

PRACTICE BRIEFING

Certification and Verification under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

INTRODUCTION

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the Act”) requires “reporting entities” to conduct customer due diligence (“CDD”) on their customers, their customers’ beneficial owners and anyone acting on behalf of their customers. In the Practice Briefing the term ‘customer’ is to be interpreted as including the beneficial owners and persons acting on behalf of customers.

Law firms carrying out certain activities became reporting entities from 1 July 2018 and are now required to conduct CDD in accordance with the Act. This Practice Briefing provides information on the wording which lawyers may use when certifying CDD documentation for their own clients or for the customers of other reporting entities (such as banks). It is intended to provide guidance in an area where there are few definitive procedures.

CDD REQUIREMENT

The Act requires reporting entities to conduct CDD. There are two elements to this: (1) “identifying” the customer; and (2) “verifying the identity” of the customer. To complete valid identity verification, the customer must provide certain identity information to the reporting entity who must then independently validate its authenticity. Lawyers, in the role of “trusted referees”, are often asked to certify identity documents for those purposes.

AMENDED IDENTITY VERIFICATION CODE OF PRACTICE 2013 (“THE CODE”)

The Code, which has been approved by the Ministry of Justice, applies to reporting entities unless they meet notification requirements and adopt “equally effective” procedures. It appears

that most reporting entities have adopted the Code.

The Code suggest a best practice for all reporting entities conducting name and date of birth identity verification on customers who are natural persons and who have been assessed to be low to medium risk for AML/CFT purposes. The Department of Internal Affairs (“DIA”) has provided guidance for lawyers and conveyancers in relation to AML/CFT matters which endorses the use of the methods described in the Code.

“TRUSTED REFEREES”

The Code allows reporting entities to verify information by either sighting and retaining a copy of the original identification document, or relying on electronic identification verification, or by relying on a “trusted referee” to sight the original identification document and provide the customer with a certified copy containing approved wording for the retention of the reporting entity.

Lawyers are one of the approved classes of “trusted referees”.

When a reporting entity relies on a certified document to satisfy its verification requirements, it is relying on a trusted referee to sight the original document and to confirm, through the use of appropriate wording, that the quality of the certified document is such that the reporting entity may rely on it.

THE ROLE OF TRUSTED REFEREES

The Code requires the reporting entity to actually verify the identity of a customer. The trusted referee’s role is to check that the identity of the customer matches the identity of the person named in those documents.

ACTIONS ON CERTIFICATION BY TRUSTED REFEREES

When certifying a document, a trusted referee must sight the original documentary evidence and include his or her name, signature, reference to his or her qualification (to evidence that he or she is qualified as a trusted referee) and the date of certification.

The Code states that the wording used by the trusted referee to certify documents must be “to the effect that the documents provided are a true copy and represent the identity of the named individual (link to the presenter)”.

The Code appears to require a visual check of the identity of the customer against appropriate photographic identification.

WORDING TO USE ON CERTIFICATION BY TRUSTED REFEREES

There is no absolute rule on the wording that trusted referees should use when certifying documentation. However, the wording must satisfy the particular reporting entity's requirements.

If a lawyer is asked to certify documentation for customers of other reporting entities the lawyer should ask the customer whether any prescribed wording is required by the reporting entity.

If a lawyer is asked to certify documentation for customers of other reporting entities and the reporting entity does not require any specific wording, it is recommended that the lawyer should adopt wording that the reporting entity is likely to deem acceptable.

Please note that where a client is a customer of another reporting entity, the lawyer will be 'certifying' the identity documentation for the purposes of the reporting entities own verification protocols. Where the law firm is dealing with its own clients, the lawyer will be 'verifying' the identity documentation. Examples for each scenario are detailed below.

Photographic identification: This would include a request to certify or verify a copy of the customer's passport, driver's licence, New Zealand firearms licence or an overseas national identity card. Where a customer presents a reporting entity with a duly certified copy of photographic identification, no further documentation is required to attest to the customer's name and date of birth.

Suggested wording when certifying documentation for customers of other reporting entities is: "I certify this to be a true copy of the original, which I have sighted, and the photo represents a true likeness of [the person presenting the document to me for certification] [OR] [customer's name]."

Suggested wording when verifying documentation for lawyers own clients is: "I verify this to be a true copy of the original, which I have sighted, and the photo represents a true likeness of [the person presenting the document to me for verification] [OR] [customer's name]."

Non-photographic identification: If a customer asks a lawyer to certify/verify a copy of non-photographic identification, the lawyer needs to consider to what extent he or she is happy to certify/verify that the document "represents the identity of the named individual" - particularly if he or she does not know the customer. Because the phrase "represents the identity" is not defined, lawyers need to consider to what extent non-photographic identification documentation is capable of representing someone's identity.

It is suggested that where a lawyer is presented with a piece of non-photographic identification and a piece of photographic identification together, the lawyer may take sufficient comfort from the quality of the photographic identification so as to be able to corroborate the information on the non-photographic identification and to certify the copy as follows:

Suggested wording when certifying documentation for customers of other reporting entities is: "I certify this to be a true copy of the original, which I have sighted, and it represents the identity of [the person presenting the document to me for certification] [OR] [customer's name]."

A lawyer who does not feel comfortable about making this assertion could offer to certify the copy as follows:

“I certify this to be a true copy of the original, which I have sighted.”

The onus is then on the reporting entity to decide whether to accept it or not.

Where a lawyer is verifying non-photographic identification for his or her own client the lawyer, if he or she feels comfortable about making this assertion, could use the following suggested wording:

“I verify this to be a true copy of the original, which I have sighted, and it represents the identity of [the person presenting the document to me for verification] [OR] [client’s name].”

Where a lawyer is verifying non-photographic identification for his or her own client and the lawyer does not feel comfortable about making the above assertion, the lawyer and his or her law firm need to decide whether or not wording which verifies the non-photographic identification to a lesser standard is acceptable. As the AML/CFT regime is a risk-based regime whether or not such wording is acceptable should be considered by the lawyer and law firm at the relevant time. If it is determined that verification of non-photographic identification to a lesser standard is appropriate after applying a risk based approach, the suggested wording is:

“I verify this to be a true copy of the original, which I have sighted.”

OTHER POINTS TO NOTE

Trusted referees may be excluded from certifying/verifying due to their relationship with the customer (if they are a spouse, a relation, living at the same address, or otherwise involved in the transaction or business).

Because the trusted referee must check identity, it follows that a lawyer can only certify/verify a document under the Code if it is being provided by the person named in that document or if they know that person in a personal capacity (subject to the exclusions). This means a lawyer should not state that a document “represents the identity of the named individual” if it is provided by a third party – even if it is otherwise a true and accurate copy of the original.

ACCEPTANCE BY REPORTING ENTITIES

Each reporting entity must be satisfied that the wording satisfies its own requirements set out in its AML/CFT Compliance Programme. All reporting entities must establish, implement and maintain an AML/CFT Compliance Programme – which must include protocols for conducting CDD.

If a reporting entity’s AML/CFT programme prescribes particular wording for certification, that reporting entity is unlikely to accept any certified document that does not adopt that wording.

Law firms may choose to adopt in their own Compliance Programmes the wording which has been suggested in this Practice Briefing.

PREPARATION OF CERTIFICATION STAMPS

There is no absolute rule on the wording trusted referees should use when certifying or verifying documentation. Where a lawyer is certifying documentation for customers of other reporting entities, the customer is responsible for requesting that the document be certified in accordance with the express requirements of the reporting entity that has requested they provide a certified copy of a document. If a lawyer is verifying its own client's identification documentation, the wording contained in this Practice Briefing could be adopted.

Subject to the caveats above, it could be possible for law firms to design prefabricated certification/verification stamps as time-saving devices. Note again that any prefabricated certification stamps may not always meet the needs of a particular reporting entity but the verification stamps could certainly meet the internal requirements of the relevant law firm.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on good practices. Some of the information and requirements may change over time and should be checked before any action is taken.

Updated June 2018