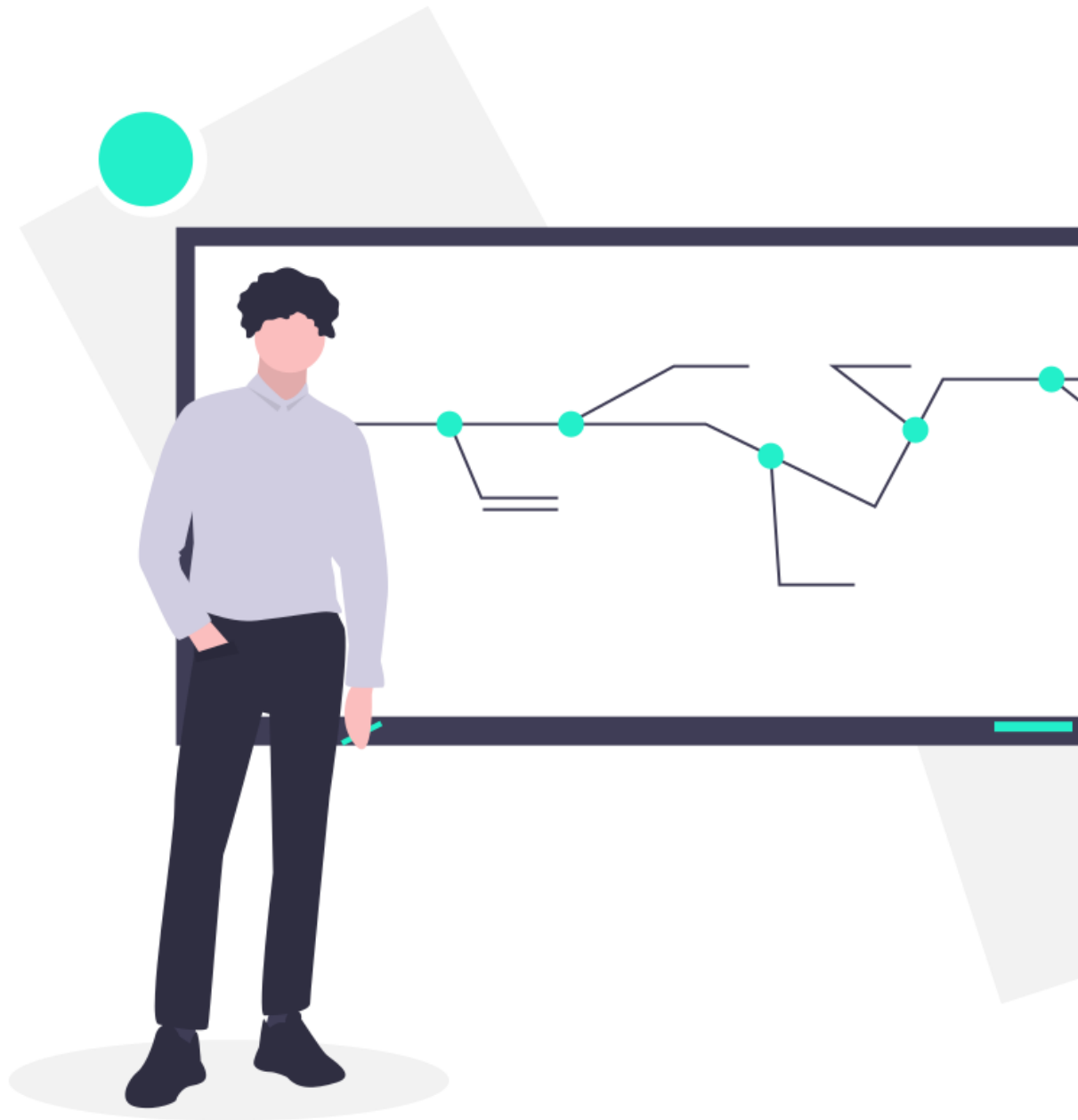


Do you have Trust issues? Part 1



AML CDD Trust Part 1

Do you have Trust issues?

Well, you are not alone.

Oh wait.... I'm not talking relationship Trust issues. I'm not brave enough to take those on. I am talking about issues with carrying out Anti Money-Laundering

Customer Due Diligence (AML CDD) on Trusts. Almost without exception, your AML CDD requirements are at their most challenging when your customer is a Trust.

If you just find Trusts confusing, or if your last AML audit highlighted gaps, then you have come to the right place. In this blog series I'll try to help you overcome your Trust issues, including:

- what Trusts are and why have one
- what enhanced CDD, SoW, and PoF means
- the different types of roles involved in Trusts to consider for ID verification

Make sure you read [part two](#) and [part three](#).

We are also running a free Trust Webinar. Sign up and we will explain Trusts and walk you through how to do CDD for a Trust. After the webinar we will send you a Training Certificate to show the AML training you received.

[Sign Up](#)

Before we begin...

Have you ever tried to help someone, but were worried that your opinion might be taken as "advice" and then make you liable in some way? That's how we often feel. We want to help, and we get asked daily what to do in a particular AML situation. And we either know, or we try to find out. We help with our opinion, and we refer customers to the legislation, their AML Supervisor, and their AML Programme and Compliance Officer.

But we continually find out gems, from our research or shared by our customers, and we know others are struggling with that and would love to know it too. Hence this blog. It is about stuff we have found out on Trusts along the way which we hope will help you.

But please remember everything here is an opinion, and we really hope our opinion can help you. It is not to be read as "advice", or in any way that makes us liable for the content. Remember – always refer to the [legislation](#), information and advice provided by your AML Supervisor, and your AML Programme and Compliance Officer.

Just needed to get that clear, and now we can begin!

What is a Trust and why have one?

Generally, a Trust is a legal structure that takes on the ownership of assets to be used for the benefit of someone (or something) else. It is created using a document called a Deed.

Trusts date back to the middle ages. Knights would set up a Trust so that their castle was looked after for the benefit of their wife and children while they went off fighting (and in case they didn't come back!)

Fast forward to today and Trusts are still in use, and not just for Crusaders! People set up Trusts for lots of reasons, for example:



- **Legacy:** An elderly couple place the ownership of their family home into a Trust for the benefit of their family. They want their beloved family home to stay in family ownership after their death. Over time they transfer all their assets into the Trust to consolidate them and allow their family (with help from their accountant or lawyer) to manage them on their behalf during their retirement and after they have passed.
- **Protection:** An entrepreneur with many business ideas transfers shares in their first company into a Trust. That way the shares have some protection from potential legal claims related to other businesses they start.
- **Succession:** A charity sets up a Trust that outlines its purpose, and how it will go about realising it. It includes succession planning for how the charity will be run after its founders retire.

No one knows exactly how many Trusts there are in NZ because there is no NZ register of Trusts. But the Ministry of Justice estimates between 300,000 and 500,000 Trusts in NZ! Which is a lot, considering there are 677,000 registered limited companies. While it is predicted that number of Trusts will reduce in the future (due to recent changes to NZ Trust law). For now, as a Reporting Entity offering professional services, it is still very likely you will have to deal with Trusts.

Trusts require Enhanced Due Diligence (EDD)

If your customer is a Trust – and you are providing AML in-scope services – you must perform Enhanced Customer Due Diligence (EDD).

NZ legislation outlines a range of situations when EDD is required, and a customer that is a Trust is one of these. Typically, these enhanced situations are where internationally there has been a higher likelihood of money laundering terrorist financing occurring, such as when a client lives in a high-risk country.

The requirement to do enhanced CDD on Trusts are set by the **Financial Action Task Force** (FATF), which is an international body. It's not personal. The fact you are dealing with Trusts does not mean you or they are risky. The reason you need to carry out enhanced due diligence is that internationally Trusts are used as an 'entity of choice' by criminals who want to launder money, because they can be used to provide a layer of anonymity.

Since NZ wants to make it hard for criminals to clean their money here, one of the ways to do that is to make sure all movement of money through Trusts in NZ is legitimate. Which is why the legislation raised the bar on CDD for a Trust to enhanced.

Trusts - Where did the money come from?

When you carry out EDD, in addition to your Standard due diligence procedures, you must also find out where the Trust's money (assets) came from. You need to get evidence of the source of the Trust's wealth (SoW), or proof of where the Trusts funds come from (PoF).

For example, the source of wealth might be the sale and purchase agreement of a property that was placed (settled) in the Trust. The proof of funds might be the financial accounts of the Trust, or a business owned by the Trust and providing it income.

Every situation is unique, so what you accept as SoW/PoF will likely vary from Trust to Trust. Just remember in all cases you are checking and recording evidence that the Trust's money came from a legitimate and explainable source.



How far you go should be based on the circumstances and risk for each situation (it is a risk-based approach, I'm sure you've heard lots). If a Trust derives its income and assets from another Trust, it is likely you'll need to establish SoW/PoF for that Trust, and so on. Oh, and just because a Trust Deed is established with a nominal sum (like \$20), that isn't SoW done and dusted –

what about the usual, significant assets that were settled into the Trust after it was established? The SoW evidence should address that.

You can find more on the factors that trigger EDD, and how to record evidence of SoW/PoF correctly [here](#).

Additional Due Diligence just for Trusts

Unique to Trusts, the legislation requires you to record additional information that depends on the type of Trust you're dealing with.

There are a dizzying array of factors that can be different across Trusts. Plus there is no set format or template for what a Trust deed looks like. On top of that, Trusts are mostly written in pretty formal legal language. So it can feel like you need a secret decoder key to figure them out!

For AML/CFT purposes the first thing you need to do with the Trust Deed is use it to categorise what type of Trust you are dealing with. It should be one of the following types:

Type of Trust	Because	In a trust deed look for
Fixed	The trust deed fixes who will benefit and how. Payments are distributed in the proportions set out.	The disbursements/payments to beneficiaries will be in fixed proportions (equity shares, percentages, etc). There will be no discretionary powers for the Trustees to make payments as they see fit. So no wording like "at their sole discretion", etc.
Discretionary	The trust deed allows Trustees discretion to decide when, how and who will benefit. Payments can be made to some beneficiaries and not others.	A trust where the Trustees can choose who to make payments to (often but not always) from a defined list of beneficiaries) and how much each receives. Look for discretionary powers of the Trustees – again if it includes "discretionary" or "at the discretion of..." then it is likely to be a discretionary trust.
Charitable	The trust deed outlines the charitable purpose and how it will realise that purpose.	The purpose of the trust should show clear charitable intent, the purpose (objects) of the Trust. Charitable trusts are often (but not always) registered with Charities.co.nz.

For each type of Trust you will need to record different information about the beneficiaries and objects of the Trust.