

## LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance  
(Chapter 112)

### INLAND REVENUE (AMENDMENT) BILL 2016

#### INTRODUCTION

A At the meeting of the Executive Council on 5 January 2016, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Amendment) Bill 2016 (“the Bill”), at Annex A, should be introduced into the Legislative Council, to provide a legislative framework for the implementation of automatic exchange of financial account information in tax matters (“AEOI”) in Hong Kong. The Bill amends the Inland Revenue Ordinance (Cap. 112) (“IRO”) to enable Hong Kong to comply with the international standard for AEOI.

#### JUSTIFICATIONS

##### **Hong Kong’s Existing Policy on Exchange of Information**

2. Exchange of information (“EOI”) for tax purposes is an important avenue to enhance tax transparency and combat cross-border tax evasion. In order to catch up with the latest international standard on EOI as promulgated by the Organisation for Economic Co-operation and Development (“OECD”), we indicated to the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) in September 2014 our support for implementing the new standard on AEOI. Hong Kong’s undertaking was that AEOI would be implemented on a reciprocal basis with appropriate partners which could meet relevant requirements on protection of privacy and confidentiality of information exchanged and ensuring proper use of the data exchanged, with a view to **commencing the first information exchanges by the end of 2018** (the latest timeline permissible by the Global Forum). Our commitment was premised on the condition that Hong Kong could put in place necessary domestic legislation by 2017.

## New Standard on AEOI

3. In very brief terms, under the OECD standard for AEOI (“AEOI Standard”)<sup>1</sup>, a financial institution (“**FI**”) is required to conduct **due diligence procedures**, so as to identify **reportable accounts** held by tax residents of **reportable jurisdictions** (i.e. non-Hong Kong tax residents who are liable to tax by reason of residence in the AEOI partner jurisdictions), and collect the **reportable information** in respect of these relevant accounts. FIs are also required to report such information to the tax authority in specified format. Upon receipt of the information from FIs, the tax authority will exchange the relevant information with their counterparts in the reportable jurisdictions concerned on an annual basis. Hence, “automatic exchange” does not mean a free flow of information amongst jurisdictions.

4. Hong Kong has been practising a simple, territorial-based tax regime. We have also been implementing EOI only on request. In developing the model for AEOI in Hong Kong, we need to ensure that our model meets the international standard without creating undue burden of compliance on FIs and their non-Hong Kong tax resident account holders. We will adopt a **pragmatic approach** to include all essential requirements of the AEOI standard in our domestic law and will **ensure effective implementation** of the international standard.

5. In general, whether an individual or entity is a tax resident of a jurisdiction is determined having regard to the person’s physical presence or stay in a place (say, whether over 183 days within a tax year) or, in the case of a company, the place of incorporation or where the central management and control of the entity lies. That a person has paid taxes charged by a jurisdiction (say value-added tax, withholding tax or capital gains tax) does **not** automatically render that person a tax resident of that jurisdiction. The tax residence of individual account holders may change from one year to another and the tax laws may differ amongst jurisdictions. Individual account holders ought to verify and update their tax residence status and seek legal advice if necessary.

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<sup>1</sup> Specifically, the AEOI standard comprises -  
(a) Model Competent Authority Agreement (“Model CAA”);  
(b) Common Reporting Standard (“CRS”);  
(c) Commentaries on the Model CAA and CRS; and  
(d) Guidance on Technical Solutions.

## Policy Approach for AEOI

6. We intend to conduct AEOI only with our partners with which we have signed comprehensive avoidance of double taxation agreement (“CDTA”) or tax information exchange agreement (“TIEA”) on a **bilateral** basis<sup>2</sup>. We have no plan to enter into a multilateral treaty with other jurisdictions. Under such an approach, Hong Kong will rely on the bilateral CDTAs or TIEAs signed and having effect by way of Orders made under section 49(1A) of the IRO as the basis for implementing AEOI. IRD would still have to sign a new Competent Authority Agreement (“CAA”), which sets out the modalities of transfer of information collected pursuant to the AEOI standard, with the tax authority of CDTA/ TIEA partners concerned.

7. To take forward Hong Kong’s commitment, we need to incorporate into our domestic law, by amending IRO, the essential requirements of the AEOI standard, namely key provisions of CAA and due diligence requirements as laid down in CRS. The legislative proposals are set out in the ensuing paragraphs.

## Legislative Proposals

### (A) *Scope of FIs, non-reporting FIs and excluded accounts*

8. For the purpose of implementing AEOI, **FIs** comprise custodial institutions, depository institutions, specified insurance companies, and investment entities; and only FIs which are resident in Hong Kong will be subject to the reporting requirements<sup>3</sup>. We propose to set out the relevant definitions in IRO along the definitions provided in CRS, with adaptations, where appropriate, by including references to our domestic law, for clarity purpose.

9. CRS provides that certain FIs and accounts (known as **non-reporting FIs** and **excluded accounts** respectively), which present a low risk of being used for tax evasion, can be exempted from reporting. We propose setting out such exemptions in IRO. CRS also allows jurisdictions to identify additional items for exemptions, subject to certain stringent criteria. In the Hong Kong context, we consider it justifiable to

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<sup>2</sup> For CDTAs and TIEAs which expressly provide for EOI on request only, we need to amend the relevant agreements before the Inland Revenue Department (“IRD”) could sign the new CAA for AEOI.

<sup>3</sup> The reference to “FIs” in the ensuing paragraphs refers to “reporting FIs”.

add the Mandatory Provident Fund Schemes, the Occupational Retirement Schemes and the Credit Unions registered under the relevant ordinances, to the list of non-reporting FIs; and to add dormant accounts to the list of excluded accounts. In considering whether a certain category of FI or account should be exempted, we need to abide by the CRS criteria<sup>4</sup> and we have made this very clear to stakeholders making such requests. The full lists of non-reporting FIs and excluded accounts, summarized at Annex B, will be included in a Schedule to IRO. The Secretary for Financial Services and the Treasury (“SFST”) may amend the Schedule by notice in the Gazette, subject to negative vetting by LegCo.

***(B) Scope of information to be furnished by FIs***

10. For the purpose of implementing AEOI, FIs would be required to furnish IRD with information on each reportable account. Following the CRS requirements, this includes –

- (a) the **name, address, jurisdiction(s) of residence, taxpayer identification number(s) (“TIN(s)”) and date and place of birth** of each reportable person<sup>5</sup> whether the account holder is an individual or is an entity with one or more controlling persons that is a reportable person<sup>6</sup>;
- (b) the **account number** (or functional equivalent in the absence of an account number);

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<sup>4</sup> The criteria are mainly as follows -

- (a) whether or not it presents a low risk of being used for tax evasion;
- (b) whether it bears substantially similar characteristics to any “non-reporting FIs” or “excluded accounts” under CRS; and
- (c) whether it is subject to regulation or some form of information reporting to the tax authority.

<sup>5</sup> The list of items applies to a reportable person who is an individual or a controlling person of an entity. The items of date and place of birth, however, do not apply to a reportable person which is an entity.

<sup>6</sup> With reference to the exceptions as provided for under the Commentaries on CRS, FIs are **not** required to report **TIN or date of birth** in respect of **pre-existing accounts** if the information is not in the records of the FIs **and** there is not otherwise a requirement for such information to be collected by the FIs concerned under domestic law. That said, FIs are required to use reasonable efforts to obtain the TIN and date of birth with respect to the pre-existing accounts by the end of the second calendar year following the year in which such accounts were identified as reportable accounts. Regarding **TIN**, FIs are **not required** to report it if a TIN is not issued by the AEOI partner or the domestic law of the AEOI partner does not require the collection of the TIN. For **place of birth**, FIs are **not** required to report such information for **both pre-existing and new accounts unless** the FIs are otherwise required to obtain and report it under domestic law **and** it is available in the electronically searchable data maintained by the FIs.

- (c) the **name and identifying number** (if any) of the FI;
- (d) the **account balance or value**<sup>7</sup> as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account; and
- (e) in the case of any custodial account -
  - (i) the **total gross amount of interest, the total gross amount of dividends**, and the **total gross amount** of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
  - (ii) the **total gross proceeds** from the sale or redemption of financial assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the reporting FI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
- (f) in the case of any depository account, the **total gross amount of interest** paid or credited to the account during the calendar year or other appropriate reporting period; and
- (g) in the case of any account not described in subparagraph (e) or (f), the **total gross amount** paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the reporting FI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.

**(C) *Scope of reportable jurisdictions***

11. Reportable jurisdictions refer to jurisdictions with which Hong Kong has entered into either CDTA or TIEA (an arrangement given effect under s.49(1A) of IRO for the conduct of EOI) as well as CAA for the conduct of AEOI. They are, in short, our AEOI partners. We propose to

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<sup>7</sup> This includes, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value.

set out the list of reportable jurisdictions in a Schedule to IRO. SFST may amend the Schedule by notice in the Gazette, subject to negative vetting by LegCo.

12. In identifying potential AEOI candidates from our existing or future CDTA / TIEA partners, our guiding principles are that they should have the capability in meeting the OECD standard and relevant safeguards in their domestic law for protecting data privacy and confidentiality of the information exchanged. We will also take into account the bilateral trade relationship of the potential AEOI partners. We are open to suggestions from stakeholders on the priorities for AEOI negotiations.

**(D) *Due diligence and reporting requirements***

13. In order to collect and report the required information to IRD, FIs would be required under the Bill to perform the due diligence procedures (i.e. Sections II to VII of the CRS) to identify reportable accounts. We propose to set out such procedures in a Schedule to IRO, which may be amended by SFST by notice in the Gazette, subject to negative vetting by LegCo. In relation to these procedures, we would like to highlight the following two issues -

**(a) *Targeted approach or wider approach?***

One key issue flagged up in our consultation is whether FIs should be mandated to identify and keep information of accounts held by tax residents of the reportable jurisdictions only (i.e. those jurisdictions with which Hong Kong has entered into a CAA for AEOI purpose) (“targeted approach”) or of accounts held by all non-Hong Kong tax residents (“wider approach”). The majority views are that a “wider approach” should be implemented, although some are concerned about the compliance costs if it is made mandatory for all. In the light of the above, we propose to provide in the Bill that FIs **must** establish procedures to identify whether a financial account is a reportable account, and must maintain and apply such procedures to identify and collect information of reportable accounts with account holder’s residence corresponding to the specific **reportable jurisdiction**, but they **may** also, in carrying out the requirements of due diligence obligations on FIs, apply the same procedures for accounts the holders of which are, for tax purposes, residents of **any other jurisdictions** outside Hong Kong. This will provide flexibility for FIs in choosing an approach which fits their circumstances, whilst providing FIs with a

clear legal basis to pursue the “wider” approach in identifying and collecting the information in respect of accounts which are not reportable accounts<sup>8</sup>.

***(b) Reasonableness test by FIs***

During the consultation, FIs have expressed concerns about the reasonableness test which they are required to perform in respect of the self-certification made by the account holders. Following the spirit of CRS, account holders are responsible for identifying their own tax residence. Self-certification is an important tool under CRS for FIs to fulfill its reporting and due diligence obligations, in particular to determine the tax residence of the account holders. IRD will promulgate guidelines, which will include a sample self-certification form for FIs’ reference.

***(E) Enforcement provisions - powers and sanctions***

14. At present, FIs in Hong Kong are not obliged to furnish and report to IRD the financial account information of their clients who are non-Hong Kong tax residents for the purpose of EOI. In order to implement AEOI, we propose to –

- (a) require FIs to notify IRD of the commencement of maintaining the first reportable account and cessation to maintain any reportable accounts;
- (b) empower IRD to –
  - (i) require FIs to furnish information about reportable accounts in the specified format;
  - (ii) have access to the business premises of an FI or a service provider (if any) and inspect its compliance system and process (if the inspection is reasonably required for the purpose of checking its compliance with the due diligence and reporting obligations, and upon prior notice by IRD) and, if any non-compliance is found during such inspection, require the FI or service provider to rectify the system or process to

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<sup>8</sup> As due diligence procedures are mandatory only for reportable accounts, FIs will be sanctioned if they fail to identify, collect and report information of reportable accounts to IRD, but not those which choose not to identify and collect information of accounts held by residents of **non-reportable jurisdictions**, as this is permissible but not mandatory under the AEOI legislation.

secure compliance; and

- (iii) obtain search warrant where an FI or its service provider (if any) fails to comply with the court order directing it to comply with the return filing requirement; and where access to and inspection of any places or any books, records, or information or data in relation to the compliance system and process is required because there is reasonable ground for suspecting that the FI or the relevant service provider has failed to comply with the due diligence or return filing requirements.

15. It is essential to put in place appropriate penalty provisions to provide for sufficient deterrent effect to ensure effective implementation of the AEOI regime in Hong Kong, while not imposing disproportionately heavy sanctions on FIs and individuals. In this connection –

- (a) For **reporting FIs**, we propose to sanction them for –
  - (i) non-compliance with the due diligence and reporting obligations without reasonable excuse;
  - (ii) providing misleading, false or inaccurate information and knows, or is reckless as to whether, the information is misleading, false or inaccurate; or
  - (iii) providing, with intent to defraud, any information that is misleading, false or inaccurate<sup>9</sup>.

The relevant sanctions would also apply to **service providers** engaged by reporting FIs to fulfill the latter's due diligence and reporting obligations. An employee of, or a person engaged to work for, a reporting FI will only be held liable if he or she, with intent to defraud, causes or allows the FI to provide misleading, false or inaccurate information.<sup>10</sup>

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<sup>9</sup> For (i) and (ii), the penalty is fine at level 3. For non-compliance with the requirements to file returns and non-compliance with the notice for rectification, there will be a further fine of not exceeding \$500 for every day or part of a day during which the offence continues after conviction. For (iii), the penalty is –

- ♦ on summary conviction, a fine at level 3 and imprisonment for six months; or
- ♦ on indictment, a fine at level 5 and imprisonment for three years.

<sup>10</sup> The penalty is same as that for FIs, i.e. –

- ♦ on summary conviction, a fine at level 3 and imprisonment for six months; or
- ♦ on indictment, a fine at level 5 and imprisonment for three years.



- (b) We also propose making it an offence for a person to provide, knowingly or in a reckless manner, misleading, false or incorrect information in a material particular, in **making a self-certification** to FIs<sup>11</sup>. Self-certification plays a key role to the effective implementation of AEOI and we are mindful that, as set out in the Commentary section of the OECD Standard concerning effective implementation, jurisdictions are expected to include a specific provision in their domestic law imposing sanctions for signing (or otherwise positively affirming) a false self-certification, so as to increase the reliability of self-certifications.

## Related issues

16. We would like to take the opportunity to flag up three issues related to the implementation of AEOI in Hong Kong –

*(a) Safeguards on taxpayers' rights and confidentiality of information exchanged*

During the course of exchange of financial account information on an automatic basis, it is of paramount importance to ensure the protection of the privacy of taxpayers and the confidentiality of information exchanged, as well as the proper use of the exchanged information. The EOI article of CDTA and relevant articles of the TIEA provide for safeguards to protect taxpayers' privacy and confidentiality of information exchanged. Given that we would, in practice, implement AEOI with CDTA and TIEA partners under the respective agreements, the safeguards for EOI will be equally applicable to information exchanged under the AEOI mode. Such safeguards at the treaty level are set out in Annex C.

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The AEOI standard also provides for similar safeguards. The Model CAA provides that all information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention/Instrument. It also provides that a competent authority may suspend EOI by giving notice in writing to the other competent authority if there is or has been significant non-compliance by the other competent authority with CAA. The competent authority may also terminate CAA by giving notice of termination to the other

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<sup>11</sup> The penalty is fine at level 3.

competent authority.<sup>12</sup> Termination may take immediate effect pending completion of negative vetting by LegCo of the subsidiary legislation that removes the jurisdiction from the Schedule to IRO.

***(b) Personal Data (Privacy) Ordinance (Cap.486) (“PDPO”)***

Hong Kong would conduct AEOI with a jurisdiction that is a party to a CDTA or TIEA having effect under section 49(1A) and requiring disclosure of information concerning tax of the territory. By virtue of section 58(1)(c), (1A) and (2) of PDPO, the collection of personal data from FIs, and the exchange of such information by IRD with another jurisdiction with which Hong Kong has signed either a CDTA or TIEA as provided for under section 49(1A) of IRO is exempt from the Data Protection Principles 3 and 6 of PDPO<sup>13</sup>.

Separately, we have reminded FIs that they should comply with the existing requirements under the data protection principles in Schedule 1 to PDPO. For instance, they should inform the account holders of the possible use of the information collected for AEOI purposes and that all practicable steps must be taken to ensure that the personal data are accurate. Account holders are entitled to request access to and correction of their personal data.

***(c) AEOI Portal and implementation schedule***

Subject to enactment of the legislation before mid-2016, we will identify potential AEOI candidates and aim to conclude CAA negotiations with the first batch of AEOI partners by the end of 2016. This is to pave the way for FIs to start conducting due diligence procedures in respect of their financial accounts in 2017 (including FIs which prefer the “targeted approach” to identify and collect information of reportable accounts the holders of which are, for tax purposes, resident of our AEOI partners).

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<sup>12</sup> The OECD has devised a questionnaire to assist jurisdictions in assessing whether or not the other jurisdiction has met the required confidentiality and data safeguards. Where these standards are not met (whether in law or in practice) or the treaty partners have breached the confidentiality rules, jurisdictions can suspend the transmission of information to the relevant treaty partners.

<sup>13</sup> Under Data Protection Principle 3 (“Data Use Principle”), personal data must not be used for any purpose other than the purpose for which the data is to be used at the time of collection of data (the “collection purpose”) or for a purpose directly related to the collection purpose, unless voluntary and explicit consent is obtained from the data subject. Under Data Protection Principle 6 (“Access to Personal Data”), a data subject is entitled to, inter alia, request access to his/her personal data and request the corrections of the personal data.

To help FIs fulfil their obligations, IRD would provide a secure platform, i.e. the AEOI Portal, for FIs to submit notifications and file AEOI returns (“Returns”) electronically. FIs would be required to use digital certificate for authentication and open an online account in the AEOI Portal for transacting with IRD on matters relating to AEOI. FIs could assign access right to employees holding the organization’s e-Cert to perform various types of transactions in the AEOI Account, such as updating account information, submitting Returns and amending the Returns filed previously.

IRD would issue electronic notices, through the AEOI Portal, to all FIs maintaining reportable accounts (i.e. FIs which have notified IRD pursuant to the requirement under paragraph 14(a) above) in January 2018 (and January annually thereafter) for filing the Returns. FIs should lodge the Returns within five months after the calendar year to which the information relates (and nil return would be required if there is no reportable account for a particular year). The first exchanges of information with our AEOI partners are scheduled for September 2018.

## **OTHER OPTIONS**

17. Legislation is required to amend the IRO, in order to bring our proposals into effect. There are no other options.

## **THE BILL**

18. The main provisions of the Bill are as follows –

(a) **Clause 4** of the Bill introduces –

- (i) a new section 50A to provide for the definitions of the various key terms required for implementation of AEOI standard (e.g. reporting FIs, non-reporting FIs, reportable accounts, excluded accounts, and reportable jurisdictions) (paragraphs 8 and 9 above);
- (ii) a new section 50B to provide for an obligation on a reporting FI to establish, maintain and apply due diligence

procedures (in particular, applying procedures under the AEOI standard as set out in a new Schedule 17D) (paragraph 13 above);

- (iii) a new section 50C to provide for an obligation on a reporting FI to furnish the required information to IRD and a new section 50F to provide for the information required for the return to be furnished under the new section 50C (paragraph 10 above);
  - (iv) a new section 50D to provide for an obligation on a reporting FI to notify the Commissioner of Inland Revenue when the reporting FI commences to maintain any reportable account or when it no longer maintains any reportable account (paragraph 14(a) above);
  - (v) a new section 50H to provide for engagement by a reporting FI of a service provider to carry out the FI's obligations under the new sections 50B(1) and (2) and 50C(1);
  - (vi) a new section 50J to empower SFST to amend the new Schedules 17C, 17D and 17E by notice in Gazette (paragraphs 9, 11 and 13 above); and
  - (vii) a new section 50K to provide that information reported by a reporting FI may be used for the administration or enforcement of IRO;
- (b) **Clause 6** of the Bill amends section 51B of the IRO to provide for a search warrant to be issued against a reporting FI or service provider under specified conditions (paragraph 14(b)(iii));
  - (c) **Clause 7** of the Bill introduces a new section 51BA to provide for the power of IRD to enter and inspect the business premises of a reporting FI or service provider under specified conditions (paragraph 14(b)(ii) above);
  - (d) **Clause 9** of the Bill amends section 80 of the IRO to provide for an offence against any person in relation to making a self-certification required under a new Schedule 17D that is misleading, false or incorrect (paragraph 15(b) above);

- (e) **Clause 10** of the Bill introduces a new section 80B to provide for offences against a reporting FI; a new section 80C for offences against a person employed by a reporting FI; and a new section 80D to provide for offences against a service provider engaged by a reporting FI to carry out the relevant due diligence and reporting obligations (paragraph 15(a) above);
- (f) **Clause 11** of the Bill adds to the IRO the following three new schedules –
  - (i) a new Schedule 17C setting out a list of non-reporting FIs and a list of excluded accounts;
  - (ii) a new Schedule 17D setting out the due diligence procedures as laid down in the AEOI standard; and
  - (iii) a new Schedule 17E setting out a list of reportable jurisdictions and a list of participating jurisdictions.

## LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows –

Publication in the Gazette	8 January 2016
First Reading and commencement of Second Reading debate	20 January 2016
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## IMPLICATIONS OF THE PROPOSAL

20. The economic, financial and civil service implications of the proposal are set out in Annex D. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has no sustainability, productivity, environmental, family or gender implications. The amendments proposed in the Bill will not affect the current binding effect of the IRO.

## **PUBLIC CONSULTATION**

21. We have been engaging relevant stakeholders such as financial industry bodies, business chambers and professional associations all along. We launched a consultation exercise from April to June 2015 to gauge views on how we should adapt to Hong Kong the new standard on AEOI. In general, stakeholders support the overall direction to catch up with the latest international standard and implement AEOI in Hong Kong. To the extent allowed under CRS, we have taken into account the valuable feedback from stakeholders when refining our legislative proposals. In addition, we briefed the Legislative Council Panel on Financial Affairs in November 2014 and July 2015 respectively on our proposed policy and legal framework. The Panel raised no objection to our proposal.

## **PUBLICITY**

22. We will issue a press release on 8 January 2016. A spokesperson will be available to answer media and public enquiries.

## **BACKGROUND**

23. It has been Government's priority to conclude CDTAs with Hong Kong's trading and investment partners to facilitate business and minimize the incidence of double taxation. All CDTAs signed embody a mechanism for EOI with our treaty partners. In addition, we have signed TIEAs purely as instruments for EOI; TIEAs do not offer taxation relief. By the end of December 2015, Hong Kong has signed 33 CDTAs and seven TIEAs<sup>14</sup>. OECD standard for EOI permits EOI upon request or on automatic or spontaneous basis. So far, Hong Kong has only opted for EOI upon request.

24. The international landscape on tax cooperation has been evolving rapidly. OECD released in July 2014 the standard on AEOI, calling on governments to collect from their FIs financial account information of overseas tax residents and exchange the information with jurisdictions of

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<sup>14</sup> CDTAs signed include Belgium (2003), Thailand (2005), Mainland of China (2006), Luxembourg (2007), Vietnam (2008), Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand (2010), Portugal, Spain, the Czech Republic, Switzerland, Malta (2011), Jersey, Malaysia, Mexico, Canada (2012), Italy, Guernsey, Qatar (2013), Korea, South Africa, the United Arab Emirates (2014), and Romania (2015). TIEAs include the United States, Norway, Denmark, Sweden, Iceland, Greenland and the Faroes (2014). (Years of signing in brackets).

residence of the relevant account holders on an annual basis. The Global Forum, a 126-strong international organisation pursuing tax transparency, has invited all its members, including Hong Kong, to commit to implementing the new global standard on AEOI. It has also established a mechanism to monitor and review the progress of implementation amongst members from 2017 onwards<sup>15</sup>. By the end of October 2015, 96 jurisdictions have expressed commitment to the new standard.

25. Besides, in October 2015, OECD released a final package of measures under the Base Erosion and Profits Shifting Project, which was endorsed by G20 at the Leaders' Summit in mid-November 2015. There would be pressure for Hong Kong to be covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters<sup>16</sup>, and to conduct AEOI on a **multilateral** basis (rather than **bilateral** basis even though this is an option allowed by OECD so far). We will keep a close eye on any further development in this respect and map out our strategy and response.

## ENQUIRIES

26. In case of enquiries about this Brief, please contact Mr Gary Poon, Principal Assistant Secretary for Financial Services and the Treasury (Treasury) at 2810 2370.

## Financial Services and the Treasury Bureau 7 January 2016

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<sup>15</sup> The Global Forum will conduct a peer review on members regarding AEOI implementation from 2017 onwards. Committed jurisdictions are expected to go through peer review on the effectiveness of the legal framework and the actual implementation of AEOI.

<sup>16</sup> The Convention is a free-standing multilateral agreement designed to promote international cooperation for better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all forms of administrative cooperation between countries in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. The administrative assistance that the Convention envisages includes EOI, simultaneous tax examinations, tax examinations abroad, assistance in recovery and service of documents. The Convention advocates AEOI for the purpose of combating tax evasion. China became a signatory in August 2013. Following its ratification by China in July 2015, the Convention would enter into force for China on 1 February 2016.

# **LEGISLATIVE COUNCIL BRIEF**

Inland Revenue Ordinance  
(Chapter 112)

## **INLAND REVENUE (AMENDMENT) BILL 2016**

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# A BILL

## To

Amend the Inland Revenue Ordinance to enable Hong Kong to comply with the international standard for automatic exchange of financial account information regarding tax matters; and to provide for related matters.

Enacted by the Legislative Council.

### 1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2016.

### 2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 11.

### 3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *financial institution*, after “(財務機構),”—

**Add**

“except in Part 8A and Schedules 17C and 17D,”.

- (2) Section 2(1)—

**Add in alphabetical order**

“*banking business* (銀行業務) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

*reportable account* (須申報帳戶) has the meaning given by section 50A;

*reportable jurisdiction* (申報稅務管轄區) has the meaning given by section 50A;

*reporting financial institution* (申報財務機構) has the meaning given by section 50A;

*service provider* (服務提供者) has the meaning given by section 50A;”.

#### 4. Part 8A added

After Part 8—

Add

### “Part 8A

## Returns by Reporting Financial Institutions

### 50A. Interpretation

(1) In this Part—

*account holder* (帳戶持有人), in relation to a financial account maintained by a financial institution—

- (a) subject to paragraphs (b) and (c), means the individual or entity listed or identified by the financial institution as the holder of the account;
- (b) if the account is held by an individual or entity, other than a financial institution, for the benefit or account of another individual or entity as an agent, custodian, nominee, signatory, investment advisor or intermediary, means that other individual or entity;

- (c) if the account is for a cash value insurance contract or an annuity contract that has yet to reach maturity, means—
  - (i) the individual or entity that is entitled to access the cash value, or change the beneficiary, of the contract; or
  - (ii) if there is no such individual or entity mentioned in subparagraph (i)—
    - (A) the individual or entity named as the owner in the contract (if any); and
    - (B) the individual or entity with a vested entitlement to payment under the terms of the contract (if any); or
- (d) if the account is for a cash value insurance contract or an annuity contract that has reached maturity, means the individual or entity that is entitled to receive a payment on the maturity;

*active NFE* (主動非財務實體) means an NFE that falls within any of the following descriptions—

- (a) in terms of the NFE’s gross income and its assets—
  - (i) for the calendar year or other appropriate reporting period preceding the year in which the determination as to whether the NFE is an active NFE is made, less than 50% of the NFE’s gross income is passive income; and
  - (ii) less than 50% of the assets held by the NFE during that calendar year or period are assets that produce, or are held for the production of, passive income;

- (b) the stock of the NFE or the related entity of the NFE is regularly traded on an established securities market;
- (c) the NFE is—
  - (i) a governmental entity;
  - (ii) an international organization;
  - (iii) a central bank; or
  - (iv) an entity wholly owned by one or more of the entities mentioned in subparagraphs (i), (ii) and (iii);
- (d) the NFE does not function, or does not hold itself out, as an investment fund (including a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies, and then to hold interests in those companies as capital assets for investment purposes) and—
  - (i) 80% or more of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution (*holding or group finance activities*); or
  - (ii) if less than 80% of the activities of the NFE consist of the NFE's holding or group finance activities, the sum of the NFE's holding or group finance activities and the NFE's other activities that generate income other than passive income constitute in total 80% or more of the activities of the NFE;

- (e) not more than 24 months have elapsed since the date of the incorporation, formation or constitution of the NFE and the NFE—
  - (i) is not yet operating a business and has no prior operating history; and
  - (ii) is investing capital into assets with the intent to operate a business other than that of a financial institution;
- (f) the NFE was not a financial institution in the past 5 years, and is in the process of—
  - (i) liquidating its assets; or
  - (ii) is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution;
- (g) the NFE falls within all of the following descriptions—
  - (i) the NFE is primarily engaged in financing and hedging transactions with or for its related entities that are not financial institutions;
  - (ii) the group of the related entities mentioned in subparagraph (i) is primarily engaged in a business other than that of a financial institution;
  - (iii) the NFE does not provide financing or hedging services to any entity that is not its related entity;
- (h) the NFE falls within all of the following descriptions—

- (i) the NFE is established and operated in its jurisdiction of residence, and—
  - (A) is established and operated exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes; or
  - (B) is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
- (ii) the NFE is exempt from income tax in its jurisdiction of residence;
- (iii) the NFE has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than—
  - (A) pursuant to the conduct of the NFE's charitable activities;
  - (B) as payment of reasonable compensation for services rendered; or
  - (C) as payment representing the fair market value of a property which the NFE has purchased;

- (v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, on the NFE's liquidation or dissolution, all of its assets are to be distributed to a governmental entity or other non-profit organization, or be escheated to the government of that jurisdiction or any political subdivision of that government;

**Note—**

See also subsection (4).

**AML/KYC procedures** (打擊洗錢暨認識客戶程序) means the customer due diligence procedures required to be carried out by a reporting financial institution pursuant to any anti-money laundering requirements or similar requirements (including requirements to know a customer) to which the reporting financial institution is subject;

**annuity contract** (年金合約) means a contract under which the issuer agrees to make payments for a period of time determined, in whole or in part, by reference to the life expectancy of one or more individuals;

**calendar year** (公曆年) means a year that begins on 1 January and ends on 31 December;

**cash value** (現金值)—

- (a) means the greater of the following—
  - (i) the amount that the policyholder of an insurance contract or annuity contract is entitled to receive on surrender or termination of the contract (determined without reduction for any surrender charge or policy loan);

- (ii) the amount that the policyholder can borrow under the contract; but
- (b) does not include an amount payable under an insurance contract—
  - (i) solely because of the death of an individual insured under a life insurance contract;
  - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred on the occurrence of the event insured against;
  - (iii) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - (iv) as a policyholder dividend (other than a termination dividend) if the dividend relates to an insurance contract under which the only benefits payable are described in subparagraph (ii); or
  - (v) as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the returned amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;

***cash value insurance contract*** (現金值保險合約) means an insurance contract, other than an indemnity reinsurance contract between 2 insurance companies, that has a cash value;

***central bank*** (中央銀行) means an institution in a jurisdiction that is, by law or government sanction, the principal authority in the jurisdiction, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency, and includes an instrumentality that is separate from the government of the jurisdiction, whether or not owned, in whole or in part, by the government of the jurisdiction;

***controlled entity*** (受控制實體), in relation to a jurisdiction, means an entity that falls within all of the following descriptions—

- (a) the entity is separate in form from the jurisdiction or otherwise constitutes a separate juridical entity;
- (b) the entity is wholly owned and controlled by one or more governmental entities of the jurisdiction directly or through other controlled entities;
- (c) the entity's net earnings are credited to its own account or to the accounts of other governmental entities of the jurisdiction, with no portion inuring to the benefit of any private person;
- (d) the entity's assets are vested in other governmental entities of the jurisdiction on dissolution of the entity;

**Note—**

See also subsection (5).

***controlling person*** (控權人)—

- (a) in relation to an entity, subject to paragraphs (b) and (c), means an individual who exercises control over the entity;
- (b) in relation to an entity that is a trust—
  - (i) means an individual who is the settlor, trustee, protector (if any), or a beneficiary or a member of the class of beneficiaries, of the trust; or
  - (ii) if the settlor, trustee, protector, or the beneficiary or the member of the class of beneficiaries, of the trust is another entity, means an individual who exercises control over that other entity; or
- (c) in relation to an entity that is a legal arrangement equivalent or similar to a trust but not in the name of a trust—
  - (i) means an individual who, in relation to the legal arrangement, is in a position similar to the settlor, trustee, protector (if any), or a beneficiary or a member of the class of beneficiaries, of a trust; or
  - (ii) if, in relation to the legal arrangement, another entity is in a position similar to the settlor, trustee, protector, or a beneficiary or a member of the class of beneficiaries, of a trust, means an individual who exercises control over that other entity;

**Note—**

See also subsection (6).

**custodial account** (託管帳戶) means an account, other than an insurance contract or annuity contract, maintained by

a financial institution to hold one or more financial assets for the benefit of an individual or entity;

**custodial institution** (託管機構) means an entity that holds, as a substantial portion of its business, financial assets for the account of another individual or entity;

**Note—**

See also subsection (9).

**depository account** (存款帳戶) includes the following accounts maintained by a financial institution in the ordinary course of a banking business or similar business—

- (a) a commercial, checking, savings, time and thrift account;
- (b) an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument; and
- (c) an amount held by an insurance company to pay or credit interest pursuant to a guaranteed investment contract or similar agreement;

**depository institution** (存款機構) means—

- (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155); or
- (b) an entity that accepts deposits in the ordinary course of a banking business or similar business;

**entity** (實體) means a body of persons (corporate or unincorporate) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and
- (c) a trust;

**equity interest** (股權權益)—

- (a) in relation to a partnership that is a financial institution, means either a capital or profits interest in the partnership;
- (b) in relation to a trust that is a financial institution, means—
  - (i) an interest held by a settlor or beneficiary of the whole, or any part, of the trust; or
  - (ii) an interest held by an individual exercising ultimate control over the trust; or
- (c) in relation to a company or corporation that is a financial institution, means an ownership interest in the company or corporation;

**Note—**

See also subsection (10).

**established securities market** (具規模證券市場) means an exchange—

- (a) that is officially recognized and supervised by a government authority of a territory in which the exchange is located; and
- (b) that has an annual value of shares traded on it (or on its predecessor) exceeding \$7.8 billion during each of the 3 calendar years immediately preceding the calendar year in which the determination as to whether the exchange is an established securities market is made;

**Note—**

See also subsection (11).

**excluded account** (豁除帳戶) means an account that is described as an excluded account in Part 3 of Schedule 17C;

**financial account** (財務帳戶) means any of the following accounts maintained by a financial institution—

- (a) a custodial account;
- (b) a depository account;
- (c) (if the financial institution is an investment entity but not an advising manager within the meaning of subsection (12)) any equity interest or debt interest in the financial institution;
- (d) (if the financial institution is not an investment entity) any equity interest or debt interest in the financial institution, if the class of interests was established with the purpose of avoiding reporting the required information under section 50F(1) and (2);
- (e) any cash value insurance contract and any annuity contract issued or maintained by the financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is an excluded account,

but does not include an excluded account;

**Note—**

See also subsection (12).

**financial asset** (財務資產) includes—

- (a) any security (including share units of a stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded



- partnership or trust; note, bond, debenture, or other evidence of indebtedness);
- (b) partnership interest;
  - (c) commodity;
  - (d) swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements);
  - (e) insurance contract or annuity contract; and
  - (f) any interest (including a futures or forward contract or option) in any of the assets mentioned in paragraphs (a), (b), (c), (d) and (e),
- but does not include a non-debt direct interest in real property;

**financial institution** (財務機構) means—

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment entity; or
- (d) a specified insurance company;

**governmental entity** (政府實體) means—

- (a) the government of a jurisdiction;
- (b) the political subdivision of a jurisdiction, including a state, a province, a county, and a municipality;
- (c) a wholly owned agency or instrumentality of a jurisdiction, or of any of the entities mentioned in paragraphs (a) and (b); or
- (d) an integral part, controlled entity or political subdivision of a jurisdiction;

**insurance contract** (保險合約) means a contract, other than an annuity contract, the issuer of which agrees to pay an amount on the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;

**integral part** (組成部分), in relation to a jurisdiction—

- (a) means a person, organization, agency, bureau, fund, instrumentality, or other body, however described—
  - (i) that constitutes the jurisdiction's governing authority; and
  - (ii) the net earnings of which must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person; but
- (b) does not include an individual who is a sovereign, official, or administrator of the jurisdiction acting in a private or personal capacity;

**Note—**

See also subsection (5).

**international organization** (國際組織)—

- (a) means an international organization or its wholly owned agency or instrumentality; and
- (b) includes any inter-governmental organization (including a supranational organization)—
  - (i) that is composed primarily of governments;
  - (ii) that has in effect a headquarters agreement, or substantially similar agreement, applicable to Hong Kong; and

- (iii) the income of which does not inure to the benefit of private persons;

**investment entity** (投資實體) means—

- (a) a corporation licensed under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) leveraged foreign exchange trading;
  - (iv) asset management;
- (b) an institution registered under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) asset management;
- (c) a collective investment scheme authorized under the Securities and Futures Ordinance (Cap. 571);
- (d) an entity that primarily conducts as its business one or more of the following activities or operations for its customers—
  - (i) trading in—
    - (A) money market instruments, including cheques, bills, certificates of deposit, and derivatives;

- (B) foreign exchange;
- (C) exchange, interest rate and index instruments;
- (D) transferable securities; or
- (E) commodity futures;
- (ii) individual and collective portfolio management;
- (iii) otherwise investing, administering, or managing financial assets or money on behalf of other entity or individual; or
- (e) an entity—
  - (i) that is managed by a custodial institution, a depository institution, a specified insurance company, or an entity mentioned in paragraph (a), (b), (c) or (d); and
  - (ii) whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets,

but does not include an entity that is an active NFE solely because it falls within any of the descriptions in paragraphs (d), (e), (f) and (g) of the definition of **active NFE** in this subsection;

**Note—**

See also subsection (13).

**jurisdiction of residence** (居留司法管轄區) means a territory of which an individual or entity is a resident for tax purposes;

**NFE** (非財務實體) means an entity that is not a financial institution;

**non-reporting financial institution** (免申報財務機構) means a financial institution that is described as a non-reporting financial institution in Part 2 of Schedule 17C;

**participating jurisdiction** (參與稅務管轄區) means a territory outside Hong Kong that is specified in Part 2 of Schedule 17E;

**participating jurisdiction financial institution** (參與稅務管轄區財務機構) means—

- (a) a financial institution that is resident in a participating jurisdiction (excluding any branch of the financial institution located outside the participating jurisdiction); or
- (b) a branch located in a participating jurisdiction of a financial institution that is not resident in the participating jurisdiction;

**passive income** (被動收入) means the portion of gross income that consists of—

- (a) dividend;
- (b) interest;
- (c) income equivalent to interest;
- (d) rent and royalties (other than rents and royalties derived from the active conduct of a business undertaken, at least in part, by the employees of an NFE);
- (e) annuities;
- (f) the excess of gains over losses from the sale or exchange of financial assets that gives rise to the passive income mentioned in any of paragraphs (a), (b), (c), (d) and (e);

- (g) the excess of gains over losses from transactions (including futures, forwards, options and similar transactions) in any financial assets;
- (h) the excess of foreign currency gains over foreign currency losses;
- (i) net income from swaps; or
- (j) amounts received under cash value insurance contracts;

**passive NFE** (被動非財務實體) means—

- (a) an NFE that is not an active NFE; or
- (b) a financial institution that—
  - (i) falls within the description in paragraph (e) of the definition of **investment entity** in this subsection;
  - (ii) is not a participating jurisdiction financial institution; and
  - (iii) is not a financial institution in Hong Kong;

**pre-existing account** (先前帳戶) means—

- (a) a financial account of an account holder maintained by a reporting financial institution as at 31 December 2016 (**old financial account**); or
- (b) a financial account of an account holder opened and maintained by a reporting financial institution on or after 1 January 2017 (**subsequent account**), if all of the following conditions are met—
  - (i) the account holder holds with the institution, or its related entity within Hong Kong, any old financial account;
  - (ii) on the opening of the subsequent account, the institution (and, as applicable, its related

entity within Hong Kong) treats the subsequent account and the following financial accounts as a single financial account—

- (A) one or more old financial accounts of the account holder maintained by the institution; and
- (B) (if there exist one or more subsequent accounts that are treated as pre-existing accounts because all of the conditions in this subparagraph and subparagraphs (iii), (iv) and (v) are met) all of the subsequent accounts that are so treated;
- (iii) the institution (and, as applicable, its related entity within Hong Kong) acts in the manner described in subparagraph (ii) for the purposes of—
  - (A) satisfying the requirement set out in section 2 of Part 7 of Schedule 17D; and
  - (B) calculating the balance or value of any of the accounts mentioned in that subparagraph to determine any of the account thresholds;
- (iv) the subsequent account is subject to AML/KYC procedures and the institution is permitted to carry out such AML/KYC procedures for the subsequent account by relying on the AML/KYC procedures carried out for the old financial account mentioned in subparagraph (ii)(A);
- (v) on the opening of the subsequent account, no new, additional or amended customer

information is required to be provided by the account holder other than for the purpose of complying with sections 50B, 50C, 50F and 50G;

***regularly traded*** (經常買賣), in relation to a class of stock traded during a calendar year, means that—

- (a) trades in the class of stock are effected, other than in de minimis quantities, on one or more established securities markets for at least 60 business days during the prior calendar year; and
- (b) the aggregate number of shares in the class of stock that are traded on such market or markets during the prior calendar year are at least 10% of the average number of shares outstanding in that class during the prior calendar year;

***reportable account*** (須申報帳戶)—

- (a) means a financial account—
  - (i) that has been identified as such under the due diligence requirements in Schedule 17D; and
  - (ii) that is held by—
    - (A) at least one reportable person; or
    - (B) a passive NFE with at least one controlling person being a reportable person; and
- (b) for the purposes of sections 50C, 50D, 50F and 50G, includes a pre-existing account that must be reported as an undocumented account under the due diligence requirements in Schedule 17D;

***reportable jurisdiction*** (申報稅務管轄區) means a territory outside Hong Kong—

- (a) that is a party to an arrangement having effect under section 49(1A) and requiring disclosure of information concerning tax of the territory; and
- (b) that is specified in column 1 of Part 1 of Schedule 17E;

**reportable person** (申報對象)—

- (a) means—
  - (i) an individual or entity that is a resident for tax purposes of a reportable jurisdiction; or
  - (ii) an estate of a decedent who was a resident for tax purposes of a reportable jurisdiction; but
- (b) does not include—
  - (i) a corporation the stock of which is regularly traded on an established securities markets;
  - (ii) a corporation that is a related entity of a corporation mentioned in subparagraph (i);
  - (iii) a governmental entity;
  - (iv) an international organization;
  - (v) a central bank; or
  - (vi) a financial institution;

**reporting financial institution** (申報財務機構) means—

- (a) a financial institution that is resident in Hong Kong (excluding any branch of the financial institution located outside Hong Kong); or
- (b) a branch located in Hong Kong of a financial institution that is not resident in Hong Kong,

but does not include a non-reporting financial institution;

**Note—**

See also subsection (15).

**reporting year** (申報年), in relation to a reportable jurisdiction, means the year specified in column 2 of Part 1 of Schedule 17E opposite that jurisdiction;

**resident for tax purposes** (稅務居民), in relation to a territory, means—

- (a) an individual who is subject to taxation as a resident in the territory; or
- (b) an entity that—
  - (i) is subject to taxation as a resident in the territory; or
  - (ii) has its effective management situated in the territory and is not subject to taxation as a resident in any other territory;

**service provider** (服務提供者) means a service provider engaged to carry out the obligations of a reporting financial institution as referred to in section 50H(1);

**specified insurance company** (指明保險公司) means an entity that is an insurance company, or the holding company of an insurance company, that issues, or is obliged to make payments with respect to, a cash value insurance contract or an annuity contract, including the following—

- (a) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
- (b) an entity the gross income of which arising from insurance, reinsurance and annuity contracts exceeds 50% of the entity's total gross income for the calendar year immediately preceding the calendar year in which the determination as to whether the entity is a specified insurance company is made;

- (c) an entity the aggregate value of the assets of which associated with insurance, reinsurance and annuity contracts exceeds 50% of the entity's total assets at any time during the calendar year immediately preceding the calendar year in which the determination as to whether the entity is a specified insurance company is made;

**TIN** (稅務編號) means—

- (a) a taxpayer identification number; or
  - (b) (if there is no taxpayer identification number) the functional equivalent to such number.
- (2) An entity is a related entity of another entity if—
- (a) either entity controls the other entity;
  - (b) the 2 entities are under common control; or
  - (c) the 2 entities are investment entities as described in paragraph (e) of the definition of *investment entity* in subsection (1) and—
    - (i) the entities are under common management; and
    - (ii) the management fulfils the due diligence requirements for the entities under Schedule 17D.
- (3) For subsection (2)(a) and (b), control of an entity means direct or indirect ownership of both of the following—
- (a) more than 50% of the voting rights in the entity;
  - (b) more than 50% of the value of the shares in the entity.
- (4) For paragraph (d) of the definition of *active NFE* in subsection (1), a subsidiary of an NFE is an entity whose

outstanding stock is either directly or indirectly held, in whole or in part, by the NFE.

- (5) For paragraph (c) of the definition of *controlled entity*, and paragraph (a) of the definition of *integral part*, in subsection (1)—
  - (a) (subject to paragraph (b)) an income does not inure to the benefit of a private person if—
    - (i) the person is the intended beneficiary of a governmental programme; and
    - (ii) the programme is performed for the general public with respect to the common welfare, or related to the administration of some phase of government; and
  - (b) an income is taken to inure to the benefit of a private person if the income is derived from the use of a governmental entity to conduct a commercial business that provides financial services to that private person.
- (6) For the definition of *controlling person* in subsection (1)—
  - (a) where an entity is a corporation, an individual exercises control over the entity if—
    - (i) the individual—
      - (A) owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than the specified percentage of the issued share capital of the entity;
      - (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than the specified percentage of the

- voting rights at general meetings of the entity; or
- (C) exercises ultimate control over the management of the entity; or
- (ii) the entity is acting on behalf of another person over whom the individual exercises control;
- (b) where an entity is a partnership, an individual exercises control over the entity if—
  - (i) the individual—
    - (A) is entitled to or controls, directly or indirectly, not less than the specified percentage of the capital or profits of the entity;
    - (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than the specified percentage of the voting rights in the entity; or
    - (C) exercises ultimate control over the management of the entity; or
  - (ii) the entity is acting on behalf of another person over whom the individual exercises control;
- (c) where an entity is a trust, an individual exercises control over the entity if the individual—
  - (i) is entitled to a vested interest in not less than the specified percentage of the capital of the property of the entity, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;

- (ii) is the settlor of the entity;
- (iii) is the protector of the entity; or
- (iv) exercises ultimate control over the management of the entity; or
- (d) where an entity is not a corporation, partnership or trust, an individual exercises control over the entity if—
  - (i) the individual ultimately owns or controls the entity; or
  - (ii) the entity is acting on behalf of another person over whom the individual exercises control.
- (7) For subsection (6), the specified percentage is 25%.
- (8) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend the percentage in subsection (7).
- (9) For the definition of *custodial institution* in subsection (1), an entity holds financial assets for the account of another individual or entity as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of the following—
  - (a) the 3-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination as to whether the entity is a custodial institution is made;
  - (b) the period during which the entity has been in existence.

- (10) For paragraph (b)(i) of the definition of *equity interest* in subsection (1), a person is the beneficiary of all, or a portion, of a trust if the person—
- (a) has the right to receive, directly or indirectly (including through a nominee), a mandatory distribution from the trust; or
  - (b) may receive, directly or indirectly, a discretionary distribution from the trust.
- (11) For paragraph (b) of the definition of *established securities market* in subsection (1), if an exchange has more than one tier of market level on which stock may be separately listed or traded, each such tier is to be treated as a separate exchange.
- (12) For paragraph (c) of the definition of *financial account* in subsection (1), an advising manager is an entity that falls within the definition of *investment entity* in that subsection solely because it—
- (a) renders investment advice to, and acts on behalf of; or
  - (b) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, administering, or managing financial assets deposited in the name of the customer with a financial institution other than the entity.
- (13) In relation to the definition of *investment entity* in subsection (1)—
- (a) for the purposes of paragraph (d) of the definition, an entity is treated as primarily conducting as its business one or more of the activities mentioned in that paragraph if it meets the criterion set out in subsection (14); or

- (b) for the purposes of paragraph (e) of the definition, an entity's gross income is treated as primarily attributable to investing, reinvesting, or trading in financial assets if it meets the criterion set out in subsection (14).
- (14) For subsection (13)(a) and (b), the criterion is that the entity's gross income attributable to the relevant activities equals or exceeds 50% of the entity's gross income during the shorter of the following—
- (a) the 3-year period that ends on 31 December prior to the year in which the determination as to whether the entity is an investment entity is made;
  - (b) the period during which the entity has been in existence.
- (15) For paragraph (a) of the definition of *reporting financial institution* in subsection (1), a financial institution is resident in Hong Kong if—
- (a) where the financial institution is a company—it is incorporated in Hong Kong or, if incorporated outside Hong Kong, is normally managed or controlled in Hong Kong;
  - (b) where the financial institution is a trust—
    - (i) it is constituted under the laws of Hong Kong;
    - (ii) if constituted outside Hong Kong, it is normally managed or controlled in Hong Kong; or
    - (iii) if both of the descriptions in subparagraphs (i) and (ii) are not met, one or more of its trustees are resident in Hong Kong; or
  - (c) where the financial institution is not a company or trust—it is constituted under the laws of Hong



- Kong or, if constituted outside Hong Kong, is normally managed or controlled in Hong Kong.
- (16) For subsection (15)(b), a trustee is resident in Hong Kong if—
- (a) (where the trustee is an individual) the trustee ordinarily resides in Hong Kong or stays in Hong Kong for—
    - (i) more than 180 days during a year of assessment; or
    - (ii) more than 300 days in 2 consecutive years of assessment one of which is the relevant year of assessment;
  - (b) (where the trustee is a company) the trustee—
    - (i) is incorporated in Hong Kong; or
    - (ii) (if incorporated outside Hong Kong) is normally managed or controlled in Hong Kong; or
  - (c) (where the trustee is any other entity) the trustee—
    - (i) is constituted under the laws of Hong Kong; or
    - (ii) (if constituted outside Hong Kong) is normally managed or controlled in Hong Kong.
- (17) A note located in the text of this section is provided for information only and has no legislative effect.

**50B. Due diligence obligations on reporting financial institutions**

- (1) A reporting financial institution must—
- (a) establish procedures that are designed to—

- (i) identify the jurisdiction of residence of—
    - (A) the account holder of a financial account maintained with the institution; and
    - (B) (if the account holder is a passive NFE) the controlling person of the passive NFE;
  - (ii) identify whether a financial account is a reportable account;
  - (iii) secure that any evidence relied on, or a record of the steps taken, for carrying out the procedures in relation to a financial account is kept for a period of 6 years beginning on the date on which the procedures are completed; and
  - (iv) enable the institution to identify and collect the required information within the meaning of section 50C(3) (*required information*); and
- (b) incorporate into those procedures the due diligence requirements in Schedule 17D.
- (2) A reporting financial institution must maintain and, for carrying out its obligations under this Part, apply the procedures established in compliance with subsection (1)(a) and (b) (*required procedures*)—
- (a) to identify reportable accounts, and to identify and collect the required information; and
  - (b) to ensure that the purpose mentioned in subsection (1)(a)(iii) can be achieved.
- (3) A reporting financial institution may, in carrying out its obligations under this Part, apply the required procedures—

- (a) in relation to any financial account, even if—
  - (i) the account holder of the financial account is a resident for tax purposes in a territory outside Hong Kong that is not a reportable jurisdiction; or
  - (ii) (if the account holder of the financial account is a passive NFE) any controlling person of the account holder is a resident for tax purposes in a territory outside Hong Kong that is not a reportable jurisdiction; and
- (b) for identifying and collecting the required information in respect of any financial account as referred to in paragraph (a).

**50C. Obligations of reporting financial institutions to furnish returns**

- (1) A reporting financial institution must furnish a return in accordance with a notice given by an assessor under subsection (2) and in compliance with subsections (4) and (5).
- (2) An assessor may give a notice in writing to a reporting financial institution requiring it to furnish a return reporting the information referred to in subsection (3) (*required information*) in relation to reportable accounts with respect to any reportable jurisdiction that are maintained by the institution at any time during the period specified in the notice (*specified information period*), which must be either of the following—
  - (a) the calendar year preceding the year in which the date of the notice falls;
  - (b) such other period as the Commissioner may decide in appropriate cases.

- (3) The required information is—
  - (a) the information referred to in sections 50F and 50G; and
  - (b) any other information that the Board of Inland Revenue specifies.
- (4) The return under subsection (1) must be furnished—
  - (a) within the time specified in the notice;
  - (b) in the manner specified in the notice; and
  - (c) in the form of an electronic record that—
    - (i) is sent by using a system specified by the Board of Inland Revenue; or
    - (ii) contains the required information arranged in a form specified by the Board of Inland Revenue.
- (5) If, during the specified information period, the reporting financial institution maintains no reportable accounts, the institution must state that fact in the return.

**50D. Further obligations of reporting financial institutions relating to returns**

- (1) A reporting financial institution must keep sufficient records to enable the correctness and accuracy of the return furnished under section 50C(1) to be readily ascertained for a period of 6 years beginning on the date on which the return is furnished.
- (2) A reporting financial institution must give a notice to the Commissioner when any of the following events occur—
  - (a) the first occasion on which it commences to maintain a reportable account;

- (b) one year has lapsed after it ceased to maintain even a single reportable account;
- (c) the first occasion on which it commences to maintain a reportable account following the occurrence of an event described in paragraph (b).
- (3) If a reporting financial institution—
  - (a) has given a notice to the Commissioner under subsection (2)(a) or (c) (*first notice*); and
  - (b) has changed its address after the first notice but before a notice is given under subsection (2)(b), it must notify the Commissioner of its new address.
- (4) A notice under subsection (2) or (3) must be given—
  - (a) in the form of an electronic record that is sent by using a system designated by the Commissioner;
  - (b) in the manner that the Commissioner specifies; and
  - (c) within the following period—
    - (i) for a notice under subsection (2)—3 months from the date on which the event occurred;
    - (ii) for a notice under subsection (3)—1 month from the change of the address.

**50E. Application of due diligence and other obligations to non-corporate reporting financial institutions**

In relation to a reporting financial institution that is not a corporation, sections 50B, 50C and 50D apply to a person who acts for the institution to maintain financial accounts as if the obligations under those sections were imposed on that person.

**50F. Required information under section 50C(3)**

- (1) A return furnished under section 50C must include the name and identifying number (if any) of the reporting financial institution.
- (2) The return must also include the following information in relation to each reportable account—
  - (a) if the account holder is an individual who is a reportable person—the name, address, jurisdiction of residence, TIN, and the date and place of birth, of the individual;
  - (b) if the account holder is an entity that is a reportable person—the name, address, jurisdiction of residence and TIN of the entity;
  - (c) if the account holder is an entity and at least one controlling person of the entity is a reportable person—
    - (i) the name, address, jurisdiction of residence and TIN of the entity; and
    - (ii) the name, address, jurisdiction of residence, TIN, and the date and place of birth, of each reportable person;
  - (d) the account number or (if there is no such number) its functional equivalent;
  - (e) the account balance or value (including, for a cash value insurance contract or an annuity contract, the cash value or surrender value) as at the end of the specified information period or other appropriate reporting period, or (if the account was closed during such period) the closure of the account;
  - (f) for a custodial account—

- (i) the total gross amount of interest paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
  - (ii) the total gross amount of dividends paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period;
  - (iii) the total gross amount of other income generated in respect of the financial assets held in the account, and paid to the account, or in respect of the account, during the specified information period or other appropriate reporting period; and
  - (iv) the total gross proceeds from the sale or redemption of financial assets paid to the account during the specified information period or other appropriate reporting period in respect of which the reporting financial institution acts as a custodian, broker, nominee, or otherwise as an agent for the account holder;
- (g) for a depository account—the total gross amount of interest paid to the account during the specified information period or other appropriate reporting period;
  - (h) for any account in respect of which the reporting financial institution is the obligor or debtor, other than a custodial account or a depository account—the total gross amount paid to the account holder in respect of the account during the specified information period or other appropriate reporting

- period, including the aggregate amount of any redemption payments made to the account holder during that period.
- (3) For reporting the information referred to in subsection (2)—
  - (a) references to the balance or value of a reportable account include a nil balance or value;
  - (b) references to paying an amount include crediting an amount; and
  - (c) in any reference to an amount, the currency in which the amount is denominated must be identified.
- (4) For subsection (2)(e), (f), (g) and (h)—
  - (a) the specified information period means the period specified under section 50C(2); and
  - (b) the appropriate reporting period is the period of 12 months as may be elected by the financial institution, and once the election is made, it is irrevocable.

#### **50G. Modifications of required information**

- (1) Despite section 50F(2)(a), (b) and (c)—
  - (a) for a reportable account that is a pre-existing account maintained by a reporting financial institution—
    - (i) if the TIN or date of birth is not kept in the records of the institution and is not otherwise required to be collected by the institution under the laws of Hong Kong, the TIN or date of birth is not required to be reported; but

- (ii) subject to paragraph (b), the institution is required to use reasonable efforts to obtain the TIN and date of birth by the end of the second calendar year following the year in which the account is identified as a reportable account;
- (b) for a reportable account, the TIN is not required to be reported if—
  - (i) a TIN is not issued by the relevant reportable jurisdiction; or
  - (ii) (where a TIN is issued by the relevant reportable jurisdiction) such TIN is not required to be collected under the domestic law of the jurisdiction;
- (c) the place of birth is not required to be reported unless the reporting financial institution is otherwise required to obtain and report it under the laws of Hong Kong and it is available in the electronically searchable data maintained by the institution.
- (2) Despite section 50F(2)(f)(iv), the information under that section—
  - (a) is not required to be reported with respect to the calendar year of 2017; and
  - (b) is only required to be reported with respect to the calendar year of 2018 and onwards.

#### **50H. Engagement of service provider**

- (1) A service provider may be engaged to carry out, for or on behalf of a reporting financial institution, the

institution's obligations under any, or all, of the following provisions—

- (a) section 50B(1);
  - (b) section 50B(2);
  - (c) section 50C(1).
- (2) To avoid doubt, even if a service provider has been engaged under subsection (1), the reporting financial institution is not relieved from its obligation under section 50B(1) or (2) or 50C(1), as the case requires.

#### **50I. Commissioner may designate system or specify requirements for electronic record, etc.**

- (1) The Commissioner may designate any system in respect of any communication with the Commissioner for the purposes of section 50C or 50D.
- (2) The Commissioner may by notice published in the Gazette specify requirements as to—
  - (a) the manner of generating or sending an electronic record or any attachment required to be furnished with an electronic record;
  - (b) how a digital signature is to be affixed to a return furnished under section 50C(1); and
  - (c) the software and communication in relation to any attachment required to be furnished with an electronic record.
- (3) A notice under subsection (2) is not subsidiary legislation.

**50J. Power to amend Schedules 17C, 17D and 17E**

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 17C, 17D or 17E.

**50K. Use of information provided by reporting financial institutions**

To avoid doubt, any information reported in a return furnished under section 50C may be used for the administration or enforcement of this Ordinance.”.

**5. Section 51 amended (returns and information to be furnished)**

Section 51(4)(a)—

**Repeal**

“in the notice”

**Substitute**

“in the notice, and in the form and manner specified in it,”.

**6. Section 51B amended (power to issue search warrant)**

(1) After section 51B(1)—

**Add**

“(1AAA) If the Commissioner or authorized officer satisfies a magistrate, by statement made on oath—

- (a) that a reporting financial institution or its service provider (if any) has failed to comply with an order of a court made under section 80B(3)(a) or 80D(9)(a) directing the institution or its service provider (if any) to comply with a requirement under section 50C(1); or

- (b) that there are reasonable grounds for suspecting that a reporting financial institution or its service provider (if any) has failed to comply with section 50B(1) or (2) or 50C(1) and has done so without reasonable excuse and not through an innocent oversight or omission,

the magistrate may by warrant authorize the Commissioner or authorized officer to exercise the powers specified in subsection (1AAAB).

(1AAAB) The powers are for the Commissioner or authorized officer—

- (a) without previous notice at any reasonable time during the day, to enter and have free access to any land, buildings, or place where the Commissioner or authorized officer suspects there to be any articles or data of the reporting financial institution or its service provider (if any), or of any other person, that may afford evidence material in assessing—

- (i) the liability of the institution or its service provider (if any) under this Ordinance; or
- (ii) the liability of any other person for tax of a reportable jurisdiction,

and there to search for and examine such articles or data;

- (b) in carrying out any such search, to open or cause to be removed and opened, any article which the Commissioner or authorized officer suspects to be containing any articles or data;
- (c) to—

- (i) take possession of any articles or data of the reporting financial institution or its service provider (if any); and
- (ii) make copies of such parts of any articles or data of any other person, as may afford evidence material in assessing the liability of the institution or its service provider (if any) under this Ordinance or the liability of any other person for tax of a reportable jurisdiction;
- (d) to retain any such articles or data for as long as they may be reasonably required for any assessment to be made or for any proceedings under this Ordinance to be completed.

(1AAAC) If the Commissioner or authorized officer retains any articles or data for a period of more than 14 days, the person aggrieved may apply in writing to the Board of Review for an order directing the return of such articles or data, and the Board, after hearing the applicant or the applicant's authorized representative and the Commissioner or the Commissioner's representative, may so order, either unconditionally or subject to any condition that the Board considers proper to impose.

(1AAAD) If, on entering the land, buildings or place under the warrant issued under subsection (1AAA), an authorized officer is of the opinion that the reporting financial institution or service provider is likely to fail to carry out the obligations under section 50B(1) or (2) or 50C(1), the Commissioner or authorized officer may give notice to the institution or service provider requiring it, within a reasonable time and in a manner specified in the notice, to take any action as specified in the notice that is

necessary for rectifying its compliance system and process as defined by section 51BA(1).

(1AAAE) In subsections (1AAAB) and (1AAAC), references to articles or data are references to books, records, accounts or documents, or any information or data of the compliance system and process as defined by section 51BA(1)."

(2) Section 51B(1A)—

**Repeal**

"under subsection (1)"

**Substitute**

"under subsection (1) or (1AAA)".

(3) Section 51B(1A)—

**Repeal**

"subsection (1)(i), (ii) and (iii)"

**Substitute**

"subsection (1)(i), (ii) and (iii) or (1AAAB)(a), (b) and (c)".

(4) Section 51B(2)—

**Repeal**

"subsection (1)"

**Substitute**

"subsection (1) or (1AAAB)".

(5) Section 51B(3)—

**Repeal**

"or documents taken possession of under subsection (1)"

**Substitute**

“or documents, or any information or data of a compliance system and process as defined by section 51BA(1), as the case requires, taken possession of under subsection (1) or (1AAAB)”.

(6) Section 51B(4)—

**Repeal**

“subsection (1)”

**Substitute**

“subsection (1) or (1AAAB)”.

**7. Section 51BA added**

After section 51B—

**Add**

**“51BA. Assessor’s power to enter business premises of reporting financial institutions and service providers and inspect**

(1) In this section—

*business premises* (業務處所) means the premises that an assessor has reason to believe—

- (a) in relation to a reporting financial institution, are used in connection with the carrying on of a business by or on behalf of the institution; or
- (b) in relation to a service provider, are used in connection with the carrying out of the obligations under section 50B(1) or (2) or 50C(1) by the service provider for a reporting financial institution concerned;

*compliance system and process* (合規系統及程序) means the system and process, including any information or data that is recorded (whether by means of a computer or

otherwise) in a legible or non-legible form, that relate to the procedures required to be applied by a reporting financial institution or service provider (as the case requires) for carrying out the obligations under section 50B(1) or (2) or 50C(1).

- (2) A reporting financial institution or service provider must allow an assessor to enter its business premises, and inspect its compliance system and process for the purpose of checking whether it is carrying out or has carried out, or is likely to be able to carry out, the obligations under section 50B(1) or (2) or 50C(1) if it receives a notice from an assessor requiring it to do so.
- (3) The notice under subsection (2) may be given only if the inspection is reasonably required for the purposes specified in that subsection.
- (4) The inspection may only be carried out—
  - (a) at a time agreed to by the reporting financial institution or service provider to whom the notice is given; or
  - (b) on a notice given to the reporting financial institution or service provider at least 7 days before the time of the inspection.
- (5) The notice under subsection (4)(b) must state the possible consequences under section 80B(1)(c) of obstructing or hindering an assessor in the exercise of the powers under subsection (2).
- (6) If, during the inspection, an assessor is of the opinion that the reporting financial institution or service provider is likely to fail to carry out the obligations under section 50B(1) or (2) or 50C(1), the assessor may give notice to the institution or service provider requiring it, within a reasonable time and in a manner specified in the notice,



to take any action as specified in the notice that is necessary for rectifying its compliance system and process.”.

**8. Section 61C added**

After section 61B—

**Add**

**“61C. Avoidance arrangement of no effect**

If—

- (a) a person enters into an arrangement; and
- (b) the main purpose, or one of the main purposes, of the arrangement is to avoid any obligation under section 50B(1) or (2) or 50C(1),

then those sections are to have effect as if the arrangement had not been entered into.”.

**9. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)**

After section 80(2D)—

**Add**

“(2E) A person commits an offence if the person, in making a self-certification that is required to be collected under Schedule 17D by a reporting financial institution—

- (a) makes a statement that is misleading, false or incorrect in a material particular; and
- (b) knows, or is reckless as to whether, the statement is misleading, false or incorrect in a material particular.

(2F) A person who commits an offence under subsection (2E) is liable on conviction to a fine at level 3.”.

**10. Sections 80B to 80F added**

Before section 81—

**Add**

**“80B. Penalties for offences relating to reporting financial institutions**

- (1) A reporting financial institution commits an offence if the institution, without reasonable excuse—
  - (a) fails to comply with a requirement under—
    - (i) section 50B(1) or (2);
    - (ii) section 50C(1); or
    - (iii) section 50D(1), (2), (3) or (4);
  - (b) fails to comply with a requirement of a notice given to it under section 51B(1AAAD) or 51BA(6); or
  - (c) obstructs or hinders an assessor in the exercise of the powers under section 51BA(2).
- (2) For subsection (1)(a)(i) and (ii), engaging a service provider under section 50H does not in itself constitute a reasonable excuse.
- (3) A reporting financial institution that commits an offence under subsection (1) is liable on conviction to a fine at level 3, and the court may order the institution, within the time specified in the order—
  - (a) (for subsection (1)(a) or (b)) to do the act that the institution has failed to do; or

- (b) (for subsection (1)(c)) to allow and facilitate an assessor to exercise the powers under section 51BA(2).
- (4) In the case of an offence under—
  - (a) subsection (1)(a)(ii) for contravening section 50C(1); or
  - (b) subsection (1)(b) for contravening section 51B(1AAAD) or 51BA(6),
 the reporting financial institution is liable to a further fine of \$500 for every day or part of a day during which the offence continues after conviction.
- (5) A reporting financial institution commits an offence if the institution does not comply with an order of the court under subsection (3), and is liable on conviction to a fine at level 4.
- (6) A reporting financial institution commits an offence if the institution—
  - (a) in purported compliance with the requirement to furnish a return under section 50C(1), provides any information in the return that is misleading, false or inaccurate in a material particular, and—
    - (i) knows the information is misleading, false or inaccurate in a material particular;
    - (ii) is reckless as to whether the information is misleading, false or inaccurate in a material particular; or
  - (iii) has no reasonable ground to believe that the information is true or accurate; or

- (b) after a return has been furnished to the Commissioner in purported compliance with section 50C(1)—
  - (i) discovers misleading, false or inaccurate information in the return; and
  - (ii) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (7) A reporting financial institution that commits an offence under subsection (6) is liable on conviction to a fine at level 3.
- (8) A reporting financial institution commits an offence if the institution, with intent to defraud, provides any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C(1).
- (9) A reporting financial institution that commits an offence under subsection (8) is liable—
  - (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.
- (10) In relation to a reporting financial institution that is not a corporation, this section applies to a person who acts for the institution to maintain financial accounts as if the references to a reporting financial institution were references to that person.

**80C. Offences of persons employed by reporting financial institutions, etc.****(1) If a person—**

- (a) is an employee of a reporting financial institution or, as the case requires, an individual employed as an employee in respect of a reporting financial institution that is not a corporation;
- (b) other than a service provider, is engaged to work for a reporting financial institution; or
- (c) is concerned in the management of a reporting financial institution,

the person commits an offence if the person, with intent to defraud, causes or allows the institution to provide any information that is misleading, false or inaccurate in a material particular in a return furnished under section 50C(1).

**(2) A person who commits an offence under subsection (1) is liable—**

- (a) on summary conviction to—
  - (i) a fine at level 3; and
  - (ii) imprisonment for 6 months; or
- (b) on conviction on indictment to—
  - (i) a fine at level 5; and
  - (ii) imprisonment for 3 years.

**80D. Offences of service provider**

- (1) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) commits an offence if the person, without reasonable excuse, fails to—

- (a) establish the procedures described in section 50B(1)(a); or
  - (b) incorporate into those procedures the due diligence requirements in Schedule 17D.
- (2) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(2) commits an offence if the person, without reasonable excuse, fails to maintain or apply the procedures established in compliance with section 50B(1)(a) and (b)—
- (a) to identify reportable accounts, and to identify and collect the required information within the meaning of section 50C(3); or
  - (b) to ensure that the purpose mentioned in section 50B(1)(a)(iii) can be achieved.
- (3) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50C(1) commits an offence if the person, without reasonable excuse, fails to cause a return to be furnished as required by that section.
- (4) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) or (2) or 50C(1) commits an offence if the person—
- (a) causes or allows the institution to provide, or in purported compliance with the requirement on the institution to furnish a return under section 50C(1), provides any information in the return that is misleading, false or inaccurate in a material particular, and—

- (i) knows the information is misleading, false or inaccurate in a material particular;
  - (ii) is reckless as to whether the information is misleading, false or inaccurate in a material particular; or
  - (iii) has no reasonable ground to believe that the information is true or accurate; or
- (b) after a return has been furnished to the Commissioner in purported compliance with section 50C(1)—
  - (i) discovers misleading, false or inaccurate information in the return; and
  - (ii) without reasonable excuse, fails to notify the Commissioner of the discovery within a reasonable time.
- (5) A person who is a service provider commits an offence if the person, without reasonable excuse—
  - (a) fails to comply with a requirement of a notice given to it under section 51B(1AAAD) or 51BA(6); or
  - (b) obstructs or hinders an assessor in the exercise of the powers under section 51BA(2).
- (6) A person who commits an offence under subsection (1), (2), (3), (4) or (5) is liable on conviction to a fine at level 3.
- (7) A person who is a service provider engaged to carry out a reporting financial institution's obligations under section 50B(1) or (2) or 50C(1) commits an offence if the person, with intent to defraud, causes or allows the institution to provide any information that is misleading,

- false or inaccurate in a material particular in a return furnished under section 50C(1).
- (8) A person who commits an offence under subsection (7) is liable—
  - (a) on summary conviction to—
    - (i) a fine at level 3; and
    - (ii) imprisonment for 6 months; or
  - (b) on conviction on indictment to—
    - (i) a fine at level 5; and
    - (ii) imprisonment for 3 years.
- (9) The court may order a service provider that commits an offence under subsection (1), (2), (3) or (5), within the time specified in the order—
  - (a) (for subsection (1), (2), (3) or (5)(a)) to do the act that the service provider has failed to do; or
  - (b) (for subsection (5)(b)) to allow and facilitate an assessor to exercise the powers under section 51BA(2).
- (10) A service provider commits an offence if the service provider does not comply with an order of the court under subsection (9), and is liable on conviction to a fine at level 4.

#### **80E. Offences of directors, etc. of corporations**

If—

- (a) any of the following persons is a corporation—
  - (i) a reporting financial institution that commits an offence under section 80B(1), (5), (6) or (8);

- (ii) a person who commits an offence under section 80B(1), (5), (6) or (8) pursuant to section 80B(10);
  - (iii) a service provider that commits an offence under section 80D(1), (2), (3), (4), (5), (7) or (10); and
  - (b) the offence was committed with the consent or connivance of a director, or other officer concerned in the management, of the corporation, or any person purporting to act as such director or officer (*that person*),
- the director or officer or that person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence.

**80F. Miscellaneous provisions for certain offences relating to reporting financial institutions, etc.**

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under section 80B, 80C, 80D or 80E, other than an indictable offence, may be brought within 6 years after the date on which the offence was committed.
- (2) The Commissioner may compound an offence under section 80B, 80C, 80D or 80E, and may before judgment stay or compound any proceedings instituted for the offence.”.

**11. Schedules 17C, 17D and 17E added**

Before Schedule 18—

**Add**

**“Schedule 17C**

[ss. 2(1), 50A(1) & 50J]

**Non-reporting Financial Institutions and  
Excluded Accounts**

**Part 1**

**Interpretation**

**1. Interpretation**

In this Schedule—

*account holder* (帳戶持有人) has the meaning given by section 50A;

*annuity contract* (年金合約) has the meaning given by section 50A;

*cash value insurance contract* (現金值保險合約) has the meaning given by section 50A;

*central bank* (中央銀行) has the meaning given by section 50A;

*controlling person* (控權人) has the meaning given by section 50A;

*depository account* (存款帳戶) has the meaning given by section 50A;

*entity* (實體) has the meaning given by section 50A;

*established securities market* (具規模證券市場) has the meaning given by section 50A;

- financial account* (財務帳戶) has the meaning given by section 50A;
- financial asset* (財務資產) has the meaning given by section 50A;
- financial institution* (財務機構) has the meaning given by section 50A;
- governmental entity* (政府實體) has the meaning given by section 50A;
- international organization* (國際組織) has the meaning given by section 50A;
- investment entity* (投資實體) has the meaning given by section 50A;
- non-reporting financial institution* (免申報財務機構) has the meaning given by section 50A;
- passive NFE* (被動非財務實體) has the meaning given by section 50A;
- regularly traded* (經常買賣) has the meaning given by section 50A;
- reportable person* (申報對象) has the meaning given by section 50A.

## Part 2

### Non-reporting Financial Institutions

#### 1. Governmental entity

A governmental entity, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

#### 2. International organization

An international organization, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

#### 3. Central bank

A central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

#### 4. Hong Kong Monetary Authority

The Hong Kong Monetary Authority, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

#### 5. Pension fund of governmental entity, international organization, central bank or Hong Kong Monetary Authority

A fund is a non-reporting financial institution if it is established by a governmental entity, international organization, central bank or the Hong Kong Monetary Authority to provide retirement, disability, or death benefits to beneficiaries or participants who—

- (a) are current or former employees (or persons designated by such employees); or

- (b) are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services rendered for the governmental entity, international organization, central bank or the Hong Kong Monetary Authority.

#### 6. Broad participation retirement fund

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits, or any combination of the above, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it—
  - (i) does not have a single beneficiary with a right to more than 5% of the fund's assets;
  - (ii) is subject to government regulation and provides information reporting to the tax authorities; and
  - (iii) meets any of the following conditions—
    - (A) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, owing to its status as a retirement or pension plan;
    - (B) the fund receives at least 50% of its total contributions (other than transfers of assets from other funds described in this section or section 5 or 7 of this Part or

from a retirement and pension account described in section 1 of Part 3 of this Schedule) from the sponsoring employers;

- (C) distributions or withdrawals from the fund are allowed only on the occurrence of specified events related to retirement, disability or death (except rollover distributions to other retirement funds described in this section or section 5 or 7 of this Part or to a retirement and pension account described in section 1 of Part 3 of this Schedule), or penalties apply to distributions or withdrawals made before such specified events;
- (D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to the earned income of the employee, or may not exceed \$390,000 annually, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

#### 7. Narrow participation retirement fund

A fund is a non-reporting financial institution if—

- (a) it is established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and

- (b) it—
  - (i) has less than 50 participants;
  - (ii) is sponsored by an employer that is not an investment entity or a passive NFE; and
  - (iii) meets all of the following conditions—
    - (A) the employee and employer contributions to the fund (other than transfers of assets from a retirement and pension account described in section 1 of Part 3 of this Schedule) are limited by reference to the earned income and compensation of the employee;
    - (B) the participants who are not residents for tax purposes for the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets;
    - (C) the fund is subject to government regulation and provides information reporting to the tax authorities.

#### 8. Qualified credit card issuer

- (1) An entity is a non-reporting financial institution if—
  - (a) the entity is a financial institution and it is so solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the credit card of the customer and the overpayment is not immediately returned to the customer; and
  - (b) by 1 January 2017, the entity has begun to implement policies and procedures—

- (i) to prevent a customer from making an overpayment in excess of \$390,000; or
  - (ii) to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days,

in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.
- (2) For the purposes of subsection (1)(b)(ii), a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

#### 9. Exempt collective investment vehicle

- (1) An investment entity is a non-reporting financial institution if—
  - (a) the investment entity is regulated as a collective investment vehicle; and
  - (b) all of the interests in the investment entity are held by or through any of the following—
    - (i) individuals who are not reportable persons;
    - (ii) entities that—
      - (A) are not reportable persons; and
      - (B) are passive NFEs with controlling persons who are not reportable persons.
- (2) An investment entity that is regulated as a collective investment vehicle does not fail to qualify under subsection (1) as a non-reporting financial institution solely because the investment entity has issued physical shares in bearer form, if—



- (a) the investment entity has not issued, and does not issue, any physical shares in bearer form after 1 January 2017;
- (b) the investment entity retires all such shares on surrender;
- (c) the investment entity applies the due diligence requirements in Schedule 17D and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) the investment entity has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to 1 January 2018.

#### 10. Trustee-documented trust

A trust is a non-reporting financial institution if it is established to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported pursuant to this Ordinance with respect to all reportable accounts of the trust.

#### 11. Grant Schools Provident Fund and Subsidized Schools Provident Fund

- (1) The Grant Schools Provident Fund maintained for teachers under the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) is a non-reporting financial institution.
- (2) The Subsidized Schools Provident Fund maintained for teachers under the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D) is a non-reporting financial institution.

#### 12. Mandatory provident fund schemes and occupational retirement schemes

- (1) A mandatory provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*MPF scheme*) is a non-reporting financial institution.
- (2) An occupational retirement scheme registered under the Occupational Retirement Schemes Ordinance (Cap. 426) (*ORSO scheme*) is a non-reporting financial institution.
- (3) A pooling agreement as defined by section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426) that only applies to 2 or more participating ORSO schemes is a non-reporting financial institution.
- (4) An approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), in which only either or both of the following schemes are invested, is a non-reporting financial institution—
  - (a) MPF schemes;
  - (b) ORSO schemes.

#### 13. Credit union

A credit union registered under the Credit Unions Ordinance (Cap. 119) is a non-reporting financial institution.

### Part 3

#### Excluded Accounts

##### 1. Retirement and pension account

- (1) A retirement or pension account is an excluded account if all of the following conditions are met—
- (a) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
  - (c) information reporting to the tax authorities is required in respect of the account;
  - (d) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such events;
  - (e) either—
    - (i) the annual contributions are limited to \$390,000 or less; or
    - (ii) there is a maximum lifetime contribution limit to the account of \$7,800,000 or less,

in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

- (2) A financial account that does not meet the condition under subsection (1)(e) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 2 of this Part or from one or more retirement or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

##### 2. Non-retirement tax-favoured accounts

- (1) An account is an excluded account if all of the following conditions are met—
- (a) the account is, for purposes other than for retirement, subject to regulation as an investment vehicle that is regularly traded on an established securities market, or the account is, for purposes other than for retirement, subject to regulation as a savings vehicle;
  - (b) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder, or are taxed at a reduced rate, or taxation of the investment income from the account is deferred or made at a reduced rate);
  - (c) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (including the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met;

(d) the annual contributions are limited to \$390,000 or less, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D.

(2) A financial account that does not meet the condition under subsection (1)(d) does not fail to meet the condition solely because the financial account may receive assets or funds transferred from one or more financial accounts as described in this section and section 1 of this Part or from one or more retirement or pension funds as described in sections 5, 6 and 7 of Part 2 of this Schedule.

### 3. Term life insurance contracts

A life insurance contract with a coverage period that will end before the insured individual attains age 90 is an excluded account if all of the following conditions are met—

- (a) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (b) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (c) the amount (other than a death benefit) payable on cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract;

(d) the contract is not held by a transferee for value.

### 4. Estate account

An account held solely by an estate is an excluded account if its documentation includes a copy of the deceased's will or death certificate.

### 5. Escrow account

An account established in connection with any of the following is an excluded account—

- (a) a court order or judgment;
- (b) a sale, exchange, or lease of real or personal property, provided that the account meets the following conditions—
  - (i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - (ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - (iii) the assets of the account, including the income earned on the assets, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor or lessee (including

satisfying the obligation of the purchaser, seller, lessor or lessee) when the property is sold, exchanged, or surrendered, or the lease terminates;

- (iv) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
- (v) the account is not associated with an account described in section 6 of this Part;
- (c) an obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (d) an obligation of a financial institution solely to facilitate the payment of taxes at a later time.

#### 6. Depository account owing to not-returned overpayments

- (1) A depository account is an excluded account if both of the following conditions are met—
  - (a) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - (b) beginning on or before 1 January 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of \$390,000, or to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days, in each case applying the rules of account

aggregation and currency set out in the due diligence requirements in Schedule 17D.

- (2) For the purpose of subsection (1)(b), a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

#### 7. Dormant account

An account (other than an annuity contract) with a balance that does not exceed \$7,800 is an excluded account if—

- (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with a reporting financial institution in the previous 3 years;
- (b) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years;
- (c) the account is treated as a dormant account in accordance with the reporting financial institution's normal operating procedures; or
- (d) (for the account being a cash value insurance contract) the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous 6 years.

## Schedule 17D

[ss. 2(1), 50A(1) & (2),  
50B(1), 50J, 80(2E) &  
80D(1) & Sch. 17C]

### Due Diligence Requirements

#### Part 1

#### Interpretation

##### 1. Interpretation

In this Schedule—

*account holder* (帳戶持有人) has the meaning given by section 50A;

*active NFE* (主動非財務實體) has the meaning given by section 50A;

*AML/KYC procedures* (打擊洗錢暨認識客戶程序) has the meaning given by section 50A;

*annuity contract* (年金合約) has the meaning given by section 50A;

*cash value insurance contract* (現金值保險合約) has the meaning given by section 50A;

*controlling person* (控權人) has the meaning given by section 50A;

*depository account* (存款帳戶) has the meaning given by section 50A;

*documentary evidence* (文件證據) includes—

- (a) a certificate of residence issued by an authorized government body (including a government, a government agency and a municipality) of the jurisdiction of which the payee claims to be a resident for tax purposes;
- (b) for an individual, a valid identification issued by an authorized government body (including a government, a government agency and a municipality) of a jurisdiction that includes the individual's name and is typically used for identification purposes;
- (c) for an entity, an official documentation issued by an authorized government body (including a government, a government agency and a municipality) of a jurisdiction that includes the entity's name and—
  - (i) the address of the entity's principal office in the jurisdiction of which it claims to be a resident for tax purposes; or
  - (ii) the jurisdiction in which the entity was incorporated or organized; and
- (d) an audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report;

*entity* (實體) has the meaning given by section 50A;

*financial account* (財務帳戶) has the meaning given by section 50A;

*financial institution* (財務機構) has the meaning given by section 50A;

*high value account* (高值帳戶) means a pre-existing individual account with an aggregate balance or value

that exceeds \$7,800,000 as at 31 December of the second year before the reporting year or 31 December of any subsequent year;

**jurisdiction of residence** (居留司法管轄區) has the meaning given by section 50A;

**low value account** (低值帳戶) means a pre-existing individual account with an aggregate balance or value that does not exceed \$7,800,000 as at 31 December of the second year before the reporting year;

**new account** (新帳戶) means a financial account opened and maintained by a reporting financial institution on or after 1 January 2017;

**new entity account** (新實體帳戶) means a new account held by one or more entities;

**new individual account** (新個人帳戶) means a new account held by one or more individuals;

**participating jurisdiction** (參與稅務管轄區) has the meaning given by section 50A;

**participating jurisdiction financial institution** (參與稅務管轄區財務機構) has the meaning given by section 50A;

**passive NFE** (被動非財務實體) has the meaning given by section 50A;

**pre-existing account** (先前帳戶) has the meaning given by section 50A;

**pre-existing entity account** (先前實體帳戶) means a pre-existing account held by one or more entities;

**pre-existing individual account** (先前個人帳戶) means a pre-existing account held by one or more individuals;

**related entity** (有關連實體)—see section 50A(2);

**reportable person** (申報對象) has the meaning given by section 50A;

**reporting year** (申報年) has the meaning given by section 50A;

**resident for tax purposes** (稅務居民) has the meaning given by section 50A;

**TIN** (稅務編號) has the meaning given by section 50A.

## Part 2

### General Due Diligence Requirements

1. An account is to be treated as a reportable account beginning as at the date it is identified as such pursuant to the due diligence requirements in this Part and Parts 3, 4, 5, 6 and 7 of this Schedule and information in relation to a reportable account must be reported as required under section 50C.
2. The balance or value of an account is to be determined as at the last day of the calendar year or other appropriate reporting period of 12 months.
3. If a balance or value threshold is to be determined as at the last day of a calendar year, the relevant balance or value must be determined as at the last day of the reporting period that ends with or within that calendar year.
4. A reporting financial institution may—

- (a) apply the due diligence requirements for new accounts to pre-existing accounts (but in such cases the requirements that otherwise apply to pre-existing accounts continue to apply); and
  - (b) apply the due diligence requirements for high value accounts to low value accounts.
- 5. A financial account held by an individual as a partner of a partnership is to be treated as an entity account and is not to be treated as an individual account.
- 6. In applying the rules of account aggregation and currency set out in the due diligence requirements in this Schedule, an account balance that has a negative value is to be treated as having a nil value.

### Part 3

#### Due Diligence Requirements for Pre-existing Individual Accounts

##### 1. Application

This Part specifies the requirements that apply to pre-existing individual accounts in identifying a reportable account.

##### 2. Accounts not required to be reviewed, identified, or reported

A pre-existing individual account that is a cash value insurance contract or an annuity contract is not required to be reviewed, identified or reported, if the reporting financial institution is effectively prevented by law from selling the contract to residents for tax purposes of a reportable jurisdiction.

### 3. Low value accounts

- (1) The requirements in this section apply to low value accounts.
- (2) If a reporting financial institution has in its records a current residence address for the individual account holder based on documentary evidence, the institution may treat the individual account holder as a resident for tax purposes of the jurisdiction in which the address is located for the purpose of determining whether the individual account holder is a reportable person.
- (3) If a reporting financial institution does not rely on the current residence address for the individual account holder based on documentary evidence as mentioned in subsection (2), the institution must review electronically searchable data maintained by the institution for any of the following indicia and apply the provisions in subsections (4), (5), (6), (7), (8) and (9)—
  - (a) identification of the account holder as a resident for tax purposes of a reportable jurisdiction;
  - (b) current mailing or residence address (including a post office box) in a reportable jurisdiction;
  - (c) one or more telephone numbers in a reportable jurisdiction outside Hong Kong with no telephone number in Hong Kong;
  - (d) standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a reportable jurisdiction;
  - (e) currently effective power of attorney or signatory authority granted to a person with an address in a reportable jurisdiction;

- (f) a hold mail instruction or in-care-of address in a reportable jurisdiction if the institution does not have any other address on file for the account holder.
- (4) If none of the indicia described in subsection (3) is discovered in the electronic search, then no further action is required until—
  - (a) there is a change in circumstances that results in one or more indicia being associated with the account; or
  - (b) the account becomes a high value account.
- (5) If any of the indicia described in subsection (3)(a), (b), (c), (d) and (e) is discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the reporting financial institution must treat the account holder as a resident for tax purposes of a reportable jurisdiction for which an indicium is identified, unless it elects to apply subsection (8) or (9), or both, and any of the exceptions in subsections (8) and (9) applies to the account.
- (6) If a hold mail instruction or in-care-of address is discovered in the electronic search and no other address and none of the other indicia described in subsection (3)(a), (b), (c), (d) and (e) is identified for the account holder, the reporting financial institution must—
  - (a) in the order most appropriate to the circumstances, perform the paper record search described in section 4(4) of this Part; or
  - (b) seek to obtain from the account holder a self-certification or documentary evidence to establish the jurisdiction of residence for the account holder.

- (7) If—
  - (a) the paper record search under subsection (6)(a) fails to establish an indicium; and
  - (b) the attempt to obtain the self-certification or documentary evidence under subsection (6)(b) is not successful,
 the reporting financial institution must report the account as an undocumented account.
- (8) Despite any finding of an indicium described in subsection (3)(b), (c) or (d) for a financial account, a reporting financial institution is not required to treat its account holder as a resident for tax purposes of a reportable jurisdiction if it obtains, or has previously reviewed and maintains a record of, both of the following—
  - (a) a self-certification from the account holder showing that his or her jurisdiction of residence does not include that reportable jurisdiction;
  - (b) documentary evidence establishing the jurisdiction of residence for the account holder other than that reportable jurisdiction.
- (9) Despite any finding of an indicium described in subsection (3)(e) for a financial account, a reporting financial institution is not required to treat its account holder as a resident for tax purposes of a reportable jurisdiction if it obtains, or has previously reviewed and maintains a record of, any of the following—
  - (a) a self-certification from the account holder showing that his or her jurisdiction of residence does not include that reportable jurisdiction;



- (b) documentary evidence establishing the jurisdiction of residence for the account holder other than that reportable jurisdiction.

#### 4. Enhanced review procedures for high value accounts

- (1) This section provides for enhanced review procedures and applies to high value accounts.
- (2) With respect to a high value account, the reporting financial institution must review electronically searchable data maintained by the institution for any of the indicia described in section 3(3) of this Part.
- (3) If the reporting financial institution's electronically searchable databases (*e-databases*) include fields for, and capture all of the information described in, subsection (5), then a further paper record search is not required.
- (4) However, if the e-databases do not capture all of the information described in subsection (5), then with respect to a high value account, the reporting financial institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the institution within the last 5 years for any of the indicia described in section 3(3) of this Part—
  - (a) the most recent documentary evidence collected with respect to the account;
  - (b) the most recent account opening contract or documentation;
  - (c) the most recent documentation collected by the reporting financial institution pursuant to

- AML/KYC procedures or for other regulatory purposes;
- (d) any standing instructions (other than with respect to a depository account) to transfer funds currently in effect;
- (e) any power of attorney or signatory authority currently in effect.
- (5) A reporting financial institution is not required to perform the paper record search described in subsection (4) if its electronically searchable information includes the following information—
  - (a) the account holder's residence status;
  - (b) the account holder's mailing and residence address currently on file with the reporting financial institution;
  - (c) the account holder's telephone number currently on file, if any, with the reporting financial institution;
  - (d) for financial accounts other than depository accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the reporting financial institution or another financial institution);
  - (e) whether there is a current hold mail instruction or in-care-of address for the account holder;
  - (f) whether there is any power of attorney or signatory authority for the account.
- (6) Apart from conducting the electronic and paper record searches described in subsections (2) and (4), the reporting financial institution must treat as a reportable account any high value account assigned to a

relationship manager of the institution (including any financial accounts aggregated with that high value account) if the relationship manager has actual knowledge that the account holder is a reportable person.

- (7) After an enhanced review of a high value account under subsection (2) or (4) is performed—

(a) if—

- (i) none of the indicia described in section 3(3) of this Part is discovered; and
- (ii) the account is not identified as held by a resident for tax purposes of a reportable jurisdiction in subsection (6),

then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account;

(b) if—

- (i) any of the indicia described in section 3(3)(a), (b), (c), (d) and (e) of this Part is discovered; or
- (ii) there is a subsequent change in circumstances that results in one or more indicia being associated with the account,

then the reporting financial institution must treat the account holder as a resident for tax purposes of each reportable jurisdiction for which an indicium is identified unless it elects to apply subsection (8) or (9), or both, of section 3 of this Part and any of the exceptions in subsections (8) and (9) of that section applies to the account; and

(c) if—

- (i) a hold mail instruction or in-care-of address is discovered; and
- (ii) no other address and none of the other indicia described in section 3(3)(a), (b), (c), (d) and (e) of this Part is identified for the account holder,

then the reporting financial institution must obtain from the account holder a self-certification or documentary evidence to establish the jurisdiction of residence for the account holder and (if it cannot obtain such self-certification or documentary evidence) must report the account as an undocumented account.

- (8) If a pre-existing individual account is not a high value account as at 31 December of the second year before the reporting year, but becomes a high value account as at the last day of a subsequent calendar year—

(a) the reporting financial institution must complete the enhanced review procedures under this section with respect to the account within the calendar year following the year in which the account becomes a high value account; and

(b) (if based on the review under paragraph (a), the account is identified as a reportable account) the reporting financial institution must report the required information about the account with respect to the year in which it is identified as a reportable account and subsequent years on an annual basis, unless the account holder ceases to be a reportable person.

- (9) Once a reporting financial institution applies the enhanced review procedures under this section to a high

- value account, the reporting financial institution is not required to reapply the procedures, other than the procedure in subsection (6), to the same high value account in any subsequent year unless the account is undocumented where the reporting financial institution must reapply them annually until the account ceases to be undocumented.
- (10) If there is a change of circumstances with respect to a high value account that results in one or more indicia described in subsection (3) of section 3 of this Part being associated with the account, then the reporting financial institution must treat the account as a reportable account with respect to each reportable jurisdiction for which an indicium is identified unless it elects to apply subsection (8) or (9), or both, of section 3 of this Part and any of the exceptions in subsections (8) and (9) of that section applies to the account.
- (11) A reporting financial institution must implement procedures to ensure that a relationship manager of the institution identifies any change in circumstances of an account.
- (12) Without limiting subsection (11), if a relationship manager is notified that the account holder has a new mailing address in a reportable jurisdiction, the reporting financial institution—
- (a) must treat the new address as a change in circumstances; and
  - (b) if the institution elects to apply subsection (8) or (9), or both, of section 3 of this Part, must obtain the appropriate documentation from the account holder.

## 5. Review of pre-existing individual accounts

- (1) Review of a pre-existing individual account that is a high value account must be completed on or before 31 December of the year before the reporting year for the account.
- (2) Review of a pre-existing individual account that is a low value account must be completed on or before 31 December of the reporting year for the account.

## Part 4

### Due Diligence Requirements for New Individual Accounts

#### 1. Application

This Part specifies the requirements that apply to new individual accounts in identifying a reportable account.

#### 2. Requirements

- (1) On the opening of a new individual account, a reporting financial institution must—
  - (a) obtain a self-certification, which may be part of the account opening documentation, that allows the institution to determine the jurisdiction of residence for the account holder; and
  - (b) confirm the reasonableness of the self-certification based on the information obtained by the institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

- (2) If the self-certification establishes that the account holder is a resident for tax purposes of a reportable jurisdiction—
  - (a) the reporting financial institution must treat the account as a reportable account; and
  - (b) the self-certification must also include the account holder's date of birth and (subject to section 50G(1)(b)) the account holder's TIN with respect to the reportable jurisdiction.
- (3) If there is a change of circumstances with respect to a new individual account that causes the reporting financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the institution—
  - (a) cannot rely on the original self-certification; and
  - (b) must obtain a valid self-certification that establishes the jurisdiction of residence for the account holder.

## **Part 5**

### **Due Diligence Requirements for Pre-existing Entity Accounts**

#### **Division 1—General**

##### **1. Application**

This Part specifies the requirements that apply to pre-existing entity accounts in identifying a reportable account.

### **Division 2—Entity Accounts subject to Review**

#### **2. Entity accounts not required to be reviewed, identified or reported**

- (1) A pre-existing entity account with an aggregate account balance or value that does not exceed \$1,950,000 as at 31 December of the second year before the reporting year, is not required to be reviewed, identified, or reported as a reportable account until the aggregate account balance or value exceeds \$1,950,000 as at the last day of any subsequent calendar year.
- (2) Subsection (1) does not apply if the reporting financial institution elects otherwise, whether with respect to all pre-existing entity accounts or, separately, with respect to any clearly identified group of such accounts.

#### **3. Entity accounts subject to review**

A pre-existing entity account must be reviewed in accordance with the review procedures under section 4 of this Part if—

- (a) the account has an aggregate account balance or value that exceeds \$1,950,000 as at 31 December of the second year before the reporting year; or
- (b) the account does not exceed \$1,950,000 as at 31 December of the second year before the reporting year but the aggregate account balance or value of the account exceeds \$1,950,000 as at the last day of any subsequent calendar year.

### Division 3—Review Procedures

#### 4. Review procedures for identifying entity accounts with respect to which reporting may be required

For a pre-existing entity account described in section 3 of this Part, a reporting financial institution must apply the review procedures under this Division.

#### 5. Determining residence of entity that holds pre-existing entity account

- (1) The reporting financial institution must review information maintained for regulatory or customer relationship purposes (including information collected and maintained pursuant to AML/KYC procedures) to determine the account holder's residence.
- (2) For the purpose of subsection (1), information indicating the account holder's residence includes a place of incorporation or organization, or an address in a reportable jurisdiction.
- (3) If the information indicates that the account holder is a reportable person, the reporting financial institution must treat the account as a reportable account unless it obtains a self-certification from the account holder, or reasonably determines, based on information in its possession or that is publicly available, that the account holder is not a reportable person.

#### 6. Determining residence of controlling persons of passive NFE

- (1) With respect to an account holder of a pre-existing entity account (including an entity that is a reportable person), the reporting financial institution must identify whether

the account holder is a passive NFE with one or more controlling persons, and determine the residence of the controlling persons.

- (2) If any of the controlling persons of a passive NFE is a reportable person, then the account is to be treated as a reportable account.
- (3) In making the determinations, the reporting financial institution must follow the guidance in sections 7, 8 and 9 of this Part in the order most appropriate under the circumstances.

#### 7. Determining whether account holder is passive NFE

For the purpose of determining whether the account holder is a passive NFE, the reporting financial institution must obtain and rely on a self-certification from the account holder to establish the account holder's status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the account holder is—

- (a) an active NFE; or
- (b) a financial institution other than an investment entity within the meaning of paragraph (e) of the definition of *investment entity* in section 50A(1) that is not a participating jurisdiction financial institution.

#### 8. Determining controlling persons of an account holder

For the purpose of determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

**9. Determining residence of controlling person of passive NFE**

- (1) For the purpose of determining the residence of a controlling person of a passive NFE, a reporting financial institution may rely on—
  - (a) information collected and maintained pursuant to AML/KYC procedures in the case of a pre-existing entity account held by one or more passive NFEs with an aggregate account balance or value that does not exceed \$7,800,000; or
  - (b) a self-certification from the account holder or the controlling person of the jurisdiction for which the controlling person is a resident for tax purposes.
- (2) For the purpose of subsection (1)(b), if a self-certification is not provided, the reporting financial institution must establish the residence by applying the review procedures under section 4 of Part 3 of this Schedule.

**Division 4—Timing of Review, etc.**

**10. Timing of review**

- (1) Review of a pre-existing entity account with an aggregate account balance or value that exceeds \$1,950,000 as at 31 December of the second year before a reporting year must be completed on or before 31 December of the reporting year for the account.
- (2) Review of a pre-existing entity account with an aggregate account balance or value that does not exceed \$1,950,000 as at 31 December of the second year before the reporting year, but exceeds \$1,950,000 as at the last day of a subsequent calendar year, must be completed

within the calendar year following the year in which the aggregate account balance or value exceeds \$1,950,000.

**11. Additional procedures applicable to pre-existing entity accounts**

If there is a change of circumstances with respect to a pre-existing entity account that causes the reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the institution must re-determine the status of the account in accordance with the review procedures under Division 3 of this Part.

**Part 6**

**Due Diligence Requirements for New Entity Accounts**

**1. Application**

This Part specifies the requirements that apply to new entity accounts in identifying a reportable account.

**2. Determining residence of entity**

- (1) A reporting financial institution must—
  - (a) obtain a self-certification from an entity that opens an account, which may be part of the account opening documentation, that allows the institution to determine the jurisdiction of residence for the account holder; and
  - (b) confirm the reasonableness of the self-certification based on the information obtained by the institution in connection with the opening of the account,

including any documentation collected and maintained pursuant to AML/KYC procedures.

- (2) If the entity certifies that it is not a resident for tax purposes of any jurisdiction, the reporting financial institution may rely on the address of the principal office of the entity to determine the residence of the account holder.
- (3) If the self-certification indicates that the account holder is a resident for tax purposes of a reportable jurisdiction, the reporting financial institution must treat the account as a reportable account unless it reasonably determines, based on information in its possession or that is publicly available, that the account holder is not a reportable person with respect to the reportable jurisdiction.

### 3. Determining residence of controlling persons of passive NFE

- (1) With respect to an account holder of a new entity account (including an entity that is a reportable person), the reporting financial institution must identify whether the account holder is a passive NFE with one or more controlling persons, and determine the residence of the reportable persons.
- (2) If any of the controlling persons of a passive NFE is a reportable person, then the account is to be treated as a reportable account.
- (3) In making the determination, the reporting financial institution must follow the guidance in sections 4, 5 and 6 of this Part in the order most appropriate under the circumstances.

### 4. Determining whether account holder is passive NFE

For the purpose of determining whether the account holder is a passive NFE, the reporting financial institution must obtain and rely on a self-certification from the account holder to establish the account holder's status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the account holder is—

- (a) an active NFE; or
- (b) a financial institution other than an investment entity within the meaning of paragraph (e) of the definition of *investment entity* in section 50A(1) that is not a participating jurisdiction financial institution.

### 5. Determining controlling persons of account holder

For the purpose of determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

### 6. Determining residence of controlling person of passive NFE

For the purpose of determining the residence of a controlling person of a passive NFE, a reporting financial institution may rely on a self-certification from the account holder or the controlling person.

## Part 7

### Special Due Diligence Requirements

#### 1. Application

This Part specifies the additional requirements that apply in applying the due diligence requirements in Parts 2, 3, 4, 5 and 6 of this Schedule.

#### 2. Reliance on self-certifications and documentary evidence

A reporting financial institution may not rely on self-certification or documentary evidence if it knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

#### 3. Alternative procedures for financial accounts held by individual beneficiaries of cash value insurance contract or annuity contract

- (1) A reporting financial institution may presume that an individual beneficiary (other than the owner) of a cash value insurance contract or an annuity contract receiving a death benefit is not a reportable person and may treat the financial account as other than a reportable account unless the institution has actual knowledge, or reason to know, that the beneficiary is a reportable person.
- (2) 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 by the institution and associated with the beneficiary contains indicia of residence in a reportable jurisdiction as described in section 3 of Part 3 of this Schedule.

- (3) If a reporting financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person, the institution must apply the requirements in section 3 of Part 3 of this Schedule.

#### 4. Alternative procedures for group cash value insurance contract or group annuity contract

- (1) A reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the date on which an amount is payable to the employee, certificate holder or beneficiary, if the financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets all of the following conditions—
  - (a) the group cash value insurance contract or group annuity contract is issued to the employer and covers 25 or more employees or certificate holders;
  - (b) the employees or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable on the death of the employee or certificate holder;
  - (c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed \$7,800,000.
- (2) In subsection (1)—
 

**group annuity contract** (團體年金合約) means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group;



**group cash value insurance contract** (團體現金值保險合約) means a cash value insurance contract that—

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

#### 5. Rules of account aggregation and currency

- (1) For the purpose of determining the aggregate balance or value of financial accounts held by an individual, a reporting financial institution must aggregate all financial accounts maintained by the institution, or by a related entity, but only to the extent that the institution's computerized systems—
  - (a) link the financial accounts by reference to a data element such as client number or TIN; and
  - (b) allow account balances or values to be aggregated.
- (2) Each holder of a jointly held financial account must be attributed the entire balance or value of the jointly held financial account for the purpose of applying the aggregation requirements described in subsection (1).
- (3) For the purpose of determining the aggregate balance or value of financial accounts held by an entity, a reporting financial institution must take into account all financial accounts that are maintained by the institution, or by a related entity, but only to the extent that the institution's computerized systems—

- (a) link the financial accounts by reference to a data element such as client number or TIN; and
- (b) allow account balances or values to be aggregated.
- (4) Each holder of a jointly held financial account must be attributed the entire balance or value of the jointly held financial account for the purpose of applying the aggregation requirements described in subsection (3).
- (5) For the purpose of determining the aggregate balance or value of financial accounts held by a person and whether a financial account is a high value account, if a relationship manager of a reporting financial institution knows, or has reason to know, any financial accounts are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, the institution must aggregate all those accounts.
- (6) References to a dollar amount in this Schedule are to be read as including an equivalent amount in a foreign currency.

### Schedule 17E

[ss. 50A(1) & 50J]

## Reportable Jurisdictions and Participating Jurisdictions

### Part 1

#### Reportable Jurisdictions and Reporting Year

Column 1	Column 2
Reportable jurisdiction	Reporting year

**Note—**

The reporting year for a reportable jurisdiction is the year beginning from which a notice may be given under section 50C(2) requiring information on reportable accounts with respect to that jurisdiction.

(This note does not have legislative effect.)

### Part 2

#### Participating Jurisdictions”.

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## Explanatory Memorandum

This Bill amends the Inland Revenue Ordinance (Cap. 112) (*Ordinance*) to enable Hong Kong to comply with the international standard for automatic exchange of financial account information regarding tax matters (*AEOI standard*).

2. The object of the Bill is mainly to—
  - (a) impose obligations on a certain financial institution (defined as *reporting financial institution* as mentioned in paragraph 4) to establish, maintain and apply procedures for, among other things, identifying whether any account maintained by the institution is an account in respect of which certain information is required to be reported to the Commissioner of Inland Revenue (*Commissioner*) (defined as *reportable account* as mentioned in paragraph 4);
  - (b) impose obligations on a reporting financial institution to furnish a return to the Commissioner; and
  - (c) impose penalty on a reporting financial institution for failing to comply with the obligations mentioned in subparagraphs (a) and (b).
3. Clause 3 amends section 2 of the Ordinance to provide for some definitions and revise the existing definition of *financial institution*.
4. Clause 4 adds to the Ordinance a new Part 8A providing for the obligations of a reporting financial institution as mentioned in paragraph 2(a) and (b). The new Part 8A comprises the following new sections, that is, sections 50A to 50K as described below—

- (a) the new section 50A provides for the definitions of the various key terms required for implementation of the AEOI standard, such as—
  - (i) *reporting financial institution* and *non-reporting financial institution*;
  - (ii) *reportable account* and *excluded account*; and
  - (iii) *jurisdiction of residence* and *reportable jurisdiction*;
- (b) the new section 50B provides for an obligation on a reporting financial institution to establish, maintain and apply due diligence procedures (in particular, applying procedures under the standards approved by the Organisation for Economic Co-operation and Development (*OECD standards*) as set out in a new Schedule 17D);
- (c) the new section 50C provides for an obligation on a reporting financial institution to furnish the required information to the Commissioner and the new section 50D provides for further obligations relating to returns;
- (d) the new section 50E provides for application of due diligence and other obligations on a person who acts for a non-corporate reporting financial institution to maintain financial accounts;
- (e) the new section 50F provides for information required for the return to be furnished under the new section 50C and the new section 50G provides for what information otherwise required is not required to be furnished;
- (f) the new section 50H provides for engagement by a reporting financial institution of a service provider to carry out the institution's obligations under the new sections 50B(1) and (2) and 50C(1);

- (g) the new section 50I empowers the Commissioner to designate any system in respect of any communication with the Commissioner for the purposes of the new section 50C or 50D;
  - (h) the new section 50J empowers the Secretary for Financial Services and the Treasury to amend 3 new Schedules, namely Schedules 17C, 17D and 17E, by notice published in the Gazette; and
  - (i) the new section 50K provides that information reported by a reporting financial institution may be used for the administration or enforcement of the Ordinance.
- 5. Clause 5 amends section 51(4) of the Ordinance to provide that the specified information is required to be furnished in the form and manner as specified in the notice issued by an assessor or inspector.
  - 6. Clause 6 amends section 51B of the Ordinance to provide for a search warrant to be issued against a reporting financial institution under specified conditions.
  - 7. Clause 7 adds to the Ordinance a new section 51BA providing for the power of an assessor to enter and inspect the business premises of a reporting financial institution or service provider under specified conditions.
  - 8. Clause 8 adds to the Ordinance a new section 61C voiding any arrangement entered into for or mainly for the purpose of avoiding any obligation under the new section 50B(1) or (2) or 50C(1).
  - 9. Clause 9 amends section 80 of the Ordinance to provide for an offence against any person in relation to the making of a self-certification required under a new Schedule 17D that is misleading, false or incorrect.

10. Clause 10 adds to the Ordinance the new sections 80B, 80C, 80D, 80E and 80F as described below—
- (a) the new section 80B provides for offences against a reporting financial institution;
  - (b) the new section 80C provides for offences against a person employed by a reporting financial institution;
  - (c) the new section 80D provides for offences against a service provider engaged by a reporting financial institution to carry out the obligations under the new sections 50B(1) and (2) and 50C(1);
  - (d) the new section 80E provides for offences against a director, or other officer concerned in the management, of a corporation, or any person purporting to act as such director or officer in certain circumstances; and
  - (e) the new section 80F contains miscellaneous provisions in relation to the offences under the new sections 80B, 80C, 80D and 80E.
11. Clause 11 adds to the Ordinance the following 3 new Schedules—
- (a) a new Schedule 17C for setting out a list of non-reporting financial institutions and a list of excluded accounts;
  - (b) a new Schedule 17D for setting out the due diligence requirements as laid down in the OECD standards; and
  - (c) a new Schedule 17E for setting out a list of reportable jurisdictions and a list of participating jurisdictions.

**Lists of “Non-reporting FIs” and “Excluded Accounts”**

**Non-reporting FIs**

- (a) government entities (including statutory bodies and entities which are wholly owned by the Government), international organizations, central banks, Hong Kong Monetary Authority;
- (b) pension fund of a government entity, international organization, central bank or the Hong Kong Monetary Authority;
- (c) Grant Schools Provident Fund and Subsidized Schools Provident Fund;
- (d) any FIs meeting the requirements defined as Board Participation Retirement Fund, Narrow Participation Retirement Fund, qualified credit card issuer, exempt collective investment vehicle or trustee-documented trust under CRS;
- (e) Mandatory Provident Fund Schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap.485); and Occupational Retirement Schemes registered under the Occupational Retirement Schemes Ordinance (Cap.426), including pooling agreement and approved pooled investment funds with participants confined to the above schemes; and
- (f) Credit Unions registered under the Credit Unions Ordinance (Cap.119).

**Excluded accounts**

- (a) retirement or pension accounts satisfying certain requirements;
- (b) non-retirement tax-favoured accounts;
- (c) term life insurance contracts;
- (d) estate accounts;
- (e) escrow accounts;
- (f) depository accounts due to non-returned overpayments as defined under CRS; and
- (g) dormant accounts

**Safeguards at the treaty level**

- (a) The information exchanged should be foreseeably relevant, i.e. there will be no fishing expeditions;
- (b) Information received by our partners should be treated as confidential;
- (c) Information will only be disclosed to the tax authorities and not for release to their oversight bodies unless there are legitimate reasons given by CDTA/TIEA partners (i.e. we have committed to the LegCo that the inclusion of any such oversight bodies must be positively listed);
- (d) Information exchanged should not be disclosed to a third jurisdiction;
- (e) There is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which would be covered by legal professional privilege, etc.;
- (f) The use of information exchanged for other purposes (i.e. non-tax related) should be allowed provided that such use is allowed under the laws of both contracting parties and the competent authority of the supplying party authorises such use. In other words, it is a prerequisite that EOI must first be conducted for tax purposes in accordance with the provisions of a relevant CDTA/TIEA. As envisaged by OECD, the sharing of tax information exchanged is only meant for certain high priority matters (such as to combat money laundering, corruption and terrorism financing); and
- (g) We would not accede to any requests from our treaty partners for tax examinations abroad (i.e. we have not included such an article in our CDTA/TIEAs).

**Economic, Financial and Civil Service  
Implications of the Proposal**

**Economic Implications**

It is important for Hong Kong, as an international financial and business centre, and a responsible and co-operative member of the international community, to catch up with the evolving international standard on EoI arrangements, so as to maintain its competitiveness and reputation. Timely implementation of AEOI will demonstrate Hong Kong's commitment to enhancing tax transparency and combatting cross-border tax evasion. The bilateral approach taken by Hong Kong for AEOI, which means that our future AEOI partner must either be our CDTA or TIEA partner, may serve as an impetus for us to further expand Hong Kong's network of CDTAs/TIEAs. The legal framework for AEOI is necessary for Hong Kong to pass the peer review conducted by the Global Forum, and to avoid being labelled as an un-cooperative tax jurisdiction.

**Financial and Civil Service Implications**

2. The implementation of AEOI standard will create additional work for IRD. Apart from the necessary preparatory work, IRD will need to operate the system for collection of information from FIs and delivery of such information to our AEOI partners, maintain liaison with the FI groups to facilitate smooth operation, draw up / update necessary guidelines for staff and FIs, conduct negotiations for CAAs, and enforce compliance with the statutory requirements, on an on-going basis. We also envisage that the implementation of AEOI would trigger more EOI requests from our CDTA / TIEA partners.

3. Additional resources have been earmarked for IRD to cope with the workload in 2016-17 and beyond.