



**The British
Chamber of Commerce
in Hong Kong**

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27 March, 2008

Mr. He Guang Bei
Chairman
The Hong Kong Association of Banks
Room 525, 5/F, Prince's Building
Central
Hong Kong

Dear Mr. He

We had a meeting in December with the Hong Kong Association of Banks and the Hong Kong Monetary Authority to discuss practical issues that our members have been experiencing in working with banks in Hong Kong. The meeting was facilitated by your predecessor as Chairman of the Hong Kong Association of Banks, Peter Sullivan, who was also Chairman of the British Chamber of Commerce at the time. At the conclusion of that meeting, we agreed to set out in writing our thoughts and recommendations on a number of the issues raised.

We are now pleased to write in detail with our findings, as based on research conducted among some of our members (drawn from end users of banking services in Hong Kong as well as professional advisers). In particular we note that some of our members have experienced different treatment from bankers regarding their client acceptance procedures and bank account opening arrangements. In view of the different practices currently adopted by banks in Hong Kong, we strongly recommend that the Hong Kong Association of Banks set out more detailed guidelines or, preferably a practice note so that banks may standardize, as far as possible, their requirements for bank opening accounts and related matters, thus enhancing Hong Kong's reputation as a global finance centre.

Please note, we do not, and would not in any way, advocate watering down the stringent "Know Your Customer" rules promulgated by the Hong Kong Monetary Authority ("HKMA") but merely wish to have these rules applied in a systematic, predictable and rational manner.

The following are comments from some of our members regarding their experiences with the note issuing banks and leading multinational banks operating in Hong Kong:

1. Frustrations with bank account opening in Hong Kong

Typified by the following recent quote from someone who was previously working in Hong Kong and who has bank accounts here; and wishes to open a company account (where he and his wife are the beneficial owners and directors of the company):

Where business gets done

"I am having difficulty identifying a window where my wife and I can get over to HK in Dec – they say they need to meet us to open the account at all, despite our being loyal steady personal customers.

We have pretty much smoothed the path to opening an account atBANK, and I need to identify what they need for the account opening apart from us being there, then I can inform you of next steps. It seems to be a strangely difficult process to get them to fax me forms, with only one set successfully arriving, and that one being in Chinese. So each time I pick up the process again, it seems to start with "ok, must find out what bank needs...", and then the forms never arrive and after I phone for them and I get distracted again."

Even when an account is opened, a change of signatory, in some cases, requires a visit to Hong Kong by the new signatory to meet the bank in Hong Kong, if they do not live here. This appears an overly pedantic practice especially when, in some cases, our members have seen it applied to main board directors of overseas listed companies, who are often well known in their home jurisdictions.

2. Complex ownership structures misunderstood by bank staff

Some banks refuse to open accounts where the ownership involves a complex group or trust structure. This seems inappropriate for Hong Kong as an international financial services hub.

3. Inconsistent use, or lack of use of, of Intermediary Introducers

Intermediaries are not typically used by banks in Hong Kong, to speed up the process of bank account opening, despite the large numbers of intermediaries operating bank accounts in Hong Kong on behalf of overseas parties. This should be addressed particularly where the intermediary is regulated in Hong Kong in some way, i.e., a member firm of the Hong Kong Institute of Certified Public Accountants, or a Law firm or a Registered Hong Kong Trustee Company etc. This is common practice in other jurisdictions, for example Jersey, UK, etc., and speeds up the bank account opening process considerably. In many cases it takes 4 weeks or more to open a new company bank account in Hong Kong although some of our members seem to have access to streamlined protocols not generally available to other professionals. Also, frequent duplication of the same documents (i.e. Certificate of Incorporation, Memorandum & Articles of Association of the intermediary) typically arises for intermediaries. So in many cases it is easier for them to open accounts in other jurisdictions than Hong Kong.

4. Physical meeting with a bank officer is a pre-requisite for account opening

Most of the banks require a meeting with a majority of directors (a few banks also accept meeting with one director or shareholder) to understand their business activities before agreeing to open bank accounts.

As such, overseas clients are obliged to make a special trip to Hong Kong for the purpose of opening of a bank account, which is very inconvenient and cost inefficient.

For an example, one of the clients of a corporate services practice member, set up a Hong Kong subsidiary and intended to appoint a very senior executive to be the sole director of the Hong Kong entity. Unfortunately, the sole director could not come to Hong Kong to meet with a bank officer. The sole director then reluctantly appointed his colleague to be the co-director of the Hong Kong entity to meet with the bank officer for the sole purpose of opening a bank account. Once the account was opened, the second director then promptly resigned making a mockery of the requirement. This was a process suggested by the bank officer!

5. Verification of signatures

Most of the banks only accept verification of signatures by other bankers. However, even when an overseas banker has verified a signature, banks in Hong Kong do not always accept the certification. Examples of rejection have included circumstances where overseas bank officers have apparently not provided sufficient information or contact details for the bankers in Hong Kong or when specimen signatures of these overseas bank officers are not available in the banking network in Hong Kong. Clearly, if the banks continue to only accept signature verification by other bankers, then a standardized protocol may avoid delays in the process.

In addition to verification by overseas bankers, it would be much more convenient if a notary public, or an official of similar standing such as a Justice of the Peace, may also be accepted for verification of customer's signatures (we are aware of a few banks which allow for such verification). This, one hope, may become a standard practice.

6. Physical office

A few banks require a company to have a physical office in Hong Kong before accepting the opening of bank accounts. This seems an odd requirement for an international financial centre.

7. Change of authorized signatories

A few banks have unusual/unorthodox requirements whenever there are changes of authorised signatures; often a company needs to complete a new set of bank account opening forms, with all related appropriate documents. In addition, certain banks have not accepted certified true copies of Certificates of Change of Name or business registration certificates for the purpose of updating bank records consequent on a corporate customer's change of company name and/or registered office. Some banks will only accept instructions as to a change in the desired manner of operation of corporate customer bank accounts, to be given by the authorised signatories rather than the directors who are the proper persons to make such decisions. It therefore becomes very difficult or impossible to update the bank records when an existing sole authorised signatory has already left a particular company.

8. Proof of address and identities

In our view there is varied practice regarding use of address proofs by banks in Hong Kong. Unusual address proofs are accepted in many cases - even mobile phone

bills and other internationally inappropriate address proofs. But most importantly, changes in address of directors or shareholders are rarely checked after the account has been opened. Often, the bank has no idea where the shareholders or directors are actually resident, especially where an intermediary is involved in running the account.

9. A paperchase.

The volume of paperwork and time taken to complete necessary banking paperwork is surprising to most customers; it often takes over an hour to complete new account opening paperwork. Usually separate forms are also required to be filled in and lodged at the branch to operate internet banking, telephone banking for each user, for credit card payments, etc. It would be better if a simplified set of forms offering all banking services could be completed at the outset enabling comprehensive services from the outset, rather than an incremental approach to giving services.

Anti money laundering –Third EU anti- money laundering Directive

In an international context, as you will know, on 15 December 2007 new anti-money laundering regulations came into force in the EU to implement the Third EU anti-money laundering directive. The directive, and the UK regulations and the relevant legislation in other EU member states implementing this directive, will bring into being in the UK and the rest of the EU, **a new risk based approach to customer due diligence/know your client requirements**. The risk-based approach means that resources are focused on the areas of greatest risk. The **resulting benefits of this approach include:**

- more efficient and effective use of resources proportionate to the risks faced
- **minimizing compliance costs and burdens on clients**
- Greater flexibility to respond to emerging risks as laundering and terrorist financing methods change.

Customer due diligence (or "CDD" - previously referred to as "know your client" or "KYC" requirements) is defined in the regulations to include:

- identifying the client and verifying their identity on the basis of documents, data or information **obtained from a reliable and independent source**
- identifying, where there is a **beneficial owner** who is not the client, the beneficial owner and **taking adequate measures, on a risk-sensitive basis**, to verify his identity so that regulated persons (namely authorized credit/financial institutions and professional advisers) are satisfied that they know who the beneficial owner is. This includes understanding the ownership and control structure of a legal person, trust or similar arrangement.

Identification of a client or a beneficial owner is simply being told or coming to know a client's identifying details, such as their name and address. **Verification** is obtaining some evidence which supports this claim of identity. **Verification can be completed on the basis of documents, data and information which come from a reliable and independent source**. This means that there are a number of ways a client's identity can be verified including:

- obtaining or viewing original documents
- conducting electronic verification
- Obtaining information from other regulated persons.

The regulations also provide for situations where a new client is not dealt with on a face to face basis. Where such a **client is a natural person and they are not physically present for identification purposes, enhanced due diligence** above standard verification procedures should be undertaken to compensate for the higher risk of non face-to-face transactions. Such procedures could include:

- Using additional documents, data or information **to establish identity**. This may involve using electronic verification to confirm documents provided, or using two or three documents from different sources to confirm the information set out in each.
- Using supplementary measures **to verify or certify the documents** supplied or obtain confirmatory certification by a credit or financial institution which is subject to the money laundering directive - e.g. getting certified copies of documents or electronic verification to confirm the documents provided.

A client who is not a natural person can never be physically present for identification purposes and will only ever be represented by an agent. **The mere fact that a regulated person does not have face-to-face meetings with the agents of an entity does not automatically require that enhanced due diligence is undertaken.** A regulated person should consider the risks associated with the retainer and the client, assess how well standard CDD measures are meeting those risks and decide whether further CDD measures are required.

We believe that paying due regard to the above outlined aspects of the new anti-money laundering legislation in the UK (and which has/will also be implemented in some guise in the other EU member states) in a set of guidelines issued by the HKAB/HKMA and adopted by members of the HKAB, should avoid many of the inflexible practices outlined in the draft letter (especially those set out in paragraphs 1, 2, 4 and 5 of the draft letter) whilst still preventing/acting as a deterrent against money-laundering. **Failure to take heed of the new anti-money laundering standards in the UK and the rest of the EU can only erode the attractiveness of Hong Kong as an international financial centre.**

Conclusion

As different banks set widely different criteria and requirements for bank account opening and amendment procedures (even though all banks' policies should be based on the same guidelines issued by the HKMA) and requirements sometimes vary from branch to branch of the same bank and are also periodically changed, it is very difficult for prospective clients of such banks or service providers to anticipate what the requirements may be at any given time.

We know that some banks seem to exercise more commercial discretion than others but would respectfully request that, as observed earlier, serious consideration be given by the Hong Kong Association of Banks ("HKAB"), guided by the HKMA, to drafting detailed practice notes which may also be made available to customers and professional advisers.

We will happily volunteer the services of some of our members to sit on a working committee or liaise with the HKAB/HKMA working committee examining these issues.

Yours sincerely

James Riley
Chairman

Cc: Brig. Christopher Hammerbeck - BCC
Ms. Deborah Annells - BCC
Ms. Eva Wong - HKAB