**Guidance: New regulations clarifying AML/CFT requirements for DNFBPs providing trust and company services**

**Background**

1. Effective 31 July 2023, three new amendment regulations take effect that further define requirements of the Anti-Money Laundering and Countering Financing of Terrorism (**AML/CFT**) Act 2009 (the **Act**) and associated regulations.
2. These regulatory amendments are important for all law firms, accounting practices and trust and company service providers (**TCSPs**) that carry out the following designated non-financial business or profession (**DNFBP**) activities under s5(1) of the Act:

##### acting as a formation agent of legal persons or legal arrangements:

##### acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements.

1. The new regulations follow the Ministry of Justice’s [Statutory Review](https://www.justice.govt.nz/assets/AMLCFT-Statutory-Review-Final-Report.pdf) of the Act completed in 2022.
2. This review was required by section 156A of the Act and began on 1 July 2021. It identified various circumstances in which the Act’s requirements for these DNFBP activities needed to be further defined – This includes the definition of customer, who must be subject to customer due diligence (**CDD**) requirements and who is the reporting entity responsible for doing so. It was identified that some DNFBPs were over-complying with the Act as obligations were unclear.
3. This guidance is intended to inform you of these recent changes to the Act and associated regulations, it does not constitute legal advice.

**Definition of customer**

1. New [Regulation 5F](https://www.legislation.govt.nz/regulation/public/2011/0222/latest/whole.html#LMS877234) of the AML/CFT (Definitions) Regulations 2011 clarifies who a customer is if a DNFBP is instructed to form a legal person or a legal arrangement as an occasional activity (i.e. outside of a business relationship).When carrying out this instruction:
2. the customer is the person who instructs the DNFBP to form the legal person or legal arrangement; and
3. the DNFBP must, according to the level of risk involved, take reasonable steps to verify the identity of any person(s) that will meet the definition of beneficial owner of the (to be formed) legal person or legal arrangement.

**Acting as (or arranging for a person to act as) a nominee or trustee**

1. New [Regulation 5G](https://www.legislation.govt.nz/regulation/public/2011/0222/latest/whole.html#LMS877236) of the AML/CFT (Definitions) Regulations 2011 clarifies who the customer is if a DNFBP acts as, or arranges for a person to act as, a nominee director, a nominee shareholder or a trustee of a legal person or legal arrangement. The customer is the legal person or legal arrangement that the DNFBP is acting for (or is arranging for someone else to act for).
2. The customer is not a third-party intermediary (e.g. an agent or another law firm, accountant or TCSP, including if overseas) that engages the DNFBP to act as or arrange for someone to act as a nominee or trustee.
3. In turn, this means that the DNFBP’s CDD obligations under the Act (including ongoing CDD and account monitoring) must be applied to[[1]](#footnote-2):
* the legal person or legal arrangement that the DNFBP is acting for (or arranging for someone else to act for):
* any person(s) that is the beneficial owner of that legal person or legal arrangement:
* any person acting on behalf of that legal person or legal arrangement (Note this may now include the third-party intermediary).

**Corporate trustees and nominee companies**

1. New [Regulation 24AF](https://www.legislation.govt.nz/regulation/public/2011/0223/latest/LMS879464.html) of the AML/CFT (Exemptions) Regulations 2011 clarifies that when a DNFBP in New Zealand (most likely a law firm, accounting practice or TCSP) delivers its trust and company services through separate legal persons (i.e. a corporate trustee or nominee company), the DNFBP is the reporting entity for that activity, subject to certain conditions being met.
2. The regulation states that a separate corporate trustee or nominee company used by a DNFBP to deliver its trust and company services is not a reporting entity under the Act, when:
* the corporate trustee or nominee company is a subsidiary[[2]](#footnote-3) of, controlled by, and delivers services on behalf of a DNFBP that is a reporting entity in New Zealand (known as the **parent entity**); and
* the parent entity has established, and implements and maintains, an AML/CFT programme for the trustee or nominee services that are provided by the corporate trustee or nominee company.
1. Importantly, a corporate trustee or nominee company that does not meet these conditions is still a reporting entity in New Zealand and is therefore required to comply with the Act in full. This includes any corporate trustee or nominee company that is not a subsidiary of a New Zealand reporting entity or for whom a parent entity does not have an AML/CFT programme in place.

**AML/CFT programmes**

1. All DNFBPs impacted by these regulations should ensure that their risk assessments and AML/CFT programmes are updated to reflect these new requirements.
2. If you require further information on these new amendments to the regulations, please contact Te Tari Taiwhenua Department of Internal Affairs (**DIA**) AML/CFT Group on amlcft@dia.govt.nz.

### Disclaimer

Note: This guidance has been produced by the Department of Internal Affairs for DNFBPs under s132(2)(c) of the AML/CFT Act. It is for those DNFBPs that carry out activities (i) and (ii) in the definition of DNFBP in s5(1) of the AML/CFT Act. This guidance does not set out comprehensive obligations under the AML/CFT Act and associated regulations and codes of practice. This guidance does not constitute legal advice.

### Version history

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1. Section 11(1)(a) of the Act [↑](#footnote-ref-2)
2. A subsidiary means wholly owned by the parent entity, or a company owned by— (i) 2 or more accountants in public practice, and practising in partnership, who are partners; or (ii) 2 or more solicitors in public practice, and practising in partnership, who are partners; or (iii) a solicitor in sole practice; or (iv) an accountant in sole practice. [↑](#footnote-ref-3)