AML/CFT programme. CDD is the process through which you develop an understanding of your customers, and the money laundering and terrorism financing (ML/TF) risks they pose to your business.
8. Knowing who a customer is, verifying information provided and establishing their risk profile assists in protecting reporting entities from misuse. Developing a clear

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<sup>1</sup> Within the meaning of section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act)

understanding of the underlying persons that own or control an entity is a key part of this.

9. You must conduct CDD when you establish a business relationship with a new customer who is requesting services that are captured by the Act, or when a customer seeks to conduct an occasional activity or an occasional transaction. You must also conduct CDD on an existing customer in certain circumstances.

10. The Act requires you to conduct CDD on:<sup>2</sup>

- a) your customer
- b) any beneficial owner of a customer
- c) any person acting on behalf of a customer

11. The CDD process you follow for sole traders, partnerships, or limited partnerships (standard or enhanced) is determined by the level of risk posed by your customer.<sup>3</sup>

## Customers

### Standard CDD

12. When standard CDD applies, you need to collect the following information to identify a sole trader, partnership, or limited partnership:

- full legal name
- principal business address or registered office address
- identity or registration number

13. You must verify this information using documents, data or information issued by a reliable and independent source. You must take reasonable steps to verify the information.

14. You also need to collect:

- information on the nature and purpose of the proposed business relationship between you and the sole trader, partnership, or limited partnership
- sufficient information to determine whether the sole trader, partnership or limited partnership should be subject to enhanced CDD

### ***Requirements relating to nominee general partners***

15. As part of your onboarding of a new customer that is a limited partnership or an overseas limited partnership you must also obtain information on the existence and name of any nominee general partners.<sup>4</sup>

16. You should do this by asking for this information from the limited partnership. The limited partnership's response should be recorded in writing. This could include:

- recording the existence of a nominee general partner in a yes/no tick box as part of your onboarding process

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<sup>2</sup> This factsheet does not cover customer due diligence (CDD) requirements for wire transfers, politically exposed persons, new or developing technologies or correspondent banking relationships.

<sup>3</sup> A reporting entity cannot conduct simplified CDD on its customers who are sole traders, partnerships, or limited partnerships.

<sup>4</sup> [Regulation 11 – AML/CFT \(Requirements and Compliance\) Regulations 2011](#). For the remainder of this factsheet the term 'limited partnership' is used to encompass New Zealand based limited partnerships and overseas limited partnerships.

- recording the limited partnership's response in your system, as determined from your discussions with the limited partnership
  - an email from the limited partnership setting out their response
17. A nominee general partner is a person who must follow, or is accustomed to follow, the instructions or directions of another person who is not a general partner when carrying out their role (sometimes called a 'silent partner').<sup>5</sup> This relationship can be informal (such as acting on the verbal instructions of a family member or business associate), or formal (such as setting up a nominee agreement with a professional intermediary such as a lawyer, accountant or trust and company service provider).
18. Nominee general partner arrangements are sometimes used to protect or disguise a limited partnership's beneficial owner(s). For example, a nominee general partner could make all their decisions on the instructions of an underlying third party, who in practice is the natural person with effective ownership or control of the limited partnership. In this circumstance, the underlying third party would be considered a beneficial owner of the limited partnership.
19. While there are legitimate reasons for using nominee general partners, limited partnerships which have these arrangements also present a higher ML/TF risk. Nominee general partner arrangements can be misused to facilitate money laundering and other types of criminal offending. For example, criminals or terrorists can use nominees to obscure their involvement in a transaction or activity.
20. You must take reasonable steps to verify the existence and name of any nominee general partner, according to the level of risk involved, so that you are satisfied you know who the nominee general partner is.
21. You are not required to use information, documents or data issued by an independent source to verify this information. This is because there may not be any independent information, documents, or data available. For example, New Zealand's register for limited partnerships does not require nominee general partners to disclose their nominee status or the identity of the person whose instructions or directions the nominee follows or is accustomed to follow.
22. You may use information, documents or data issued by a limited partnership or another reliable source to verify the existence and name of any nominee general partner. This may include, for example:
- written confirmation from another partner confirming the name of the nominee general partner
  - written confirmation of any nominee relationship(s) (formal or informal)
  - a written agreement in place between any nominees and the person whose instructions or directions the nominee follows or is accustomed to follow
23. Enhanced CDD is required for limited partnerships with nominee general partners. This is discussed in the "Enhanced CDD" section below.

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<sup>5</sup> A nominee general partner is not a recognised term under the Limited Partnerships Act 2008, however it is used in other countries. Therefore, it may be relevant if you establish a business relationship with a customer that is an overseas limited partnership.

## Any beneficial owner of a sole trader or partnership

24. If you want to do business with a customer that is a sole trader, partnership, or limited partnership, you must identify and verify the identity of its beneficial owner(s).
25. Most sole traders and partnerships have simple and transparent structures, and the beneficial owner(s) are likely to be easily identifiable. You should consider the possibility that a third party may be making decisions for the business, particularly in the case of sole traders.
26. Understanding and examining any nominee general partner arrangements in place is a key part of being able to identify and understand a limited partnership's beneficial ownership.
27. It is crucial to know who the beneficial owner(s) are so that you can make appropriate decisions about the level of ML/TF risk presented by the sole trader, partnership, or limited partnership.
28. A beneficial owner is the individual (natural person(s)) who ultimately owns or controls a sole trader, partnership, or limited partnership.
29. To identify a sole trader, partnership, or limited partnership's beneficial owner(s), you should establish and understand the business's ownership structure at each layer (if applicable). Where there are complex ownership structures with no reasonable explanation, you should consider the possibility that the structure is used to hide the beneficial owner(s).
30. The person whose instructions or directions a nominee general partner follows, or is accustomed to follow, is likely to be considered a beneficial owner under the Act, if they are an individual who in practice has effective control or ownership of a limited partnership.
31. For each beneficial owner of a sole trader, partnership, or limited partnership, you must obtain the individual's full name, date of birth, address, and their relationship to the business (for example: general partner).
32. You must then take reasonable steps, according to the level of ML/TF risk, to verify this information, so that you know who the beneficial owner is.
33. You must also take reasonable steps to determine if the beneficial owner of a sole trader, partnership or limited partnership is a political exposed person.<sup>6</sup>
34. Refer to the **Beneficial Ownership Guideline** and the **Enhanced Customer Due Diligence Guideline** for further information on beneficial ownership.

## Any person acting on behalf of a customer

35. You must identify and verify the identity of any person acting on behalf of a sole trader, partnership, or limited partnership. A person is acting on behalf of a

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<sup>6</sup> Section 26 of the Act.

business if they are authorised to carry out transactions or other activities on its behalf. This includes persons who have authority to act on behalf of the business, this may include, for example:

- an accountant or persons able to transact on the business account
- a person with the authority to sign, amend account holder details, transfer, and spend in the customer's name (for example a signatory or second cardholder on a spouse's account)
- a person granted authority because they are the legal guardian of a minor or the holder of an operational power of attorney or similar.
- an individual who is authorised to represent any legal entity appointed as a professional third party to act for the customer

36. You must obtain the person's full name, date of birth (if an individual), address or registered office, entity identifier or registration number and registered office (if not an individual), and the person's relationship to the business.

37. When a sole trader, partnership or limited partnership is your existing customer, you must identify the identity of any new person acting on behalf of the business. This applies when you have previously conducted CDD on the business. You must obtain the full name and date of birth of the new person acting on behalf of the business, and their relationship to the business.<sup>7</sup>

38. You must take reasonable steps, according to the level of ML/TF risk, to verify the information you have collected, so that you are satisfied who the person is *and* that they have authority to act.

39. Refer to the **Acting on behalf of a customer factsheet** and **Beneficial ownership guideline** for further information

## Enhanced CDD

40. When your customer is a sole trader, partnership, or limited partnership, you must conduct enhanced CDD in specific circumstances:

- if you are establishing a business relationship with the entity, or the entity seeks to conduct an occasional transaction or activity, and the entity:
  - is a vehicle for holding personal assets
  - is a non-resident customer from a country that has insufficient AML/CFT systems or measures in place
- if you are establishing a business relationship with a limited partnership that has one or more nominee general partners.<sup>8</sup>
- the entity seeks to conduct a complex, unusually large or unusual pattern of transactions that have no apparent or visible economic or lawful purpose
- you assess the entity (based on your risk assessment, the situation and your standard CDD) to present a higher ML/TF risk

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<sup>7</sup> Section 18(3) of the Act.

<sup>8</sup> Regulation 12 - AML/CFT (Requirements and Compliance) Regulations 2011

- if the entity is an existing customer or is conducting an occasional transaction or activity, as soon as practicable after you become aware you must report a suspicious activity report to the New Zealand Police Financial Intelligence Unit (FIU).

41. When enhanced CDD applies, you must collect and verify the same identify information as required by standard CDD. You must also collect and verify, according to the level of risk, information about the source of funds or source of wealth of the sole trader, partnership, or limited partnership.

42. Refer to the **Enhanced Customer Due Diligence Guideline** for further information.

### AML/CFT programme

43. Your policies, procedures, and controls for CDD must be documented in your AML/CFT programme. This should include how your business will determine when enhanced CDD is required for a customer, when other types of CDD are permitted, and what you will do if you are unable to conduct CDD.

Updated 25 October 2022

### Version History

April 2013	Original version
July 2019	Removal of the word “or” in paragraph (b) under “Introduction” to align with section 11 of the Act.
October 2022	Full revised version. The additions to the guidance reflect regulation changes that require CDD for nominee general partners. Minor changes have been made to the guidance to reflect the enhanced CDD guideline. The remaining changes are not substantial and have been made for reasons of clarity.

*Disclaimer: This factsheet has been produced by the AML/CFT supervisors under section 132(2)(c) of the Act. It is intended to assist reporting entities to understand their customer due diligence obligations under the Act for their customers who are sole traders, partnerships, or limited partnerships. This guidance does not constitute legal advice.*

*Where AML/CFT guidance material is referenced, it can be accessed at the following websites:*

**Department of Internal Affairs**

<http://bit.ly/2gQ3lev>

**Reserve Bank of New Zealand**

<http://bit.ly/2n6RYdp>

**Financial Markets Authority**

<https://bit.ly/3fjckID>