

Frequently Asked Questions (“FAQs”) on “Rules Governing Offshore Banking Branches”

1. Why is it necessary for the FSC to strengthen the customer due diligence (CDD) procedures of offshore banking units (OBUs)?

A:

- (1) The FSC takes actions to strengthen the CDD practices of OBUs mainly to address the issues of anti-money laundering and combating the financing of terrorism (AML/CFT), a topic of mounting concern for governments around the world. An international organization established to deal with related issues has been conducting mutual evaluations for its members to understand their implementation of AML/CFT regimes. Poor evaluation result could adversely affect the reputations of a country in international financial markets and subject to the country’s financial transactions to stricter scrutiny, and furthermore, impact the country’s economic activities. On the other hand, it is the time for banks to step up their management of account opening operation to remedy past practice of not routinely and rigorously reviewing and verifying information provided by OBU customers on the offshore company they established.
- (2) The documents, data or information that must be obtained or verified by OBUs when performing CDD as set out in the Attachment to these Rules (referred to as the “Attachment” hereunder) are conformance requirements that OBUs in principle should ask their customers to present identification documents or certificates issued by a government agency, the registration agency or a registered agent at where the customer is located to ensure that the company registered/incorporated by the customer abroad continues to be in good standing and continues to be a valid legal entity. This practice in fact also helps safeguard the interests of the customer.

2. When a foreign company that has been approved to invest in Taiwan but has not been recognized by the Ministry of Economic Affairs applies to open an onshore (DBU) account, are relevant documents under these Rules still required when the bank performs CDD?

A:

These Rules apply only to OBUs. When a designated bank (DBU) accepts the over-the-counter application of a foreign company to open an onshore account, the bank should follow anti-money laundering related regulations and FSC Order No. Jin-Guan-Yin-Fa-Zi -10400077630 dated May 8, 2015 regarding the types of ID documents that may be accepted in double ID document check.

3. With regard to identity verification for the directors, shareholders, beneficial owners of an offshore legal entity customer or the guarantors for loans extended to an offshore legal entity customer, should banks follow the Attachment or can banks draw up their own rules? If an OBU customer is a multi-layered holding company, how to verify if the company is in good standing and its beneficial owners?

A:

- (1) Pursuant to anti-money laundering related regulations, “customer” is defined as a person with whom a bank establishes or intends to establish business relations or with whom a bank conducts or intends to conduct transactions. Thus the requirements concerning documents, data or information that must be obtained or verified by OBUs when performing CDD as set out in the Attachment apply to persons with whom an OBU establishes or intends to establish business relations or conducts or intends to conduct transactions.
- (2) With regard to information to be obtained from people related to the customer (including its shareholders, directors, beneficial owners, guarantors, etc.), banks should follow anti-money laundering related regulations, risk-based approach and internal rules. However for higher risk customers or if a bank deems that further confirmation is necessary, the bank may refer to the Attachment with regard to documents, data or information to be obtained from or verified on people related to the customer as described above.
- (3) A bank should refer to anti-money laundering related regulations or Q&A on AML regulations with regard to the steps for identifying beneficial owners. In principle, a bank should obtain customer’s list of shareholders, ownership or control structure and other documents the bank deems helpful for understanding the equity or funding situation of the customer.

- (4) For customers that are a multi-layered holding company, the bank should follow the steps for identifying beneficial owners mentioned above. For information to be obtained regarding intermediary companies, a bank may follow the principles laid out in Point (2) above.

4. Is it necessary to check the articles of association of an offshore company to determine whether the company can issue bearer shares?

A:

Pursuant to anti-money laundering related regulations, when the customer is a legal person, a bank should understand whether the customer is able to issue bearer shares and adopt appropriate measures for customers who have issued bearer shares to ensure its beneficial owners are kept up-to-date (in reference to Subparagraph 6, Article 3 of the Regulations Governing Anti-Money Laundering of Financial Institutions). A bank should follow the same provisions for its OBU customers.

5. How to verify the authenticity of bank documents provided by a customer? How to review non-English documents? Can the job of bank staff examining the authenticity of documents presented by a customer who applies to open an account be replaced by a verification report on those document issued by a conflict-of-interest-free non-financial professional institution engaged by the bank?

A:

- (1) According to the Attachment, a bank should adopt reasonable measures to confirm customer identity, including verifying the identification documents or certificates issued by relevant government agency, registration agency or registered agent. For example, a bank should cross-check the consistency of data or information in different documents, and make enquiry via the website of registration agency. When a bank has doubt about the documents provided by a customer, the bank should ask the bank to provide other supporting documents.
- (2) If a document provided by a customer is written in a foreign language other than English, a bank should take proper measures, such as

asking the customer to provide a translation of the document certified by a professional institution or a professional.

- (3) Article 11 of these Rules allows OBUs to rely on the assistance of intermediaries to perform CDD. However such intermediaries are limited to banking institutions. Article 11 also specifies the qualifications of an intermediary and part of CDD procedures an intermediary may perform and that a bank and an intermediary may agree on proper division of labor with regard to CDD process.
- (4) In addition, if a bank has doubt about a customer's identity or the information a customer provides, the bank may engage the service of a non-financial professional institution without conflict of interest to produce a verification report as reference. However such verification report should be supporting evidence in nature, which may not substitute the CDD process and a bank should still perform its own CDD.
- (5) To facilitate compliance by banks, the FSC will ask Bankers Association to draw up the criteria for verification method, credit agency and verification procedures and include them in the self-regulatory rules for banks.

6. Can an offshore legal entity customer provide a post office box as the address at the place of incorporation and the address of principal place of business? What is the principle for accepting the address of principal place of business provided by customers?

A:

- (1) According to the Attachment, a bank should obtain customer's address at the place of incorporation and the address of principal place of business. To avoid the situation where a bank retains only a customer's address at the place of incorporation which happens to be a post office box, these Rules also require banks to obtain customer's address of principal place of business, which may not be a post office box.
- (2) If an offshore legal entity customer has actual business operation, the address of its principal place of business should be the address at where it is located (possibly the same as the address at the place of incorporation). If the offshore legal entity customer is established in a duty-free country or jurisdiction but does not have actual operation,

the bank should save the address or mailing address of the individual controlling the customer or the customer's actual place of operation.

7. When an offshore legal person that has been established for less than six months has presented Certificate of Incorporation, articles of association, list of shareholders and other relevant documents when it applies to open an OBU account, should the bank also ask for Certificate of Incumbency and Certificate of Good Standing?

A:

Yes, a bank should still examine relevant documents in accordance with Subparagraph (2), Paragraph 2 of the Attachment or a complete report issued by the registration agency at where the legal person is incorporated on the enquiry made on the lawful incorporation of the legal person as provided by the customer (or an enquiry made via the website of the registration agency or a certificate issued by the registration agency) in accordance with Subparagraph (3) of the same paragraph; the complete report should also include the list of incumbent directors and the standing status of the customer.

8. Under what circumstances can a bank using simplified CDD measures based on risk-based approach for customers with lower money laundering or terrorist financing risk? For foreign companies that are listed in Taiwan, can a bank use the corporate information obtained from Market Observation Post System in performing CDD without asking the customer to provide Certificate of Incumbency and Certificate of Good Standing?

A:

- (1) According to anti-money laundering related regulations, simplified measures may be adopted for lower risk situations, which however should be commensurate with the lower risk factors (refer to Subparagraph 3, Paragraph 1, Article 6 of the Regulations Governing Anti-Money Laundering of Financial Institutions). Thus simplified measures may be adopted for lower risk customers mentioned in the preface of the Attachment, to whom the remaining section of the Attachment needs not apply. A bank should decide whether to apply

simplified CDD measures on certain customers that based on the aforesaid principles.

- (2) For example, for legal entity customers to whom the identification of their shareholders or beneficial owners is not required in accordance with anti-money laundering regulations, a bank may, in principle, adopt simplified measures commensurate with customer risk (refer to Item C, Subparagraph 7, Article 3 of the Regulations Governing Anti-Money Laundering of Financial Institutions). A few examples for those types of customers include a foreign government entity, a public company and its subsidiaries, an entity listed on a stock exchange outside of R.O.C. that is subject to regulatory disclosure requirements of its principal shareholders, and the subsidiaries of such entity, a financial institution supervised by the R.O.C. government, and an investment vehicles managed by such institution, and a financial institution incorporated or established outside R.O.C. that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the Financial Action Task Force on Money Laundering (FATF), and an investment vehicle managed by such institution.
- (3) However for the aforementioned types of customers, a bank should still scrutinize the purpose of a customer opening an account, intended use of the account and planned transaction activities. If complicated and multi-layered equity or beneficiary structure is involved, or if the account is opened mainly for assets managed by an individual or a legal person and has frequent cross-border fund transfer activities or if the customer is from a high-risk area and business transactions are deemed to involve high risk, the bank may not adopt simplified measures but still should ask the customer to provide relevant documents and identify beneficial owners in accordance with the Attachment.
- (4) For a foreign company customer listed on TWSE/TPEX, a bank may obtain relevant information from the Market Observation Post System or the company's CPA-audited financial report or annual report. In principle, a bank can follow the provisions for exceptions mentioned in the preface of the Attachment for a foreign company customer listed on TWSE/TPEX without requesting the Certificate of Incumbency and the Certificate of Good Standing. However the bank should still pay attention to the principles described in the preceding

point.

9. If a complete report issued by the registration agency at where the legal person is incorporated does not contain shareholder related information, should a bank ask the customer to provide a list of shareholders?

A:

- (1) The purpose of the provisions “obtain the list of its directors and shareholders to identify its ownership structure and control structure and confirm its beneficial owners” set out in Subparagraph (4), Point 2 of the Attachment is to confirm the beneficial owners of an offshore legal person.
- (2) There is no requirement that the list of shareholders must be included in the enquiry made with the registration agency at where the legal person is incorporated within the last six months. Thus the list of shareholders may be provided by the customer itself for confirming its beneficial owners.

10. If the name of a document provided by an offshore legal person is not Certificate of Incumbency, but its content is consistent with that of a Certificate of Incumbency and the certificate is issued by a local registered agent, is this type of document acceptable? What if the place at where the legal person is incorporated does not have a registered agent system?

A:

- (1) The “Certificate of Incumbency issued by the registered agent at where the legal person is incorporated within the last six months” that a bank should examine according to the Attachment is issued by a registered agent at where the offshore legal person is incorporated. The requirement is met if that certificate contains the list of incumbent directors. Also if the Certificate of Incumbency has stated that the legal person is still in good standing, the bank needs to ask the customer to provide a “Certificate of Good Standing issued by the registration agency at where the legal person is incorporated within the last six months.” On the other hand, if the Certificate of Incumbency does not state that the legal person is in good standing, the bank should ask for a Certificate of Good Standing.

- (2) In addition, if the place at where an offshore legal entity customer is located does not have a local registered agent system, a bank should ask the customer to provide a complete report issued by the registration agency at where the legal person is incorporated on the enquiry made on the lawful incorporation of the legal person (or an enquiry made via the website of the registration agency or a certificate issued by the registration agency), which should also include the list of incumbent directors and the standing status of the customer.

11. With regard to the provisions of Subparagraph 2, Paragraph 1 of the Attachment that require the verification of at least two identification documents for offshore individuals, as offshore individuals do not have domicile in Taiwan, can a bank accept the photocopy of identity document provided by a customer if the customer is unable to enter Taiwan before the end of this year?

A:

With regard to the directive requiring banks to re-perform CDD on existing offshore individual customers before the end of 2017, a bank may not have the chance to examine the original of the customer's second identification document because the customer is unable to make it to Taiwan before the specified deadline. In such event, a bank is allowed to accept a photocopy of the second identification document provided by the customer and confirm the consistency of customer information. However other reasonable verification measures should also be adopted. For example, obtaining a reply signed by the customer to a correspondence sent to the address provided by the customer or conducting phone interview, onsite visit or other identity verification measures in view of the level of risk the customer poses, and putting in place other internal control mechanisms as provided in Subparagraph (3), Paragraph 1 of the Attachment.

12. With regard to the provisions "In view of the level of risk the customer poses, obtain a reply signed by the customer to a correspondence sent by the offshore banking branch to the address provided by the customer or conduct phone interview, onsite visit or other identity verification measures", how a bank

determines whether to take any of those actions or not? What are the “other” identity verification measures?

A:

- (1) The measures set out in Subparagraph (3) of Paragraph 1 and Subparagraph (5) of Paragraph 2 of the Attachment are considered “enhanced due diligence” conducted by a bank in view of customer risk. If a bank deems it necessary to verify further after examining the information and documents provided by a customer or determines following assessment that a customer is a medium/high risk customer, the bank should carry out relevant measures in view of needs. If there is no doubt or the bank determines following assessment that the customer is a low risk customer, the bank needs not adopt those measures.
- (2) As for other identity verification measures, a bank may request other supporting documents or information from customer in reference to anti-money laundering related regulations.

13. Is it necessary to ask existing customers to provide the Certificate of Good Standing every year, and should the requirement for the document follow the provisions of the Attachment?

A:

- (1) The principles of ongoing due diligence laid out in anti-money laundering regulations are summarized as follows (refer to Article 5 of the Regulations Governing Anti-Money Laundering of Financial Institutions):
 - A. Periodically review the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date, particularly for higher risk categories of customers.
 - B. May rely on the identification and verification steps already undertaken without repeatedly identifying and verifying the identity of each customer every time that a customer conducts a transaction unless having doubts about the veracity of that information. For example, there is a suspicion of money laundering in relation to that customer, or there is a material change in the way that the customer’s account is operated, which is not consistent with the customer’s business profile. In such events, CDD should be conducted again.

- (2) In conducting periodic review of customers, an OBU should use risk-based approach and in reference to the aforementioned principles request updated documents from customers in view of the business relations with customer, customer risk level and changes in customer information. An offshore company should show that it is in good standing. In addition, the Attachment stipulates that the Certificate of Good Standing should be certified or issued by the government at where the customer is incorporated or issued by a registered agent approved by the government at where the legal person is incorporated. A Certificate of Good Standing issued by customer's local agent is not acceptable.

14. Pursuant to Paragraph 2, Article 10 of these Rules, banks shall re-perform CDD and review the level of risk on existing customers before December 31, 2017. What are the relevant guidelines:

A:

- (1) A bank that re-performs CDD on existing customer before the end of 2017 should in principle follow the provisions of the Attachment by reviewing whether customer information and documents on file are conforming and whether beneficial owners have been confirmed. If there is inadequacy, nonconformity or changes, the bank should obtain relevant information from the customer and ask the customer to provide the required documents. If a bank has initiated the aforementioned review procedure but is unable to complete the CDD process before the end of 2017 because the customer has not provided the requested information or it takes more time to verify the information provided by customer or due to other justifiable reasons, the bank may put the matter under internal control and complete the review as soon as possible.
- (2) If an offshore customer opened an account within the past year or the bank has performed review on a customer within the past year and the bank has examined and confirmed that the information and documents obtained are conforming, the bank needs not request certain documents that are not issued or enquired within the last months from the customer again. However the bank should save the review records. On the other hand, for accounts opened within the last year or for which review has been done, if any customer

information and/or document left on file is found nonconforming, the bank should still request necessary information or document from the customer.

- (3) If the Certificate of Incumbency or Certificate of Good Standing provided by a customer is issued more than six months ago but is still valid and the certificate issuing agency meets the requirement set forth in the Attachment, the bank may, in view of the situation, give the customer some flexibility by confirming that relevant information stated in the certificate has not changed and asking the customer to provide a certificate issued within the last six months at the time of new review.
- (4) If a customer declines to provide CDD related documents, or documents provided by the customer are suspicious or unclear, or the customer refuses to provide other supporting documents, or the documents provided cannot be authenticated, or the customer procrastinates in providing additional identification documents in an unusual manner, a bank should take actions in accordance with Article 4 of the Regulations Governing Anti-Money Laundering of Financial Institutions. With respect to some situations that were not agreed on in the account agreement a bank enters with its customers, such as inactive account, whether an offshore company is still in good standing or a customer declining to provide CDD information, the FSC will ask the Bankers Association to draw up review and handling procedures and include them in the self-regulatory rules for banks.

15. What does the clause “It is time for periodic update of customer identity information” under Subparagraph 2, Paragraph 2, Article 10 of these Rules mean?

A:

Banks shall re-perform CDD and review the level of risk on existing customers before December 31, 2017 but should re-perform CDD immediately in the event of two situations. One of the situations is “It is time for periodic update of customer identity information”, which means CDD should be re-performed when it is time for periodic review set by the bank based on the materiality and risk of customer without waiting until the end of 2017.

16. Does the “Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation” (referred to as the “Outsourcing Regulations” hereunder) apply to OBUs relying on the assistance of intermediaries to perform CDD on offshore customers set forth in Article 11 of these Rules? If some operations of the OBU, such as creation of customer data files, have been outsourced with approval of the FSC pursuant to the Outsourcing Regulations, does the OBU need to follow Article 11 of these Rules?

A:

- (1) The Outsourcing Regulations does not apply to OBUs performing CDD through the assistance of intermediaries set forth in Article 11 of these Rules.
- (2) When the FSC approves a bank to outsource some of its operations, the FSC does so pursuant to the scope and procedure of outsourcing set forth in the Outsourcing Regulations, and the outsourcing service providers concerned are not intermediaries referred to in Article 11 of these Rules.

17. Article 11 of these Rules allows OBUs to rely on the assistance of intermediaries to perform CDD on offshore customers. What is the scope of such assistance? If the service of an intermediary is merely document delivery or checking the signatures of customers made in person, is it necessary to report the name of such intermediary?

A:

- (1) In reference to Article 7 of the Regulations Governing Anti-Money Laundering of Financial Institutions and Recommendation 17 of FATF, the scope of CDD measures that an intermediary may perform include identifying and verifying customer identity (using reliable, independent source documents, data or information), the identity of agent (verifying the fact of agency and using reliable, independent source documents, data or information to verify the agent’s identity), the identity of beneficial owner (taking reasonable measures to verify the identity of beneficial owner, including using reliable, independent source data or information), or enquiring information on the purpose

and intended nature of the business relationship. Thus if an OBU plans to rely on the assistance of an intermediary in the aforementioned matters, the OBU should do it in accordance with Article 11 of these Rules.

- (2) When a bank engages its overseas branches to assist in document delivery, checking the signature of customer made in person or verifying customer signature on loan documents, whether Article 11 of these Rules applies or not depends on whether the service rendered by the overseas branch involves the scope of CDD measures mentioned in the preceding point. If the bank performs the identification and verification of customer identity itself, and the services of document delivery, checking the signature of customer made in person or verifying customer signature on loan documents does not involve any CDD measures, Article 11 of these Rules need not apply. However there should be a written service agreement between the bank and its overseas branch to delineate the responsibilities of the parties.

18. Pursuant to Subparagraph 2, Paragraph 1, Article 12 of these Rules, when an offshore legal person opens an account, if its shareholders, directors or beneficial owners include onshore individuals or legal persons, the OBU needs to obtain a customer statement declaring that it did not switch to non-resident status under inducement or for investment in specific products. How is this done?

A:

- (1) When a bank obtains necessary information from an offshore legal entity customer in the process of conducting CDD using a risk-based approach and discovers that the customer's shareholders, directors or beneficial owners include onshore individuals or legal persons, the bank should ask the customer to issue a statement declaring that it did not switch to non-resident status under inducement or for investment in specific products and inform the customer of its legal responsibility.
- (2) As to whether the bank needs to ask the offshore legal entity customer to provide the identity documents of its shareholders, the bank should decide in accordance with anti-money laundering related regulations, risk-based approach and internal rules. The provisions of

Subparagraph 2, Paragraph 1, Article 12 of these Rules do not require a bank to request the identification documents of each and every shareholder from legal entity customer.