

CHAPTER 13

DUE DILIGENCE: INVESTMENT ENTITY WITH REGULARLY TRADED SECURITIES

A difference between AEOI and FATCA¹ is that under FATCA regime, the definition of financial account excludes equity and debt interests in an investment entity where those interests are regularly traded on an established securities market. Under the AEOI regime, there is no similar exclusion. That means that equity and debt interests in certain listed investment entities (LIEs), for example listed investment companies, can be in scope under the AEOI.

2. For an LIE that is a reporting financial institution, the equity interests in the LIE are all held by HKSCC Nominees Limited (HKSCC Nominees) as the equity interest holder (with a few exceptions known as “Other LIE”). Since HKSCC Nominees is a reporting financial institution, the LIE is not required to report on HKSCC Nominees and HKSCC Nominees would have its own obligation to identify and report on its own account holders.

3. In certain circumstances, Other LIE may not possess information or have relationship with the account holder that enables it to comply with its due diligence and reporting obligations. Section 50H of the IRO contains provisions allowing the use of third party service provider with respect to AEOI to assist the Other LIE in meeting its due diligence and reporting obligations in such circumstances.

4. Where new account holders in Other LIE arise as a result of interests (as to which HKSCC Nominees is not the account holder) being acquired on the secondary market, a periodic check for new account holders will be required to be done by the Other LIE. The frequency of such checks will depend on the systems and processes of the Other LIE that are in place. An annual check may be considered adequate if performed at the year-end if the systems in place are sufficiently robust. However, for operational reasons such checks may be performed at every six months or at more frequent intervals.

¹ In 2010 the USA enacted the FATCA provisions which are contained in the HIRE Act 2010. These provisions are aimed at reducing tax evasion by US citizens and entities. FATCA requires financial institutions outside the USA to pass information about their USA customers to the US tax administration, the Internal Revenue Service. The legislation allows for a 30% withholding tax to be applied to the US source income of any non-US financial institution that fails to comply with this requirement.

5. For new account holders that arise as a result of primary market issues of interests (as to which HKSCC Nominees is not the account holder) by Other LIE, the Other LIE would be required to perform due diligence on the new account holders, whether through procedures described below or otherwise. The share application form for such interests can be amended to include the self-certification required on new account opening. Any incomplete applications would need to be returned to the applicant. In accordance with existing AML practice, incomplete applications could be accepted and the missing information be requested but if the missing information was not received the shares could be re-allotted or sold to a third party and/or the register of members rectified, provided that the terms and conditions of the offer and any applicable law allowed this.