THE COMMON REPORTING STANDARD (CRS)

AUTOMATIC EXCHANGE

OF FINANCIAL ACCOUNT INFORMATION

GUIDANCE NOTES

(2nd Edition in response to comments received on the 1st Edition issued in December 2015)

FEBRUARY 2016

CONTENTS

1. BACKGROUND

1.1 The OECD together with G20 countries, and in close cooperation with the EU and other stakeholders has developed the ”Standard for Automatic Exchange of Financial Account Information” or “the Standard”. This is a standardised automatic exchange model which builds on the FATCA IGA to maximise efficiency and minimum costs.

1.2 The Standard consists of the following elements –

- **The Common Reporting Standard (the CRS) that contains due diligence rules for financial institutions to follow to collect and then report the information, that underpin the automatic exchange of financial information;**

- **The Model Competent Authority Agreement (the CAA) that links the CRS to the legal basis for exchange, specifying the financial information to be exchanged;**

- **The Commentaries that illustrate and interpret the CAA and the CRS; and**

- **Guidance on technical solutions, including an XML schema to be used for exchanging the information and standards in relation to data safeguards and confidentiality, transmission and encryption**

1.3 The CRS and a Model CAA, and commentaries on both, are included in the OECD publication "Standard for Automatic Exchange of Financial Account Information in Tax Matters"

http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm

1.4 Another helpful publication in understanding the Standard is the Standard for Automatic Exchange of Financial Information in Tax Matters – Implementation Handbook

http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-

automatic-exchange-of-financial-account-information-in-tax-matters.htm

1.5 The Commentaries and the Handbook are extensive and their content is not repeated in these Guidance Notes. The Notes are to be seen as complementing these two source documents**.**

1.6 To implement the CRS there is a need for domestic law. This is provided by the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015, adopted by the States on the 1st December 2015 with an entry into force date of the 1st January 2016. ("the Domestic Law")

http://www.jerseylaw.je/Law/Display.aspx?url=%2flaw%2fLawsInForce%2fhtm%2frofiles%2fR%26OYear2015%2fR%26O-148-2015.pdf

1.7 It should be noted that this Guidance is not a legal document and does not cover every scenario. The Guidance does not replace the need to take independent professional advice on the implementation of the Standard.

2. THE DOMESTIC LAW

2.1 In drafting the Domestic Law consideration has been given to what steps can be taken to ease the burden faced by financial institutions while not conflicting with the substance or purpose of the CRS.

2.2 The following are some key points from the Domestic Law –

- **Regulation 1(2)** indicates that the Regulations are to be construed as having effect for and in connection with the implementation of the obligations of Jersey arising under the Multilateral CAA or any other international governmental agreement to which Jersey and another participating jurisdiction is a party and which provides for the automatic exchange of tax information. This enables the Regulations to apply to those situations where the Multilateral CAA does not apply such as where automatic exchange of information is required between two non-sovereign states (e.g. between Jersey and Guernsey and Jersey and the Isle of Man).

- **Regulation 1(4)** refers to Schedule 1 which sets out words and expressions used in the Regulations which are defined in the CRS. This avoids having to include all of the definitions in the text of the Regulations.

- **Regulation 1(5) –** this provides financial institutions with an option to use the definition of a word or expression in the CRS or use a definition in any other international governmental agreement if Jersey and a participating jurisdiction is, or has been, a party to that other agreement; and that other agreement provides for the automatic exchange of information – in so far as such use would not frustrate the purposes of the Agreement. This provision allows Financial Institutions in appropriate circumstances to continue to use definitions as applied for FATCA and the UK FATCA style IGA or to use the CRS definitions. In taking advantage of this provision Financial Institutions will need to satisfy themselves that in doing so they are not frustrating the purposes of the CRS and the Model CAA. Examples of where

the FATCA definitions may be used are provided in the following section of the Guidance.

- **Regulation 7** provides for flexibility in the application of the due diligence obligations.

- **Regulation 9** provides that a reporting financial institution may use a service provider to undertake the due diligence requirements and the reporting obligations but states that those obligations continue to be the obligations of the reporting financial institution.

3. FATCA IGA/CRS COMPARISONS

3.1. The CRS Implementation Handbook in Section III compares the Standard with the FATCA Model 1 IGA. This is indicative of where the IGA Guidance may continue to be relied upon without affecting the purpose of the CRS. For example, in respect of the definition of Investment Entity the Handbook states that “while the wording of the definition of Investment Entity may differ between the FATCA Model 1 IGA and the Standard, the Standard was designed to achieve an equivalent outcome to that achieved through the Model 1 FATCA IGA. Jurisdictions should therefore be able to rely on the approach in the standard for purposes of both the standard and the Model 1 FATCA IGA”. The Jersey Authorities take the position that this would also be the case if the wording was changed to read “jurisdictions should therefore be able to rely on the approach in the FATCA IGA for both the IGA and the standard”.

3.2. Examples of Sections of the IGA Guidance where it is considered that Guidance may continue to be applied , subject always to the proviso that in their application the purposes of the CRS are not frustrated, include the following a number of

which have been specifically referred to in queries received from industry representatives.

- Section 3.2 - resident for tax purposes
- Section 3.9 – investment entity
- Section 3.12 – nominee companies
- Sections 7.1, 7.2, 7.3 on the treatment of Jersey trusts
- Section 7.8 which among other things refers to the position of a settlor who is specifically excluded from the trust
- Section 7.13 – Employee benefit trusts
- Section 19.4 – Multiple Financial Institutions – Duplicate Reporting.
- Appendix 4 - which among other things indicates that a beneficiary of a pension scheme will not be treated as financial accounts until a benefit payment is made

4. OPTIONS

4.1. The CRS includes a number of options to which reference is made on pages 12 to 17 in the CRS Implementation Handbook. Two of these options are referred to in Regulation 6 of the domestic law. There are a number of areas where the Standard provides options for jurisdictions to implement as suited to their domestic circumstances in order to provide for easier implementation, and reduced burdens, without impacting on the purpose or effectiveness of the CRS. The position being taken on each, which generally mirrors the position taken by the UK, is set out below. Reference in this section to 'legislation' includes primary legislation, regulations and guidance notes.

A. Reporting Requirements (Section I to the CRS)

1. <u>Alternative approach to calculating account balances</u>

CRC Commentary on Section 1, paragraph 11

A jurisdiction that already requires Financial Institutions to report the average balance or value of the account may provide for the reporting of average balance or value during the calendar year or other appropriate reporting period instead of the reporting of the account balance or value as of the end of the calendar year or other reporting period. This option is likely only desirable to a jurisdiction that has provided for the reporting of average balance or value in its FATCA IGA. **It is not proposed to offer this alternative approach.**

2. <u>Use of other reporting period</u>

CRS Section 1, subparagraphs A(4) through (7); Commentary on Section 1, paragraph 15

A jurisdiction that already requires Financial Institutions to report information based on a designated reporting period other than the calendar year may provide for the reporting based on such reporting period. This option is likely only desirable to a jurisdiction that includes (or will include) a reporting period other than a calendar year in its FATCA implementing legislation. **Reporting on a calendar year basis as is done for the FATCA IGA will be required.**

3. Phasing in the requirement to report gross proceeds

CRS: Section 1, paragraph F; Commentary on Section 1, paragraph 35

A jurisdiction may provide for the reporting of gross proceeds to begin in a later year (as was the case in FATCA). If this option is provided a Reporting Financial Institution would report all the information required with respect to a Reportable Account. This will allow Reporting Financial Institutions additional time to implement systems and procedures to capture gross proceeds for the sale or redemption of Financial Assets. This option is contained in the FATCA IGAs, with reporting required beginning in 2016 and thus Financial Institutions may not need additional time for reporting of gross proceeds for the CRS. The Multilateral Competent Authority Agreement does not provide this option. **It is not proposed to offer this option.**

4. Filing of nil returns

A jurisdiction may require the filing of a nil return by a Reporting Financial Institution to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period. **The filing of nil returns will not be required in line with the position adopted for the IGAs.**

B. Due Diligence (Section II-VII of the CRS)

5. Allowing third party service providers to fulfil the obligations on behalf of the financial institutions

CRS: Section II, paragraph D; Commentary on Section II, paragraph 6-7

A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the Reporting Financial Institution's reporting and due diligence obligations. (Without this difficulties could occur due to the interactions between various counter-parties.) The Reporting Financial Institution remains responsible for fulfilling these requirements and the accounts of the service provider are imputed to the Reporting Financial Institution. This option is available for FATCA. **This option will be maintained for the CRS.**

6. Allowing the due diligence procedures for New Accounts to be used for Preexisting Accounts

CRS: Section II, paragraph E; Commentary on Section IV, paragraph 8

A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts. This means, for example, a Financial Institution may elect to obtain a self-certification for all Preexisting accounts held by individuals consistent with the due diligence procedures for New Individual Accounts. If a jurisdiction allows a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Preexisting Accounts; or (2) with respect to

any clearly identified group of such accounts (such as by line of business or location where the account is maintained). **This option is offered in Regulation 6 of the domestic law.**

7. **<u>Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts</u>**
   CRS: Section II, paragraph E; Commentary on Section II, paragraph 8

   A jurisdiction may allow a Financial Institution to apply the due diligence procedures for High Value Accounts to Lower Value Accounts. A Financial Institution may wish to make such election because otherwise they must apply the due diligence procedure for Lower Value Accounts and then at the end of a subsequent calendar year when the account balance of value exceeds $1 million, apply the due diligence procedures for High Value Accounts. **This option is offered in regulation 6 of the domestic law..**

8. **<u>Residence address test for Lower Value Accounts</u>**
   CRS: Section III, subparagraph B(1); Commentary on Section III, subparagraph 7-13

   A jurisdiction may allow Financial Institutions to determine an Account Holder's residence based on the residence address provided by the account holder so long as the address is current and based on Documentary Evidence. The residence address test may apply to Preexisting Lower Value Accounts (less than $1 million) held by Individual Account Holders. **This option is offered.**

9. <u>Optional Exclusion from Due Diligence for Preexisting Entity Accounts of less than $250,000</u>

CRS: Section V, paragraph A; Commentary on Section V, subparagraph 2-4

A jurisdiction may allow Financial Institutions to exclude from its due diligence procedures pre-existing Entity Accounts with an aggregate account balance or value of $250,000 or less as of a specified date. If, at the end of a subsequent calendar year, the aggregate account balance or value exceeds $250,000, the Financial Institution must apply the due diligence procedures to identify whether the account is a Reportable Account. If this option is not adopted, a Financial Institution must apply the due diligence procedures to all Preexisting Entity Accounts. **This option is offered.**

10. <u>Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts</u>

CRS Section VII, paragraph 8; Commentary on Section VII, paragraph 13

With respect to a group cash value insurance contract or annuity contract that is issued to an employer or individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary provided that certain conditions are met. These conditions are: (1) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five or more employees/certificate holders; (2)

The employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and (3) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1 million. This provision is provided because the Financial Institution does not have a direct relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence. **This option is offered.**

11. <u>Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process</u>

CRS: Commentary on Section VIII, paragraph 154

A jurisdiction may define documentary evidence to include any classification in the Reporting Financial Institution's records based on a standard industry coding system provided that certain conditions are met (making it easier to identify types of account holders). With respect to a pre-existing entity account, when a Financial Institution is applying its due diligence procedures and accordingly required to maintained a record of documentary evidence, this option would permit the Financial Institution to rely on the standard industry code contained in its records. **This option is offered.**

12. <u>Currency translation</u>

CRS: Section VII, subparagraph C(4); Commentary on Section VII, paragraph 20-21

All amounts in the Standard are stated in US dollars and the Standard provides for the use of equivalent amounts in other currencies as provided by domestic law. For example, a lower value account is an account with an aggregate account balance or value of less than $1 million. The Standard permits jurisdictions to include amounts that are equivalent (or approximately equivalent) in their currency to the US dollars amounts as part of their domestic legislation. Further, a jurisdiction may allow a Financial Institution to apply the US dollar amount or the equivalent amounts. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. **This option is offered.**

C. Definitions (Section VIII of the CRS)

13. <u>Expanded definition of Pre-existing Account</u>

CRS: Commentary on Section VIII, paragraph 82

A jurisdiction may, by modifying the definition of Preexisting Account, allow a Financial Institution to treat certain new accounts held by preexisting customers as a Preexisting Account for due diligence purposes. A customer is treated as pre-existing if it holds a Financial Account with the Reporting Financial Institution or a Related Entity. Thus, if a preexisting customer opens a new account, the Financial Institution may rely on the due diligence procedures it (or its Related Entity) applied to the customer's Preexisting Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the Reporting Financial Institution must be permitted to satisfy its AML/KYC

procedures for such account by relying on the AML/KYC performed for the Preexisting Account and the opening of the account does not require new, additional, or amended customer information. **This option is offered.**

14. Expanded definition of Related Entity

CRS Commentary on Section VIII, paragraph 82.

Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities. **This option is offered.**

15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle

CRS: Section VIII, subparagraph B(9)

With respect to an Exempt Collective Investment Vehicle, a jurisdiction may provide a grandfathering rule if the jurisdiction previously allowed collective investment vehicles

to issue bearer shares. The Standard provides that a collective investment vehicle that has issued physical shares in bearer form will not fail to qualify as an Exempt Collective Investment Vehicle provide that: (1) it has not issued and does not issue any physical shares in bearer form after the date provided by the jurisdiction; (2) it retires all such shares upon surrender; (3) it performs the due diligence procedures and reports with respect to such shares when presented for redemption or payment; and (4) it has in place policies and procedures to ensure the shares are redeemed or immobilized as soon as possible and in any event prior to the date provided by the jurisdiction. **This option is not considered to be applicable but if it is it is offered**

16. <u>Reporting obligation on a beneficiary of a discretionary trust treated as a Passive NFE.</u>
CRS commentary Section VIII Para 134

The definition of Controlling Person of a trust includes the settlor(s), trustee(s), beneficiary(ies), protector(s) and any other natural person exercising ultimate effective control over the trust. A jurisdiction may however allow Reporting Financial Institutions to align the scope of beneficiaries of a trust, who are treated as Controlling Persons of that trust, with the scope of the beneficiaries who are treated as Reportable Persons of a trust that is a Financial Institution. In such cases, a Reporting Financial Institution would only need to report discretionary beneficiaries as Controlling Persons in the year they receive distributions from the Passive NFE trust. Jurisdictions allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a Controlling Person. For

instance, the Reporting Financial Institution would require notification from the trustee that a distribution has been made to that discretionary beneficiary. **This option is offered**.

17. <u>Transitional challenge resulting from staggered adoption of CRS</u>

The CRS contains a so called "look-through" provision pursuant to which Reporting Financial Institutions must treat an account that is held by an Investment Entity which is not a Participating Jurisdiction Financial Institution as a Passive NFE and report the Controlling Persons of such entity that are Reportable Persons. This presents operational challenges given that certain jurisdictions have agreed to start exchanging information in 2017 or 2018. As such, Financial Institutions will need to manage entity account classifications on a jurisdiction by jurisdiction basis. The CRS provides an option for jurisdictions to address this transitional implementation issue by treating all jurisdictions that have publicly, and at government level, committed to adopt the CRS by 2018 as Participating Jurisdictions for a transitional period. This therefore means that any Investment Entity resident in a Schedule 3 jurisdiction will be treated as a Financial Institution and not as a Passive NFE. As a result, Reporting Financial Institutions will not be required to apply the due diligence procedures for determining the Controlling Persons of such Investment Entities or for determining whether such Controlling Persons are Reportable Persons. **This option is offered.**

5. EXCLUDED ACCOUNTS

5.1. Certain Financial accounts are seen to be low risk of being used to evade tax and are specifically excluded from needing to be reviewed. These excluded accounts include several of the categories of accounts excluded from the

definition of Financial Accounts in the FATCA IGA. The non-reportable accounts are jurisdiction specific in that what is low risk can vary from jurisdiction to jurisdiction. It is proposed that for Jersey the following are to be considered non-reportable accounts –

- Retirement and pension accounts
- Non-retirement tax favoured accounts
- Term Life Insurance contracts
- Estate accounts
- Escrow accounts
- Depository accounts due to not returned overpayments
- Other low risk excluded accounts

Details of what is covered by the above categories is to be found in Section VIII of the CRS Commentaries.

5.2 Low risk excluded accounts can be specified if the CRS criteria set out in the Commentary on Section VIII (para 97) can be met.

5.3 Dormant accounts as defined in paragraph 9 of the CRS Commentary on Section III will be viewed as excluded accounts if the annual balance does not exceed 1000 US Dollars

[Note: there may be other accounts that are considered to meet the CRS definition of low risk and representations made to this effect will be carefully considered by the Jersey authorities]

6. NON-REPORTING FINANCIAL INSTITUTIONS

6.1 The concept of Non-Reporting Financial Institution is similar to that in FATCA whereby some are specifically excluded from being required to report and some are reported by other Reporting Financial Institutions It is considered that a starting point in compiling a list of non-reporting financial institutions are those so treated with respect to the FATCA IGA. It is proposed that for Jersey the list of non-reporting financial institutions would include the following –

- Governmental entities ; and their pension funds
- International organisations
- Central Banks
- Certain retirement funds
- Qualified Credit Card Issuers
- Exempt Collective Investment Vehicles
- Trustee Documented Trusts
- Other low risk Financial Institutions

Details of what is covered by the above categories is to be found in Section VIII of the CRS Commentaries.

6.2 Low risk non-reporting financial institutions can be specified if the CRS criteria set out in the Commentary on Section VIII (para 45) can be met. In this respect regard will also be had for the approach adopted by the UK. For example the intention is to follow the UK Guidance Notes on CREST as follows:-

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: CENTRAL SECURITIES DEPOSITORY
In the UK a Central Securities Depository (CSD) will not be treated as maintaining financial accounts. The participants of UK securities settlement systems that hold interests recorded in the CSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor). It is these Financial Institutions that maintain the

accounts and it is these participants and/or sponsors that are responsible for undertaking any reporting obligations.
For example, members of the CREST securities settlement system operated by Euroclear UK & Ireland Limited (EUI), or the Financial Institution that accesses EUI on their behalf, are responsible for any reporting required in respect of securities held by means of EUI. EUI acting as the CSD is not required to undertake any reporting in respect of such securities.
This treatment will also apply to a UK entity which is a direct or indirect subsidiary used solely to provide services ancillary to the business operated by that CSD (CSD Related Entity).
The relationship between the securities settlement system and its participants is not a financial account and accordingly the CSD and any CSD Related Entity is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants.

Notwithstanding the foregoing, the CSD may act as a third party service provider and report on behalf of such participants in respect of reportable interests.

6.3 In considering the reporting requirements for occupational pension plans the position set out in Appendix 4 of the FATCA/IGA Guidance is maintained taking account of the definitions for Broad Participation Retirement Fund and Narrow Participation Retirement Fund in the CRS. Plans that are registered with the Jersey tax authorities and where Form 11SF is submitted are considered to meet the requirement of “subject to government regulation and provides information reporting to the tax authorities”.

[Note: there may be other financial institutions that are considered to meet the CRS definition of low risk and representations made to this effect will be carefully considered by the Jersey authorities]

7. PARTICIPATING JURISDICTIONS

7.1 The Regulations have three Schedules listing the participating jurisdictions. Schedule 2 lists those jurisdictions that have committed to the CRS with effect from 1 January 2016 and with first reporting in 2017; Schedule 3 lists those jurisdictions committed to CRS with effect from 1 January 2017 and with first reporting in 2018; Schedule 4 lists those jurisdictions that are committed to the CRS but have not yet fixed a date.

7.2 Which Jurisdictions Jersey will exchange information with will depend on whether they satisfy certain requirements. For those jurisdictions who are using the Multilateral CAA to link the CRS to the legal basis for exchange Section 7 of the Multilateral CAA sets out the process to be followed - see below. Comparable safeguards will apply to the exchange of information where a different legal basis such as a DTA applies.–

SECTION 7

Term of Agreement

1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible after its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard, a notification to the Co-ordinating Body Secretariat:

a) that its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard and specifying the relevant effective dates with respect to Preexisting Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures;

b) confirming whether the Jurisdiction is to be listed in Annex A;

c) specifying one or more methods for data transmission including encryption (Annex B);

d) specifying safeguards, if any, for the protection of personal data (Annex C);

e) that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met and attaching the completed confidentiality and data safeguard questionnaire, to be included in Annex D; and

f) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures (if any).

Competent Authorities must notify the Co-ordinating Body Secretariat, promptly, of any subsequent change to be made to the above-mentioned Annexes.

2.1. This Agreement will come into effect between two Competent Authorities on the later of the following dates: (i) the date on which the second of the two Competent Authorities has provided notification to the Co-ordinating Body Secretariat under paragraph 1, including listing the other Competent Authority's Jurisdiction pursuant to subparagraph 1(f), and, if applicable, (ii) the date on which the Convention has entered into force and is in effect for both Jurisdictions.

2.2. The Co-ordinating Body Secretariat will maintain a list that will be published on the OECD website of the Competent Authorities that have signed the Agreement and between which Competent Authorities this is an Agreement in effect (Annex E).

2.3. The Co-ordinating Body Secretariat will publish on the OECD website the information provided by Competent Authorities pursuant to subparagraphs 1(a) and (b). The information provided pursuant to subparagraphs 1(c) through (f) will be made available to other signatories upon request in writing to the Co-ordinating Body Secretariat

3. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to

another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned 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, 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.

4. A Competent Authority may terminate its participation in this Agreement, or with respect to a particular Competent Authority, by giving notice of termination in writing to the Co-ordinating Body Secretariat. 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."

7.3 There will also be information exchange between jurisdictions provided for by bilateral Double Taxation Treaties or Tax Information Exchange Agreements. In all cases that exchange will only take place if confidentiality safeguards are in place in accordance with the international standard.

7.4 The confidentiality safeguards will be considered to be in place if the jurisdiction has been assessed and found to be compliant by the Global Forum AEOI Working Group and/or the US assessment for reciprocity purposes. . Jurisdictions are required to provide the Coordinating body for CRS with a list of jurisdictions that are considered to meet the safeguards requirements and this together with the other requirements of Section 7 of the MCAA will be the basis for listing those

jurisdictions with whom information will be exchanged and this list will be made public.

8. EFFECTIVE DATES

8.1 The effective dates for due diligence on financial accounts and exchange of information under the CRS are set out below.

8.2 Financial institutions may apply due diligence in 2016 to reportable persons in respect of all participating jurisdictions whether the first reporting obligations are for 2017, 2018 or later; or they may limit the due diligence in 2016 to reportable persons where the first reporting obligation is for 2017.

8.3 As an “early adopter” with the CRS entering into effect from 1 January 2016 -

- Pre-existing financial accounts to be subjected to due diligence procedures are those in existence as at 31 December 2015
- New financial accounts requiring self-certification by the customer are those opened on or after 1 January 2016
- First reporting period ends on 31 December 2016
- Information to be reported by financial institutions to the Taxes Office in respect of the first reporting period on or before 30 June 2017
- Information to be exchanged by Taxes Office with partner jurisdictions on or before 30 September 2017
- Subsequent reporting periods ending on 31 December each year are reportable to the Taxes Office by 30 June next following.

9. INFORMATION TO BE REPORTED TO THE TAXES OFFICE

9.1 For each reporting year the following information is required to be reported for each reportable person where a reportable person either holds a reportable account or is a controlling person of an entity account –

Name
Address
Jurisdiction of residence
Tax Identification Number (TIN)
Date of birth
Account number or functional equivalent
Name and identifying number (if any)of reporting financial institution
Account balance or value

The Place of Birth is not required to be reported

A TIN is not required to be reported if a TIN is not issued by the relevant jurisdiction of residence or the domestic law of the relevant Reporting Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.[1]

For further information please refer to paragraphs 25 to 32 of the OECD CRS commentary on Section 1

- Custodial Accounts
  Total gross amount of interest

[1] [Note: for information. For the purposes of reporting on Jersey residents under the CRS, the taxpayer identification number (TIN) will be the taxpayer's Jersey social security number. Social security numbers begin with two letters, usually JY, followed by six digits, and a letter: A, B, C, or D. An example would be JY000000A. The TIN for a Jersey entity is the tax reference number, which takes the format of two letters and up to five digits.

Total gross amount of dividends
Total gross amount of other income paid or credited to account
The total gross proceeds from the sale or redemption of property paid or credited to the account

- Depository Accounts
  The total amount of gross interest paid or credited to the account in the calendar year or other reporting period

- Other Accounts
  The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

- Fully Disclosed Accounts

  Where wealth management services are provided it is common for Financial Institutions to enter into arrangements designed to facilitate the clearing and settlement of security transactions utilising a third party provider's 'IT' systems, specifically those that interface with the international securities settlement and clearing systems (clearing firms).

  A tri-partite relationship between the underlying customer, the broker/wealth manager and the clearing firm is created, by virtue of the fact that the broker has entered into a fully disclosed clearing relationship with the clearing firm on its own behalf, and is also acting as the agent of its underlying client.

  Where a broker/wealth manager has opened an account (or sub-accounts) with the clearing firm in the name of its

underlying client, and fulfils all verification, due diligence and reporting requirements on them, then the financial accounts remain the responsibility of the broker/wealth manager and not the clearing firm.

The broker/wealth manager may appoint the clearing firm as a service provider to undertake the reporting on its behalf.

The broker/wealth manager will be the client of the clearing house. Where the clearing house is a Reporting Financial Institution it is the broker/wealth manager that is the person for which it maintains a financial account and will undertake reporting and classification accordingly.

The term broker/wealth manager in respect of fully disclosed clearing and settlement would include any Financial Institution who acts on behalf of the underlying investor in respect of executing, placing or transmitting orders and would therefore include financial advisers if their business is more than simply advisory.

10. SELF-CERTIFICATION

10.1. Timing of self-certification for New Accounts

Jersey Financial Institutions have an obligation to maintain account opening processes that facilitate collection of a valid self-certification at the time a New Account is opened.

There may however be circumstances where it is not possible or practical to obtain self-certification on “day 1” of the account opening process.

In such circumstances, it is expected that a valid self-certification is obtained as quickly as possible and in any event, no later than 90 days after the account has been opened. The Jersey Financial Institution must make reasonable endeavours

to obtain the self-certification in these circumstances, including the follow-up letters on at least an annual basis.

If an account holder fails to respond, there is no requirement to close that account but the Jersey Financial Institution must report to the Comptroller of Taxes the account as an undocumented account until such time as a valid self-certification is received.

10.2. Undocumented accounts

An undocumented account may arise when a Financial Institution is unable to obtain information from an account holder in respect of Pre-existing or New Accounts. They may also arise where a Financial Institution is unable to obtain from the account holder a valid self-certification following a "change in circumstances".

Financial Institutions with a disproportionate number of reported undocumented accounts may be subject to a compliance review from the Comptroller of Taxes, once the review regime has been developed.

11. FORMAT OF REPORTING

Reports are to be submitted on a jurisdictional basis. For the purposes of applying any penalties, all of the reports submitted by a Reporting Financial Institution will be considered to be one report.

12. ADMINISTRATIVE MATTERS

12.1 Prevention of avoidance

The Jersey Regulations include an anti-avoidance measure which is aimed at "arrangements" taken by any person to avoid the obligations placed upon them by the Regulations.

It is intended that “arrangements” will be interpreted widely and the effect of the rule is that the Regulations will apply as if the arrangements had not been entered into.

12.2 **Audit procedures**

As required by the CRS, the Comptroller of Taxes will be introducing procedures under which he, or his representatives, will carry out an audit of the effective implementation of the Regulations. Details of these procedures will be published in due course.

[For any queries concerning these Guidance Notes please contact Colin Powell, Adviser-International Affairs, Chief Minister’s Dept – Tel: 01534 440414; Email: c.powell@gov.je]