

# Tax Information Authority



CAYMAN ISLANDS

## THE COMMON REPORTING STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS

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### Guidance Notes

These Guidance Notes are issued under regulation 5(2) of the *Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015* by the Tax Information Authority as the Competent Authority for the purposes of the legislation.

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#### ***Department for International Tax Cooperation***

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## I. Overview

### A. General

The Common Reporting Standard (“**CRS**”) was developed by the Organisation for Economic Co-operation and Development (“**OECD**”) on the mandate of the G20. It is the global standard for the automatic exchange of financial account information for tax purposes. The CRS builds on the intergovernmental approach adopted by many jurisdictions for the implementation of the United States Foreign Account Tax Compliance Act (“**FATCA**”) and is designed to maximise efficiency and minimise costs.

Under the CRS, jurisdictions obtain specified financial account information from their Financial Institutions and automatically exchange that information with partner jurisdictions on an annual basis.

### B. Core documents

The standard consists of the following core elements that are relevant for Financial Institutions:

- The [Common Reporting Standard](#) that contains the due diligence and reporting rules for Financial Institutions.
- The Commentary on the CRS, which is an integral part of the CRS and is intended to illustrate or interpret its provisions.

The OECD has developed a comprehensive [Automatic Exchange Portal](#) that is the principal source for CRS materials and resources. In particular, Financial Institutions should consult the following resources which have been issued by the OECD as aids to applying the CRS:

- [CRS Implementation Handbook](#)
- [CRS-related FAQs](#)

The legal basis for jurisdictions to exchange information under the CRS is contained in Multilateral or Bilateral Competent Authority Agreements (“**CAA**”). The most common instrument is the [Multilateral Competent Authority Agreement](#) (“**MCAA**”), to which the Cayman Islands is a party. The MCAA contains the rules on the modalities of the exchange between the Cayman Islands Competent Authority (the Tax Information Authority) and partner jurisdiction Competent Authorities. It also contains representations on confidentiality, safeguards and the existence of the necessary infrastructure for an effective exchange relationship.

### C. Domestic law

The CRS is implemented in the Cayman Islands through *The Tax Information Authority Law* (“**TIA Law**”) which provides for all forms of exchange of information for tax purposes. The detailed provisions of the CRS itself are in regulations made under the TIA Law and, in particular Schedule 1 of the CRS Regulations which incorporates the “wider approach” and options under the CRS.

The CRS Regulations are [The Tax Information Authority \(International Tax Compliance\) \(Common Reporting Standard\) Regulations, 2015](#) as amended by [The Tax Information Authority \(International Tax Compliance\) \(Common Reporting Standard\) \(Amendment\) Regulations, 2016](#). The CRS Regulations came into force on 1 January 2016 save that the 2016 Amendment came into force on the 19 December 2016. A copy of the original 2015 CRS Regulations and its Schedules are available at Appendix 1 and a copy of the 2016 Amendment to the CRS Regulations is available at Appendix 2.

The CRS Regulations were amended to impose additional compliance and regulatory obligations on Cayman Financial Institutions and certain other persons and to set out the enforcement powers of the Tax Information Authority by means of an administrative penalty regime and also through the court system. These obligations are summarised in section II below headed “[Obligations of Cayman Financial Institutions under the CRS Regulations](#)”.

## D. Interpretation

The CRS Regulations now include several new definitions to assist with interpretation and also converts these terms used in the CRS (exhibited to the CRS Regulations):

Term in the CRS	Conversion by the CRS Regulations
1. A Financial Institution	1. A Cayman Financial Institution
2. A Reporting Financial Institution	2. A Cayman Reporting Financial Institution
3. A reporting period or a calendar year or other appropriate reporting period	3. A calendar year.

## E. Purpose of these Guidance Notes

As the CRS is a global standard, the OECD has developed extensive and comprehensive materials for the consistent application and interpretation of the Standard by all jurisdictions. These guidance notes are therefore limited to providing guidance on aspects of the CRS that are particular to Cayman and to addressing certain aspects of the CRS Regulations. The guidance notes are not intended to replicate the information in the aforementioned OECD documents, which form the core of the Standard and its interpretation subject to the CRS Regulations.

A Financial Institution must apply the Cayman CRS Regulations in force at the time, with reference to any OECD explanatory materials for the Common Reporting Standard and the Cayman CRS Guidance Notes.

Financial Institutions are encouraged to seek professional advice if they are unsure of their obligations under the CRS framework.

## F. The Cayman Islands Competent Authority

The Cayman Islands Competent Authority is the Tax Information Authority (“**TIA**”) who is designated by law as the Minister with responsibility for Financial Services, or his delegate. The delegated functions of the TIA are carried out by the Director and staff of the Department for International Tax Cooperation (“**DITC**”) which is the government department responsible for the operation of all mechanisms for the exchange of information for tax purposes.

Financial Institutions will report the information required under the CRS to the TIA via the Cayman AEOI Portal, accessible at [www.ditc.gov.ky](http://www.ditc.gov.ky). The TIA will then exchange information with partner jurisdictions that have satisfied the requisite confidentiality and data safeguards standards, and have the appropriate legal instruments and legislative frameworks in place.

## G. Entity classification

For the purposes of the CRS the term “Entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation. The CRS Regulations broadly classify Entities as either Financial Institutions or Non-Financial Entities.

A Financial Institution that is not a Non-Reporting Financial Institution is a Reporting Financial Institution. Cayman Reporting Financial Institutions have reporting obligations to the TIA whereas, except as provided for Trustee Documented Trusts, Non-Reporting Financial Institutions do not.

An Entity that is not a Financial Institution is a Non-Financial Entity (“**NFE**”). A NFE that is not an Active NFE is a Passive NFE. Paragraphs 7, 8 and 9 of Section VIII.D. of Schedule 1 to the CRS Regulations define the terms “NFE”, “Passive NFE”, and “Active NFE”, respectively. The CRS requires a Passive NFE to disclose its Controlling Persons

to any Reporting Financial Institution with which it has an account whereas an Active NFE is not required to disclose its Controlling Persons.

Existing Cayman Entities should already have determined their own classifications for the purposes of FATCA, UK CDOT and the CRS if they have been required to complete an Entity Self-Certification form.

There are important differences in the entity classification rules under the CRS Regulations on the one hand and the Tax Information Authority (International Tax Compliance) (United States of America) Regulations, 2014 regarding FATCA on the other hand, although they are broadly similar.

In particular, certain entities classified as either Exempt Beneficial Owners or Non-Reporting Financial Institutions under Annex II of the US-Cayman IGA regarding FATCA are classified as Cayman Reporting Financial Institutions under the CRS and will therefore have reporting and other obligations under the CRS Regulations in addition to the notification obligation. This is because the CRS has a more limited definition of Non-Reporting Financial Institutions in paragraph B1 of Section VIII of Schedule 1 to the CRS Regulations.

## II. Obligations of Cayman Financial Institutions under the CRS Regulations

Every Cayman Financial Institution must determine its own “entity classification” for the purposes of the CRS Regulations. Cayman Financial Institutions have the obligations prescribed by Part 2 of the CRS Regulations.

Part 2 of the CRS Regulations includes separate regulations regarding each of the following:

- Common Reporting Standard in force (i.e. imposes due diligence and reporting obligations on Cayman Reporting Financial Institutions)
- Required policies and procedures for Cayman Reporting Financial Institutions
- Obligation of Cayman Financial Institutions to notify certain information
- Obligation of Cayman Reporting Financial Institutions to make a return
- Requirements for making returns
- Appointment of third parties
- Authority’s monitoring function
- Anti-avoidance

A “Cayman Financial Institution” means

- (a) a Financial Institution resident in the Islands other than any of the institution’s branches outside the Islands; and
- (b) a branch in the Islands of a Financial Institution not resident in the Islands.

Any reference in these Guidance Notes to “the Islands” means the Cayman Islands.

Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

A “branch” is a unit, business, or office of a Financial Institution that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the Financial Institution. A branch includes a unit, business, or office of a Financial Institution located in a jurisdiction in which the Financial Institution is resident, and a unit, business, or office of a Financial Institution located in the jurisdiction in which the Financial Institution is created or organised. All units, businesses, or offices of a Reporting Financial Institution in a single jurisdiction shall be treated as a single branch.

For a Financial Institution, “resident in the Islands”, means -

- (a) being incorporated or established in the Islands;
- (b) having in the Islands a place of effective management as defined under paragraph 109 of the commentary to the CRS; or
- (c) being subject to financial supervision in the Islands.

Most Cayman Financial Institutions will be resident in the Islands because they are incorporated or established here as described in (a) above. The TIA will regard a legal arrangement as being established in the Islands if: (1) it is a general partnership that carries on business in the Islands; or (2) it is a trust that has a trustee which is resident in the Islands.

For the purposes of (c) above, the TIA will regard all Financial Institutions not falling into (a) or (b) that are subject to the regulatory laws defined by the Monetary Authority Law (2016 Revision), and therefore supervised or regulated by the Cayman Islands Monetary Authority, as being Cayman Financial Institutions on the basis that they are subject to financial supervision in the Islands.

Financial Institutions will also be Cayman Financial Institutions for the purposes of (b) above if the Islands are the place where key management and commercial decisions that are necessary for the conduct of the Entity’s business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of

effective management. An Entity may have more than one place of management, but it can have only one place of effective management at any one time.

For the purpose of the CRS Regulations:

A. Cayman Financial Institutions include:

1. Custodial Institutions
2. Depository Institutions
3. Investment Entities
4. Specified Insurance Companies

Any Cayman Financial Institutions that are not Non-Reporting Financial Institutions are Cayman Reporting Financial Institutions. Cayman Reporting Financial Institutions have much broader obligations than Non-Reporting Financial Institutions under Part 2 of the CRS Regulations.

B. Cayman Non-Reporting Financial Institutions include:

1. International Organisation
2. Broad Participation Retirement Fund
3. Narrow Participation Retirement Fund
4. Pension Fund of an International Organisation
5. Qualified Credit Card Issuer
6. Exempt Collective Investment Vehicle
7. Trustee Documented Trust
8. Exempted bodies

C. Exempted bodies include:

1. The Cayman Islands Monetary Authority
2. Governmental Entity
3. Pension Fund of the Cayman Islands Monetary Authority
4. Pension Fund of a Governmental Entity

## A. CRS due diligence and reporting obligations

Each Cayman Reporting Financial Institution has the due diligence and reporting obligations detailed in the CRS included in Schedule 1 to the CRS Regulations.

## B. Accuracy of information

Each Cayman Financial Institution will give information to the TIA in the course of complying with its obligations under Part 2 of the CRS Regulations. In order for the TIA to perform its functions it is important that all information given to the TIA is accurate, i.e. complete, correct and reliable.

Certain offences regarding inaccurate information are described in Section VII below headed "Enforcement".

## C. Required written policies and procedures for Cayman Reporting Financial Institutions

Each Cayman Reporting Financial Institution shall -

- (a) establish and maintain written policies and procedures to comply with Part 2 of the CRS Regulations; and
- (b) implement and comply with the policies and procedures.

The Cayman Reporting Financial Institution's policies and procedures shall -

- (a) identify each jurisdiction in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes or for the purpose of any tax imposed by the law of the jurisdiction that is of a similar character to either of those taxes;
- (b) apply the due diligence procedures set out in the CRS; and
- (c) ensure that any information obtained in accordance with the CRS Regulations or

a record of the steps taken to comply with the CRS Regulations in respect of a Financial Account is kept for six years from the end of the year to which the information relates or during which the steps were taken.

A Cayman Reporting Financial Institution is deemed to have contravened the policies and procedures relating to a self-certification or documentary evidence (the “instrument”) if the institution -

- (a) knows, or has reason to believe, the instrument is inaccurate in a material way for the policies and procedures; and
- (b) it makes a return that relies on the instrument’s accuracy.

Written policies and procedures should be appropriate for the type of institution and its Account Holders and should reflect any delegation to third parties. Given the variety of Cayman Reporting Financial Institutions, there will not be one style or approach which fits all institutions.

#### **Examples of written policies and procedures:**

##### ***a) No delegation of CRS obligations***

The written policies and procedures of a Cayman Reporting Financial Institution which has not delegated performance of its CRS obligations to third parties should describe the performance of those CRS obligations in a way that is reasonable for the nature of its business.

##### ***b) Delegation of CRS obligations***

Any Cayman Reporting Financial Institution may delegate performance of its CRS obligations and the DITC recognises that Investment Entities will typically do so. An Investment Entity which has decided to delegate its CRS obligations to a fund administrator, the Investment Entity should have written policies and procedures which describe (i) what functions have been delegated, (ii) the management/oversight of the delegation, and (iii) the performance of any CRS obligations that have not been

delegated (e.g. management of the required information under regulation 8(4) of the CRS Regulations). Therefore, in circumstances where the TIA requires such an Investment Entity to produce its written policies and procedures for CRS compliance, the TIA may also require production of any agreement regarding delegation of the Investment Entity's CRS obligations together with the written policies and procedures for CRS compliance which the delegate uses for client Investment Entities.

**c) *Segregated Portfolio Companies, Umbrella Funds and Multi-issuance Entities***

The written policies and procedures of an SPC/ equivalent should include policies and procedures which apply to all of its segregated portfolios/ equivalent in respect of which it assumes notification and reporting obligations via the SPC's/ equivalent's own registration account on the Cayman AEOI Portal. Those segregated portfolios/ equivalent will not require their own written policies and procedures.

**d) *Trustee of Trustee Documented Trusts***

The written policies and procedures of the Reporting Financial Institution that is a trustee of Trustee Documented Trusts should include policies and procedures which apply to all of its Trustee Documented Trusts since the trustee is responsible for all due diligence and reporting obligations of its Trustee Documented Trusts. Those Trustee Documented Trusts would not be expected to have their own written policies and procedures.

**D. *Registration on the Cayman AEOI Portal by notification to the Tax Information Authority***

Every Cayman Financial Institution – other than an “exempted body” described above – has an obligation to give the TIA an information notice online via the Cayman AEOI Portal available at [www.ditc.gov.ky](http://www.ditc.gov.ky). A Cayman Financial Institution will be considered to be registered with the TIA for CRS purposes once it has successfully completed the process described in the Cayman AEOI Portal User Guide.

Under regulation 8 of the CRS Regulations, the deadline for initial registration is 30 April 2017 or, if an entity becomes a Cayman Financial Institution after that date, the next 30 April after the entity became a Cayman Financial Institution. Registration is a one-off process and does not need to be repeated annually. For 2017 only, the TIA will accept registrations up to 30 June 2017 without considering compliance measures or penalties.

## 1. Required information for every Cayman Financial Institution

Every Cayman Financial Institution must provide the “required information” specified by regulation 8(4) of the CRS Regulations, namely:

- (a) the institution’s name and the ‘FI number’ given to it by the TIA as a Financial Institution (i.e. upon completion of initial registration);
- (b) whether the institution is a Cayman Reporting Financial Institution or a Non-Reporting Financial Institution; and
- (c) if the institution is a Cayman Reporting Financial Institution, its classification under paragraph A of Section VIII of the standard;
- (d) if the institution is a Non-Reporting Financial Institution, its classification under paragraph B of Section VIII of the standard; and
- (e) the full name, address, business entity, position and contact details (including an electronic address) of -
  - (i) an individual the Cayman Financial Institution has authorised to be its principal point of contact for compliance with this Part; and
  - (ii) an individual the Cayman Financial Institution has authorised to give change notices for its principal point of contact.

For the avoidance of doubt, the Cayman Financial Institution must authorise different individuals for the purposes of (e)(i) and (ii) above. The Cayman AEOI Portal User Guide will specify the documents the TIA requires as evidence in support of the Cayman Financial Institution’s appointment of the individuals named in (e)(i) and (ii) above. Only the individual named in (e)(ii) above may give a change notice to the TIA

regarding the principal point of contact named in (e)(i) above. Only the principal point of contact may give a change notice to the TIA in respect of any other matter.

In order to prevent unauthorised access to and/or tampering with confidential information, a Cayman Financial Institution must promptly notify the TIA in respect of any change to the appointment or contact details of either or both of those two individuals and, in any event, within 5 business days. The TIA will generally regard change notices on other matters as sufficiently prompt if given within 14 days of the relevant change occurring.

The TIA regards confidentiality of Cayman Financial Institution's data as critical. In order to ensure that no unauthorised access takes place in relation to such data, additional verification may be required regarding any changes to the principal point of contact. The TIA may deny a Cayman Financial Institution access to its registration account on the Cayman AEOI Portal if the Cayman Financial Institution is unable to provide the TIA with the required verification.

The FI number referred to in (a) above is the unique identifying number for the Cayman Financial Institution used by the TIA and other Competent Authorities for AEOI purposes. The FI number is not a tax identification number (TIN) in the strict sense. The Cayman Islands does not issue TINs or equivalent identifiers for domestic tax collection purposes.

### ***Trustee Documented Trusts***

Trustee Documented Trusts (TDTs) are treated differently than other types of Non-Reporting Financial Institutions. Subparagraph B1(e) of Section VIII of Schedule 1 to the CRS Regulations and paragraphs 55 and 56 of the commentary provide that:

- (i) the reporting and due diligence obligations of a TDT will be transferred to the trustee;
- (ii) the time and manner of the reporting and due diligence obligations remain the

- same as if they still were the responsibility of the TDT; and
- (iii) the trustee must report such information as the TDT would have reported and identify the TDT with respect to which it fulfils the reporting and due diligence obligations.

A TDT's information notice that it is a Non-Reporting Financial Institution must include the name and FI number of its trustee in addition to the name and FI number of the TDT itself.

The trustee will be required to make all CRS reports on behalf of the TDT via the TDT's registration account on the Cayman AEOI Portal using the FI number issued by the DITC to the TDT. The TDT's CRS reports must name the TDT as the "Reporting Financial Institution". This is in contrast to the position under FATCA where the trustee of a TDT may use its own registration account and report as a sponsoring entity on behalf of its TDTs.

## **E. Reporting to the Tax Information Authority**

Reporting for the CRS will be conducted through the Cayman AEOI Portal, available at [www.ditc.gov.ky](http://www.ditc.gov.ky).

### **1. Timing of reporting on Reportable Accounts and mandatory nil returns**

All Cayman Reporting Financial Institutions are required to report for CRS purposes via the Cayman AEOI Portal in respect of any Reportable Accounts and to file a nil return in respect of those Reportable Jurisdictions for which it has no Reportable Accounts. The reporting deadline for each calendar year is 31 May following the end of such calendar year. For the 2016 reporting year only, the TIA will not consider compliance measures or penalties in respect of reports that have been submitted and show the status "Accepted" within the Submission History page of the Cayman AEOI Portal by 31 July 2017.

## 2. Reporting procedures

The current system design for the Cayman AEOI Portal follows the CRS XML schema. This requires a Cayman Reporting Financial Institution to submit a separate return with respect to each Reportable Jurisdiction for which it has Reportable Accounts under the CRS.

Third party service providers should take note that it will not be possible to include reports for multiple Cayman Reporting Financial Institutions in a single XML file.

Each Cayman Reporting Financial Institution must use the single check box within the Cayman AEOI Portal to make a nil return in respect to all Reportable Jurisdictions for which it has no Reportable Accounts under the CRS. Cayman Reporting Financial Institutions should not submit nil returns by XML files or manual entry returns.

### F. Cayman AEOI Portal User Guide

The DITC will issue further updates in due course when the Portal will be available for notifications and reporting for the CRS.

The Cayman reporting schema for the CRS will be the published [CRS XML Schema](#) that is available on the OECD Automatic Exchange Portal.

### G. Appointment of third parties

A Cayman Reporting Financial Institution may appoint a person as the institution's agent to carry out the duties and obligations imposed on the institution by Part 2 of the CRS Regulations. If an institution makes such an appointment, the institution shall ensure that it continues to have access to and is able to produce to the TIA records and documentary evidence used to identify and report on Reportable Accounts. The

institution is responsible for any failure of such an agent to satisfy the institution's obligations under Part 2.

## **H. Compliance with the TIA's information requirements**

The TIA may, by notice given to a Cayman Reporting Financial Institution, require the institution -

- (a) within a time specified by the TIA, to provide to the TIA information, including a copy of a relevant book, document or other record, or of electronically stored information; or
- (b) at a time specified by the TIA, to make available to the TIA for inspection, a book, document or other record, or any electronically stored information,

that is in the institution's possession or under its control that the TIA reasonably requires to decide whether or not information the institution gave the TIA was accurate.

If information the TIA wants or wants to inspect, is outside the Islands and the TIA requires the institution to bring the information to the Islands, the TIA shall specify a time that will enable the institution to bring the information to the Islands and the institution shall comply with the requirement of the TIA.

## **I. Record-keeping**

A Cayman Reporting Financial Institution shall retain for six years any book, document or other record, including any information stored by electronic means, which relates to the information required to be reported to the TIA under the CRS Regulations.

## J. Anti-avoidance

The CRS Regulations provide that if a person enters into any arrangement, the main purpose or one of the main purposes of which is to avoid any obligation under Part 2, the arrangement is deemed not to have been entered into by the person and the CRS Regulations are to have effect as if the arrangement had never been in existence. The situations in which the anti-avoidance rule may apply are wide and varied. The commentary on Section IX provides a few examples.

Consultation Draft

### III. Key dates under the CRS

The following are the effective dates for the implementation of the CRS in the Cayman Islands:

- Pre-existing Accounts to be subjected to due diligence procedures are those in existence as at 31 December 2015
- New Accounts requiring self-certification by the customer are those opened on or after 1 January 2016
- The review of Pre-existing High Value Individual Accounts at 31 December 2015 must be completed by 31 December 2016
- The first CRS reporting period ends on 31 December 2016
- Cayman Financial Institutions must complete their initial registration by 30 June 2017 or, if an entity becomes a Cayman Financial Institution after 30 April 2017, the next 30 April after the entity became a Cayman Financial Institution
- Cayman Reporting Financial Institutions must complete their reporting to the TIA by 31 July 2017 for the 2016 reporting year for CRS and by 31 May of each year thereafter
- First exchanges of information by the TIA to partner jurisdictions will occur on or before 30 September 2017
- The review of Pre-existing Lower Value Individual Accounts at 31 December 2015 must be completed by 31 December 2017
- The review of Pre-existing Entity Accounts at 31 December 2015 must be completed by 31 December 2017

## IV. CRS jurisdictions

### A. Participating Jurisdictions

“Participating Jurisdiction” is defined in the CRS. For the purposes of identifying Participating Jurisdictions, the OECD has provided guidance in the CRS Handbook. In line with the approach adopted by the Handbook at paragraph 31, the Cayman Islands will specify all committed jurisdictions as Participating Jurisdictions.

The Cayman Islands published an updated CRS Participating Jurisdiction List on [DATE] 2017 by Gazette Notice. This list is available at Appendix 3 and here:

[http://www.tia.gov.ky/pdf/CRS\\_Legislation/Participating\\_Jurisdictions.pdf](http://www.tia.gov.ky/pdf/CRS_Legislation/Participating_Jurisdictions.pdf)

In the event of changes to jurisdictions committed to implementation of the CRS, the list of Participating Jurisdictions will be amended accordingly by the TIA. The Authority will update the CRS Participating Jurisdiction List via a publication in the Gazette from time to time, and at least once every calendar year as required by regulation 5(3) of the CRS Regulations.

### B. Reportable Jurisdictions

With the exception of those Participating Jurisdictions that have chosen to be non-reciprocal, i.e. do not wish to receive information, the Cayman Islands intends to exchange information with all Participating Jurisdictions that have committed to the 2017 first exchange (i.e. early adopters) subject to satisfaction of conditions in the relevant Competent Authority Agreement. Therefore, all 2017 Participating Jurisdictions other than those which are non-reciprocal should be regarded as Reportable Jurisdictions for 2017.

The Cayman Islands published the list of 2017 Reportable Jurisdictions on [DATE] 2017

by Gazette Notice. This list is available at Appendix 4 and here:

[http://www.tia.gov.ky/pdf/CRS\\_Legislation/Reportable\\_Jurisdictions.pdf](http://www.tia.gov.ky/pdf/CRS_Legislation/Reportable_Jurisdictions.pdf)

For the 2018 reporting year, a further list of Reportable Jurisdictions will be published in the Gazette in due course

### **Tax Identification Number (or functional equivalent)**

Cayman Reporting Financial Institutions must also collect the Tax Identification Number (TIN) or functional equivalent in respect of each Account Holder or Controlling Person who is a Reportable Person. The CRS defines the term “Reportable Person” by reference to the term Reportable Jurisdiction and the list of Reportable Jurisdictions will change over time.

The OECD has published an overview of domestic rules in certain Participating Jurisdictions governing the issuance, structure, use and validity of TINs or their functional equivalents here:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

The rules regarding collection of the TIN (or functional equivalent) and date of birth are subject to the exceptions set out in Section I Paragraphs C through E of Schedule 1 to the CRS Regulations and in paragraphs 25 through 34 of the commentary on the CRS.

### **C. Confidentiality**

The Cayman Islands will not exchange information under the CRS until it is satisfied that a partner jurisdiction has in place adequate measures to ensure the required confidentiality and data safeguards are met. These confidentiality obligations are evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its implementation monitoring programme. Confidentiality and data

safeguard questionnaires for all CRS jurisdictions (Annex 4 of the CRS) are filed with the OECD Co-ordinating Body Secretariat.

Consultation Draft

## V. Other AEOI regimes

### A. US FATCA

US FATCA was implemented in the Cayman Islands in accordance with the Cayman/USA [intergovernmental agreement](#) signed in November 2013, and the [Tax Information Authority \(International Tax Compliance\) \(United States of America\) Regulations](#) published in July 2014, as subsequently amended.

The United States is a non-participating jurisdiction for CRS purposes. The United States has indicated that it will continue to undertake automatic information exchanges pursuant to its FATCA intergovernmental agreements. The US FATCA legislative framework in Cayman will therefore continue to operate as normal, in parallel with the CRS regime.

## B. UK CDOT – Transition to the CRS

“UK CDOT” was implemented in the Cayman Islands in accordance with the Cayman/UK [intergovernmental agreement](#) (IGA) signed in November 2013, and the [Tax Information Authority \(International Tax Compliance\) \(United Kingdom\) Regulations](#) published in July 2014, as subsequently amended.

The CDOT arrangement will transition to the CRS in 2017. In particular, Cayman Reporting Financial Institutions will be regarded as having met their obligations under the Tax Information Authority (International Tax Compliance) (United Kingdom) Regulations, 2014 (the "UK Regulations") if they report on UK Reportable Persons pursuant to the CRS Regulations.

Strictly speaking, due diligence needs to be carried out using both the UK IGA definitions of Specified Persons and the CRS definition of Reportable Person during the transition period, which in some circumstances may give different results. However, for new accounts opened on or after 1 January 2016 instead of complying with the UK IGA due diligence rules the TIA will allow Cayman Reporting Financial Institutions to rely on CRS due diligence procedures to identify such Specified Persons with UK tax residency.

As a result of the transition of the CDOT regime to the CRS, it is anticipated that the UK IGA, UK Regulations and Guidance Notes will be phased out in Cayman by the end of 2017.

Financial Institutions which become Cayman Reporting Financial Institutions on or after 1 January 2016 will be treated as compliant with the notification requirements of the UK Regulations provided they comply with the notification requirements of the CRS Regulations. The CRS does not recognise the Alternative Reporting Regime which was available under the UK IGA in respect of UK non-domiciled account holders.

## VI. Guidance on technical issues

### A. General issues

#### 1. Options under the CRS

There are areas where the CRS provides optional approaches for jurisdictions to adopt the ones most suited to their circumstances. For further detail on these CRS implementation options, please refer to pages 12 – 17 of the CRS Implementation Handbook.

The table below outlines these 16 implementation options and how they have been incorporated into the Cayman Islands CRS legislative framework. Some of these implementation options are also further elaborated upon in the Guidance Notes below.

Options under the CRS	Legislative Reference
1. Alternative approach to calculating account balances	Not applicable
2. Use of reporting period other than calendar year	Not applicable
3. Phasing in the requirements to report gross proceeds	Not applicable
4. Filing of nil returns	Regulation 9(1)(b) of the CRS Regulations
5. Allowing third party service providers to fulfil obligations for FIs	Regulation 11 of the CRS Regulations
6. Allowing due diligence procedures for New Accounts to be used for Pre-existing Accounts	Schedule 1 (Section II paragraph E) of the CRS Regulations
7. Allowing the due diligence procedures for High-Value Accounts to be used for	Schedule 1 (Section II paragraph E) of the CRS Regulations

Options under the CRS	Legislative Reference
Low-Value Accounts	
8. Residence address test for Lower Value Accounts	Schedule 1 [Section II paragraph B(1)] of the CRS Regulations
9. Threshold of US\$250,000 for Pre-existing Entity Accounts	Schedule 1 (Section V paragraph A) of the CRS Regulations
10. Simplified due diligence rules for Group Cash Value Insurance Contracts and Group Annuity Contracts	Schedule 1 (Section VII paragraph B) of the CRS Regulations
11. Allowing greater use of existing standardised industry coding systems for the due diligence process	Schedule 1 [Section VIII paragraph E(6)] of the CRS Regulations
12. Permitting a single currency translation rule	Regulation 6A(6) and Schedule 1 (Section VII paragraph C) of the CRS Regulations
13. Expanding definition of Pre-existing Account when pre-existing customers open a new account	Schedule 1 [Section VIII paragraph C(9)] of the CRS Regulations
14. Expanded Related Entity definition	Schedule 1 [Section VIII paragraph E(4)] of the CRS Regulations
15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	Not applicable
16. Controlling Persons of a trust	CRS Commentary on Section VIII, paragraph 134

## 2. Threshold exemption

The CRS Regulations allow Financial Institutions to apply a threshold exemption for the review, identification and reporting of Pre-existing Entity Accounts. This can be found in Schedule 1 (Section V paragraph A) of the CRS Regulations.

For Financial Institutions applying the threshold exemption, Pre-existing Entity Accounts with a balance or value not exceeding US\$250,000 at 31 December 2015 do not need to be reviewed, identified or reported until the account balance exceeds US\$250,000 at 31 December of a subsequent calendar year. Financial Institutions applying the threshold exemption must keep an internal record of the application of the exemption as part of the policies and procedures which they are required to have in place in accordance with the CRS Regulations.

### **3. Due diligence modifications**

Under the CRS Regulations, Financial Institutions may choose to apply modified due diligence rules. This includes:

- Applying the due diligence procedures for New Accounts to Pre-existing Accounts; and
- Applying the due diligence procedures for High Value Accounts to Lower Value Accounts.

These options have been included in Schedule 1 (Section II paragraph E) of the CRS Regulations.

### **4. “Residence address” test for Lower Value Accounts**

In respect of Lower Value Accounts only, the CRS Regulations permit Financial Institutions to determine an Account Holder’s residence based on the residence address provided by the account holder so long as the address is current and based on Documentary Evidence. This can be found at Schedule 1 [Section III paragraph B(1)] of the CRS Regulations. The residence address test may apply to Pre-existing Lower Value Accounts held by Individual Account Holders.

This test is an alternative to the electronic indicia search for establishing residence. If the residence address test cannot be applied, because, for example, the only address

on file is an “in care of” address, the Financial Institution must perform the electronic indicia search.

## 5. Currency translation

All amounts in the CRS are stated in US dollars. The CRS Regulations permit Financial Institutions to convert the threshold limits into the currency in which accounts are denominated before applying a threshold amount under the CRS. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. For example, a Pre-Existing Individual Lower Value Account is an account with an aggregate account balance or value of less than US\$1 million, and this threshold amount may be converted to the relevant currency for the Financial Institution by reference to the spot rate of exchange on the date for which the Cayman Reporting Financial Institution is determining that threshold amount.

Please refer to regulation 6A(6) and Schedule 1 (Section VII paragraph C) of the CRS Regulations for further details on the currency translation and account balance aggregation rules.

## 6. Expanded definitions

The CRS Regulations have incorporated the expanded definitions that are available under the CRS. This includes expanded definitions for:

- *Pre-existing Accounts* (please refer to Section VIII paragraph C(9) in Schedule 1 of the CRS Regulations for the full definition); and
- *Expanded Related Entities* (please refer to Section VIII paragraph E(4) in Schedule 1 of the CRS Regulations for the full definition).

## 7. CRS self-certifications

### a) *Template forms*

The Joint Ministry for Financial Services/Industry Working Group assisting with FATCA and CRS implementation has developed template self-certification forms for CRS purposes. The Authority is satisfied that these forms may be used for the purposes of the Common Reporting Standard, US and UK FATCA compliance. Cayman Islands Financial Institutions may use these forms as a basis for self-certification and adapt or modify them as necessary to suit their own usage.

The template entity and individual self-certification forms are available at Appendix 5, and can also be downloaded from the DITC [CRS Legislation and Resources](#) webpage. The forms have been updated as of the date of these Guidance Notes v2.0.

The Business and Industry Advisory Committee to the OECD have also drafted template self-certification forms, and these can be accessed via the OECD Automatic Exchange Portal.

Self-certifications should be obtained and validated as part of a Financial Institution's account opening procedures. Where it is not possible to obtain a self-certification on 'day one' of the account opening process, one should be obtained and validated as soon as practicable, and in any event, no later than 90 days after the account has been opened. Failure to obtain a self-certification within 90 days will result in the account being reported as undocumented. Financial Institutions with a disproportionate number of undocumented accounts may be subject to compliance reviews by the DITC.

### b) *False self-certifications*

CRS compliance depends heavily upon the accuracy of self-certifications that are made by Account Holders and Controlling Persons and given to Cayman Financial Institutions.

CRS reporting cannot be accurate if the due diligence upon which it is based is not accurate. The CRS commentary states that to increase the reliability of self-certifications, jurisdictions are expected to include a specific provision in their domestic legislation imposing sanctions for signing (or otherwise positively affirming) a false self-certification.

Accordingly, the CRS Regulations provide that a person may be criminally liable if he makes a self-certification that is false in a material particular for the CRS and a Cayman Financial Institution is given the self-certification for any purpose for which it was made or purports to have been made. It is no defence that -

- a. the self-certification was made outside the Islands;
- b. the person did not know, or had no reason to know, that the self-certification was false; or
- c. the self-certification was given to the institution by someone else.

## **B. Entity-specific issues**

### **1. Investment Entities**

#### ***a) Financial Accounts of investment managers and advisers***

Cayman Islands investment managers and advisers are classified as Investment Entities and as Cayman Reporting Financial Institutions for CRS purposes. They will have all obligations under Part 2 of the CRS Regulations. This is in contrast to the position under similar regulations regarding FATCA which classify most investment managers and advisers as Non-Reporting Financial Institutions which do not impose a notification obligation on Non-Reporting Financial Institutions.

In contrast to the position on other Investment Entities, the CRS provides that the Equity and Debt Interests of investment managers or advisers will only be treated as a “Financial Account” if the class of interests was established with a purpose of avoiding

the reporting obligation. It follows that investment managers or advisors will generally be able to satisfy their annual reporting obligation by filing a nil return in respect of all Reportable Jurisdictions as described above in section II.E above headed "[Reporting to the Tax Information Authority](#)".

***b) Cayman Financial Institutions that are in liquidation or being wound up***

For the avoidance of doubt, a Cayman Financial Institution will, so long as it exists, continue to have the obligations which the CRS Regulations impose on it as a Cayman Reporting Financial Institution or a Non-Reporting Financial Institution, as the case may be.

Liquidators (or equivalent) must ensure that the Cayman Financial Institution continues to satisfy all its obligations under Part 2 of the CRS Regulations. In particular, but without limitation, this includes the obligation to give the TIA a change notice regarding any changes to the required information described in section II.D above headed "[Registration on the Cayman AEOI Portal by notification to the Tax Information Authority](#)".

In addition, the liquidators (or equivalent) must ensure that the Cayman Financial Institution notifies the TIA of such final dissolution or winding up on or after such final return. In the case of a Cayman Reporting Financial Institution, the liquidators (or equivalent) must ensure that it has complied with its reporting obligations in respect of (i) the previous calendar year and (ii) the current calendar year. A return in respect of any Reportable Account for the current calendar year when such final dissolution or winding up occurs should report all information specified in Section I.A. 1 to 7 of Schedule 1 to the CRS Regulations. For the avoidance of doubt this would confirm the closure of that Reportable Account (rather than the account balance or value) pursuant to Section 1.A.4 and also confirm the total gross amount of the relevant payments or proceeds of sale under the applicable paragraph Section 1.A 5, 6 or 7. For example, where a Cayman Reporting Financial Institution will be finally dissolved in 2017, the

returns must be made in respect of 2016 and also, up to the date of closure of the relevant accounts, in respect of 2017.

For the avoidance of doubt, the TIA will not expect a Cayman Reporting Financial Institution which is finally dissolved or wound up before it is possible to comply with the notification obligation on the Cayman AEOI Portal to register there.

A Cayman Financial Institution should obtain professional advice if it is uncertain when an account is closed.

Any liquidators (or equivalent) or other representatives of a Cayman Financial Institution who were responsible for the final liquidation or dissolution of a Cayman Financial Institution have duties to maintain the Cayman Financial Institution's records and to respond to the TIA's information requirements under regulation 12 of the CRS Regulations for six years following such final liquidation or dissolution. These records may be held by a delegate.

### ***Dormant or liquidating Investment Entities***

Unlike the position regarding FATCA, an Investment Entity does not cease to be classified as such for the purposes of the CRS Regulations if it is either:

- closed (i.e. there are no remaining participating investors, or equivalent, in the Investment Entity, and the Investment Entity is not open to further investors), or
- is in liquidation (i.e. a Liquidator has been formally appointed, but there remain residual assets and debtors, and realisation or recovery actions are being pursued).

### ***c) Limited Life Debt Investment Entities***

Limited Life Debt Investment Entities (LLDIEs) are Cayman Reporting Financial Institutions for the purposes of the CRS. The OECD Global Forum on Transparency

and Exchange of Information for Tax Purposes has determined that LLDIEs cannot be considered as a jurisdiction specific low-risk Non-Reporting Financial Institution for the purposes of subparagraph B.1.c of Section VIII of the CRS. This changes the position stated by the TIA on 7 December 2015 in the [Gazette Notice](#) for CRS Non-Reporting Financial Institutions.

Consultation Draft

## 2. Segregated Portfolio Companies, Umbrella Funds and Multi-issuance Entities

Segregated Portfolio Companies (SPCs), umbrella funds and multi-issuance entities may be considered as a whole and categorised accordingly. It is not necessary to treat each segregated portfolio, fund or series (“sub-entity”) as a separate Cayman Reporting Financial Institution (or other applicable classification for CRS purposes) unless the entity wishes to do so. If one or more of such sub-entity elects to avail itself of an exemption, such election shall not prevent the entity (as a whole) from electing to register on the Cayman AEOI Portal and report in its own right with respect to its general assets and/or one or more other sub-entities. However, where an SPC, umbrella fund or multi-issuance entity is categorised as the Cayman Reporting Financial Institution for CRS purposes, it must ensure that the account number (or functional equivalent) in respect of any Reportable Account is sufficient to identify both the particular sub-entity and Account Holder to which that Reportable Account relates.

## 3. Passive Non-Financial Entities (“NFEs”)

A Cayman Reporting Financial Institution is required to determine the residence of every Controlling Person of a Passive NFE that is an Account Holder. Subparagraph D(6) of Schedule 1 to the CRS Regulations defines the term “Controlling Persons” and paragraphs 132 to 137 of the commentary on the CRS elaborate on the Controlling Persons of different types of Entities. “Controlling Person” corresponds to the term “beneficial owner” as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), which are available here:

[www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf).

In applying the FATF Recommendation to Controlling Persons of Passive NFEs that are legal persons, the following should be noted:

- (a) In applying the first test of the FATF Recommendation, controlling ownership

interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%).

(b) In applying the second test of the FATF Recommendation, control through other means may be achieved through shareholder or nominee agreements.

(c) In applying the third test of the FATF Recommendations, this may be a managing director or it could be all directors if there is no managing director or other person with a senior management position.

Limited partnerships that are legal persons under their governing law and which are Passive NFEs are subject to the Controlling Persons test referred to above in respect of legal persons.

Entities that are regarded as Passive NFEs that have another entity that holds a controlling ownership interest are subject to the same cascading tests, i.e. each of the FATF tests must be considered in turn against that next entity, save for where the interest is held by a Participating Jurisdiction Financial Institution (see below).

To illustrate – a Delaware limited partnership (which is a legal person under Delaware law) is an investor in a Cayman Islands investment fund. The Delaware limited partnership has five limited partners who are natural persons with interests of 20% each, a corporate general partner and an external manager. Under the first control test, no limited partner has a controlling ownership interest because none exceed 25%. Under the second control test, no natural person has control through other means the general partner would be regarded as having control. As the general partner is an entity that controls the Delaware limited partnership, consider if any of the shareholders of the general partner entity have more than 25% ownership interests. If none, consider if any natural person has control of the GP through other means. If none, identify the natural person who holds the position of senior managing official of the general partner entity.

### ***Entities with a controlling interest in a Passive NFE***

It is not necessary to identify the natural person exercising ultimate effective control of an Entity which has a controlling interest in a Passive NFE if the entity is either:

- (a) a Financial Institution unless (subject to section VI.B.8.b) below headed “United States retirement and pension funds”) that Financial Institution is deemed to be Passive NFE by Section VIII.D.8.(ii) of the CRS; or
- (b) an Active NFE of the type listed in Section VIII.D.9.b) of the CRS.

It is necessary to identify the natural person exercising ultimate effective control of other types of Entities with a controlling interest in a Passive NFE.

#### **4. Controlling Persons of a trust that is a Passive NFE**

The CRS defines the Controlling Persons of a Passive NFE that is a trust to include –

- the settlor(s)
- the trustee(s);
- the protector(s) (if any);
- the beneficiary(ies) or classes of beneficiary(ies); and
- any other natural person(s) exercising ultimate effective control over the trust.

It is not necessary to “look through” any Entity with a controlling interest in such a trust for the natural person(s) exercising ultimate effective control over the trust if that Entity is a Financial Institution or an Active NFE of the types described in the paragraph headed “Entities with a controlling interest in a Passive NFE” under section VI.B.3 above headed “Passive Non-Financial Entities (“NFEs”)”.

In accordance with the option available under the CRS with respect to trusts that are Passive NFEs (Non-Financial Entities), Cayman Reporting Financial Institutions may align the scope of beneficiaries of a trust treated as Controlling Persons with the scope of beneficiaries treated as Reportable Persons where the trust itself is a Financial

Institution. Therefore, Cayman Reporting Financial Institutions would only need to report discretionary beneficiaries of Passive NFE trusts for the reporting period in which they receive a distribution from the trust.

For a Cayman Reporting Financial Institution to apply this option, it must ensure that it has appropriate procedures in place to identify whether a distribution is made by the trust to a discretionary beneficiary in the reporting period. Cayman Reporting Financial Institutions may, for example, receive certifications from the trustees of the trust as to whether distributions have been made and, if so, by whom.

Where no such procedures are in place to identify distributions to discretionary beneficiaries, the Cayman Reporting Financial Institution must continue to treat the discretionary beneficiary as a Controlling Person and report accordingly if that person is a Reportable Person.

#### **5. Equity Interests of natural persons exercising ultimate effective control of a trust that is a Cayman Financial Institution**

In the case of a trust that is a Cayman Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.

In order to determine whether there is any other natural person exercising ultimate effective control, it will be necessary to look through any entity exercising such control (such as a corporate protector or enforcer) unless is a Financial Institution or Active NFE of the types described in the paragraph headed "Entities with a controlling interest in a Passive NFE" under section VI.B.3 above headed "Passive Non-Financial Entities ("NFEs")".

## 6. Non-Participating Jurisdictions Entities

### a) *Determination of CRS status of Entities*

The CRS commentary provides that an Entity's status as a Financial Institution or NFE should be resolved under the laws of the participating jurisdiction in which the Entity is resident. If an Entity is resident in a Non-Participating Jurisdiction - such as the U.S., the rules of the Participating Jurisdiction in which the account is maintained – such as the Cayman Islands, determine the Entity's status as a Financial Institution or NFE since there are no other rules available.

Therefore, when determining an Entity's status as an Active or Passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status.

### b) *Determining residence of certain foreign Entities*

It is possible for an Entity established under the laws of another jurisdiction to be resident in the Cayman Islands for the purposes of the CRS even where it does not have a branch in the Cayman Islands. Where a foreign limited partnership, a foreign limited liability company, or equivalent is organised or incorporated in a Non-Participating Jurisdiction, and:

- (a) its residency is not ascertainable pursuant to the tests set out in the CRS Commentary and CRS Implementation Handbook, and
- (b) it is not reporting its Financial Accounts to the relevant tax authority in another Participating Jurisdiction,

it will be regarded as being subject to the CRS Regulations, if it:

- (i) has a general partner (or managing member, or equivalent) that is incorporated, registered or licensed in the Cayman Islands, or,
- (ii) in the case of an individual general partner (or managing member, or equivalent), the person is resident in the Cayman Islands, or
- (iii) in the case of a foreign company, foreign limited partnership, foreign limited liability company, or equivalent, its "place of effective management"

(as described in paragraph 109 of the commentary on Section VIII) is in the Cayman Islands, unless that foreign limited partnership, foreign limited liability company, or equivalent has a tax residency in another jurisdiction.

## **7. Holding companies and similar vehicles**

A holding company or intermediary vehicle may be classified as an Active NFE if it satisfies the criteria of any of subparagraphs D.9. a) to h) of Section VIII of the CRS and the commentary thereon. For example, paragraphs 129 and 130 of the commentary on subparagraph D.9.e) of Section VIII describes the criteria to qualify for the Active NFE status for “holding NFEs that are members of a nonfinancial group.” A holding company or intermediary that is not an Active NFE will generally be classified as a Passive NFE unless it falls within the definition of an Investment Entity in subparagraph A.6 a) or b) of Section VIII.

## **8. Certain Non-Reporting Financial Institutions**

The rules regarding Non-Reporting Financial Institutions are in Schedule 1 (Section VIII paragraph B) of the CRS Regulations. The following Guidance relates to two types of Non-Reporting Financial Institutions under the CRS Regulations.

### **a) Cayman Islands retirement and pension funds**

Cayman Islands retirement and pension funds that meet the definitions of Broad Participation Retirement Fund or Narrow Participation Retirement Fund under Section VIII paragraph B will be Non-Reporting Financial Institutions under the CRS.

For the purpose of the CRS Regulations, Cayman Islands retirement and pension funds are ‘subject to government regulation’ if they are registered with the Cayman Islands National Pensions Office.

Cayman Islands retirement and pension funds availing themselves of the Non-Reporting Financial Institution Broad and Narrow Participation Retirement Fund definitions must submit an annual declaration to the Authority in order to satisfy the requirements under the CRS. A template declaration form will be made available by the TIA prior to the first reporting period.

Cayman Islands pension funds managed and administered by the Public Service Pensions Boards are Non-Reporting Financial Institutions as Pension Funds of a Governmental Entity.

**b) United States retirement and pension funds**

[TO BE DETERMINED]

**C. Account-specific issues**

**1. Group Cash Value Insurance Contracts or Group Annuity Contracts**

Under the CRS Regulations, a Financial Institution may treat an account that is a Group Cash Value Insurance Contract or a Group Annuity Contract, as a non-reportable account until the date on which an amount is payable to an 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 the following requirements:

- The Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- The employees/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed US\$1,000,000.

Please refer to Schedule 1 (Section VII paragraph B) of the CRS Regulations.

## **2. Dormant Depository Accounts are Excluded Accounts**

Regulation 6A(4) of the CRS Regulations provides that a Depository Account is an “Excluded Account” in Section VIIC. of the CRS if it is a dormant account under section 4(1) of the Dormant Accounts Law (2011 Revision) with a balance that does not exceed US\$1,000. The 2016 Amendment to the CRS Regulations repeals the definition of Excluded Account in Schedule 2 of the original 2015 CRS Regulations.

Consultation Draft

## VII. Enforcement

### A. Offences

Part 3 of the CRS Regulations establishes various offences which attach to Cayman Financial Institutions or other persons for contravention of the CRS Regulations. A Cayman Financial Institution will commit an offence if it contravenes any of its obligations under Part 2 of the CRS Regulations.

It is an offence for any person to provide a false self-certification to a Cayman Financial Institution. Cayman Financial Institutions and their agents should therefore be aware that a person's false self-certification may give rise to an obligation to make a suspicious activity report pursuant to the Proceeds of Crime Law (2016 Revision).

Cayman Financial Institutions, their representatives and other persons may be criminally liable if they give inaccurate information to the TIA. Cayman Financial Institutions may be liable for the action or inaction of their agents and representatives. Conversely, representatives may be liable for the action or inaction of their Cayman Financial Institution. For the purpose of these Guidance Notes, "representatives" means the persons with imputed liability (directors, etc.) listed in regulation 21(1) the CRS Regulations; the term is also defined in regulation 36(5) in the context of vicarious liability.

A person may be criminally liable if he gives information to the TIA which causes the TIA to breach its statutory duty to keep the information it receives confidential.

A person may be criminally liable if he hinders the TIA in performing a function under the CRS Regulations or section 5 of the TIA Law concerning the CRS. This could arise, for example, where the person fails to respond to the TIA's requirement to produce information, whether the TIA gives the notice on its own initiative or pursuant to an information request by another Competent Authority.

A person may be criminally liable if he tampers with information or if he authorises, advises or counsels someone else to do so. In this context, tampering includes alters, destroys, mutilates, defaces, hides or removes information in a way that causes the person or anyone else to contravene Part 2. This could arise, for example, where a person alters or removes documentary evidence which a Cayman Reporting Financial Institution must rely upon for the purpose of complying with its due diligence and reporting obligations.

Any defendant has a defence if he has a reasonable excuse. Insufficient funds and reliance on an agent are not reasonable excuses.

A Cayman Financial Institution's representatives (listed in regulation 21(1)) may be liable where their institution commits an offence unless they exercised reasonable diligence to prevent the contravention.

The court may impose a fine of up to CI\$50,000 for any offence by a body corporate or an unincorporated Cayman Financial Institution or up to CI\$20,000 for an offence by any other person.

The following table summarises who may be liable for contravention of the CRS Regulations. In the table, “CFI” means Cayman Financial Institution, “CRFI” means Cayman Reporting Financial Institution, “TDT” means Trustee Documented Trust and “NRFI” means “Non-Reporting Financial Institution”.

Offences under the CRS Regulations	Persons who may be liable for contravention:				
	Cayman Financial Institutions and trustees in respect of their TDTs	Representatives (i.e. directors, etc. of Cayman Financial Institution)	Any person		
Contravention of obligations under regulations in Part2 (reg. 15):	Yes, as indicated for the obligations listed below:	No	No		
• Common Reporting Standard in force [includes due diligence obligations]	Yes for CFIs				
• Written policies and procedures (reg. 7)	Yes for CRFIs and trustees for their TDTs				
• Notification to TIA (reg. 8)	Yes for CFIs				
• Make a return on Reportable Accounts / nil returns (reg. 9)	Yes for CRFIs and trustees for their TDTs				
• Requirements for making returns (reg. 10)	Yes for CRFIs and trustees for their TDTs				
• Compliance measures of Authority (reg. 10)	Yes for CFIs				
• Anti-avoidance (reg. 13)	Yes for CFIs				
Inaccurate information (reg. 16)	Yes for CFIs	Yes	(e.g. unauthorised access using principal point of contact’s login)		
Causing Authority’s unauthorised disclosure of confidential information (reg. 17)	Yes for CFIs			Yes	
Tampering offence (reg. 18)	Yes for CFIs			Yes	Yes
Hindering offence (reg. 19)	Yes for CFIs			Yes	Yes
Imputed offence (of representatives, etc. where CFI commits an offence) (reg. 21)	No for CFIs	Yes	No		
False self-certification (reg. 14)	Yes for CFIs	Yes	Yes (e.g. account holder or controlling person of account holder that is an entity)		

## B. Administrative penalties

Part 4 of the CRS Regulations now includes the Competent Authority's powers to impose administrative penalties matching the court fines described above and the safeguards for them. These sections set out the criteria for deciding penalties, the limitation period, the protection against double jeopardy, the steps required to impose penalties including requirements for breach notices and penalty notices. There are also sections on a party's right of appeal to the court, the automatic stay of penalties on appeal, the appeal hearing and outcome and interest.

Part 5 of the CRS Regulations includes sections on the conduct and *mens rea* of representatives, the giving of notices by the TIA, and evidentiary provisions.

\*\*\* END \*\*\*