

# Verification of Identity and Administration of Oaths and Declarations During COVID-19 Alert Levels

*The challenges of the COVID-19 Level 4 lockdown, and potential for the continuation of strict social distancing measures even once New Zealand returns to Level 3, has made much of the day-to-day practice of law challenging.*

*In particular, it has rendered many of the requirements for identity verification, document execution and the taking of oaths and declarations very difficult to comply with. This Guidance Note is designed to review the challenges associated with the verification of identity and execution of different types of document and provide guidance on best practice for overcoming them.*

*This Guidance Note is written by the LexisNexis team and relies on the guidance offered by the New Zealand Law Society, Department of Internal Affairs and Land Information New Zealand. It aims to summarise and consolidate that information, providing links to their resources and further reading on Lexis Advance and Lexis Practical Guidance.*

This note covers:

- Identity Verification - AML/CFT
- Identity Verification - Authority and Instruction Forms
- Remote Execution - Oaths and Declarations
- Remote Execution - Wills

## ***Identity Verification – AML/CFT***

Compliance with AML/CFT requirements under the [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) during the COVID-19 Alert Level 4 lockdown is challenging. It becomes impossible to verify a client's identity face-to-face or review original documentation. Even under the slightly less onerous Level 3 restrictions, it is likely that continued social distancing measures will make physical identification impossible, or at least impractical, for some time.

To address this, the Department of Internal Affairs has published guidance on complying with AML/CFT requirements to enable firms to take new instructions during the period of COVID-19 restrictions.

See Department of Internal Affairs - [Guidance: Complying with AML/CFT verification requirements during COVID-19 Alert Levels](#)

### **Delayed Verification**

While it is not possible to conduct face-to-face identify verification checks, there remains the option under [s 16\(3\)](#) and [s 24\(3\)](#) of the Act to delay verification until a later date, while continuing to act on the client's matter, on the basis that:

1. it is essential not to interrupt normal business practice; and
2. money laundering and financing of terrorism risks are effectively managed through procedures of transaction limitations and account monitoring or (if the reporting entity is not a financial institution) through other appropriate risk management procedures; and
3. verification of identity is completed as soon as is practicable once the business relationship has been established.

As long as the verification is completed as soon as practicably once restrictions are eased or lifted, it is possible to establish the new relationship and receive funds from the client. However, standards of diligence still apply, and it is important to ensure that appropriate measures are implemented to demonstrate that due care is being given to avoid breaches.

The Department of Internal affairs suggests that transfer or withdrawal limits be imposed on funds received until the client's identify can be properly verified.

## Remote Verification

Where a firm has appropriate electronic verification methods, the [Amended Identity Verification Code of Practice 2013 \(IVCOP\)](#) allows for identify verification to take place remotely, without face-to-face interaction.

To rely on remote identification, additional measures must be implemented where remote verification takes place. The Department of Internal Affairs give the example "e.g. requiring the first credit into the facility from a New Zealand registered bank in the same name as the new customer".

Remote verification still requires sighting original identity documentation and Part 1 of the IVCOP requires that firms have established risk-based exception handling provisions to deal with occasions where this cannot take place (e.g. delayed verification measures above).

## Existing Relationships - Ongoing Due Diligence

The Department of Internal Affairs acknowledges that typical standards of ongoing Customer Due Diligence (CDD) may be challenging and advises that a risk-based approach is adopted.

Reporting entities are trusted to use their discretion as to what measures they might take in sighting original documentation and are to establish guidelines for interim measures and plans for undertaking usual CDD once (e.g. accepting scanned copies with processes for ensuring all originals are sighted once possible).

## AML/CFT Internal Audits and Annual Reports

The Department of Internal Affairs has issued a separate statement relating to Internal Audits and Annual Reports due on 31 August 2020.

Read it [Here](#).

While there are no firm plans, the Department assures reporting entities that it is aware of potential challenges in completing audits and reports and states that it is developing guidance:

*We do not currently have definitive answers but we are working to define solutions that will assist reporting entities and ensure New Zealand businesses and communities are protected against the harm caused by money laundering and financing terrorism.*

## Identity Verification – A&I Forms

Land Information New Zealand has issued [Authority and Identity Requirements and Electronic Signing of Documents Interim Guideline 2020 - LINZ OP G 01247](#) to allow for remote witnessing of A&I Forms and Verification of Identity while in-person verification is not possible.

Practitioners may now use audio-visual technology to complete this step for all clients (both new and existing). A previous version of the guidance only permitted remote execution where the client was known to the practitioner for a period of 12 months or more and already hold a copy of their ID, but this has now been relaxed.

All other requirements under the [2018 Guidelines](#) continue to apply. LINZ notes in particular that the audio-visual session should **not** proceed if:

- there are any concerns that the client may lack capacity or is acting under duress; and/or
- the practitioner is not able to simultaneously see and hear their client; and/or
- the practitioner cannot clearly see their photo ID and what documents are being signed for the duration of the session.

When deciding whether this approach to execution is appropriate, practitioners should take into account the following practical considerations.:=

- Do both you and your client have access to sufficient quality audio-visual conferencing technology (e.g. Skype, Zoom etc). Audio only is not sufficient. Video must be of sufficient quality to be able see documents held to the camera.
- Does your client have access to a printer to print the documents? If not, it may be possible to proceed by handwriting out the necessary information.
- Do you require any paper instruments for manual dealings to be signed for the transaction? These documents require a wet signature and to be submitted to LINZ in hard copy. This requirement is unchanged, though LINZ is not currently accepting manual dealings due to COVID 19 restrictions.
- Does your client have access to a scanner or means of sending a photographed copy of the signed documents to you once completed?
- Are you prepared to accept scanned or photographed copies? Usually, sight of the original is required, but LINZ has stated that due to the limited availability of things like courier services: *"It is up to the practitioner, taking into account their client's particular circumstances and any internal requirements or processes their firm may have, to decide whether they will make their certifications relying on something less than the original, such as a scanned copy or a photograph copy."*

For further information, see: [LINZ Signing Documents Remotely](#)

## ***Administration of Oaths and Declarations***

The Government has made a temporary law change to modify the requirements for signing and witnessing oaths, affirmations (such as affidavits) and declarations under the Oaths and Declarations Act 1957. This is contained in the [Epidemic Preparedness \(Oaths and Declarations Act 1957\) Immediate Modification Order 2020](#).

Previously, oaths and declarations needed to be made in the physical presence of the administrator. These requirements have temporarily been relaxed to permit administration via audio-visual or audio link.

The Ministry of Justice advises that:

- The change makes it clear that there is no requirement for a person taking oaths, affirmations or declarations to be in the physical presence of those making them. The person witnessing the oath, declaration or affirmation is also not required to physically sign the same document as the person making it. Instead, oaths, affirmations or declarations can be administered using audio-visual or audio links, such as over Skype, Zoom, Facetime, or over the phone.
- Other requirements for taking oaths, affirmations, and statutory declarations remain the same. It will still be important for the person taking the oath, affirmation or declaration to be sure that:
  - the person making the oath, affirmation, declaration is the person signing the document
  - the person making the oath, affirmation or declaration has read and understood its contents and believes its contents to be true, and
  - the exhibits attached are those referred to in the oath, affirmation or declaration.
- The person making the oath, affirmation or declaration should sign the document during the audio-visual or audio link.
- As soon as possible after that, the person must send it to the person taking the oath, affirmation or declaration (the witness) so that they can also sign it. The document can be scanned or photographed and sent electronically. At Alert Levels 1-3, it could also be posted or couriered. At Alert Level 4, the document can be posted or couriered if it is an essential good (for example, because it relates to priority court or tribunal proceedings).

- The person taking the oath, affirmation or affidavit can also note on the document that it was taken by audio or audio-visual link.
- The order also allows entities that receive statutory declarations to authorise some of their employees to take statutory declarations instead of a lawyer, JP, Deputy Registrar in a court, or other person who would usually do that. This is because people may find it harder than usual to find someone to take their statutory declarations. Entities authorising their staff to do this should make sure that staff are trained in the process outlined below and that staff don't take declarations where they may have a conflict of interest with the person making it.
- The changes made by this modification order are temporary. The modification order will expire after the Epidemic Notice is lifted.

For further information, see: [Ministry of Justice: Oaths, Affirmations or Declarations](#)

### ***Remote Execution - Wills***

While it is relatively common under normal circumstance for wills to be executed remotely, the challenges of the COVID-19 Level 4 lockdown present significant challenges.

To facilitate the execution of wills and codicils, the Government has passed [Epidemic Preparedness \(Wills Act 2007—Signing and Witnessing of Wills\) Immediate Modification Order 2020](#) which operates for the duration that the [Epidemic Preparedness \(COVID-19\) Notice 2020](#) is in place.

Witnessing may now take place via audio-visual link where it is impossible or impracticable for in-person witnessing to take place.

A strict procedure should be followed, and the will or codicil should be re-executed as soon as practicable once the Epidemic Notice is lifted.

For full guidance on this topic, see our dedicated COVID 19 Guidance Note: [Execution of Wills under COVID-19 Alert Levels](#)