

Customer Due Diligence - Trusts

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

A trust is an arrangement where a person (the settlor) gives money or property to another person (the trustee), to be held in trust for the benefit of either the trust's beneficiaries, or a purpose recognised by law.

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.

Section 22 of the Act requires you Reporting Entities to conduct enhanced customer due diligence (EDD) on a trust.

Customer Identification

a) On the trust.

The information required to identify the trust is:

- full name of the trust,
- address of the trust,
- name and date of birth of the individuals who are the trust's beneficiaries,¹
- source of funds or wealth of the customer, and
- any additional information, such as identifying a class of beneficiary for charitable trusts, as prescribed by regulations.

You are required to obtain information on the nature and purpose of the business relationship you will have with the trust.²

b) On the beneficial owners of the trust:

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:

- name,

¹ Unless Regulation 6(2) of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 applies.

² Section 25 of the Act.

- date of birth,
- address, and
- any additional information, such as identifying a class of beneficiary for charitable trusts, as prescribed by regulations.

For a trust, the beneficial owners may include:

- trustees, and
- any other individual who has effective control over the trust, specific trust property, or with the power to amend the trust's deeds, or remove or appoint trustees. This might include a protector or special trustee (if there are any), or one or more of the beneficiaries of the trust.

c) On the persons acting on behalf of the trust:

Acting on behalf of the customer is when a person is authorised to carry out transactions or other activities on behalf of the customer. For trusts, this includes persons who have authority to act on behalf of the trust, for example trustees or other persons who are able to give instructions about the trust's assets.

The information required to identify the persons acting on behalf of the trust 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.

When professional entities are appointed, for example as corporate trustee or agent, you also need to identify the individual(s) representing the corporate trustee or agent. Identification and verification of all individuals must be to the standard required by the Act.

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

The requirement for EDD on trusts recognises the potential for trusts to be used to disguise the criminal origin of funds or the true ownership and effective control of the trust, particularly where ownership and control arrangements are sophisticated or complex. All trusts must be subject to EDD, but those trusts that are geographically or financially linked to higher risk countries, or include politically exposed persons, may have increased ML/FT risks.

The information that you have gathered on the nature and purpose of the business relationship you will have with the trust may also help determine the ML/FT risk that the trust may pose. You may decide a trust with a complex structure and varied commercial activities is of greater ML/FT risk when compared to a simple family trust.

Information on EDD

EDD involves gathering further information on source of funds or wealth of the trust.

Source of funds or wealth of the customer (section 23)

To identify the source of funds or the wealth of a trust:

- identify the individuals who are the settlor(s), and the origin of the settlor's wealth. For example, the settlor may have inherited family wealth, accumulated business earnings, or funds from the sale of property, and/or
- identify the source of any income that the trust is receiving. For example it may be income from an underlying company or simply a monthly deposit from a family bank account.

Regulation 6 – beneficiaries

Regulation 6 of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 provides additional information on EDD for the beneficiaries of trusts. Regulation 6(1) requires you to obtain the name and date of birth of each beneficiary of a trust. However, regulation 6(2) allows you to relax this requirement if your customer is a discretionary trust, a charitable trust, or any type of trust that has more than ten beneficiaries. In such cases you must obtain:

- a description of each class or type of beneficiary, and
- in the case of a charitable trust, the objects of the trust.

Verification

The trust's structure and arrangements should be verified using documents, data or information issued by a reliable and independent source. This may require the provision of relevant extracts from a trust deed, subsequent deeds of appointment and amendment, or reference to an appropriate register in the country of establishment.

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. You are also required to take reasonable steps to verify information provided about the trust's source of funds or wealth, based on your assessment of the customer's level of risk.

When regulation 6(2) applies you are not required to verify the identity of the individual beneficiaries if you have established the class or type of beneficiary, or the objects of a trust.

An individual's authority to act on behalf of a trust should be verified as well as their identity.

April 2013

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.

