Inland Revenue Department
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

CHAPTER 14
DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES

Reliance on self-certifications

Where information already held by a reporting financial institution, including knowledge about the customer held by a relationship manager, conflicts with any statements or self-certification, or the reporting financial institution has reason to know that the self-certification or other documentary evidence is incorrect, it may not rely on that evidence or self-certification.

2.   A reporting financial institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts, a reasonably prudent person would know this to be the case.

Reliance upon an audited financial statement

3.   Reporting financial institutions may rely upon an audited financial statement to establish that an account holder meets a certain income or asset threshold, but are not obliged to where the entity's status can be established from other information or documentation that it holds.

4.   If a reporting financial institution does rely upon an audited financial statement to establish a status for an account holder, it has reason to know that the status claimed is unreliable or incorrect only if the audited financial statement for the account holder or the notes or footnotes to the financial statement conflicts with the self-certification provided to it.

5.   If a reporting financial institution relies upon an audited financial statement to establish a status for an account holder that does not require the account holder to meet an asset or income threshold, it will be required to review only the notes or footnotes to the financial statement to determine whether the financial statement supports the claimed status.   If a reporting financial institution does rely upon other documentation to establish the account holder's status there is no need to review any financial statements that may have been provided to it as part of the account opening.

Reliance upon other documentation

6.   Where a reporting financial institution relies on organizational documents to establish that an account holder has a particular status, it will only be required to review the documents to the extent needed to establish that the requirements applicable to the particular status are met.

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Limits on reason to know

Pre-existing entity accounts

7.   For the purposes of determining whether a reporting financial institution that maintains a pre-existing entity account has reason to know that the status applied to the entity is unreliable or incorrect, the reporting financial institution is only required to review information that may contradict the status claimed if such information is contained in:

    (a)   the most recent self-certification and documentary evidence;

    (b)   the current customer master file;

    (c)   the most recent account opening contract; and

    (d)   the most recent documentation obtained for AML/KYC procedures or for other regulatory purposes.

Multiple accounts

8.   A reporting financial institution that maintains multiple accounts for a single account holder will have reason to know that a claimed status for the person is inaccurate based on account information for another account held by the person only to the extent that the accounts are either required to be aggregated or because of any other "reason to know"; for example, knowledge of a relationship manager.

Change of address within same jurisdiction

9.   A change of address in the same jurisdiction as that of the previous address is not a reason to know that the self-certification or documentary evidence provided is inaccurate.

Conflicting indicia

10.   A reporting financial institution does not know or have reason to know that a self-certification or documentary evidence is unreliable or incorrect solely because it discovers any of the following indicia and such indicia conflicts with the self-certification or documentary evidence:

    (a)   one or more telephone numbers in a reportable jurisdiction and no telephone number in Hong Kong; or

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(b)   standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a reportable jurisdiction; or

(c)   currently effective power of attorney or signatory authority granted to a person with an address in a reportable jurisdiction.

11.   The following examples illustrate the application of the limits on the standards of "reason to know":

(a)   **Example 1: Reporting financial institution Bank-HK maintains a depository account for individual account holder "A"**

A holds a pre-existing depository account with Bank-HK.   Bank-HK has relied on the address in its records for A, as supported by his passport and a utility bill collected upon opening of the account, to determine that A is resident for tax purposes in Jurisdiction X (application of the residence address test).

Five years later, A provides a power of attorney to his sister, who lives in Jurisdiction Y, to operate his account.   The fact that A has provided such power of attorney is not sufficient by itself to give Bank-HK reason to know that the documentary evidence relied upon to treat A as a resident of Jurisdiction X is unreliable or incorrect.

(b)   **Example 2: Reporting financial institution Insurance Company I has entered into a cash value insurance contract with individual account holder "B"**

The contract is a new individual account. Insurance Company I has obtained a self-certification from B and confirmed its reasonableness on the basis of the AML/KYC documentation collected from B.   The self-certification confirms that B is resident for tax purposes in Jurisdiction X.

Two years after Insurance Company I entered into the contract with B, B provides a telephone number in Jurisdiction Y to Insurance Company I. Although Insurance Company I did not previously have any telephone number in its records for B, the sole receipt of a telephone number in Jurisdiction Y does not in itself constitute a reason to know that the original self-certification is unreliable or incorrect.

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Alternative procedures for cash value insurance and annuity contracts

Individual beneficiary of a cash value insurance contract or an annuity contract

12. A reporting financial institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a cash value insurance contract or an annuity contract as a non-reportable person unless the reporting financial institution has knowledge or reason to know that the beneficiary is in fact a reportable person. A reporting financial institution has reason to know that a beneficiary of a cash value insurance contract or an annuity contract is a reportable person if the information collected and associated with the beneficiary contains indicia as described in paragraph 30 of Chapter 9 (Due Diligence: Pre-existing Individual Accounts).

Group cash value insurance contracts or group annuity contracts

13. A reporting financial institution can treat an account that is a group cash value insurance contract or a group annuity contract, and that meets the requirements set out below, as a non-reportable account until the date on which an amount is payable to an employee/certificate holder or beneficiary.

14. A reporting financial institution is not required to review all the account information collected by the employer to determine if an account holder's status is unreliable or incorrect.

15. The requirements are that:

(a) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five or more employees/certificate holders;

(b) the employees/certificate holders are entitled to receive any contract value and to name beneficiaries for the benefit payable on the death of the employee/certificate holder; and

(c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $7.8 million.

Aggregation and currency rules

Aggregation of individual accounts and entity accounts

16. Identical rules apply to aggregation for individual and entity accounts.

17. An account held by one or more individuals as a partner(s) of a partnership is treated as an entity account and is not treated as an individual account.

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18.   Reporting financial institutions are required to aggregate all financial accounts maintained by it or by a related entity, but only to the extent that the reporting financial institution's computerized systems link the financial accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated.

19.   Each joint holder of a financial account must be attributed the entire balance or value of the account for purposes of applying the aggregation requirements.

Special aggregation rule applicable to relationship managers – all accounts

20.   In determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a high value account, a reporting financial institution is also required to aggregate all accounts held by that person which a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by that person.

21.   The following examples illustrate the application of the account aggregation rules:

(a)   **Example 1 (Reporting financial institution is not required to aggregate accounts)**: Entity E, holds two depository accounts that are pre-existing accounts with Bank-HK.   The respective balances of the two depository accounts at year end are $1.5 million and 1 million.   E's accounts are not associated with one another in the shared computerized information system of Bank-HK.   As the accounts are not associated in Bank-HK's system, Bank-HK is not required to aggregate the accounts to determine whether the accounts meet the de minimis threshold.   Both accounts are eligible for the exemption as neither account exceeds $1.95 million.

Example 2 (Reporting financial institution is required to aggregate accounts): Same facts as Example 1, except that both of E's depository accounts are associated with E and with one another by reference to Bank-HK's internal identification number.   The system shows the account balances for both accounts, and such balances may be electronically aggregated, though the system does not show a combined balance for the accounts.   In determining whether the accounts meet the de minimis threshold, Bank-HK is required to aggregate the account balances of the depository accounts under the account aggregation rules.   Under those rules, E is treated as holding depository accounts with Bank-HK with an aggregate balance of $2.5 million.   Accordingly, neither account is eligible for the exemption, because the accounts, when aggregated, exceed the $1.95 million threshold.

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(b)   **Example 3 (Aggregation rules for joint accounts maintained by a reporting financial institution)**: Individual H holds a custodial account that is a pre-existing account at Bank-HK1.   The balance of the account at year end is $5 million.   H also holds a joint custodial account that is a pre-existing account with her spouse, W, at Bank-HK2.   The balance of the joint account at year end is also $5 million.   Bank-HK1 and Bank-HK2 are related entities and share computerized information management systems.   Both H's custodial account at Bank-HK1 and Bank-HK2 and W's custodial account at Bank-HK2 are associated with H and with one another by reference to Bank-HK1's internal identification number and the system allows the balances to be aggregated.   In determining whether the accounts meet the definition of high value account, Bank-HK1 is required to aggregate the account balances of accounts held in whole or in part by the same account holder under the account aggregation rules.   Under those rules, H is treated as having financial accounts with Bank-HK1 and Bank-HK2, each with an aggregate balance of $10 million.   Accordingly, both of H's accounts are high value accounts.   W is only treated as having a financial account with Bank-HK2 with a balance of $5 million.   Thus, W's account is a low value account.

22.   The following additional examples illustrate the application of the special aggregation rule applicable to relationship manager:

(a)   **Example 1 (Accounts held by a passive NFE and by one of its controlling person)**: A passive NFE, PNFE-1, holds a depository account with Bank-HK.   One of PNFE-1's controlling persons, C, also holds a depository account with Bank-HK.   Both accounts are associated with C and with each other by reference to Bank-HK's internal identification number.   In addition, Bank-HK has assigned a relationship manager to C. As the accounts are associated in Bank-HK's system and by a relationship manager, Bank-HK is required to aggregate the accounts to determine whether the account held by C is a high value account.

(b)   **Example 2 (Accounts held by different passive NFEs with a common controlling person)**: Same facts as Example 1.   In addition, another passive NFE, PNFE-2, holds a depository account with Bank-HK.   C is also one of PNFE-2's controlling persons.   PNFE-2's account is not associated with C nor with PNFE-1's and C's accounts by reference to Bank-HK's internal identification number.   As the accounts are associated by a relationship manager, Bank-HK is required to aggregate the accounts held by PNFE-1, PNFE-2 and C to determine whether the account held by C is a high value account.

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Amounts read to include equivalent in other currencies

23.   Where accounts are denominated in a currency other than Hong Kong dollars, then either the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply, or the balance shown in the accounts must be converted into Hong Kong dollars before applying the threshold limits.

24.   This should be done using a published spot rate for 31 December of the year being reported or in the case of an insurance contract or annuity contract, the date of the most recent contract valuation.

25.   In the case of closed accounts, the spot rate to be used is the rate on the date the account was closed.