

**Consultation Paper**  
**on**  
**Automatic Exchange**  
**of Financial Account Information**  
**in Tax Matters in Hong Kong**

## EXECUTIVE SUMMARY

Exchange of information (“EOI”) for tax purposes is an important avenue to enhance tax transparency and combat cross-border tax evasion. As an international financial centre and a responsible member of the international community, Hong Kong has committed to enhancing the tax regime to facilitate exchange of tax information with other jurisdictions in accordance with the international standard promulgated by the Organisation for Economic Cooperation and Development (“OECD”).

2. It has been the Government’s priority to conclude comprehensive avoidance of double taxation agreements (“CDTAs”) with Hong Kong’s trading and investment partners to facilitate business and minimize the incidence of double taxation. All CDTAs signed embody a mechanism for EOI with our treaty partners. In addition, we have signed tax information exchange agreements (“TIEAs”) purely as instruments for EOI; TIEAs do not offer taxation relief.

3. The OECD standard for EOI permits exchange of information upon request or on automatic or spontaneous basis. So far, Hong Kong has only opted for EOI upon request. However, the international landscape on tax cooperation has been evolving rapidly. OECD released in July 2014 the “Standard for Automatic Exchange of Financial Account Information in Tax Matters” (“AEOI”), calling on governments to collect from their financial institutions financial account information of overseas tax residents and exchange the information with jurisdictions of residence of the relevant account holders on an annual basis.

4. The Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”), a 120-strong international organisation pursuing tax transparency, has invited all its members, including Hong Kong, to commit to implementing the new global standard. It has also established a mechanism to monitor and review the progress of implementation amongst members from 2017 onwards. By the end of October 2014, over 90 jurisdictions have expressed commitment to the new standard. As a responsible member of the international community and to avoid being labelled as an “uncooperative” jurisdiction which will affect our position as an international financial centre, we indicated to the Global Forum in September 2014 our

support for implementing the new standard on AEOI on a reciprocal basis with appropriate partners which can meet relevant requirements on protection of privacy and confidentiality of information exchanged and ensuring proper use of the data, with a view to commencing the first information exchanges by the end of 2018. We have stated clearly that our commitment was premised on the condition that Hong Kong could put in place necessary domestic legislation by 2017.

5. Hong Kong has been practising a simple, territorial-based tax regime. Moving towards AEOI requires fundamental changes to our policy and legal framework and to our established position of implementing EOI only on request. In developing the model for AEOI in Hong Kong, we need to ensure that our model meets the international standard without creating undue burden of compliance on the financial institutions and their non-Hong Kong tax resident account holders. We will adopt a **pragmatic approach** to include all essential requirements of the AEOI standard in our domestic law and will **ensure effective implementation** of the international standard.

6. The key components and requirements of the AEOI standard are summarised in **Chapter 1** of this paper. We have conducted informal exchanges with various financial institutions, professional bodies and chambers of commerce. Based on their preliminary feedback and our research into the legislative proposals being considered by other jurisdictions, we have set out our latest thinking on how a Hong Kong model for AEOI may look like, in terms of the legislative regime (**Chapter 2**) and the operational framework (**Chapter 3**). We plan to consult stakeholders from April to June 2015 and have flagged up a few key areas for gauging views (**Chapter 4**). We aim to introduce an amendment bill into the Legislative Council (“LegCo”) in early 2016, put the legislation in place by 2017 and commence the first automatic information exchange by end of 2018.

## CHAPTER 1

### KEY COMPONENTS OF AEOI STANDARD

#### *What is AEOI?*

1.1 According to the standard promulgated by OECD, AEOI involves systematic and periodic transmission of financial account information by the source jurisdiction to the jurisdiction of residence of the account holders (i.e. non-Hong Kong tax residents) concerning all types of investment income, account balances or values, and sales proceeds from financial assets on an annual basis. The scope of **financial account information to be exchanged is prescribed and unified** under the OECD standard. The information which is exchanged is collected in the source jurisdiction on a routine basis, through reporting by the financial institutions (“FIs”)<sup>1</sup> to the competent authorities. Hence, “automatic exchange” does **not** mean a free flow of information amongst jurisdictions.

1.2 AEOI has to be underpinned by tax treaty agreements. First, there has to be a **bilateral agreement (i.e. CDTA or TIEA) or a multilateral agreement (i.e. the Multilateral Convention on Mutual Administrative Assistance in Tax Matters)** between / among the jurisdictions concerned to serve as the legal basis for tax information exchange. Second, the competent authorities have to enter into a **Competent Authority Agreement (“CAA”)**, which provides for the modalities of exchange to ensure the appropriate flow of information in accordance with the standard.

#### *Components of the AEOI Standard*

1.3 Specifically, the AEOI standard comprises -

- (a) **Model Competent Authority Agreement (“Model CAA”)**. This is a template for the agreements on AEOI between competent authorities, typically the tax authorities.
- (b) **Common Reporting Standard (“CRS”)**. This specifies the standards and requirements for the following -

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<sup>1</sup> According to the Common Reporting Standard, there are Reporting FIs and Non-reporting FIs. For the sake of simplicity, “FIs” in this consultation paper refers to all Reporting FIs unless otherwise specified.

- (i) **FIs** – this includes banks, custodians, insurance companies, brokers and investment entities (such as certain collective investment vehicles), unless they present a low risk of being used for evading tax and are excluded from reporting (such as prescribed retirement schemes).
  - (ii) **Reportable account information** – the information which FIs have to report on each financial account holder comprises –
    - **personal data** (i.e. name, address, date and place of birth, jurisdiction of residence and taxpayer identification number (“TIN”)<sup>2</sup> of the account holder); and
    - **financial data** (i.e. interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payment made to the account).
  - (iii) **Reportable accounts** – this covers accounts held by individuals and entities (which include foundations and trusts). FIs are required to look through passive entities and to report on the relevant controlling persons (i.e. the beneficial owners).
  - (iv) **Due diligence procedures** – this covers the process and procedures for FIs to identify reportable accounts from pre-existing and new individual accounts, and pre-existing and new entity accounts; to ascertain the tax residence and other reportable account information of the account holders; and to report such information to the competent authority as of the end of the reporting period in line with the scope prescribed.
- (c) **Commentaries on the Model CAA and CRS.** This elaborates on the requirements in the Model CAA and CRS. While seeking to ensure consistent application and operation of the AEOI standard, it also provides for exceptions, amongst others, in the following aspects –
- (i) **Account balance or value** – FIs must report the balance or value of the account as of the end of the calendar year or other appropriate reporting period or, if the account was closed

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<sup>2</sup> The term “TIN” means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

during such year or period, the closure of the account. However, for some jurisdictions which already require FIs to report the average balance or value of the account during the calendar year or other appropriate reporting period, these jurisdictions are free to maintain reporting of that information instead.

**(ii) Reportable information relating to TIN, date and place of birth –**

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

**(iii) Guidance on Technical Solutions.** This provides for the schema for exchanging information and guidelines on transmission and encryption to safeguard data confidentiality.

The Model CAA and key requirements of CRS are at **Annexes A and B** respectively.

## CHAPTER 2

### PROPOSED AEOI MODEL FOR HONG KONG – LEGISLATIVE FRAMEWORK

#### *Policy Intent*

2.1 We will adopt a **pragmatic approach** to include all essential requirements of the AEOI standard in our domestic law and will ensure **effective implementation** of the new standard. We will strive to keep the cost of compliance for affected FIs as low as possible without undermining the effectiveness of the AEOI standard. We will expand the statutory powers of the Inland Revenue Department (“IRD”) to the extent justified to ensure effective implementation of AEOI.

#### *Hong Kong’s existing policy on EOI*

2.2 The Inland Revenue Ordinance (“IRO”) enables Hong Kong to enter into arrangements with other jurisdictions for the purpose of providing relief for double taxation and/or exchanging tax information<sup>3</sup>. Hong Kong can sign a CDTA with another tax jurisdiction to provide relief for double taxation for tax residents of Hong Kong and the other jurisdiction concerned. CDTA comprises an EOI article to facilitate the exchange of tax information between two parties. Hong Kong may also sign a standalone TIEA with another tax jurisdiction to provide for tax information exchange only.

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<sup>3</sup> According to section 49(1A) of IRO, it stipulates that –  
*“If the Chief Executive in Council by order declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect and in particular that –*  
(a) *shall have effect in relation to tax under this Ordinance despite anything in any enactment;*  
*and*  
(b) *for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of that territory, shall have effect in relation to any tax of that territory that is the subject of that provision.”*

Section 49(1B) of IRO further stipulates that *“[b]ut only arrangements made for either or both of the following purposes may be specified in an order under subsection (1A) –*  
(a) *affording relief from double taxation;*  
(b) *exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned.”*

2.3 IRO is silent on how EOI should be conducted – whether upon request or on an automatic or spontaneous basis. Most of the 32 CDTAs signed so far<sup>4</sup> state explicitly that the contracting parties are not obliged to conduct EOI on an automatic basis. All of the seven TIEAs signed so far<sup>5</sup> have specified that EOI will be conducted on a request basis.

### *Legal basis for AEOI*

2.4 Our current plan is to conduct AEOI only with our CDTA or TIEA partners on a bilateral basis. We would rely on the bilateral CDTAs or TIEAs as the legal basis for implementing AEOI. We have no current plans to enter into a multilateral treaty with other jurisdictions.

2.5 Specifically, we would identify from amongst our **existing** CDTA or TIEA partners jurisdictions capable of meeting the OECD standard and having in place appropriate laws and rules to safeguard data privacy and confidentiality, and map out the priorities for pursuing the negotiation on CAA for AEOI implementation. Even if Hong Kong is ready to implement an AEOI agreement with an existing CDTA/TIEA partner, we may have to moderate the CDTA/TIEA and IRD would still have to sign a new CAA with the relevant authority of the CDTA/TIEA partner. For CDTAs with EOI provision which does not rule out exchange of information on an automatic basis, it is not necessary to amend the CDTA. But for TIEAs which expressly provide for EOI on request only, we need to amend the TIEAs by way of Protocol before IRD could sign CAA on AEOI.

2.6 As for potential **new** candidates for future CDTA or TIEA negotiations, we would take into account their capability in meeting AEOI standards before considering whether or not to enter into a CDTA/TIEA only, or to sign the tax treaty together with CAA in one go.

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<sup>4</sup> The 32 CDTA partners include Belgium (2003), Thailand (2005), Mainland China (2006), Luxembourg (2007), Vietnam (2008), Brunei, the Netherlands, Indonesia, Hungary, Kuwait, Austria, the United Kingdom, Ireland, Liechtenstein, France, Japan, New Zealand (2010), Portugal, Spain, the Czech Republic, Switzerland, Malta (2011), Jersey, Malaysia, Mexico, Canada (2012), Italy, Guernsey, Qatar (2013), Korea, South Africa and the United Arab Emirates (2014). (*Note: The years in brackets denote the years in which the relevant CDTAs were signed.*)

<sup>5</sup> The seven TIEA partners include the US, Norway, Denmark, Sweden, Iceland, Greenland and Faroe Islands (2014). (*Note: The year in bracket denote the year in which the relevant TIEAs were signed.*)



## ***Key provisions of CAA and CRS to be incorporated in IRO***

2.7 While CAA is an international agreement to be signed between the competent authorities of two jurisdictions, its provisions are operational in nature and set out the modalities of EOI between the two jurisdictions (such as the scope of information to be exchanged, as well as the time and the manner to provide such information to the AEOI partner). CRS, as an Annex to CAA, sets out the due diligence procedures to be undertaken by FIs to identify reportable accounts.

2.8 In order to give legal effect to CAA and CRS, we intend to incorporate into our legislation the **key provisions** of CAA and CRS which are essential to ensuring that AEOI is **effectively implemented** in Hong Kong. We intend to include in a **Schedule** to IRO the names of the jurisdictions with which we have signed a CAA. The Schedule may be amended by the Secretary for Financial Services and the Treasury (“SFST”) by a notice in the Gazette, subject to negative vetting by LegCo.

2.9 The proposed key provisions to be included into our law (with relevant references to CAA and CRS) include –

- (a) the definitions of FIs and reportable accounts (Section 1 of CAA and Section VIII of CRS);
- (b) the scope of information to be furnished by FIs to IRD and then to be exchanged by IRD with AEOI partners (Section 2 of CAA and Section I of CRS);
- (c) the due diligence procedures to be undertaken by FIs to identify reportable accounts (Sections II to VII of CRS); and
- (d) the enforcement provisions for IRD to ensure effective implementation (section IX of CRS).

2.10 We intend to incorporate items under **paragraph 2.9 (a), (b) and (d)** above into the **principal legislation**. As set out in the OECD standard on AEOI, the due diligence procedures for FIs are essential elements which need to be included in our domestic law. Having regard to the legislative framework developed for the Anti-Money Laundering and Counter-Terrorist Financing

(Financial Institutions) Ordinance (“AMLO”) (Cap. 615), where the due diligence and record-keeping requirements are detailed in a Schedule to the AMLO, we propose to set out the due diligence procedures under the AEOI regime (i.e. **paragraph 2.9 (c)** above) in a **Schedule** to IRO. The Schedule may be amended by SFST by notice in the Gazette, subject to negative vetting by LegCo.

2.11 A schematic diagram, at **Annex C**, shows the proposed legislative model for AEOI in Hong Kong.

### *Scope of FIs and reportable accounts*

2.12 On the basis of the requirements in CRS, we propose to include in IRO the definitions of FIs with reference to our domestic law as follows –

- (a) **“Custodial institution”** - a trust company registered under the Trustee Ordinance (Cap. 29); or any other person that holds, as a substantial portion of his business, financial assets for the account of others;
- (b) **“Depository institution”** - an authorized institution licensed or registered under the Banking Ordinance (Cap. 155); or a credit union registered under the Credit Unions Ordinance (Cap. 119);
- (c) **“Specified insurance company”** - an insurer authorized under the Insurance Companies Ordinance (Cap. 41) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract, the gross income of which arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50% of total gross income for such year, or the aggregate value of the assets of which associated with insurance, reinsurances, and annuity contracts at any time during the immediately preceding calendar year exceeds 50% of total assets at any time during such year; and
- (d) **“Investment entity”** —
  - (i) a corporation licensed under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities -
    - dealing in securities;
    - trading in futures contracts;

- leveraged foreign exchange trading;
  - asset management;
- (ii) a registered institution under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities -
- dealing in securities;
  - trading in futures contracts;
  - asset management;
- (iii) a trust company registered under the Trustee Ordinance (Cap. 29);
- (iv) a collective investment scheme or a structured product authorised under the Securities and Futures Ordinance (Cap. 571);
- (v) any entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer –
- trading in money market instruments, foreign exchange, exchange, interest rate and index instruments, transferrable securities, or commodity futures trading;
  - individual and collective portfolio management; or
  - otherwise investing, administering, or managing financial assets or money on behalf of other persons; or
- (vi) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodian institution, a specified insurance company, or an investment entity described in subparagraph (v) above.

2.13 We would prescribe reportable accounts in our law as accounts held by person(s) who are tax residents of the reportable jurisdictions, i.e. our AEOI partners, whose names will be set out in a **Schedule** to IRO. Reportable accounts also include accounts held by a Passive Non-Financial Institution Entity (“NFE”) with Controlling Person(s) who are tax residents of the reportable jurisdictions. FIs would be required to identify reportable accounts pursuant to the due diligence procedures as set out in the law.

### ***Non-reporting FIs and excluded accounts***

2.14 CRS allows jurisdictions to identify and exempt from reporting those FIs and financial accounts which present a low risk of being used for tax

evasion. CRS provides definitions for **FIs** which are exempted from reporting, known as “non-reporting FIs”. These are considered to bear low risks of being used by non-residents to evade their tax obligations. Similarly, CRS provides that as long as certain specific requirements are satisfied, some **financial accounts** are not subject to reporting due to their low risks of being used to evade tax. These are known as “excluded accounts”. With reference to the requirements of CRS, we have come up with a list of our “non-reporting FIs” and “excluded accounts”.

2.15 For **non-reporting FIs**, we intend to include<sup>6</sup> –

- (a) government entities (including statutory body and entities which are wholly owned by the Government), international organisations, Hong Kong Monetary Authority;
- (b) pension fund of a government entity, international organisation or the Hong Kong Monetary Authority;
- (c) Grant Schools Provident Fund and Subsidized Schools Provident Fund; and
- (d) any FIs meeting the requirements defined as Broad Participation Retirement Fund, Narrow Participation Retirement Fund, qualified credit card issuer, exempt collective investment vehicle or trustee-documented trust under CRS.

2.16 The Mandatory Provident Fund Schemes under the Mandatory Provident Fund Scheme Ordinance (Cap. 485) and Occupational Retirement Schemes under the Occupational Retirement Schemes Ordinance (Cap. 426) registered with the Mandatory Provident Fund Schemes Authority should present a low risk of being used to evade tax. For instance, they are subject to regulation and required to report information to IRD under certain circumstances. But they may not fully satisfy the requirements under CRS. We intend to include them in the exemption list subject to ensuring that they can satisfy the CRS requirements. Regarding investment entity wholly owned by

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<sup>6</sup> The proposed list for non-reporting FIs may not be exhaustive in this consultation paper and will be subject to further refinement.

exempt beneficial owners and investment advisors/managers<sup>7</sup>, since these FIs do not have account holders who are persons triggering any reporting obligation, or are not maintaining any financial accounts, they do not have any reporting responsibilities.

2.17 As for **excluded accounts**, we intend to include the following with reference to CRS –

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

2.18 To facilitate updating as and when necessary, we propose to include the lists of “non-reporting FIs” and “excluded accounts” in the form of a **Schedule** to IRO. The Schedule may be amended by SFST by notice in the Gazette, subject to negative vetting by LegCo.

***Scope of information to be furnished by FIs to IRD and exchanged with AEOI partners***

2.19 IRD has to keep a **register** of reporting FIs with reportable accounts. For this purpose, we will introduce provisions in IRO to set out the time and manner that FIs should furnish annual returns to IRD, and the requirements for FIs to notify IRD of the commencement of maintaining the first reportable account and cessation of any such accounts. To enable IRD to exchange information with our AEOI partners in accordance with CAA, we would require

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<sup>7</sup> Investment entity wholly owned by exempt beneficial owners and investment advisors/managers are excluded from reporting under the intergovernmental agreement between Hong Kong and the United States for cooperation to facilitate the implementation of Foreign Account Tax Compliance Act.

FIs to report to IRD the following information on each reportable account -

- (a) the **name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each reportable person** whether the account holder is an individual or an entity with one or more controlling persons that is a reportable person.

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

- (b) the **account number** (or functional equivalent in the absence of an account number);
- (c) the **name and identifying number** (if any) of the FI;
- (d) the **account balance or value** (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (e) in the case of any custodial account -
  - (i) the **total gross amount of interest, the total gross amount of dividends**, and the **total gross amount** of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
  - (ii) the **total gross proceeds** from the sale or redemption of financial

assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the reporting FI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;

- (f) in the case of any depository account, the **total gross amount of interest** paid or credited to the account during the calendar year or other appropriate reporting period; and
- (g) in the case of any account not described in subparagraph (e) or (f), the **total gross amount** paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the reporting FI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.

***Requirement for FIs to identify and keep information of accounts concerning reportable jurisdictions***

2.20 In order to collect and report the above required information to IRD, FIs have to perform the due diligence procedures, which will be set out in the form of a **Schedule** to IRO, to identify reportable accounts. We reckon that some FIs may prefer adopting a “wider approach” so that they can identify and keep information of **all** of their non-Hong Kong tax resident-account holders, regardless of whether Hong Kong has reached a CAA with the tax resident countries of the account holders concerned. However, the justification of this approach can be called into question as Hong Kong has no plan to enter into a multilateral agreement on AEOI and the information sought might or might not qualify for exemption under the data privacy regime in Hong Kong. In the circumstances, we intend to only include into our law the due diligence requirements (i.e. Sections II to VII of CRS) which prescribe the procedures for FIs to identify reportable accounts with residence corresponding to the **specific reportable jurisdiction** (rather than **all** jurisdictions outside Hong Kong). The FIs would then be required to identify, furnish and report to IRD the information of those account holders who are tax residents of a certain jurisdiction as and when IRD enters into a CAA with the competent authority of that jurisdiction.

2.21 In case FIs opt to identify and keep information of **all** non-Hong Kong tax resident-account holders, over and above the proposed legal requirements for specific reportable jurisdictions, Government would have an open mind subject to FIs being able to comply with the data privacy regime in Hong Kong.

2.22 Key aspects of the due diligence procedures are set out in **Chapter 3**.

*Enforcement provisions - powers and sanctions*

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

- (a) gather information on reportable accounts from FIs in the prescribed format;
- (b) have access to the business premises and the computer systems of FIs, obtain search warrant in cases where the FIs fail to comply with the court order directing them to comply with the return filing requirement, direct FIs to verify their compliance with the reporting and due diligence procedures, and rectify their AEOI system if found defective, and direct FIs or persons to rectify any arrangement / practice which intends to circumvent the due diligence procedures;
- (c) use the information obtained from FIs for the administration of IRO; and
- (d) sanction FIs for non-compliance with the due diligence requirements or wilfully supplying false or incorrect information.

2.24 For the purpose of ensuring effective implementation, we intend to include certain penalty provisions on FIs to achieve deterrent effect. We propose to sanction **FIs** for –

- (a) **failure to comply with the requirements for carrying out due diligence procedures, furnishing returns to IRD, or any other obligations which facilitate effective implementation of AEOI without reasonable excuse.** This will be an offence and is liable on conviction to a fine at level 3. In the case of a continuing offence after conviction for failure to comply, the FI concerned is liable to a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction;



- (b) **furnishing incorrect returns due to failure to observe in full the due diligence requirements.** Making inaccurate returns is not an automatic trigger for the offence. Under our light-handed legislative approach, compliance with the due diligence procedures and the absence of knowledge about the inaccuracy may be a defence for FIs. The offence is liable on conviction to a fine at level 3. In the case of a continuing offence after conviction for failure to comply, the FI concerned is liable to a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction;
- (c) **wilfully making a return to mislead or deceive.** This relates to the use of fraudulent acts to evade the due diligence requirements or to defraud IRD. This will be an offence and –
- (i) on summary conviction liable to a fine at level 3 and imprisonment for six months; or
  - (ii) on indictment liable to a fine at level 5 and imprisonment for three years.

2.25 Further, modelled on the AMLO, we propose to impose penalties on a person who is the **employee** of an FI, employed to **work for** an FI or concerned in the **management** of an FI, for –

- (a) **without reasonable excuse**, causing or permitting the FI to fail to comply with the requirements imposed on FIs or to cause/permit the FIs to furnish incorrect returns. Such an offence will be liable to a fine at level 3. In the case of a continuing offence after conviction for failure to comply, the employee concerned is liable to a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction; and
- (b) **wilfully to defraud**, causing or permitting the FIs to fail to comply with the requirements imposed on the FIs or to make incorrect return. Such an offence will be liable on summary conviction to a fine at level 3 and imprisonment for six months; or on indictment to a fine at level 5 and imprisonment for three years.

2.26 At present, we do not intend to impose a host of new sanctions on **non-Hong Kong tax resident account holders** specifically for the purpose of AEOI. Under the existing IRO, any person who without reasonable excuse gives any incorrect information to IRD for the purpose of exchange of tax information in relation to any matter affecting the person's own liability to any tax of a territory outside Hong Kong (i.e. Hong Kong's CDTA/TIEA partners) already commits an offence. That said, self-certification plays a key role to the effective implementation of AEOI and we are mindful that OECD, as set out in the Commentary section concerning effective implementation, expects jurisdictions to include a specific provision in their domestic law imposing sanctions for signing (or otherwise positively affirming) a false self-certification so as to increase the reliability of self-certifications. In this regard, we may, in the light of the experience of other jurisdictions, consider **expanding the existing sanction in IRO or imposing a new specific sanction to cover false self-certification from individual account holders**, with a view to enhancing the reliability of the self-certification process.

### *Safeguards on Taxpayers' Rights and Confidentiality of Information Exchanged*

#### *Safeguards under CDTAs, TIEAs and CAAs*

2.27 During the course of exchange of financial account information on an automatic basis, we will protect the privacy of taxpayers and the confidentiality of information exchanged, and ensure the proper use of the exchanged information.

2.28 The EOI article of CDTA and relevant articles of TIEA provide for safeguards to protect taxpayers' privacy and confidentiality of information exchanged. Since we would implement AEOI under the existing CDTA and TIEA framework, such safeguards will be applicable. To recap, the relevant safeguards at the treaty level include –

- (a) information exchanged should be foreseeably relevant, i.e. there will be no fishing expeditions;
- (b) information received by our partners should be treated as confidential;
- (c) information will only be disclosed to the tax authorities and not for release to their oversight bodies unless there are legitimate reasons given by the CDTA/TIEA partners (i.e. we have committed to LegCo that the inclusion of any such oversight bodies must be positively listed);

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

2.29 CAA also requires similar safeguards. Section 5 of the model CAA provides that all information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention/Instrument. Section 7 provides that a competent authority may suspend the EOI by giving notice in writing to the other competent authority if there is or has been significant non-compliance by the other competent authority with CAA. The competent authority may also terminate the CAA by giving notice of termination to the other competent authority.<sup>8</sup> Terminations may take immediate effect pending completion of the negative vetting process.

### *Disclosure Rules*

2.30 At present, under our domestic regime for EOI on request, the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI) (“Disclosure Rules”) have provided additional safeguards to protect taxpayers’ privacy and confidentiality of information exchanged. The Disclosure Rules stipulate the particulars to be contained in an EOI request made by our CDTA and TIEA partners. Upon receipt of an EOI request, IRD will examine, with reference to

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<sup>8</sup> OECD has devised a questionnaire to assist jurisdictions in assessing whether or not the other jurisdiction has met the required confidentiality and data safeguards. Where these standards are not met (whether in law or in practice) or the treaty partners have breached the confidentiality rules, jurisdictions can suspend the transmission of information to the relevant treaty partners.

the particulars provided by the requesting partner for EOI, whether the information requested is foreseeably relevant according to the conditions laid down in the relevant CDTA/TIEA and the conditions laid down in the Disclosure Rules. The particulars that a CDTA/TIEA partner has to provide in its EOI request are set out in the Schedule to the Disclosure Rules. If the conditions are not fulfilled, the Commissioner for Inland Revenue (“CIR”) will not approve the EOI request.

2.31 At present, the Disclosure Rules have provided for a **notification and review system** in handling EOI requests and related appeals. For an approved EOI request, CIR will notify in writing the person who is the subject of the request (including the taxpayer concerned even if the information requested is in the possession of a third party) of the nature of the information requested by a CDTA/TIEA partner and of his right to request within 14 days after the date of notification a copy of the information that CIR is prepared to disclose to the CDTA/TIEA partner concerned. Within 21 days after CIR has provided a copy of the information to be disclosed, the subject person can ask CIR to amend any part of the information on the grounds that the information is factually incorrect or does not relate to him/her. CIR may make full amendment, partial amendment or no amendment. If the person remains not satisfied, he/she can, within 14 days after CIR’s notice of decision, further ask the Financial Secretary to direct CIR to make the amendments requested. If the person is aggrieved by any of the administrative decisions, he can apply to the court for judicial review.

2.32 The mode of operation for AEOI is very different from that for EOI on request. Thus, the current Disclosure Rules (including the notification and review mechanism) could **not be directly applicable** to the AEOI regime. With the possible large number of account holders to be involved, it would be extremely difficult, if not impossible, for IRD itself to notify each and every account holder as and when the information is exchanged. As far as we gather from OECD, we are not aware that any other jurisdiction has intended to put in place a separate notification or review mechanism by the administration itself for the purpose of AEOI.

2.33 The proposed AEOI regime would rely on the existing “customer relationship” mechanism between FIs and account holders to update / check information so as to ensure that the information to be exchanged is accurate and updated. Under the AEOI regime, FIs would, in line with the existing requirements under the privacy law, need to inform both new and existing account holders on the possible use of the personal data collected, i.e. for the purpose of AEOI, their personal data (such as name, address, tax residence,

TIN, date and place of birth) and financial account information (such as account number and account balance) would be disclosed to IRD which would in turn send the information to other jurisdictions on a regular basis (say every September) should the account holder be a tax resident of that jurisdiction and that jurisdiction is Hong Kong's AEOI partner (i.e. the collection purpose of the information). The account holders will update their own personal data and financial account information to ensure its accuracy and they can always request to review the relevant information from FIs since such information is their personal data. Moreover, FIs will conduct ongoing due diligence procedures in order to maintain updated client information.

### *Hong Kong's stance on "foreseeable relevance" under the AEOI regime*

2.34 Hong Kong has all along been adopting EOI on a request basis, and has emphasised that the standard of "foreseeable relevance" is the overriding prerequisite which has to be met before any information will be exchanged in a request. Under the AEOI regime, IRD will exchange with our AEOI partners periodically and in bulk information comprising many individual cases.

2.35 The Commentary on the OECD Model Tax Convention on Income and on Capital states that the rule laid down in paragraph 1 of the EOI Article (i.e. information exchanged is foreseeably relevant for carrying out the agreement or the administration or enforcement of tax laws) allows information to be exchanged on a request or automatic basis. The information collated by IRD and transmitted to the relevant treaty partners will only involve those persons who may be subject to taxation in their home jurisdictions. Since it is possible that these taxpayers may not have reported all their taxable income information to their own tax authorities and thus results in tax evasion, providing such information to the treaty partner still relates to the carrying out of the provisions of the EOI agreements or the administration or enforcement of the tax laws of the CDTA/TIEA partner concerning taxes imposed in periods after the CDTA/TIEA becomes effective. This will continue to fulfill the international standard of "foreseeable relevance".

## CHAPTER 3

### OPERATIONAL FRAMEWORK FOR AEOI IN HONG KONG

#### *Reporting and Due Diligence Requirements*

3.1 As mentioned in paragraph 2.20 in Chapter 2, FIs have to report to IRD the required information with reference to the requirements in CRS. In order to identify the reportable accounts to collect and report the necessary information, FIs are required to perform the following due diligence procedures<sup>9</sup> -

- (a) **Pre-existing Individual Accounts** - FIs should review accounts without application of any *de minimis* threshold. For lower value accounts, FIs will rely on permanent residence address test based on documentary evidence or the FIs will need to determine the residence on the basis of an *indicia* search. A self-certification will be required in case of conflicting *indicia*. For higher value accounts, enhanced due diligence procedures apply, including a paper record search and an actual knowledge test by the relationship manager.
- (b) **New Individual Accounts** – FIs should require a self-certification from persons opening an account and confirm its reasonableness without *de*

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<sup>9</sup> The CRS has provided alternative approaches to perform due diligence procedures in certain aspects, which may be included in our law, as follows –

- (a) use of the residence address test for lower value accounts as an alternative approach for establishing residence;
- (b) an optional threshold of US\$250,000 for Pre-existing Entity Accounts;
- (c) allowing the due diligence procedures for new accounts and higher value accounts to be used for pre-existing accounts and lower value accounts respectively;
- (d) allowing third party service providers, who will be subject to penalty provisions in case of failure, to fulfill the obligations on behalf of FIs;
- (e) allowing for simplified due diligence rules for group cash value insurance contracts and group annuity contracts;
- (f) expanding the definition of pre-existing account to simplify the process when pre-existing customers open a new account with the same FI;
- (g) allowing certain investment vehicles to benefit from the procedures that rely on the related entity test;
- (h) allowing FIs to make greater use of existing standardized industry coding systems for the due diligence process;
- (i) permitting multinational institutions to use a single currency translation rule; and
- (j) phasing in the requirements to report gross proceeds from the sale or redemption of financial assets.

If specific legislative provisions are not required, IRD will consider issuing administrative guidelines to explain the procedures.

*minimis* threshold.

- (c) **Pre-existing Entity Accounts** - FIs should determine whether the entity itself is a reportable person on the basis of available information and if such status cannot be determined on the basis of the available information, a self-certification would be needed; FIs should also determine whether the entity is a Passive NFE and if so the residence of the Controlling Persons. Pre-existing Entity Accounts below US\$250,000 are not subject to review upon election.
- (d) **New Entity Accounts** – FIs should determine whether the entity is a reportable person and whether the entity is a Passive NFE. However, as it is easier to obtain self-certifications for new accounts, the *de minimis* threshold for Pre-existing Entity Accounts does not apply.

3.2 Under the due diligence procedures, a **self-certification** from account holders is an important document to provide the account holders' status and any other information that may be reasonably requested by FIs to fulfill their reporting and due diligence requirements, in particular the tax residence of the account holders, when opening accounts or when there are conflicting indicia. As set out in the OECD standard on AEOI, the self-certification shall contain the account holder's name, residence address, jurisdiction of residence for tax purposes, TIN with respect to each reportable jurisdiction and date of birth (for individual account holders or Controlling Persons). In other words, individual account holders will not need to provide information on their place of birth in the self-certification for AEOI purpose.

3.3 For details, please refer to Sections II to VII of CRS at **Annex B**, which we intend to incorporate into IRO in the form of a **Schedule**.

### ***Ascertaining Tax Residence***

3.4 Tax residence of a financial account holder is a fundamental and important concept under CRS. A person is considered to have tax residence in a jurisdiction if he or she, under the laws of that jurisdiction, is liable to tax due to domicile, residence, place of management or any other similar criterion. We will follow the spirit of CRS that account holders are responsible for identifying their own tax residence when opening financial accounts. They need to provide detailed personal data and self-certification to FIs when opening accounts. Hence, **the onus of ascertaining tax residence rests with the account holders**. If the account holders are in doubt, they should seek advice from their own

lawyers or tax advisors.

3.5 We would not expect FIs to carry out an independent legal analysis of relevant tax laws to determine the residence of an account holder. The FI's role is limited to the performance of a reasonableness test of the self-certification with a view to confirming the residence for tax purposes indicated by an account holder. FIs are not expected to carry out any independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

### ***AEOI Portal***

3.6 To help FIs fulfil their obligations, IRD would provide a secure platform, i.e. the AEOI Portal, for FIs to submit notifications and file AEOI Returns electronically. FIs would be required to use digital certificate<sup>10</sup> for authentication and open an online account in the AEOI Portal for transacting with IRD on matters relating to AEOI. FI could assign access right to employees holding the organisation's e-Cert to perform various types of transactions in the AEOI Account, such as updating account information, submitting return and amending the returns filed previously.

### ***Filing AEOI Returns***

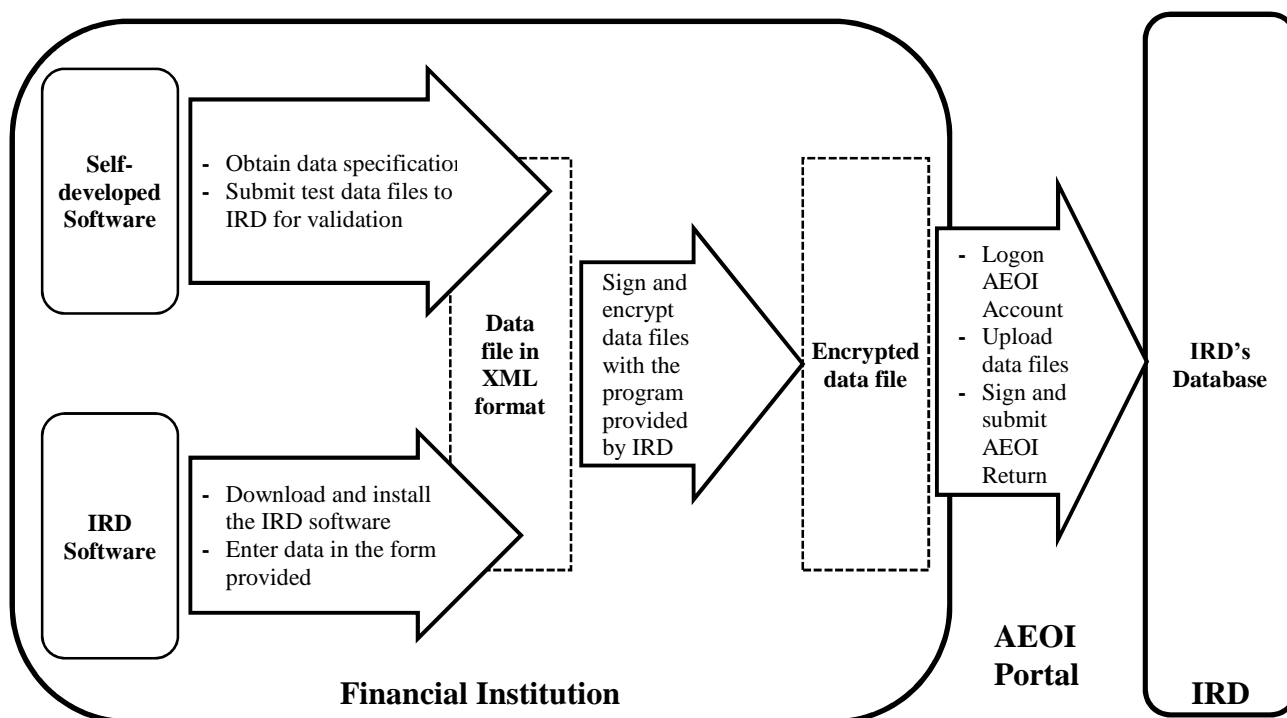
3.7 IRD would issue electronic notices, through the AEOI Portal, to all registered FIs in January annually for filing AEOI Returns. FIs would be required to file AEOI Returns even if there is no reportable account for a particular year. We propose that FIs should lodge the AEOI Returns within five months after the calendar year to which the information relates.

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<sup>10</sup> We propose that FIs should subscribe for e-Cert (Organisational Role) certificate issued by the Hong Kong Post Certification Authority for authentication purposes. The e-Cert (Organisational Role) certificate contains information including the name and business registration number of FI, the name of the employee holding the certificate as well as his / her position in the organisation.



3.8 The diagram below shows the processes for preparing and filing AEOI Returns –



3.9 There would be four steps for preparing and submitting AEOI Return -

(a) Creation of Data Files

FIs could develop their own computer software for creating data files in accordance with the data specifications issued by IRD<sup>11</sup>. In order to save the need for IRD to reformat the data for exchange with treaty partners, we propose that the data files to be submitted by FIs should follow the same format in which CRS requires, i.e. CRS Schema in extensible markup language (XML) format. To ensure that the files generated by the self-developed software conform to the data specifications, FIs would be required to submit test data files to IRD for validation and obtain IRD’s consent before putting the self-developed software to use.

Alternatively, FIs could download the software developed by IRD (“the IRD Software”) from the AEOI Portal for preparing data files. With

<sup>11</sup> The latest version of the data specification will be available in the AEOI Portal for downloading by FIs.

the IRD Software, FIs could fill in the required information in the form provided and create data files in XML format.

*(b) Encryption of Data Files*

To preserve data integrity and non-repudiation, FIs would be required to encrypt and sign the data files with their digital certificate before uploading the files to the AEOI Portal. IRD would provide a tool, which is available for downloading from the AEOI Portal, to FIs to perform the signing and encryption process.

*(c) Uploading of Data Files*

FIs could transmit signed data files to their account in AEOI Portal through a single uploading, or multiple uploading. The system would allow FIs to update data files previously submitted or delete erroneous files under prescribed conditions.

*(d) Submission of AEOI Return*

FIs would be required to complete the AEOI Return after all data files have been uploaded. FIs would be required to attach the data files to the AEOI Return and sign the return with their digital certificate.

3.10 IRD will institute stringent control and strict operational security measures to protect the confidentiality of all data received, whether received from FIs or from treaty partners. Access to the sensitive data will only be allowed to authorised users and logged for audit trail purpose. Security risk assessments will be conducted regularly and confidentiality policies will be updated as and when necessary. Penalty will be imposed on all breaches of confidentiality requirements.

### ***Proposed Implementation Timetable***

3.11 Subject to the passage of the amendment bill to IRO by LegCo by mid-2016, the proposed implementation timetable for AEOI in Hong Kong is –

<b><u>Actions</u></b>	<b><u>Planned Timeline</u></b>
FIs to commence due diligence procedures for new and pre-existing accounts to identify reportable accounts and keep relevant information	January 2017
FIs to register with IRD	September 2017
FIs to submit test data files of self-developed software to IRD for validation	Q4 of 2017
IRD to issue AEOI Returns to FIs	January 2018
FIs to file AEOI Returns to IRD	May 2018
IRD to pass information to AEOI partners	End 2018

## CHAPTER 4

### VIEWS SOUGHT

4.1 The Global Forum has indicated that the first automatic information exchanges are expected to commence by the end of 2018 the latest. In other words, FIs will need to start conducting due diligence procedures for their financial accounts in 2017. Our current target is to introduce an amendment bill of IRO into LegCo in early 2016. Your views on the proposed model for AEOI in Hong Kong, in terms of the legislative regime and operational framework, are essential to enable us to formulate an appropriate model for Hong Kong which ensures effective implementation of AEOI in accordance with the international standard.

4.2. Specifically, we would like to gauge your feedback on the following key aspects –

- (a) **FIs, non-reporting FIs and excluded accounts** – Do you have any views on the proposed scope of FIs (*paragraph 2.12*), non-reporting FIs (*paragraphs 2.15 and 2.16*) and excluded accounts (*paragraph 2.17*), within the framework allowed under CRS?
- (b) **Reporting Requirements** – Do you have any views on the reporting requirements proposed in *paragraph 2.19*, within the framework required by CRS?
- (c) **Due Diligence Procedures** – Do you have any views on the due diligence procedures (including the alternative approaches to deal with certain circumstances) proposed in *paragraph 3.1*, within the framework required by CRS?
- (d) **Requirement for FIs to identify and keep information of accounts concerning reportable jurisdictions** – Will you, as FI, identify and keep information of accounts concerning reportable jurisdictions (i.e. only those jurisdictions with CAAs with Hong Kong), or all non-Hong Kong tax resident accounts, notwithstanding the legislative requirement for FIs to report to IRD only information concerning reportable jurisdictions as proposed in *paragraph 2.20*?

- (e) **Proposed sanctions** – Are the proposed sanctions proportionate to the types of offences (*paragraphs 2.24 and 2.25*)? Do you agree that we should impose sanctions on individual account holders who make false self-certification (*paragraph 2.26*)?
- (f) **Confidentiality and notification** – Does your institution have in place any mechanism to update clients’ information and to meet the confidentiality safeguards (*paragraph 2.33*)?
- (g) **IT system** – Will you, as FIs, use your self-developed software or the IRD software for preparing the data files of AEOI Returns? What are the considerations involved (*paragraph 3.9*)?

4.3 Please send us your views and comments to the specific questions above, as well as any other views on the AEOI matter on or before **30 June 2015 (Tuesday)** by post, fax or email –

Post: Revenue Division  
Financial Services and the Treasury Bureau  
(Treasury Branch)  
24/F, Central Government Offices,  
2 Tim Mei Avenue, Tamar  
Hong Kong

Fax: 2179 5848  
(Attn.: AEOI Consultation)

Email: [aeoi@fstb.gov.hk](mailto:aeoi@fstb.gov.hk)

4.4 It is voluntary for members of the public to supply their personal data upon providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant government bureaux and departments for purposes directly related to this consultation exercise. The government bureaux and departments receiving the data may only use the data for such purposes.

4.5 The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in discussion with others, whether privately or publicly, or in any subsequent report, cite comments submitted in response to this consultation paper.

4.6 To safeguard senders' data privacy, we will remove senders' relevant data, such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signature, where provided, when publishing their submissions.

4.7 We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published.

4.8 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

4.9 Any sender providing personal data to this Bureau in the submission will have rights of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing through the above-mentioned channels to Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue)1.

**Financial Services and the Treasury Bureau**  
**April 2015**

## A. Model Competent Authority Agreement

### **MODEL AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF [JURISDICTION A] AND [JURISDICTION B] ON THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION TO IMPROVE INTERNATIONAL TAX COMPLIANCE**

Whereas, the Government of [Jurisdiction A] and the Government of [Jurisdiction B] have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to improve international tax compliance by further building on that relationship;

Whereas, the laws of their respective jurisdictions [are expected to require]/[require]/[require or are expected to require] financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Section 2 of this Agreement and the reporting and due diligence procedures contained in the Common Reporting Standard;

Whereas, [Article [...]] of the Income Tax Convention between [Jurisdiction A] and [Jurisdiction B]/[Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters] (the “Convention”)/[other applicable legal instrument (the “Instrument”)], authorises the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of [Jurisdiction A] and [Jurisdiction B] (the “Competent Authorities”) to agree the scope and modalities of such automatic exchanges;

Whereas, [Jurisdiction A] and [Jurisdiction B] have in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the [Convention]/[Instrument], and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and

concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement);

Whereas, the Competent Authorities desire to conclude an agreement to improve international tax compliance based on reciprocal automatic exchange pursuant to the [Convention]/[Instrument], and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the [Convention]/[Instrument];

Now, therefore, the Competent Authorities have agreed as follows:

## SECTION 1

### *Definitions*

1. For the purposes of this agreement (“Agreement”), the following terms have the following meanings:

- a) the term “[**Jurisdiction A**]” means [...].
- b) the term “[**Jurisdiction B**]” means [...].
- c) the term “[**Competent Authority**]” means:
  - (1) in the case of [Jurisdiction A], [...]; and
  - (2) in the case of [Jurisdiction B], [...].
- d) the term “[**Jurisdiction A**] **Financial Institution**” means (i) any Financial Institution that is resident in [Jurisdiction A], but excludes any branch of that Financial Institution that is located outside [Jurisdiction A], and (ii) any branch of a Financial Institution that is not resident in [Jurisdiction A], if that branch is located in [Jurisdiction A].
- e) the term “[**Jurisdiction B**] **Financial Institution**” means (i) any Financial Institution that is resident in [Jurisdiction B], but excludes any branch of that Financial Institution that is located outside [Jurisdiction B], and (ii) any branch of a Financial Institution that is not resident in [Jurisdiction B], if that branch is located in [Jurisdiction B].
- f) the term “[**Reporting Financial Institution**]” means any [Jurisdiction A] Financial Institution or [Jurisdiction B] Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
- g) the term “[**Reportable Account**]” means a [Jurisdiction A] Reportable Account or a [Jurisdiction B] Reportable Account, as the context



requires, provided it has been identified as such pursuant to due diligence procedures, consistent with the Common Reporting Standard, in place in [Jurisdiction A] or [Jurisdiction B].

- h)* the term “[**Jurisdiction A**] **Reportable Account**” means a Financial Account that is maintained by a [Jurisdiction B] Reporting Financial Institution and held by one or more [Jurisdiction A] Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a [Jurisdiction A] Reportable Person.
- i)* the term “[**Jurisdiction B**] **Reportable Account**” means a Financial Account that is maintained by a [Jurisdiction A] Reporting Financial Institution and held by one or more [Jurisdiction B] Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a [Jurisdiction B] Reportable Person.
- j)* the term “[**Jurisdiction A**] **Person**” means an individual or Entity that is identified by a [Jurisdiction B] Reporting Financial Institution as resident in [Jurisdiction A] pursuant to due diligence procedures consistent with the Common Reporting Standard, or an estate of a decedent that was a resident of [Jurisdiction A].
- k)* the term “[**Jurisdiction B**] **Person**” means an individual or Entity that is identified by a [Jurisdiction A] Reporting Financial Institution as resident in [Jurisdiction B] pursuant to due diligence procedures consistent with the Common Reporting Standard, or an estate of a decedent that was a resident of [Jurisdiction B].
- l)* the term “**TIN**” means a [Jurisdiction A] TIN or a [Jurisdiction B] TIN, as the context requires.
- m)* the term “[**Jurisdiction A**] **TIN**” means a [...].
- n)* the term “[**Jurisdiction B**] **TIN**” means a [...].

2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time under the law of the jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Common Reporting Standard. Any term not otherwise defined in this Agreement or in the Common Reporting Standard will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction applying this Agreement, any meaning under the applicable tax laws of that jurisdiction prevailing over a meaning given to the term under other laws of that jurisdiction.

## SECTION 2

### *Exchange of Information with Respect to Reportable Accounts*

1. Pursuant to the provisions of Article [...] of the [Convention]/ [Instrument] and subject to the applicable reporting and due diligence rules consistent with the Common Reporting Standard, each Competent Authority will annually exchange with the other Competent Authority on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.
2. The information to be exchanged is, in the case of [Jurisdiction A] with respect to each [Jurisdiction B] Reportable Account, and in the case of [Jurisdiction B] with respect to each [Jurisdiction A] Reportable Account:
  - a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
  - b) the account number (or functional equivalent in the absence of an account number);
  - c) the name and identifying number (if any) of the Reporting Financial Institution;
  - d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
  - e) in the case of any Custodial Account:
    - (1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - (2) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the

Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

- f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

### SECTION 3

#### *Time and Manner of Exchange of Information*

1. For the purposes of the exchange of information in Section 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction exchanging the information.
2. For the purposes of the exchange of information in Section 2, the information exchanged will identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Section 2, information is to be exchanged with respect to [xxxx] and all subsequent years and will be exchanged within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing sentence information is only required to be exchanged with respect to a calendar year if both jurisdictions have in effect legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange provided for in Section 2 and the reporting and due diligence procedures contained in the Common Reporting Standard.
4. Notwithstanding paragraph 3, the information to be exchanged with respect to [xxxx] is the information described in paragraph 2 of Section 2, except for gross proceeds described in subparagraph 2(e)(2) of Section 2.
5. The Competent Authorities will automatically exchange the information described in Section 2 in a common reporting standard schema in Extensible Markup Language.

6. The Competent Authorities will agree on one or more methods for data transmission including encryption standards.

## SECTION 4

### *Collaboration on Compliance and Enforcement*

A Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Common Reporting Standard. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

## SECTION 5

### *Confidentiality and Data Safeguards*

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the [Convention]/[Instrument], including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Competent Authority as required under its domestic law.
2. Each Competent Authority will notify the other Competent Authority immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed.

## SECTION 6

### *Consultations and Amendments*

1. If any difficulties in the implementation or interpretation of this Agreement arise, either Competent Authority may request consultations to develop appropriate measures to ensure that this Agreement is fulfilled.
2. This Agreement may be amended by written agreement of the Competent Authorities. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the later of the signatures of such written

agreement or the date of the later of the notifications exchanged for purposes of such written agreement.

## SECTION 7

### *Term of Agreement*

1. This Agreement will come into effect [...]/[on the date of the later of the notifications provided by each Competent Authority that its jurisdiction has the necessary laws in place to implement the Agreement].

2. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to the other Competent Authority that it has determined that there is or has been significant non-compliance by the other Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the [Convention]/[Instrument], a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.

3. Either Competent Authority may terminate this Agreement by giving notice of termination in writing to the other Competent Authority. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the [Convention/Instrument].

Signed in duplicate in [...] on [...].

Competent Authority for  
[Jurisdiction A]

Competent Authority for  
[Jurisdiction B]

## B. Common Reporting Standard

### COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION

#### Section I: General Reporting Requirements

- A. Subject to paragraphs C through F, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:
1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
  2. the account number (or functional equivalent in the absence of an account number);
  3. the name and identifying number (if any) of the Reporting Financial Institution;
  4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

5. in the case of any Custodial Account:
    - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- B. The information reported must identify the currency in which each amount is denominated.
  - C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.
  - D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.
- F. Notwithstanding paragraph A, the information to be reported with respect to [xxxx] is the information described in such paragraph, except for gross proceeds described in subparagraph A(5)(b).

## Section II: General Due Diligence Requirements

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.
- C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- D. Each Jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but these obligations shall remain the responsibility of the Reporting Financial Institutions.
- E. Each Jurisdiction may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Jurisdiction allows New Account due diligence procedures to be used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

## Section III: Due Diligence for Preexisting Individual Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Individual Accounts.

- A. **Accounts Not Required to be Reviewed, Identified, or Reported.**  
A Preexisting Individual Account that is a Cash Value Insurance



Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.

- B. **Lower Value Accounts.** The following procedures apply with respect to Lower Value Accounts.
1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.
  2. **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):
    - a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
    - b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
    - c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
    - d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
    - e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
    - f) a “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
  3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required

until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.
6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if:
  - a) the Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction, one or more telephone numbers in the Reportable Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
    - i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and
    - ii) Documentary Evidence establishing the Account Holder’s non-reportable status.

- b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
  - i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or
  - ii) Documentary Evidence establishing the Account Holder's non-reportable status.

C. **Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search.** With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).
2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in subparagraph B(2):
  - a) the most recent Documentary Evidence collected with respect to the account;
  - b) the most recent account opening contract or documentation;
  - c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
  - d) any power of attorney or signature authority forms currently in effect; and
  - e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

3. **Exception To The Extent Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution’s electronically searchable information includes the following:
  - a) the Account Holder’s residence status;
  - b) the Account Holder’s residence address and mailing address currently on file with the Reporting Financial Institution;
  - c) the Account Holder’s telephone number(s) currently on file, if any, with the Reporting Financial Institution;
  - d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
  - e) whether there is a current “in-care-of” address or “hold mail” instruction for the Account Holder; and
  - f) whether there is any power of attorney or signatory authority for the account.
4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
5. **Effect of Finding Indicia.**
  - a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Reportable Person in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
  - b) If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia

being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

- c) If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
6. If a Preexisting Individual Account is not a High Value Account as of 31 December [xxxx], but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects

to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Preexisting Individual Accounts must be completed by [xx/xx/xxxx].
- E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

#### **Section IV: Due Diligence for New Individual Accounts**

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification

that establishes the residence(s) for tax purposes of the Account Holder.

## Section V: Due Diligence for Preexisting Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Entity Accounts.

- A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December [xxxx], is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of the last day of any subsequent calendar year.
- B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of 31 December [xxxx], and a Preexisting Entity Account that does not exceed USD 250 000 as of 31 December [xxxx] but the aggregate account balance or value of which exceeds USD 250 000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
  1. **Determine Whether the Entity Is a Reportable Person.**
    - a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident

in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.

- b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
2. **Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons.** With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(2)(a) through (c) in the order most appropriate under the circumstances.
- a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
  - b) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
  - c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For the purposes of determining



whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:

- i)* information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000; or
- ii)* a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes.

**E. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250 000 as of 31 December [xxxx] must be completed by 31 December [xxxx].
2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December [xxxx], but exceeds USD 250 000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

## **Section VI: Due Diligence for New Entity Accounts**

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

- A. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. **Determine Whether the Entity Is a Reportable Person.**
  - a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
  - b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.
2. **Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons.** With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.
  - a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

- b) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## Section VII: Special Due Diligence Rules

The following additional rules apply in implementing the due diligence procedures described above:

- A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.
- C. **Account Balance Aggregation and Currency Rules.**
  - 1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to

aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

## Section VIII: Defined Terms

The following terms have the meanings set forth below:

### A. Reporting Financial Institution

1. The term “**Reporting Financial Institution**” means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.

2. The term “**Participating Jurisdiction Financial Institution**” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term “**Custodial Institution**” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term “**Depository Institution**” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term “**Investment Entity**” means any Entity:
  - a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
    - i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
    - ii) individual and collective portfolio management; or
    - iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
  - b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50% of the Entity’s gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

7. The term “**Financial Asset**” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.
8. The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

## B. Non-Reporting Financial Institution

1. The term “**Non-Reporting Financial Institution**” means any Financial Institution that is:
  - a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

- b)* a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
  - c)* any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;
  - d)* an Exempt Collective Investment Vehicle; or
  - e)* a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term “**Governmental Entity**” means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.
- a)* An “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  - b)* A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
    - i)* the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

- ii)* the Entity’s net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
    - iii)* the Entity’s assets vest in one or more Governmental Entities upon dissolution.
  - c)* Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
- 3. The term “**International Organisation**” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.
- 4. The term “**Central Bank**” means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.
- 5. The term “**Broad Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
  - a)* does not have a single beneficiary with a right to more than five per cent of the fund’s assets;
  - b)* is subject to government regulation and provides information reporting to the tax authorities; and



- c) satisfies at least one of the following requirements:
  - i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
  - ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
  - iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
  - iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
- 6. The term “**Narrow Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
  - a) the fund has fewer than 50 participants;
  - b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
  - c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;

- d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets; and
  - e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term “**Pension Fund of a Governmental Entity, International Organisation or Central Bank**” means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
8. The term “**Qualified Credit Card Issuer**” means a Financial Institution satisfying the following requirements:
- a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
  - b) beginning on or before [xx/xx/xxxx], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
9. The term “**Exempt Collective Investment Vehicle**” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as

an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after [xx/xx/xxxx];
- b) the collective investment vehicle retires all such shares upon surrender;
- c) the collective investment vehicle performs the due diligence procedures set forth in Sections II through VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to [xx/xx/xxxx].

### C. Financial Account

1. The term “**Financial Account**” means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
  - a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
  - b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and
  - c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

2. The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
3. The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person.
4. The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a 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. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term “**Insurance Contract**” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
6. The term “**Annuity Contract**” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term “**Cash Value Insurance Contract**” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term “**Cash Value**” means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract:
- a) solely by reason of the death of an individual insured under a life insurance contract;
  - b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
  - e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term “**Preexisting Account**” means a Financial Account maintained by a Reporting Financial Institution as of [xx/xx/xxxx].
10. The term “**New Account**” means a Financial Account maintained by a Reporting Financial Institution opened on or after [xx/xx/xxxx].
11. The term “**Preexisting Individual Account**” means a Preexisting Account held by one or more individuals.
12. The term “**New Individual Account**” means a New Account held by one or more individuals.

13. The term “**Preexisting Entity Account**” means a Preexisting Account held by one or more Entities.
14. The term “**Lower Value Account**” means a Preexisting Individual Account with an aggregate balance or value as of 31 December [xxxx] that does not exceed USD 1 000 000.
15. The term “**High Value Account**” means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of 31 December [xxxx] or 31 December of any subsequent year.
16. The term “**New Entity Account**” means a New Account held by one or more Entities.
17. The term “**Excluded Account**” means any of the following accounts:
  - a) a retirement or pension account that satisfies the following requirements:
    - i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
    - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
    - iii) information reporting is required to the tax authorities with respect to the account;
    - iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
    - v) either (i) annual contributions are limited to USD 50 000 or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to

satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- b) an account that satisfies the following requirements:
  - i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
  - iv) annual contributions are limited to USD 50 000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
  - i) periodic premiums, which do not decrease over time, are payable at least annually during the period the

- contract is in existence or until the insured attains age 90, whichever is shorter;
- ii)* the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - iii)* the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
  - iv)* the contract is not held by a transferee for value.
- d)* an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- e)* an account established in connection with any of the following:
- i)* a court order or judgment.
  - ii)* a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - i)* the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - ii)* the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - iii)* the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee



- (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
- iv) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
  - v) the account is not associated with an account described in subparagraph C(17)(f).
- iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
- iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- f) a Depository Account that satisfies the following requirements:
- i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - ii) beginning on or before [xx/xx/xxxx], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
- g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is defined in domestic law as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

#### D. Reportable Account

1. The term “**Reportable Account**” means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
2. The term “**Reportable Person**” means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term “**Reportable Jurisdiction Person**” means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term “**Reportable Jurisdiction**” means a jurisdiction (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and (ii) which is identified in a published list.
5. The term “**Participating Jurisdiction**” means a jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and (ii) which is identified in a published list.
6. The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term “**NFE**” means any Entity that is not a Financial Institution.

8. The term “**Passive NFE**” means any: *(i)* NFE that is not an Active NFE; or *(ii)* an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term “**Active NFE**” means any NFE that meets any of the following criteria:
  - a)* less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - b)* the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - c)* the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
  - d)* substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
  - e)* the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
  - f)* the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence

operations in a business other than that of a Financial Institution;

- g)* the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- h)* the NFE meets all of the following requirements:
  - i)* it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - ii)* it is exempt from income tax in its jurisdiction of residence;
  - iii)* it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv)* the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - v)* the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

### E. Miscellaneous

1. The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
2. The term “**AML/KYC Procedures**” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term “**Entity**” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a “**Related Entity**” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.
5. The term “**TIN**” means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term “**Documentary Evidence**” includes any of the following:
  - a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
  - b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes.

- c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
- d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator’s report.

## **Section IX: Effective Implementation**

- A. A jurisdiction must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:
  - 1. rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
  - 2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;
  - 3. administrative procedures to verify Reporting Financial Institutions’ compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
  - 4. administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
  - 5. effective enforcement provisions to address non-compliance.

**Schematic Framework for AEOI Legislation in Hong Kong**

