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GOVERNMENT OF SEYCHELLES

Automatic Exchange of Information (“AEOI”) for the Common Reporting Standard

Guidance Notes

12/20/2016

Guidance Notes Users should read the section ‘purpose and status of this guidance’ before proceeding to the guidance material.

Contents

1. Purpose and Status of the Guidance

As the OECD guides provide comprehensive commentary and examples for the CRS and Due Diligence Standards, this guidance is only to be considered supplementary to the OECD commentary and covering those aspects where is necessary to assist with the practical aspects of the CRS that are specific to implementation by Financial Institutions. This manual includes references and quotations from the following OECD publications:

- Standard for Automatic Exchange of Financial Information in Tax Matters © OECD 2014 ('the Purple Book') which can be found on the link below:

http://www.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en

- Standard for Automatic Exchange of Financial Account Information in Tax Matters: Implementation Handbook which can be found on the link below:

https://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm

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The text of the Common Reporting Standard has been incorporated into the Seychelles domestic regulations, titled "The Revenue Administration Act (Common Reporting Standards) Regulations, 2015 ("the CRS Regulations"), as copy of which can be found using the following link:

http://www.src.gov.sc/resources/SI/2015/SI1of2015.pdf

These guidance notes must be read as supplementary to the core guidance provided in the OECD publication. Financial Institutions are encouraged to take independent professional advice if they are at all unsure with any of their obligations under the CRS or any other AEOI agreement.

2. Background- Automatic Exchange of Financial Account Information

In April 2013 the UK, France, Germany, Italy and Spain (the G5) set up a pilot to explore the possibility of developing a common global approach to automatic exchange of information of financial account information (AEOI).

This was subsequently adopted by the G20, and, in February 2014, the OECD delivered the Common Reporting Standard (the CRS) which was subsequently approved by the G20 as the global standard for Automatic Exchange of Financial Account Information.

Seychelles decided to become party to the joint statement made by 50 countries to accept committing to this new-standard and became an early adopter of the CRS.

On 6 May 2014, the OECD issued a Declaration signed by over 100 jurisdictions welcoming the OECD Standard for Automatic Exchange of Financial Account Information. In total 81 (as of 16 December

2016), jurisdictions have now formally committed to implementing the CRS, by signing the Multilateral Competent Authority Agreement ("MCAA"). These jurisdictions have specified the date on which they will commence to exchange information under the standard (being either 2017, in respect of 2016 data or 2018, in respect of 2017 data).

The list of these jurisdictions can be found using the following link:

http://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf

In addition, more than 20 other jurisdictions have committed to implement the global standard in 2017 or 2018 (but have not, as yet, signed the MCAA). It follows, therefore, that, as of 16th December 2016, there are over 100 jurisdictions which have committed to the Standard.

The Standard for Automatic Exchange of Financial Information in Tax Matters was published by the OECD on 15 July 2014 (commonly referred to as "the purple book").

• Part I gives an overview of the Standard

• Part II contains the text of the Model Competent Authority Agreement and the Common Reporting and Due Diligence Standard (CRS)

• Part III contains the Commentaries on the Model CAA and the CRS as well as a number of Annexes. There are three Model Competent Authority Agreements. One is for use as a multilateral instrument, referred to as the Multilateral Competent Authority Agreement ("MCAA") enabling a number of jurisdictions to jointly agree to exchange information automatically, one is a bilateral reciprocal agreement for use between two single jurisdictions and the third is a bilateral nonreciprocal agreement under which one jurisdiction will receive information from another jurisdiction, but will not be obliged to report information in return (these latter agreements being referred to as Bilateral Competent Authority Agreements ("BCAAs")).

Seychelles is a signatory to the existing MCAA, the legal basis of this agreement being Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters ("the MAC"), which came into force on 1st October 2015.

The MCAA signed by Seychelles can be found using the following link: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf

3. Legislative Implementation

3.1 Domestic Legislation

The relevant reciprocal MCAA and BCAAs jurisdictions that will impact on Seychelles Financial Institutions by imposing reporting obligations through CRS Regulations, 2015 are for the time the ones listed under Schedule 5 of the CRS Regulations.

The Regulations have an operative date of 1st January 2016.

3.2 Optional Approaches Adopted in Seychelles Regulations

The Common Reporting Standard offered a number of various "optional approaches" available to jurisdictions to implement into their local legislation where it was considered to be more appropriate, or of greater assistance to Seychelles FIs in implementing the CRS regime and/or conducting their due diligence requirements.

Further to feedbacks received from the consultation on the CRS in October 2015, the following options have been adopted into the Regulations.

The table below summarizes those adoptions and gives the cross reference in both the CRS Regulations and the OECD Commentary and/or where there is additional information within these guidance notes, the appropriate reference.

Option	Regulations reference	OECD commentary	Guidance notes reference (where applicable)
Wider Approach	F or Part II of Schedule 1	Annex V of the CRS	P 8 and 9
Permitting Third Party Service Providers to fulfill a Reporting Financial Institution's due diligence and reporting obligations	Section 10 and D of Part II of the Schedule I	p. 108 of CRS commentary	
Allowing due diligence procedures for New Accounts to be used for Preexisting Accounts	E of Part II of Schedule I	II.E (p. 108)	
Allowing due diligence procedures for High Value Accounts to be used for Low Value Accounts	E of Part II of Schedule I	II.E (p. 108)	
Residence address test for Lower Value Accounts	B(1) of Part III of Schedule I	III.B.1 (pp.111-116)	
Optional exclusion from Due Diligence for Preexisting Entity Accounts with a balance of less than US$250,000	B of Part V of Schedule I	V.B (p. 135)	
Allowing Financial Institutions to make greater use of existing standardised industry coding systems for due diligence		VIII "Pre-Existing Account" definition (p.203)	
Permitting Currency	B(4) of Part VII of	VII.C.4 (p. 156-157)	

translation to use USD or equivalent amounts	schedule I.		
Provide for a grandfathering rule if the jurisdiction previously allowed collective investment vehicles to issue bearer shares.	section 3 (e) of the definition of "Documentary Evidence"	CRS (p.50)	
Allow Reporting Financial Institutions to align the scope of the beneficiary(ies) of a trust treated as Controlling Person(s) of the trust with the scope of the beneficiary(ies) of a trust treated as Reportable Persons of a trust that is a Financial Institution.	To be added by an amendment.	Commentaries (p.198)	p.17
Nil return	Section 6 to be amended so that the option to fill a nil return is left at the discretion of the RFI.		

The Wider Approach was an option presented when implementing the CRS that Seychelles has chosen to adopt, in light of the responses to the CRS consultation carried out in October 2015.

By adopting the "wider approach" option, the domestic regulations require Reporting Financial Institutions to capture and maintain information on the tax residence of all their Account Holders, and where applicable Controlling Persons, irrespective of whether or not that Account Holder is a Reportable Person for any given Reportable Period.

As the number of the jurisdictions with which Seychelles will be entering into automatic exchange agreements is not yet finalized and as it is expected to grow in time as more jurisdictions sign up to the MCAA, this option enables a Reporting Financial Institution to record the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction (listed under schedule 5 of the CRS Regulations, which list will be updated start of 2017 by an amendment to the regulations) at the time that the Regulations come into force, or when the account is opened.

RFIs are required to identify the territory in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes, or for the purposes of any other tax of a similar character that has been imposed by that territory, and to continue to maintain this information for a period of 7 years from the end of the period in which the due diligence process is carried out.

This effectively enables the Financial Institution to ‘future-proof’ their processes such that when a new jurisdiction is added to the list of Reportable Jurisdictions the work of identifying where existing customers are resident will already have been carried out.

This will negate the need to RFIs to revisit due diligence procedures for all accounts each time a new jurisdiction commits to the automatic exchange of financial account information with Seychelles and should therefore result in lower costs for the financial Institutions in complying with their obligations. Financial Intuitions will only need to revisit the determination of tax residence in those cases where there has been a change of circumstance.

The Regulations impose an obligation on all Reporting Financial Institutions to identify ALL Account Holder’s jurisdiction of tax residence and to maintain that information for 7 years from the end of the year in which the due diligence arrangements have been applied. Please refer to the table page 7 to check the regulations.

3.3 Balance Review Dates (Pre-existing Entity Accounts)

The deadlines for completing account reviews for pre-existing entity accounts is 31 December following the account balance review date.

Date where the $250,000 de minimis election applies from	First account balance review date	Subsequent account balance review dates	Threshold at which account balances becomes reviewable
31/12/2015	31/12/2017	31/12 annually	250,000/-USD

Example

RFI, “Bank A”, applied the thresholds for pre-existing entity account for all three regimes.

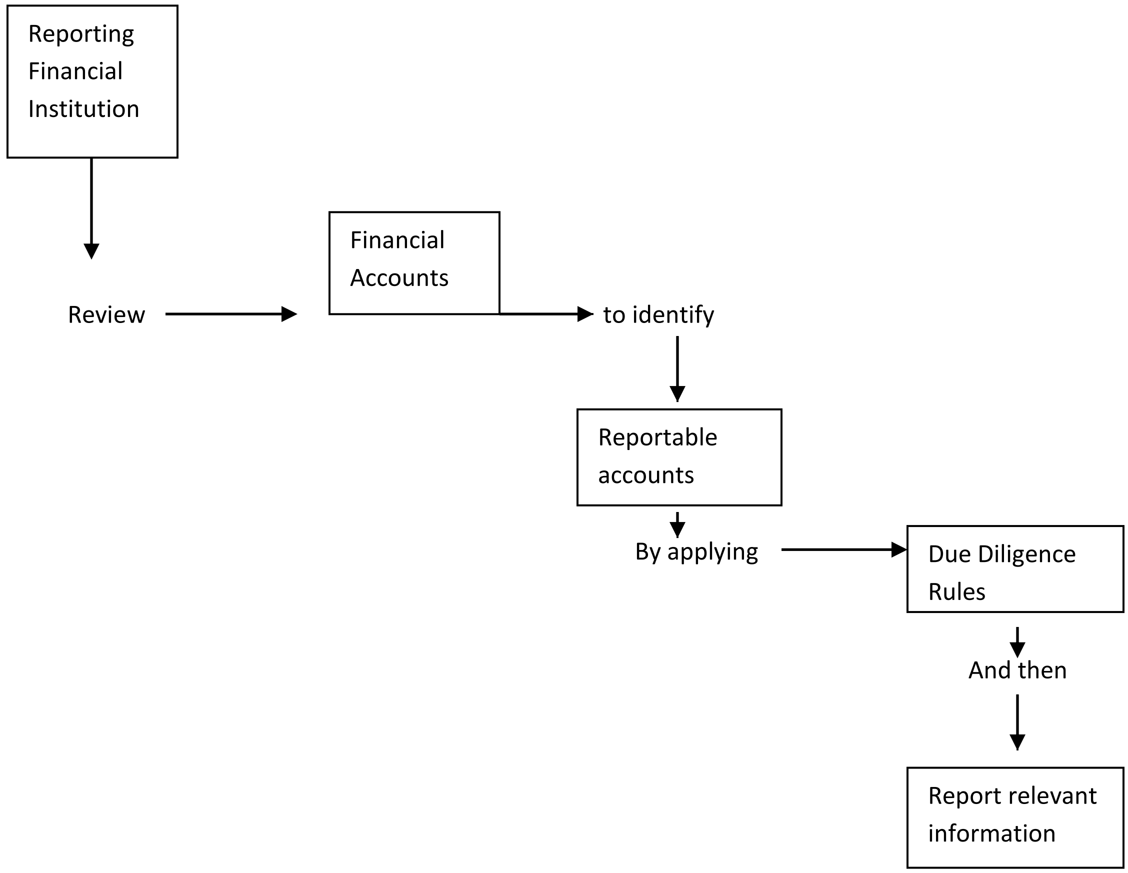
The bank holds Depository Accounts for Entity X, which has a balance at the relevant dates as follows:

31 December 2015 $208,000

31 December 2017 $623,000

At 31 December 2015 the balance does not exceed 250,000 and so would not be reviewable for the CRS. At 31 December 2017, the deadline for first review under the CRS, the balance exceeds $250,000. As a result, all accounts with a balance of $250, 0000, including this one, will be subject to the due diligence procedures in the Regulations. As a result Entity X may be identified as a reportable persons and the account, having been so identified, would be reportable for the CRS in respect of the 2017 Reportable Year.

The basic process of CRS is as following:



3.4 Reportable and Participating Jurisdictions

Seychelles Financial Institutions will only need to provide information to the SRC for Reportable Persons. Reportable persons are the persons that are resident in a reportable jurisdiction. A reportable jurisdiction is a jurisdiction with which Seychelles have an activated exchange relationship. For Seychelles to activate an EOI relationship with another Partner Jurisdiction, the said partner shall-

a) have in the opinion of the SRC, adequate data safeguards in place to protect the confidentiality of the information provided;
b) have notified specific date safeguard requirements that can be met by Seychelles; and
c) have all the legal instruments in place to enable an exchange with Seychelles.

A list of the jurisdictions that satisfy all of the required conditions will be listed under the Annex A of the MCAA, schedule 5 of the Revenue Administration, (CRS) Regulations, 2016 and updated each calendar year. Indeed, in the first year of implementation, for domestic purposes, our reportable jurisdictions will be the jurisdictions which meet all requirements above for the tax year 2017.

In addition to the reportable persons which are the only ones whom the RFIs will report information to the SRC on, the RFIs shall also bear in mind the list of participating jurisdictions as this is particularly relevant to give effect to the requirement according to which RFIs have to treat managed investment entity (or branch thereof) that are resident in (or located in) any Non Participating Jurisdiction, as passive NFE and therefore report on the controlling persons of such entities that are reportable persons.

For clarity purposes, any jurisdictions not listed as a participating jurisdiction is a non-participating jurisdiction.

4 Financial Institutions and Residency

4.1 Residency of Seychelles Financial Institutions

A Seychelles Financial Institution is an FI resident in Seychelles, as well as any branch of a non-resident FI located in Seychelles. Where such an entity has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

4.1.1 Companies

A company will be resident in Seychelles if the company is resident in Seychelles as per the requirement of the Seychelles Business Tax Act, 2009.

The Business Tax Act, section 2 defines “resident entity” as an ***entity which is incorporated, formed, organized, or otherwise established in Seychelles; or managed and controlled in Seychelles.***

For clarity purposes, an International Business Company, a company special License, and any other companies which are incorporated under an act of Seychelles are resident for the purpose of the Common reporting standards, and will therefore qualify as a reporting financial institution should they meet the criteria.

4.1.2 Trusts

A trust will be resident in Seychelles if the Trust is established or settled in Seychelles or in respect of which a trustee is resident of Seychelles. The trustee can be an entity or an individual. In case it is an individual, the rules of residency are as following:

-the individual resides in Seychelles: to reside in Seychelles a person shall reside or has resided in Seychelles for at least 183 days in a tax year or be domiciled in Seychelles. To be domiciled in Seychelles a person shall be a long term resident or a citizen of Seychelles.

-the individual has its domicile in Seychelles unless the person has a permanent place abode outside Seychelles; or

-the individual is present in Seychelles for a period of or period amounting in aggregate to, 183 days or more in any 12 months period that commences or ends during a tax year.

For an entity, the rule enounced in 4.1.1 applies.

4.1.3 Partnerships

A partnership will be resident in Seychelles if one of the partners of the partnership is a resident of Seychelles. The partner can be an individual or an entity. The rules as enounced above apply in the respective case.

4.1.4 Foundations

A foundation is resident in Seychelles if it is registered in Seychelles.

4.1.5 Dual Residency

If an entity is dual resident, such that it is resident in Seychelles and also another country, it will still need to apply the Seychelles legislation in respect of any Reportable Accounts maintained in Seychelles. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

a) Tie breaker rule

The residence article in most modern DTAs provides 'tie-breaker' rules for determining in which of the two states an individual who is dual-resident under the respective domestic laws should be treated as resident for the purposes of the Agreement. In Seychelles, the most common tie-breaker rule will follow the rule as stated under the OECD Model convention and which is stated as per below-

A series of tests have to be applied successively until residence for the purposes of the Agreement is allocated to one state or the other. In other words, once a test is conclusive it is unnecessary to apply subsequent tests. The tests usually appear in the order of:

• permanent home • centre of vital interests • habitual abode • nationality.

Permanent home

You will be a resident only of the state in which you have a 'permanent home' available to you for the period of dual-residence. A permanent home is any form of accommodation which is continuously available to you for your personal use. It does not necessarily have to be owned by you. The test will be inconclusive if you have a permanent home in both countries. In those circumstances you should move on to the next test ('centre of vital interests'). If you do not have a permanent home in either country, move on to the next but one test ('habitual abode').

Centre of vital interests

You will be a resident of the state with which your 'personal and economic relations' are closer. This is known as your 'centre of vital interests'. 'Personal and economic relations' is a wide expression intended to cover the full range of social, domestic, financial, political and cultural links. The whole range of these factors must be taken into account, but considerations based upon your personal acts are given special weight. For example, if you have a home in the Seychelles and set up another in the other state while retaining the first, the fact that you have retained your home in the Seychelles where you have lived, worked and where your family and possessions are, can, together with other factors, go to demonstrate that your centre of vital interests remains in the Seychelles. If it is not possible to determine with which of the two states your personal and economic relations are closer, perhaps because the range of factors is broadly balanced between the two, then the test will be inconclusive and you should move on to the next one.

Habitual abode

You will be a resident of the state in which you have a 'habitual abode'. This test which is applied to each state is whether you live in that state regularly, normally or customarily. The number of visits as well as the duration of the visits are taken into account and this test is applied over a sufficient period as is necessary depending on the facts of each case. If you cannot be said to have a habitual abode in either of the two countries or you have a habitual abode in both of them, you should move on to the next test.

Nationality

You will be a resident of the state of which you are a national. Ultimately, since in theory all these tests may prove inconclusive (even the last, since it is possible to have dual nationality or to be a national of neither state), DTAs normally provide for the tax authorities of the two countries to settle the matter by negotiation. In practice, very few claims reach this stage.

b) Reporting of reportable persons with more than one tax residence.

An RFI which has identified a reportable person which more than one tax residency shall report to all tax residence jurisdictions (to the extent that the jurisdiction is reportable).

c) Reasonableness Test.

It is important to note that an RFI is not expected to go through the legal analysis of tax residency and instead shall rely on self-certification. However, such reliance shall be based on reasonableness. The reasonableness of a self-certification is confirmed if in the course of account opening procedure and upon review of the information obtained in connection with the opening of an account (including any documents of the AML/KYC Procedures), the RFI does not know or have reasons to know that the self certification is incorrect or unreliable. A RFI has reason to know that a self-certification is incorrect or unreliable if it has knowledge of certain facts or statements contained in the self-certification or other documentation, including the knowledge of the relevant relationship managers, if any, is such that a reasonably prudent person in the position of the RFI would question the claim being made.

In addition, a RFI has reason to know that a self certification is unreliable or incorrect if there is information in the documentation or in the reporting financial institution account file that conflicts with the person claim with regards to its status. (refer to commentaries page 149-152)

4.1.6 Subsidiaries and Branches of Seychelles resident FI

Subsidiaries and branches of Seychelles (tax) resident financial institutions that are located outside of Seychelles are not Seychelles financial institutions. However, where such subsidiaries and branches act as introducers of business to a Seychelles financial institution resulting in the financial accounts being held and maintained by the Seychelles financial institution then the Seychelles financial institution will be required to undertake the appropriate due diligence procedures and report the details of the accounts to SRC.

A branch of a non-resident financial institution located in Seychelles is a financial institution in Seychelles if the branch qualifies under the definition of "permanent establishment" of the BTA, 2009 which reads as follows:

"Permanent establishment", in relation to a person, means a fixed place of business through which the business of the person is wholly or partly carried on and, without limiting the generality of the foregoing, includes –

(a) a place of management, branch, office (other than a liaison office), factory, warehouse, or workshop of the person;

(b) a mine, oil or gas well, quarry, or other place of extraction of natural resources of the person;

(c) a building site, or a construction, assembly or installation project of the person, or supervisory activities conducted by the person in connection with such site or project, but only if the site, project or activities continue for more than ninety days;

(d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than ninety days within any twelve-month period;

(e) an agent of the person (other than an agent of independent status), if the agent –

(i) has and habitually exercises an authority to conclude contracts on behalf of the person; or

(ii) habitually maintains a stock of goods or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the person; or

(f) any substantial equipment used by the person, but does not include a place of business maintained by the person solely for the purposes of purchasing goods or merchandise;

4.2 Investment Entities

An entity will be an Investment Entity if it:

- primarily conducts as a business specified activities for or on behalf of customers ('Type A'); and/or
- primarily derives its gross income from investing or trading in Financial Assets and is managed by a Financial Institution ('Type B').

An entity will be a Type A Investment Entity if it primarily conducts as a business for or on behalf of a customer one or more of the following activities:

- trading in
    - money market instruments (cheques, bills, certificates of deposit, derivatives, etc.)
    - foreign exchange
    - exchange, interest rate and index instruments.
    - transferable securities
    - commodity futures
- individual and collective portfolio management
- otherwise investing, administering or managing funds or money on behalf of other persons.

An entity will be regarded as primarily conducting these activities as a business if its gross income from these activities is at least 50% of its total gross income during the shorter of – either the:

- three-year period ending on 31 December in the year preceding that in which its status as an Investment Entity is to be determined;
- period in which the entity has been in existence.

An entity will be a Type B Investment Entity if it is investing on its own account or on behalf of others (including as a collective investment vehicle), is managed by a Depository Institution, a Custodial Institution, a Specified Insurance Company or a Type A Investment Entity as mentioned above and it meets the Financial Assets test as described below.

An entity:

- is managed by a Financial Institution if that Financial Institution performs, either directly or through another service provider, any of the investing or trading activities described in the section above on behalf of the entity – an entity is not regarded as being managed by a Financial Institution if that Financial Institution does not have discretionary authority to manage the entity's assets either in whole or in part
- may be managed by a mix of other entities and individuals – if one of the entities so involved in the management of the entity is a Financial Institution within the meaning of the agreements then the entity meets the requirements for being managed by a Financial Institution
- meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets – this is a similar test to that in the section above requiring that at least 50% of its income is attributable to investing, reinvesting or trading in Financial Assets in the shorter of either:

    - the three-year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined
    - the period in which the entity has been in existence.

An entity could fit the description of being both a Type A and a Type B Investment Entity. The distinction between Type A and Type B may be significant for CRS purposes in the case of an Investment Entity that is not a Participating Jurisdiction Financial Institution. If it is solely a Type B Investment Entity, it must be treated as a Passive NFE.

Note though that a professionally managed investment entity resident in a non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a financial institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for Controlling Persons to avoid reporting by setting up such entities in non-Participating Jurisdictions).

Please refer to the Commentary on Section VIII for information and examples on Investment Entities.

4.2.1 Trusts

Trusts are treated as entities by all of the agreements for automatic exchange of information. A trust can be either a Financial Institution or a NFE. Where a trust meets one of the definitions for being a Financial Institution it is most likely to be an Investment Entity but it may, alternatively, meet the requirements to be a Custodial Institution. A trust is unlikely to be regarded as an Investment Entity by virtue of investing as a business because trusts generally do not carry on businesses for or on behalf of customers unless they are collective investment schemes.

A trust may be an Investment Entity however where its gross income is primarily derived from investing, reinvesting or trading in Financial Assets and it is managed by a Financial Institution. The test of being managed by a Financial Institution will be met where the trust or its activities are being managed by a Financial Institution. **A trust is managed by a Financial Institution where either one or more of the trustees is a Financial Institution or the trustees have appointed a discretionary fund manager who is a Financial Institution to manage the trust's assets.**

For a more detailed description of what constitutes management by a Financial Institution please see the guidance in the Commentary on Section VIII (p162 et seq). If the trust is not managed by a Financial Institution in this way, and does not meet any of the other definitions of Financial Institution, it will be a Non-Financial Entity.

For example, where the trustees of a trust are individuals (and therefore not Financial Institutions) and the trust holds only a Depository Account or other investments with a Financial Institution, and that Financial Institution does not have discretion to manage the account or the assets in the account, then the trust will not be an Investment Entity.

4.2.1.1 Trusts Managed by a Financial Institution

An entity may gain the status of Investment Entity if it is managed by a Financial Institution. A distinction should be made between managing an entity and merely administering or providing services to an entity. Managing an entity involves one entity having a significant degree of discretionary decision-making and responsibility in respect of the other entity's business.

A trustee may appoint or engage another entity to professionally manage the activities or operations of the trust. If that other entity's management of the trust's activities or operations is in conducting a business as described in the relevant definition of 'Investment Entity', the trust will be an Investment Entity.

Typically a professional trustee and/or a discretionary fund manager would be treated as managing a trust in the context of determining whether the trust is an Investment Entity.

The status of a trust under the definition of Investment Entity and the status of an entity managing the trust under paragraph D of section IV of Annex II are separate considerations.

Does a Financial Institution Manage the Trust?

A Financial Institution will manage the trust where it has been appointed by the trustees to carry out the day to day functions of the trust on behalf of the trustees. This goes beyond managing the investment of the trust's assets and includes other management functions that the trustees have to perform but which are contracted to the Financial Institution.

4.2.1.2 Discretionary Beneficiaries

Financial Institutions may align the scope of the beneficiaries of a trust that is a passive NFE treated as Controlling Persons with the scope of the beneficiaries of a trust that is a reporting FI treated as Reportable Persons. This will allow a Financial Institution to treat a beneficiary of the trust as an reportable account holder only when such beneficiary received a distribution from the trust.

For these purposes, a beneficiary who may receive only a discretionary distribution from the trust will be treated as a beneficiary of a trust if such person received a distribution in the calendar year or other appropriate reporting period (i.e. either the distribution has been paid or made payable).

The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust or foundation.

However, to give effect to this option, the RFI must ensure that it has the appropriate safeguards and procedures in place to identify whether a distribution has been made. For instance, the RFI may request a notification from the trust or trustee when a distribution is made to a discretionary beneficiary.

Does a Financial Institution Manage the Financial Assets of the Trust?

A Financial Institution manages the Financial Assets of the trust where it has discretion to manage the investments or investment strategy for the assets. This will usually be where the trust has appointed a discretionary fund manager to manage their portfolio or a part thereof. The appointment of a discretionary fund manager will be evidenced by an agreement between the parties that provides for discretionary management. Where the trustees of a trust invest in retail investments the arrangement will not amount to discretionary management where the trustees make the decision on what investments to make, even though advice may be taken on investing and third party brokers used to buy, hold or sell the investments.

Family Trust Managed by an Individual – If an individual, running an investment advice business managed the assets of a family trust, the trust would not be an Investment Entity as it is neither primarily conducting as a business one or more of the relevant activities or operations for or on behalf of a customer, and although its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets, it is not an entity that is managed by a Financial Institution (because the Trust is being managed by an individual the Trust cannot be a Financial Institution).

(Note: in practice, a trust holding assets on behalf of a family arrangement will typically appoint a company or partnership to manage its assets but some family trusts may instead appoint a suitably qualified individual).

Family Trust with a Corporate Trustee – The ABC family trust's gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. The trust was set up on the advice of a law firm and that firm's own corporate trustee is the trustee of the trust. The corporate trustee acts for the law firm's clients without itself charging any fees to the clients. Even though the corporate trustee does not charge, it is a Financial Institution as its related entity (the law firm) is charging the clients for these services, it therefore primarily conducts as a business for or on behalf of a customer the prescribed activities. This in turn means that the ABC family trust is also an Investment Entity.

4.2.1.4 Reporting exception for "Trustee documented Trust"

Even if a trust is a Financial Institution, it will not necessarily be required to report.

A trust that is a 'Trustee-Documented Trust' will be a Non-Reporting Financial Institution and will not itself be required to report to SRC directly. A trust is a Trustee-Documented Trust to the extent that the trustee of the trust is a Reporting Financial Institution and the trustee reports all information that is required to be reported with respect to all Reportable Accounts of the trust.

4.2.1.5. Investment advisers and investment managers.

Under the CRS, if an entity is an Investment Entity solely because it is an investment adviser or investment manager, equity or debt interests in that entity are not Financial Accounts and therefore not reportable under CRS. It is a condition of the exclusion mentioned above that the customer's financial assets or funds are deposited in the name of the customer with another Financial Institution.

It is required that the other Financial Institution (in which the funds are deposited in the name of the customer) cannot be another investment adviser or investment manager.

It is expected that the due diligence and reporting obligations will fall with other entities within the investment relationship such as an investment fund that issues Financial Accounts (for example, debt or equity interests) to investors, or entities acting as Custodial Institutions.

Managers of investment funds (for example, discretionary fund managers of an Investment Entity) may also fall within this category. This is consistent with the expectation that within collective or managed investment schemes only the interests in the collective investment scheme or managed fund would be treated as the relevant Financial Accounts and only the scheme or fund itself would be treated as the Reporting FI (Investment Entity).

In the case of Separately Managed Portfolios (SMP) or Individually managed accounts (IMA), where an investment manager is appointed directly by the legal owner of assets to provide investment management services as SMPs or IMAs, then these accounts are not Financial Accounts of the investment manager, but instead they will be Custodial Accounts of a Custodial Institution (who will need to treat the investors as their Account Holders as there is no interposing fund). As above, where a discretionary investment manager also holds assets on behalf of clients (acting as custodian), reporting will be required by the manager on those accounts by virtue of the investment manager falling within the definition of a Custodial Institution.

Debt or equity interests in investment advisors, managers and similar entities (for example, professional management companies) could prima facie be understood to fall within the definition of Financial Account, since those entities can be construed as Financial Institutions which are solely Investment Entities. However, an advisor or manager that is a Non-Reporting FI as outlined above will not be required to perform reporting in relation to the equity or debt interests it issues, that is, such interests in the investment manager or advisor are not Financial Accounts.

Investment advisors and managers may be engaged by Reporting FIs (for example, Investment Entities or Custodial Institutions) to provide assistance in documenting Account Holders. For example, financial advisors may have a direct relationship with investors and readier access to their information. However, it is envisaged that non-reporting advisors and managers will only have reporting obligations pursuant to contractual arrangements with Reporting FIs, for instance where they undertake to act as third party service providers in relation to the customer due diligence (for which the Reporting FI is responsible under the CRS).

4.2.1.7. Deceased estates and testamentary Trusts

Generally, deceased estates are temporary in nature and used for the purposes of distributing the assets and managing the affairs of the deceased person. So long as the administration of the estate is directed at the winding up and distribution of assets (which may include temporary investing while the winding up and distribution is resolved) and is not an indefinite activity of investing, reinvesting or trading financial assets, it will not be a Financial Institution.

A testamentary trust can remain in effect for a number of years. During its existence a testamentary trust works as any other trust would, and can be used for various purposes. As such, a testamentary trust can be a Financial Institution subject to the guidance provided at section 4.2.

4.2.1.8 Examples

Example 1 – trust that is not a Financial Institution

Ms C is one of three individual trustees of her discretionary family trust. The beneficiaries include Ms C's four children. On behalf of the trust, in her capacity as trustee and on behalf of the trust, Ms C opens an account (a Financial Account) with a Reporting FI and it is noted in the account opening documentation that Ms C and the other trustees hold the account in their capacity as trustees for Ms C's family trust. The trustees of the trust invest and administer the trust funds on behalf of the beneficiaries.

The trust is not an Investment Entity by reason of it being managed by an entity that conducts the requisite activities or operations as a business because the trustees, being individuals, are excluded from the definition of 'entity'.

Where the trust holds a Financial Account in a Reporting FI, for AEOI purposes the Account Holder is the trust and not Ms C or the other trustees or any of the beneficiaries. This is despite the fact that contractually it is the trustees who enter into the agreement with the Reporting FI offering the account, and the trustees will be named as the account holders in the records of the Reporting FI.

The Reporting FI will need to apply the New Entity Account due diligence procedures in relation to the trust's account to determine the trust's status. If it is determined to be a Passive NFE, the Reporting FI will need to determine whether the individuals who exercise control or are treated as exercising control over the trust are Reportable Persons. Potential Reportable Persons include Ms C, the other trustees and Ms C's four children.

Example 2 – professionally managed trust that is not a Financial Institution

The Smith Family Trust has Mr Jones, an accountant with Jones & Jones, as its trustee in an individual capacity. Even though the trust is professionally managed by Mr Jones, as Mr Jones is an individual, the trust will not be classified as a Financial Institution.

Example 3 – professionally managed trust that is a Financial Institution

The trustee of Smith Family Trust is Jones & Jones, a partnership primarily in the business of advising and administering financial investments. A partnership falls within the definition of an entity. The trust will be an Investment Entity for CRS purposes provided that it meets the further requirement that its gross income is primarily attributable to investing, reinvesting or trading in financial assets.

Any Reporting Seychelles FI maintaining a Financial Account for the trust will, on establishing the facts, treat the trust as a Financial Institution.

Example 4– Trustee and responsible entity as manager

R1 Co is the trustee and Responsible entity (RE) of a managed investment scheme (H Trust) which manages and invests in a range of financial assets for H Trust. R1 Co is carrying on these activities as a business. As H Trust is managed by R1 Co, the latter entity's activities in relation to the trust causes H Trust to be an Investment Entity. R1 Co itself is also an Investment Entity.

Example 5 – non-trustee Investment Entity managing the trust

Following from Example 1, H Trust's portfolio of investments includes holding all of the units in another trust, B Trust, which has investments in a range of financial assets. R1 Co is not the trustee of B trust, but is appointed by the trustee to provide investment advice, manage B Trust's portfolio of investments and administer distributions of income and reports. The trustee of B Trust does not carry on any business.

R1 Co does not hold legal title to the assets of B Trust. R1 Co is carrying on these activities as a business. R1 Co's activities in relation to B Trust cause B Trust to be an Investment Entity. Those activities would also cause R1 Co to be an Investment Entity if it had not already gained that status from the activities in Example 1.

Example 6 – external investment manager

In the previous example, if R2 Co is substituted for R1 Co and R2 Co is solely in the business of providing these services for B Trust and other clients, R2 Co's activities in relation to B Trust cause B Trust to be an Investment Entity, and therefore a Reporting FI. R2 Co will be an Investment Entity in its own right;

The availability of an exemption for R2 Co in respect of its own affairs has no bearing on the status of B Trust.

Example 7 – Non-Financial Institution investment manager

Continuing the previous example, R3 Co is substituted for R2 Co. R3 Co is engaged in a range of business activities such that its gross income from trading, investing, managing or administering financial assets on behalf of other persons has always been less than half of its total gross income. Under the CRS, R3 Co will not be an Investment Entity because it is not primarily conducting the required business activities. B Trust will also not be an Investment Entity under the CRS if neither R3 Co nor B Trust's trustee is a Financial Institution.

4.3. Custodial Institutions

A Custodial Institution is an entity that holds, as a substantial portion of its business, Financial Assets for the account of others. For AEOI purposes, a substantial portion means that at least 20% of the entity's gross income is attributable to holding Financial Assets and providing related financial services in the shorter of either:

- its last three accounting periods
- the period it has been in existence.

Income attributable to holding Financial Assets and providing related financial services means the following:

- custody, account maintenance and transfer fees
- commissions and fees earned from executing and pricing securities transactions with respect to Financial Assets held in custody
- income earned from extending credit to customers with respect to Financial Assets held in custody (or acquired through such extension of credit)
- income earned from contracts for difference or on the bid-ask spread of Financial Assets held in custody
- fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity
- fees for clearance and settlement services.

For clarity purposes, it has been established that a person who holds legal title to assets on behalf of customers (providing for nominee shareholder services for instance) would qualify as a custodial institution because it will be holding assets on behalf of others. The person will therefore have to identify and report accounts belonging to reportable persons.

4.4. Depository Institutions

4.4.1. Concept of depository institutions

A Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business. An entity will be considered to be carrying on a 'banking or similar business' if it is, or is required to be, authorised by the Central Bank of Seychelles as an authorised deposit-taking institution.

'banking or similar business' is required to be applied consistent with the CRS Commentary, which provides a more expansive definition. An entity may, therefore, be a Depository Institution for CRS purposes even if it is not, or is not required to be, authorised by CBS as an authorised deposit-taking institution. In particular, it will be a Depository Institution if in the ordinary course of its business with customers it accepts deposits or other similar investments of funds and in addition to that activity also regularly engages in one or more of the following activities:

- makes personal, mortgage, industrial or other loans or provides other extensions of credit purchases, sells, discounts or negotiates accounts receivable, instalment obligations, notes, drafts, cheques, bills of exchange, acceptances or other evidences of indebtedness
- issues letters of credit and negotiates drafts drawn thereunder
- provides trust or fiduciary services
- finances foreign exchange transactions, or
- enters into, purchases or disposes of finance leases or leased assets.

4.4.2. Exception of providers of asset based finance services

An entity will not be considered a Depository Institution if the entity does not accept deposits in the ordinary course of a banking or similar business.

Therefore an entity will not be a Depository Institution if its business is solely to provide asset based finance services, such as:

- equipment finance or other asset leasing services
- real property leasing services
- acceptance of deposits solely as collateral or security pursuant to a sale or lease of property
- provision of loans secured by property, such as mortgage providers, car finance companies or similar financing arrangements.

If such an entity does not meet the definition of a Financial Institution, it may be an Active NFE. An entity will be an Active NFE if less than 50% of its gross income in a relevant period is passive income and less than 50% of the assets held during that period were for the production of passive income.

4.5. Specified Insurance

4.5.1 Concept of Specified Insurance

A Specified Insurance Company is an entity that is an insurance company or is 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.

Insurance companies that only provide general insurance or term life insurance will not be specified insurance companies, nor will reinsurance companies that only provide indemnity reinsurance contracts.

An insurance broker that sells Cash Value Insurance or Annuity Contracts on behalf of insurance companies is part of the payment chain and will not be a specified insurance company.

4.5.2 Cash Value Insurance Contracts

A Cash Value Insurance Contract means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

Cash Value is a defined term in the CRS. It means the greater of:

- 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)
- the amount the policyholder can borrow under or with regard to the contract.

Notwithstanding the above, it does not include an amount payable under an Insurance Contract:

- solely by reason of the death of an individual insured under a life insurance contract
- 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
- 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; or
- a policyholder dividend based upon the underwriting experience of the contract or group involved, excepting that the CRS limits this exclusion to a dividend that relates to an Insurance Contract under which the only benefits payable are 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.

The CRS provides one further exclusion from Cash Value– 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.

4.5.3. Annuity Contracts

An 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.

4.6. Determination of CRS Status of Entities

The CRS commentaries provide that an Entity's status as a financial institution or non-financial entity should be resolved under the laws of the participating jurisdiction in which the entity is resident. If an entity is resident in a non participating jurisdiction, the rules of the jurisdiction in which the account is maintained determine the entity's status as a financial institution of NFE. Therefore, when determining an entity's status as an active or passive NFE, the rules if the jurisdiction in which the account is maintained determine the entity's status.

5 Exemptions and Exclusions

5.1 Permitted exceptions to the "look-through rule" in respect of Controlling Persons

1) This exception will apply where a Pre-existing Entity Account has an aggregate account balance or value that does not exceed USD $1,000,000 (after aggregation). In this case, the Reporting FI may rely on information collected and maintained for regulatory or customer relationship purposes including AML/KYC procedures to determine whether a Controlling Person is a Reportable Person.

Where the RFI does not have AND is not required to have any such information on file that indicates the Controlling Persons may be a Reportable Person, it cannot document the residence of the Controlling Persons, and does not need to report that person as a Controlling Persons

2) The CRS Implementation Handbook (para 107) acknowledges the FATF Recommendations which do not require determination of beneficial ownership where-

(a) an Entity is (or is a majority owned subsidiary of) a company that is listed on a stock exchange and is subject to market regulation and to disclosure requirements to ensure adequate transparency of beneficial ownership; nor

(b) Beneficial ownership of a controlling interest that is held by an Entity described in a) above.

In such cases, it is generally accepted that a Reporting FI will not be able to determine the Controlling Persons for CRS purposes.

Reporting Financial Institutions are only required to report Reportable Jurisdiction Persons. Therefore it does not include persons resident solely in Seychelles and where a Passive NFE has a Seychelles Resident Reporting FI or Non-Reporting FI as a Controlling Peron, there is no need to report this information.

5.2 Non Reporting Financial Institutions

5.2.1 References under the CRS Purple Book.

Non-reporting Financial Institutions are defined in Section VIII.B of the CRS and further elaborated on in pages 166 to 174 of the Commentary.

5.2.2. Qualified Credit Card Issuer

Where a RFI is a Qualified Credit Card Issuer it is a Non-Reporting Financial Institution and is not required to perform due diligence and reporting for AEOI purposes.

In order to be a Qualified Credit Card Issuer, an entity must satisfy the following conditions:

- it 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
- beginning 1st January 2016 or the date the entity registers as a Financial Institution if later, it implements policies and procedures to either prevent a customer deposit in excess of $50,000, or to ensure that any customer deposit in excess of $50,000 (applying the rules for account aggregation and currency translation) is refunded to the customer within 60 days. A customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

An entity issuing credit cards will not satisfy the conditions to be a Qualified Credit Card Issuer if there is another reason why it is a Financial Institution, for example if it also offers Depository Accounts other than credit card accounts. Where this is the case the Seychelles FI has to perform due diligence and report on credit balances on credit card accounts that it maintains.

5.3. Financial Accounts to be reported

Under the AEOI regimes, RFIs are required to review the Financial Accounts they maintain to identify whether any of those accounts need to be reported to the SRC. In general, a Financial Account is an account maintained by a Financial Institution.

The term 'Financial Account' includes five categories of accounts: Depository Accounts, Custodial Accounts, Equity and debt interests, Cash Value Insurance Contracts and Annuity Contracts. The following table shows which Financial Institution is considered to maintain each type of Financial Account.

Accounts	Which Financial Institution is generally considered to maintain them
Depository Accounts	The Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution)
Custodial Accounts	The Financial Institution that holds custody over the assets in the account
Equity and debt interest in certain Investment Entities	The equity or debt interest in a Financial Institution is maintained by that Financial Institution
Cash Value Insurance Contracts	The Financial Institution that is obligated to make payments with

	respect to the contract
Annuity Contracts	The Financial Institution that is obligated to make payments with respect to the contract

A Financial Account does not include any account that is an Excluded Account (and is therefore not subject to the due diligence procedures).

5.3.1. Depository Accounts

A 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. It also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

An account that is evidenced by a passbook would generally be considered a Depository Account. As mentioned in the Commentary, negotiable debt instruments that are traded on a regulated market or over-the-counter market and distributed and held through financial institutions would not generally be considered Depository Accounts, but Financial Assets.

5.3.1.2. Depository accounts – overpayment of credit or loan facilities

A credit or revolving credit facility becomes a Depository Account when:

- a customer makes a payment in excess of a balance due
- the overpayment is not immediately returned to the customer
- the account is maintained by a Financial Institution in the ordinary course of a banking or similar business.

For the meaning of ‘banking or similar business’, see part 4.4 of this guidance. A credit or loan facility in any other circumstances is not a Depository Account.

An overpayment that is immediately returned does not cause an account to be a Depository Account. For this purpose ‘immediate’ is understood to encompass the time in which it is practical to return the overpayment following identification that an overpayment has occurred.

These rules apply to facilities regardless of whether interest is payable on any credit balance related to that account. The meaning of 'deposit' in this context is the amount of a payment in excess of the balance due, that excess amount becomes the deposit.

Under the CRS, a Depository Account that 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 will qualify as an Excluded Account if the Financial Institution has, from 1 January 2016 (or the date that the entity became a

Financial Institution, if later), policies and procedures in place to either prevent an overpayment of more than $50,000 or to refund any overpayment in excess of $50,000 within 60 days if it has not otherwise reduced in the interim.

It is the general policies and procedures that determine the exclusion. So long as, in general, the Financial Institution has a robust implementation of the policies and procedures, an isolated, exceptional and temporary breach of the account balance rules would not disqualify an account from exclusion.

The account balance threshold must be determined taking into account the aggregation rules for other accounts held by the customer with the Financial Institution or a Related Entity.

5.3.1.3. Depository accounts – payment cards or pre-loaded cards

For an account to be a Depository Account, the account must be maintained by a Financial Institution in the ordinary course of a banking or similar business. Pre-loaded payment cards, which include travel cards, gift cards and pre-loaded payment cards used for online payments, are included in the definition of 'Depository Account' where the entity which issues and maintains the card is a Financial Institution and it maintains the card in the ordinary course of a banking or similar business.

5.3.2. Custodial Accounts

A 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.

The term Financial Asset is intended to encompass any assets that may be held in an account maintained by a Financial Institution with the exception of a non-debt, direct interest in real property. It does not include physical goods.

Examples of Financial Assets include – a security (for example, a share 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.

5.3.3. Equity or debt interests in Investment Entities

Under the CRS, generally any equity or debt interest in an investment entity will constitute a financial account.

However, anti-avoidance rule will apply to ensure that equity or debt interests in a financial institution not covered by the general rule explained above may in any case constitute financial accounts where the class of interest was established with a purpose of avoiding reporting under the relevant AEOI regime.

The CRS provides a special exclusion for equity and debt interests in investment advisors and investment managers. It excludes from the definition of Financial Account any equity or debt interest in an Entity that is an Investment Entity solely because it renders investment advice to, and acts on behalf of, or manages portfolios for, and acts on behalf of, customers for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customers with other Financial Institutions.

5.4 Excluded Account

These accounts are excluded because they have been identified as carrying a low risk of use for tax evasion, generally because of the regulatory regimes under which they function.

5.3.1 Specified Excluded Accounts

A list of excluded accounts under the CRS are defined in the Regulations (Section VIII: Defined Terms) and must meet the criteria of the following Financial Accounts:

- Broad Participation Retirement Fund
- Narrow Participation Retirement Fund
- Pension Fund of a Government Entity
- International Organisations
- Central Bank

5.3.2 Other Excluded Accounts

An account that otherwise meets all the conditions of the following sections of "Excluded Account" under Section VIII:

(a) Certain Retirement and Pension accounts
(b) Certain Investment Vehicle accounts
(c) Certain Life Insurance Contracts
(d) Account held solely by an Estate
(e) Accounts established for court orders & judgements; accounts related to sale, exchange or lease of real or personal property, an FIs account to service a secured loan, an Account for an FI to facilitate payment of taxes at a late time
(f) Certain Depository Accounts
(g) Dormant Accounts ***(an account is dormant if the account holder has not initiated a transaction with regards to the account or another account held by the RFI for the past three years; the account holder has not communicated with the RFI for the past 6 years in relation to any accounts that could be held by the RFI.)***

Where an account, not otherwise specifically listed as an Excluded Account under the CRS has substantially similar criteria to named Excluded Accounts, it may be considered to be an Excluded Account under the CRS.

6 Due Diligence

6.1 Timetable

Key Dates for Due Diligence

New Accounts - Those opened after 31/12/2015
Pre-existing Individual High Value Accounts- Review by 31 December 2016
Pre-existing Individual Low Value Accounts- Review by 31 December 2017

Pre-existing Entity Account- Review by 31 December 2017
To check balance has not exceeded $250,000 as of 31st December annually

6.2 Review of pre-existing accounts once they exceed the threshold exemption

Under CRS, there is threshold exemption available to Reporting FIs. Seychelles chose the approach where the exempt threshold would apply automatically. Therefore, should the RFI want to report despite the exemption, it will have to elect to the Seychelles Revenue Commission by form of a letter addressed to the Revenue Commissioner before the 31st January of the year it wishes to elect.

The Seychelles reporting FI will therefore need not review all pre-existing entity accounts in order to identify Reportable Accounts. The FI yet will have to review the account balance at 31 December each year to determine if the balance has exceeded the relevant threshold (subject to the review dates for each regime).

Where the threshold is exceeded for an account it becomes reviewable (that is, the due diligence procedures for pre-existing entity accounts must be applied). Where the account is identified as a Reportable Account, it is reportable from the year in which it was so identified.

6.3 Investment Entity with Regularly Traded Securities

Under CRS, the equity and debt interests in certain listed Investment Entities are in the scope of reporting. For the purposes of the definition of Financial Account, an interest is 'regularly traded' if there is a meaningful volume of trading on a continuous basis and an 'established securities market' means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

Seychelles FIs may reasonably determine that there is a 'meaningful volume of trading on a continuous basis' of an interest or that an exchange has a 'meaningful annual value of shares traded' based on historical trading volumes.

6.4 Distributors in the Chain of Legal Ownership

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Schemes are financial institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others. Fund nominees, fund intermediaries and fund platforms will nevertheless still be Financial Institutions because they would otherwise be within the definition of Investment Entity. In this case the financial accounts will be those maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts. Fund nominees, fund intermediaries and fund platforms should be treated as Custodial Institutions unless specific factors indicate that their businesses are better characterized as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold Financial Assets for the account of others. For the purpose of aggregating accounts to determine whether any pre-existing Custodial Accounts are High Value Accounts, a Custodial Institution will need to consider all the financial accounts held with them by each customer even though the underlying interests are in different Collective Investment schemes.

6.5 Tax /identification Numbers (TINs)

TINs must be obtained and reported for all new accounts. For pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting financial institution. Where the TIN is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts. As Reportable Persons may be resident in more than one jurisdiction they may have two or more TINs that the financial institution must report. It is understood that the form and layout of each jurisdictions-existing TINs, (including where the jurisdiction does not issue TINs), will be compiled into a central list which will be made available to all Reporting Financial Institutions via a web based portal maintained by the OECD, available at the following address: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/

It is important to note that the reporting and obtaining of TIN is not compulsory in two instances:

1. Where the domestic law of relevant reportable jurisdiction does not require the collection of the TIN issued by such reportable jurisdiction.
2. A TIN is not issued by the relevant reportable jurisdiction.

A TIN is considered as not issued by the relevant reportable jurisdiction where the said jurisdiction does not issue a TIN to a particular individual or entity. In accordance with commentaries, page 104, a TIN in such case will not be required to be reported with respect to reportable account held by a reportable person with respect to whom has not be issued with a TIN.

This will therefore apply to IBC in the Seychelles who shall therefore specify that it is not issued with a TIN in their jurisdiction on the self-certification to be produced with the Banks when an account is opened. Clarifications have been brought to the TIN section on the AEOI portal.

In addition, RFI should not subject the opening of a bank account to the issuance of TIN unless by applying the reasonableness test, the RFI has reason to believe that the reportable person is actually making a false self certification.

6.6 Place of Birth

In accordance with the standards and the CRS regulations, there are no requirements to report the place of birth if it is not already a requirement for the FI to collect this information. As per the AML requirements, the place of birth is not an element that has to be collected as not official identifying documents contain the place of birth. Therefore, an FI is not supposed to report the place of birth.

6.7 Self-certification forms

Suggested self-certification forms are available from 31 December 2015, from the OECD AEOI Portal, http://www.oecd.org/tax/automatic-exchange/.

The OECD has not approved the forms and does not regard them as mandatory or as best practice documents. They serve only to illustrate how financial institutions may consider requesting customer information from their account holders. Financial institutions should consult their advisers to ensure their CRS-related operations, including the self-certification forms collected from account holders, comply with legal requirements.

> Controlling Person tax residency self-certification form

> Entity tax residency self-certification form

> Individual tax residency self-certification form

6.8 Timing of Self-Certifications

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances, however, where it is not possible or practical to obtain a self-certification on ‘day one’ of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate.

Financial institutions must make proper endeavors to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis. If an Account Holder fails to respond then there is no need to close the account but it should be reported as undocumented.

Enquiries may be made by SRC where particular financial institutions appear to have a disproportionate number of undocumented accounts.

7 Reporting Obligations

7.1 Reporting Dates

First reporting, for New Accounts, High Value Accounts and Lower Value Accounts where identified before 31 December 2016 will be by 30 June 2017. All subsequent reporting period ending on 31 December each year are reportable to SRC by the 30 June the following year. Where 30 June falls on a weekend, then the deadline for submitting reportable information to SRC is the next working day.

Data must be sent to SRC by this date to enable it to be processed for exchange with relevant partner jurisdictions by 30 September. The information to be reported is that required by the Regulations. The Commentary on Section I (p94 et seq. of the Purple Book) provides more detail on each of these fields.

The exception is that for Pre-existing Accounts, TIN(s) or dates of birth are not required to be reported if such TIN(s) or date of birth is not in the records of Reporting FIs and is not otherwise required to be collect by the Reporting FIs.

A Reporting FI must use reasonable efforts to obtain the TINs and Date of Birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.

Also the TIN is not required to be reported if a TIN is not issued by the jurisdiction of residence.

7.2 Reporting Currency

For the report of an account, a single currency should be used. Seychelles opted for the USD (section 5(7) of the CRS regulations. In the case of accounts of payments denominated in multiple currencies, the Reporting FI will have to report the account balance or value or payments in the USD currency using the 3-figure currency code. i.e., Dividends are paid to a custodial account in USD. The RFI should use the mid-rate as published by the Central Bank of Seychelles applicable at 31st December of the relevant year to obtain the USD values equivalent to the payments made in SCR for instance.

7.3.Reporting balance or value of a reportable account.

The balance or value of an account shall be the balance of the account on the 31st December of the reporting period.

The general rule is that the balance or value of an account to be reported shall be the balance of the account on the 31st December. If the balance is negative or 0 this remains the balance to be reported.

For the holders of a jointly held account, the entire balance or value of the joint account as well as the entire amounts paid or credited to the joint account shall be attributed to each holder.

The same rule applies for a passive NFE with more than one controlling person- each controlling person will be attributed with the entire balance or value of the account held by the passive NFE.

When an account holder has been identified as having more than one jurisdiction of residence, the entire balance or value of the account shall be reported with respect to each jurisdiction of residence.

When an account is closed, no account balance will be reported at the time of reporting, but the RFI will have to report that the account has been closed. In the case of a trust that is a RFI for instance, a debt or equity interest could be considered closed where the debt is retired or when a beneficiary is removed.

For equity or debt interest, the balance of the account shall be the value calculated by the RFI for the purpose that requires the most frequent determination of value, such as the value used for reporting to the account holder the investment results for a given period, or value of the interest upon acquisition of a trust property or the total value of all trust property. If however, the RFI does not calculate the account value in any manner, the **table page 82 of the handbook which link is specified page 5 of these guidance notes shall apply.**

The option has been given to the RFI to report the balance of the account in using an aggregate of all balance or value of all financial accounts hold by one account holder. In order to use this option, the RFI shall have a computerized system which links the financial accounts by reference to a data element (TIN, client number) AND allow financial accounts balance to be aggregated.

It is important to note that the aggregation include all financial accounts from the RFI or related Entity **(definition page 18 of the CRS regulations).**

7.4 CRS portal

7.4.1 CRS Schema

Financial Institutions will be required to submit their CRS report using the approved CRS XML Schema via the e-government gateway dedicated to CRS (CRS portal). The CRS XML Schema format will be mandatory and returns in any other format will not be accepted by SRC for the purposes of the CRS. Further amendments may be made to the CRS Schema by the OECD ahead of the first reporting date. FIs will be notified in due course if this is the case. Each Reporting Financial Institution will need only to submit a single report to SRC in the format of the CRS schema. After submission on the CRS portal, the information will be sorted by jurisdiction of tax residence. The information applicable to a Reportable Person will then be sent to the relevant Competent Authority. See page 236 in the CRS commentary for more information.

Where there is dual residence or other issues attached to multiple reporting, then the information, including all residence country codes that have been identified as applicable to the Reportable Person may be sent to the Competent Authority of each relevant jurisdiction of residence for resolution.

7.4.2 Amendments or Corrections of Submitted Reports

Where an error is identified by the (or on its behalf of the) Reporting Financial Institution, the RFI may either:

1) Retract the existing report and resubmit; or

2) Submit a new corrected report.

The options available will depend upon when the error is identified, as detailed below.

1. The FI uploads its report in the CRS portal where it is tagged as 'pending'.

2. As long as the report is in the 'pending' state an FI will be able to replace it with another corrected one at any point in time.

3. When the FI is ready to be submit/commit the file, it will be alerted that no further amendments are possible unless a formal request is made to SRC. After the 1 July following a 30 June deadline, reports will not be available to amendments or corrections. However, an RFI may alert/write to SRC to indicate its intention to replace the submitted file and once authorization granted, the FI can re-submit the corrected one. The replacement return must contain the same Reporting FIs as the original return.

The practical aspect of the registration on the e-government gateway for access to the portal along with all credential granted to the RFI and reporting conditions are detailed in a practical manual published on SRC website following the link indicated below:

http://www.src.gov.sc/resources/Guides/FATCA-Registration%20Guide.pdf

7.5 Penalties

The CRS regulations state in section 9 the penalties to be applicable on the RFIs which will not abide by their CRS obligations. The amount is 20,000 rupees.

The section 9 only applies to the Financial Institution. However, it may happen that an FI will not succeed in obtaining the relevant information from their clients. In such situation, the account holder can be convicted under sections 333 and 339 (read in conjunction with section 335) of the Penal Code and be liable to 3 years of imprisonment.

For clarity purposes, it is important to note that a director, manager, secretary or any other officer of similar level shall be personally liable to the penalty of SR20,000/- when the said person has caused or permitted the FI (body corporate) to provide incorrect return in a **willful** manner.

8. Confidentiality

As already specified under paragraph 3 above, Seychelles will not exchange under the CRS until it is satisfied that a partner jurisdiction has in place adequate measures to ensure the required confidentiality and data safeguards are met. These confidentiality obligations are assessed at the level of Global Forum by a team of made of legal experts, IT experts and a member of the Secretariat. When the assessment is concluded with "hard" recommendations, the jurisdictions will have to produce an action plan. Any jurisdiction with an action plan will not have any relationship with Seychelles until such time the AEOI working group approves the report made where all recommendations have been addressed.

9. Value of the commentaries on the Common reporting Standards.

It is important to note that the commentaries as appearing in the document that can be accessed in following the link below have legal binding values in Seychelles.

10. FAQ list and answers by OECD

CRS-related Frequently Asked Questions

(June 2016)

SECTION I: GENERAL REPORTING REQUIREMENTS

1. Reporting balance or value

What balance or value of an Equity Interest should be reported where the value is not otherwise frequently determined by the Financial Institution (for example it is not routinely recalculated to report to the customer)?

The Standard defines the account balance or value in the case of an Equity interest as the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value (Commentary to Section 1, A(4)). What this value is will depend on the particular facts. Depending on the circumstances it could, for example, be the value of the interest upon acquisition if the Financial Institution has not otherwise recalculated the balance or value for other reasons.

2. Aggregation and excluded accounts

Are Excluded Accounts required to be included when applying the aggregation rules?

No. The aggregation rules refer to the aggregation of Financial Accounts (Section VII, C). The definition of Financial Accounts specifically excludes Excluded Accounts (Section VIII, C(1)).

3. Account Holder Information

How does a Reporting Financial Institution report an individual that does not have both a first and last name?

The CRS schema requires the completion of the data elements for first name and last name. If an individual's legal name is a mononym or single name, the first name data element should be completed as "NFN" (No First Name) and the last name field should be completed with the account holder's mononym.

4. Reporting of sales proceeds credited or paid with respect to the Custodial Account

Subparagraph A(5)(b) of Section I provides that, in case of a Custodial Account, the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account are to be reported.

Is reporting of these gross proceeds also required when they are paid or credited with respect to the Custodial Account?

Yes, as is the case for the income items set out in subparagraph A(5)(a) of Section I, reporting of gross proceeds from the sale or redemption of Financial Assets held in a Custodial Account under subparagraph A(5)(b) of Section I is required both in case these gross proceeds are paid or credited to the account and in case they are paid or credited with respect to such account.

In the case that Financial Assets are held in a Custodial Account, any income, and gross proceeds from the sale or redemption of such Financial Assets are reportable by the Custodial Institution maintaining such Custodial Account, regardless of the account to which such amounts are paid or credited.

5. Requirement to collect TINs
Paragraph 30 of the Commentary on Section I provides that a TIN is not required to be reported with respect to a Reportable Account held by a Reportable Person with respect to whom a TIN has not been issued. Should a Financial Institution request a Reportable Person to obtain and provide a TIN, in case such Reportable Person is or may be eligible to obtain a TIN (or the functional equivalent) in its jurisdiction of residence, but is not required to obtain a TIN and has not obtained a TIN? No.
6. Intermittent distributions to discretionary beneficiaries of a trust that is a Reporting Financial Institution
In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as the settlor or beneficiary of all or a portion of the trust. For these purposes, a beneficiary who may receive a discretionary distribution from the trust only will be treated as a beneficiary of the trust if such person receives a distribution in the calendar year or other appropriate reporting period (see Section VIII (C)(4) and related commentary). **If a discretionary beneficiary of a trust that is a Financial Institution receives a distribution from the trust in a given year, but not in a following year, should the absence of a distribution in such following year be treated as an account closure?** No, the absence of a distribution does not constitute an account closure, as long as the beneficiary is not permanently excluded from receiving future distributions from the trust.
7. Reporting Controlling Persons of settlors that are Entities
The Standard provides that where the settlor of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor and report them as Controlling Person(s). Are the Controlling Persons to be identified and reported only in the year of settlement, or also in subsequent years? The identification and reporting of Controlling Persons of the settlor is required not only in the year of settlement but also in all subsequent years.
8. Reporting requirements in year of closure of a trust account
What is the financial activity to be reported in case of closure of an account: **a) maintained by a trust that is a Reporting Financial Institution?** **b) maintained by a Reporting Financial Institution for a trust that is a Passive NFE?** In both cases the financial activity to be reported includes both the fact of closure of the account and the gross payments made to the Account Holder during the relevant reporting period.
9. Collection of TINs from a Controlling Person that is not a Reportable Jurisdiction Person
Pursuant to Section VIII(D)(8), an Investment Entity described in Section VIII(A)(6)(b) that is not a Participating Jurisdiction Financial Institution is a Passive NFE, and the due diligence procedures in either Section V or Section VI must be applied to the account of the Investment Entity to determine whether its account is a Reportable Account. The account is a Reportable Account if the Passive NFE has one or more Controlling Persons who are Reportable Persons. In the case where a Controlling Person is not a Reportable Jurisdiction Person, is there a requirement to collect the TIN of such Controlling Person? Subject to provisions in domestic law, in particular with respect to the so-called "wider approach", as reflected in Annex 5 to the Standard, if a Controlling Person is not a Reportable Jurisdiction Person, the TIN is not required to be collected from such Controlling Person.

SECTIONS II-VII: DUE DILIGENCE REQUIREMENTS
1. Documentary Evidence
Does the Standard require a Reporting Financial Institution to retain a paper copy of the Documentary Evidence collected as part of its due diligence procedures? No. A Reporting Financial Institution is not required to retain a paper copy of the Documentary Evidence, but may do so (Paragraph 157 to the Commentary on Section VIII). A Reporting Financial institution may retain an original, certified copy, or photocopy of the Documentary Evidence or, instead, a notation of the type of documentation reviewed, the date the documentation was reviewed, and the document's identification number (if any) (for example, a passport number).
2. Residence address test – requirement to manually review Documentary Evidence
Does the requirement in the Standard to confirm the residence address with the Documentary Evidence on file require accounts to be manually reviewed? The Standard does not require a paper search to examine the Documentary Evidence. Generally, a requirement of the residence address test is that the residence address is based on Documentary Evidence (Section III, B, (1) and the associated Commentary). If a Financial Institution has kept a notation of the Documentary Evidence, as described above, or has policies and procedures in place to ensure that the current residence address is the same as the address on the Documentary Evidence provided, then the Reporting Financial Institution will have satisfied the Documentary Evidence requirement of the residence address test.
3. Residence address test – two residence addresses
Is it possible that after the application of the residence address test it is determined that the Account Holder has two residence addresses? Yes. Provided all the conditions for applying the residence address test are met (Section III, B, (1), and the associated Commentary), then it would be possible for the residence address test to result in two addresses being found. For example, with respect to a bank account maintained in Country A, a bank could have two addresses meeting the requirements in a case where a resident of Country B is working and living half her time in Country B and Country C. In this case a self-certification could be sought or the account could be reported to all Reportable Jurisdictions where there is a residence address.
4. Reliance on AML/KYC procedures for identifying Controlling Persons
With respect to Pre-existing Entity Accounts with an aggregate account balance or value that does not excess USD 1,000,000, what is the due diligence and reporting requirement in cases where the Financial Institution holds information on the names of Controlling Persons and no other information as it was not required to collect such information pursuant to applicable AML/KYC procedures? The Standard provides that for accounts with a balance or value below USD 1 million (after applying the aggregation rules), the Financial Institution may rely on information collected and maintained for regulatory or customer relationship purposes, including AML/KYC procedures to determine whether a Controlling Person is a Reportable Person (Section V, D, (2), c)). Since, in the example given, the Financial Institution does not have and is not required to have any such information on file that indicates the Controlling Person may be a Reportable Person, it cannot document the residence of the Controlling Persons and does not need to report that person as a Controlling Person.

5. Obligations of a Financial Institution to establish tax residency

What are the obligations under the Standard of a Financial Institution to establish the tax residency of its customers in relation to the New Account procedures?

A Financial Institution is not required to provide customers with tax advice or to perform a legal analysis to determine the reasonableness of self-certification. Instead, as provided in the Standard, for New Accounts the Financial Institution may rely on a self-certification made by the customer unless it knows or has reason to know that the self-certification is incorrect or unreliable, (the "reasonableness" test), which will be based on the information obtained in connection with the opening of the account, including any documentation obtained pursuant to AML/KYC procedures. The Standard provides examples of the application of the reasonableness tests (Section IV, A, and the associated Commentary).

The Standard also states that Participating Jurisdictions are expected to help taxpayers determine, and provide them with information with respect to, their residence(s) for tax purposes (Paragraph 6 of the Commentary to Section IV and Paragraph 9 of the Commentary on Section VI). The OECD is facilitating this process through a centralised dissemination of the information (on the Automatic Exchange Portal). Financial Institutions could also direct customers towards this information.

6. The Validation of TINs

With respect to a Taxpayer Identification Number (TIN) provided on a self-certification, when will a Reporting Financial Institution know or have reason to know the self-certification is incorrect or unreliable?

The Standard provides that a Reporting Financial Institution may rely on a self-certification unless it knows or has reason to know that the self-certification is incorrect or unreliable (Section VII, paragraph A and associated Commentary). This includes, among the other information provided on the self-certification, the TIN in relation to a Reportable Jurisdiction. The Standard includes an expectation that Participating Jurisdictions will provide Reporting Financial Institutions with information with respect to the issuance, collection and, to the extent possible, the practical structure and other specifications of TINs (Commentary to Section VIII, paragraph 149). The OECD will be facilitating this process through a centralised dissemination of the information (on the Automatic Exchange Portal).

A Reporting Financial Institution will have reason to know that a self-certification is unreliable or incorrect if the self-certification does not contain a TIN and the information included on the Automatic Exchange Portal indicates that Reportable Jurisdiction issues TINs to all tax residents. The Standard does not require a Reporting Financial Institution to confirm the format and other specifications of a TIN with the information provided on the Automatic Exchange Portal. However Reporting Financial Institutions may nevertheless wish to do so in order to enhance the quality of the information collected and minimise the administrative burden associated with any follow up concerning reporting of an incorrect TIN. In this case, they may also use regional and national websites providing a TIN check module for the purpose of further verifying the accuracy of the TIN provided in the self-certification.

7. Self-Certification – meaning of "positively affirmed"

A requirement for a self-certification to be valid on account opening under the Standard is that it must be signed or positively affirmed by the customer (Paragraph 7 to the Commentary on Section IV). How should "otherwise positively affirmed" be understood?

A self-certification is otherwise positively affirmed if the person making the self-certification provides the Financial Institution with an unambiguous acknowledgement that they agree with the representations made through the self-certification. In all cases, the positive affirmation is expected to be captured by the Financial Institution in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (e.g., voice recording, digital footprint, etc.). The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account. The Financial Institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.

8. Verbal self-certification
Does the Standard allow for the gathering of information for a self-certification verbally on account opening under the Standard? A self-certification may be provided in any manner and in any form (see for example Paragraph 9 to the Commentary on Section IV). Therefore, provided the self-certification contains all the required information (see for example Paragraph 7 to Commentary on Section IV) and the self-certification is signed or positively affirmed by the customer, a Financial Institution may gather verbally the information required to populate or otherwise obtain the self-certification. The approach taken by the Financial Institution in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the Financial Institution for the opening of the account. The Financial institution will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.
9. Self-certification with yes/no response
Does the Standard allow for a self-certification to solicit a yes/no response to questions about tax residence? Yes. A self-certification can be completed based on a yes/no response to record the customer's jurisdiction(s) of tax residence, instead of requiring the completion of a blank field. The Standard does not prescribe how information on jurisdiction(s) of tax residence must be collected but provides that the information with respect to tax residence cannot be prepopulated (see paragraphs 7 and 8 to the Commentary on Section IV). For example, in order to complete a self-certification the customer could be asked whether the jurisdiction in which the account is being opened is the sole tax residence of the account holder, with additional questions only being asked if the answer is no.
10. Self-certification provided on the basis of a PoA
Does the Standard allow for a self-certification to be provided by third party on the basis of a power of attorney? If an Account Holder has provided that another person has legal authority to represent the Account Holder and make decisions on their behalf, such as through a power of attorney, then that other person may also provide a self-certification.
11. Reason to Know
Should a self-certification contain language requiring the Account Holder to update the Reporting Financial Institution if there is a change in the information that affects the Account Holder's status? Although this is not a requirement under the Standard, a Reporting Financial Institution may want (or may be required to under a particular jurisdiction's domestic law) to include such language in self-certifications collected from its Account Holders as it may reduce the onus on the Reporting Financial Institution in applying the reasonableness test. Pursuant to the reasonableness test, a Reporting Financial Institution may not rely on a self-certification if it knows or has reason to know that the information contained on the self-certification is unreliable or incorrect. Commentary on Section VII paragraph 2-3. Jurisdictions may also consider including in their domestic law implementing the CRS a requirement on Account Holders to provide a self-certification to the Reporting Financial Institution and to inform the Reporting Financial Institution if there is a change to information contained in the self-certification that affects their status under CRS.

12. New Accounts of Pre-existing Account Holders

With respect to the allowance to treat certain New Accounts of a pre-existing customer as a Pre-existing Account, how broad is the requirement that the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the CRS?

The Commentary provides that a jurisdiction may allow Reporting Financial Institutions to treat a New Account opened by an Account Holder that holds an account with the Reporting Financial Institution (or a Related Entity within the same jurisdiction as the Reporting Financial Institution) as a Pre-existing Account provided that certain conditions are met. Such conditions include that the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the CRS. See Commentary to Section VIII, paragraph 82. This condition should be interpreted to include any instances in which the Account Holder is required to provide the Reporting Financial Institution with new, additional or amended customer information (as a result of a legal, regulatory, contractual, operational or any other requirement) in order to open the account. The rationale for this condition is that such instances provide an opportunity to obtain a self-certification together with new, additional or amended customer information as part of the opening of the account.

13. The relationship manager test

How might the standard of knowledge test applicable to a Relationship Manager contained in the Standard be operationalised in practice?

The standard of knowledge test applicable to a Relationship Manager (for example, Section III, C(4) and the associated Commentary) could be operationalised through regular (e.g. yearly) instructions and training by a Financial Institution to all of its employees that could be considered Relationship Managers according to the Standard (Paragraphs 38 to 42 of the Commentary to Section III, C(4)). This could include the Financial Institution maintaining a record of a response made by each Relationship Manager stating that they aware of their obligations and the channels to communicate any reason to know that an Account Holder for which they manage the relationship is a Reportable Person. These communications could then be centrally processed by the Financial Institution in the manner required by the Standard.

14. Reliance on Service Providers

Does the Standard provide any restrictions on the use of a service provider to fulfil a Reporting Financial Institution's due diligence and/or reporting requirements under the CRS?

A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil their reporting and/or due diligence obligations. See Commentary on Section II, paragraph 6. The Standard does not require, for instance, that the service provider be within the same jurisdiction as the Reporting Financial Institution or obtain approval from the relevant jurisdiction to act as a service provider. The Commentary does provide that the Reporting Financial Institution must satisfy the requirements contained in domestic law and will remain responsible for its reporting and due diligence obligations (i.e., the actions of the service provider are imputed to the Reporting Financial Institution). To facilitate effective implementation, the jurisdiction must have access to the relevant records and evidence relied upon by the Reporting Financial Institution and service provider for the performance of the reporting and/or due diligence procedures set out in the CRS. See Commentary on Section IX, paragraphs 7-12.

15. Determination of CRS Status of Entities
Which jurisdiction's rules should apply to determine an Entity's status? The Commentary provides that an Entity's status as a Financial Institution or nonfinancial entity (NFE) should be resolved under the laws of the Participating Jurisdiction in which the Entity is resident. See Commentary on Section IX, paragraph 2. If an Entity is resident in a jurisdiction that has not implemented the CRS, the rules of the jurisdiction in which the account is maintained determine the Entity's status as a Financial Institution or NFE since there are no other rules available. When determining an Entity's status as an active or passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status. However, a jurisdiction in which the account is maintained may permit (e.g. in its domestic implementation guidance) an Entity to determine its status as an active or passive NFE under the rules of the jurisdiction in which the Entity is resident provided that the jurisdiction in which the Entity is resident has implemented the CRS.
16. Residence Address Test – Penalty of perjury
The Commentary on Section III defines in what situations the Residence Address Test can be applied. Paragraph 10 refers to a declaration signed under penalty of perjury. What does "penalty of perjury" mean? "Penalty of perjury" in this context is meant to include all situations where a jurisdiction has included a penalty of a criminal nature for providing a false declaration in its law.
17. Requirement to obtain a TIN in the framework of the curing procedure
Does a Reporting Financial Institution need to ensure that a Tax Identification Number (TIN) is present on the self-certification of an Account Holder, in case such self-certification is obtained as part of the curing procedure foreseen by subparagraph B(6) of Section III and indicates that the Account Holder is a Reportable Person? In the context of the due diligence procedures for Preexisting Accounts, the Financial Institution is required to use reasonable efforts to obtain a TIN. In case the self-certification is received in the course of the curing procedure, this implies as a minimum that the Financial Institution requests the Account Holder to provide a self-certification which includes a TIN, if applicable. The Financial Institution can rely on such a self-certification, even if it does not contain a TIN of the Account Holder, provided it continues to use reasonable efforts to obtain the TIN.
18. New Entity Accounts – Reliance on publicly available information
Subparagraph A(1)(a) of Section VI provides a Financial Institution needs to obtain a self-certification for the purposes of determining the tax residence of a New Entity Account Holder. Subparagraph A(1)(b) then provides that, if the self-certification indicates that the New Entity Account Holder is resident in a Reportable Jurisdiction, the account is to be considered a Reportable Account, unless the Financial Institution reasonably determines, based on information in its possession or that is publicly available, that the New Entity Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction. **In case a Financial Institution knows, based on information in its possession or that is publicly available, that a New Entity Account Holder is not a Reportable Person, irrespective of its residence (e.g. because it is a corporation that is publicly traded), is the Financial Institution still required to obtain a self-certification from the New Entity Account Holder?** Paragraph 6 of the Commentary on Section VI provides that the steps of subparagraph (A)(1)(a), i.e. obtaining a self-certification, and subparagraph (A)(1)(b), i.e. confirming the status as a Reportable Person, may be taken in either order. Consequently, a Financial Institution may first determine whether a New Entity Account Holder is a Reportable Person. In case it is found that the New Entity Account Holder is not a Reportable Person (e.g. because it is a Financial Institution or a corporation that is publicly traded), the Financial Institution would not be required to obtain a self-certification from such New Entity Account Holder under subparagraph (A)(1)(a).

19. Determination of the threshold for due diligence with respect to Controlling Persons
For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person with respect to a Preexisting Entity Account, a Reporting Financial Institution may, in accordance with subparagraph (D)(2)(c) of Section V, only rely on the information collected and maintained pursuant to AML/KYC Procedures in case the aggregate account balance of such account held by one or more NFEs does not exceed USD 1 million. At what point in time is the USD 1 million threshold for the purpose of determining the due diligence procedure applicable to Controlling Persons of Passive NFEs to be determined? In line with the general rules applicable to thresholds applied in the framework of the due diligence procedures, as reflected e.g. in paragraph B of Section II and paragraphs A, B and E(2) of Section V, the point in time at which the surpassing of the threshold should be verified is the last day of the calendar year or other appropriate reporting period. *Example:* *In case the account balance of the relevant account is USD 900 000 on the date on which the Financial Institution carried out the due diligence, but USD 1 100 000 at year-end, the threshold of USD 1 million has been surpassed for the purpose of the due diligence obligations in that year.*

20. Timing of self-certifications
With respect to New Individual and Entity Accounts the Standard provides that the Reporting Financial Institution must obtain a self-certification upon account opening. In such cases, is it expected that Reporting Financial Institutions can only open the account once a valid self-certification is received? The Standard provides that a Reporting Financial Institution must obtain a self-certification upon account opening (Sections IV(A) and V(D)(2)). Where a self-certification is obtained at account opening but validation of the self-certification cannot be completed because it is a 'day two' process undertaken by a back-office function, the self-certification should be validated within a period of 90 days. There are a limited number of instances, where due to the specificities of a business sector it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days. Given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts (see examples in paragraph 18 of the Commentary on Section IX). In all cases, Reporting Financial Institutions shall ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened.

SECTION VIII: DEFINITIONS

A. REPORTING FINANCIAL INSTITUTIONS

1. Entities and Cash Pooling Activities

What is the CRS status of an Entity that regularly manages working capital by pooling the cash balances, including both positive and deficit cash balances, (*i.e.,* cash pooling) of one or more Related Entities that are primarily engaged in a business other than that of a Financial Institution and does not provide such cash pooling services to any Entity that is not a Related Entity?

To determine the CRS status of an Entity that engages in cash pooling it is necessary to consider whether the Entity is a Financial Institution, or more specifically a Depository Institution or an Investment Entity, or an NFE. The Standard defines a Depository Institution as an Entity that accepts deposits in the ordinary course of a banking or similar business. See Section VIII, subparagraph (A)(5) and Commentary on Section VIII, paragraph 12-14. For purposes of determining whether an Entity is a Depository Institution, an Entity that engages in cash pooling exclusively on behalf of one or more Related Entities will not be engaged in a banking or similar business by virtue of such activity.

If the Entity is not a Depository Institution, the Entity may still be a Financial Institution if it meets the definition of an Investment Entity as set forth in Section VIII, subparagraph (A)(6), except such section specifically provides that an Investment Entity does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraph (D)(9)(d) through (g).

An Active NFE described in Section VIII, subparagraph (D)(9)(g) includes an NFE that 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. See Section VIII, subparagraph (D)(9)(g). Since cash pooling is typically performed to reduce external debt and increase the available liquidity on behalf of Related Entities, cash pooling will be considered a financing transaction for purposes of the Active NFE definition. Therefore, an Entity that engages in cash pooling on behalf of one or more Related Entities that are not Financial Institutions and does not provide such cash pooling 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, will have the CRS status of Active NFE.

2. Holding Company or Treasury Centre of Financial Group

In what circumstances, if any, will a holding company or treasury centre of a financial group have the status of Financial Institution under CRS?

A holding company or treasury centre of a financial group will have the status of a Financial Institution if it meets the definition of Financial Institution provided in Section VIII, paragraph A. Thus, whether a holding company or treasury centre has the status of Financial Institution depends of the facts and circumstances, and in particular on whether it engages in the specified activities or operations of a Financial Institution (as defined in Section VIII, paragraph A.) even if those activities or operations are engaged in solely on behalf of Related Entities or its shareholders. An Entity that, for example, enters into foreign exchange hedges on behalf of the Entity's Related Entity financial group to eliminate the foreign exchange risk of such group, will meet the definition of Financial Institution provided that the other requirements of Investment Entity definition are met. A holding company will also meet the definition of Financial Institution, specifically, Investment Entity, if it functions as or hold itself out as an investment fund, private equity fund, venture capital fund, and similar investment vehicles if investors participate (either through debt or equity) in investment schemes through the holding company. See Commentary to Section VIII, paragraph 20.

3. Investment Entity

In what circumstances will an Entity be managed by another Entity that is a Depository Institution, Custodial Institution, a Specified Insurance Company, or an Investment Entity described in Section III, subparagraph A(6)(a)?

The Commentary provides, for purposes of determining whether an Entity is an Investment Entity described in Section VIII, paragraph (A)(6)(b), that an Entity is managed by another Entity if the managing Entity performs, either directly or through a service provider, any of the activities or operations described in paragraph (A)(6)(a) on behalf of the managed Entity. These activities and operations include trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable 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. Further, the managing Entity must have discretionary authority to manage the Entity's assets (in whole or in part). See Commentary on Section VIII, paragraph 17.

For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets or money of the trust, does not conduct the activities and operations described in Section VIII, subparagraph (A)(6)(a) on behalf of the trust and thus the trust is not "managed by" the private trust company within the meaning of Section VIII, paragraph (A)(b)(6).

Also, an Entity that invests all or a portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered "managed by" the mutual fund, exchange traded fund, or similar vehicle.

In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first-mentioned Entity falls within the definition of Investment Entity, as set out in Section VIII, paragraph (A)(6)(b).

4. Indirect Investment in Real Estate

If an Entity's gross income is primarily attributable to indirect investment(s) in real property, will such Entity have the status of Investment Entity?

An Entity the gross income of which is primarily attributable to investing, reinvesting, or trading real property is not an Investment Entity (irrespective of whether it is professionally managed) because real property is not a Financial Asset. See Commentary on Section VIII, paragraph 17. If, instead, an Entity is holding an interest in another Entity that directly holds real property, the interest held by the first-mentioned Entity is a Financial Asset, and the gross income derived from that interest is to be taken into account to determine whether the Entity will meet the definition of Investment Entity under Section VIII, subparagraph (A)(6)(a)(iii) or paragraph (A)(6)(b). See Section VIII; subparagraph (A)(7) for the definition of Financial Asset.

5. Investment Entity definition – managed by

In the context of Section VIII (A)(6)(b), does the notion of "managed by" also include cases where an Entity has discretionary authority to manage the assets (in whole or part) of another Entity, but does not manage the second Entity itself?

Yes, the concept of "managed by" under Section VIII (A)(6)(b) also covers cases where an Entity has discretionary authority to manage the assets (in whole or part) of another Entity, but does not manage the second Entity itself.

6. Investment Entity definition – substantial activity test
In determining whether an Entity meets the "50% gross income test" under the definition of Investment Entity, is it permissible to apply the three-year test on the final day of a non-calendar year accounting period, as foreseen for the "20% gross income test" for Custodial Institutions? Yes. In line with the approach chosen for Custodial Institutions, the three-year test for determining whether an Entity meets the "50% gross income test" under the definition of Investment Entity may be applied on the final day of a non-calendar year accounting period of the year preceding the year in which the determination is made.
B. NON-REPORTING FINANCIAL INSTITUTIONS
1. The status of a Central Bank/International Organisation/Governmental Entity
Is it not inconsistent that a Central Bank, International Organisation or Governmental Entity can meet the requirements to be both classified as a Non-reporting Financial Institution and an Active NFE? How the Standard applies to a Central Bank, International Organisation or Governmental Entity will depend on the facts. The definition of NFE specifically excludes Financial Institutions (Section VIII, D(7)). The first test will therefore be whether the Central Bank, International Organisation or Governmental Entity qualifies as a Financial Institution. This is a functional test and depends on the facts. Where the Central Bank, International Organisation or Governmental Entity is determined to be a Financial Institution then it can be classified as a Non-reporting Financial Institution, provided it meets the requirements to be such in the Standard (Subparagraphs (1), (2), (3) and (4) of Section VIII, B, and the associated Commentary). Where the Central Bank, International Organisation or Governmental Entity does not meet the requirements to be classified as a Financial Institution then it will be a NFE and will be consequently classified as an Active NFE (Section VIII, D, (9) and the associated Commentary).
2. Low Risk Non-reporting Financial Institutions
What is the relationship between the jurisdiction specific categories of Low Risk Non-reporting Financial Institutions and the contents of Annex 2 to the FATCA IGAs being concluded with the US? The categories of Non-Reporting Financial Institutions in the Standard (Section VIII, B and the associated Commentary) include some of the types of institutions contained in Annex 2 of the Model FATCA IGA. During the process of developing the Standard, however, it was decided that several of the categories in Annex 2 of the Model FATCA IGA were either not appropriate or not desirable in the context of the Standard and they were therefore not included. These are categories such as Treaty Qualified Retirement Funds, Financial Institutions with a Local Client Base, Local Banks, Financial Institutions with Only Low-Value Accounts, Sponsored Investment Entities and Controlled Foreign Corporations, Sponsored and Closely Held Investment Vehicles. There was a recognition, though, that there may be jurisdiction-specific Financial Institutions that could reasonably be understood to be similarly low risk to the categories included in the Standard but may nevertheless not be covered by the categories provided in the Standard. A residual category was therefore provided to allow Participating Jurisdictions to specifically identify these jurisdiction-specific low risk Financial Institutions as Non-Reporting Financial Institutions, provided they meet the requirements set out in the Standard (Section VIII, B, (1), c)) and the associated Commentary).

3. Depository Accounts held by a Central Bank
A Central Bank is a Non-Reporting Financial Institution except with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of the type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution. See Section VIII; subparagraph B (1) (a). **Will a Depository Account maintained by a Central Bank for its employee be considered an obligation held in connection with a commercial financial activity that will require the Central Bank to perform due diligence and reporting with respect to such account as a Reporting Financial Institution?** No. Depository Accounts held by a Central Bank for current or former employees (and the spouse and children of such employees) will not be considered held in connection with a commercial financial activity and thus the Central Bank will be a Non-Reporting Financial Institution with respect to such Financial Accounts.
C. FINANCIAL ACCOUNT
1. Debt Interest
The Standard provides that the Financial Accounts of an Investment Entity are its debt and equity interests (Section VIII, C, (1), a) and the associated Commentary). What is the definition of a debt interest? There is no definition of debt interest provided in the Standard. The Standard provides that if a term is not defined it shall have a meaning consistent with the local law of the applicable jurisdiction (Paragraph 2 of Section 1 of the Model Competent Authority Agreement). Therefore, the definition of debt interest is determined under local law of the implementing jurisdiction.
2. Excluded Account
The Standard provides that a life insurance contract with a coverage period that will end before the insured individual attains age 90 is an Excluded Account provided the additional requirements described in Section VIII, subparagraph C(17)(c) are satisfied. Should this exclusion be read to cover term life insurance contracts? Yes. The Standard includes as an Excluded Account certain term life insurance contracts that meet the conditions specified in Section VIII, subparagraph C(17)(c). See Commentary to Section VIII, paragraphs 86 and 91 which use the wording "term life insurance contract".
3. Excluded Account – Dormant accounts
The Standard provides, as an example of a Low-risk Excluded Account, a dormant account with an annual balance that does not exceed USD 1000. See Commentary on Section VIII, paragraph 103, Example 6. **In light of the fact that the USD 1000 threshold is provided as an example, to what extent can jurisdictions electing to include dormant accounts as a Low-risk Excluded Account fix a higher threshold?** Even though the USD 1000 amount is only indicative it is expected that jurisdictions electing to include dormant accounts as a Low-risk Excluded Account do not fix a threshold that substantially exceeds this amount.

4. OTC Derivatives
A Financial Asset is defined in the CRS to include 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." See Section VIII, paragraph (A)(7). **Does the definition of Financial Asset include over-the-counter derivatives?** Yes, the definition of Financial Asset does not distinguish between exchange traded (or listed) derivatives or over-the-counter derivatives.

5. Excluded Accounts – substitute requirements – penalty regime
In accordance with subparagraph C(17)(g) of Section VIII, an account may only be included in the jurisdiction-specific list of low-risk Excluded Accounts, when (i) the account presents a low risk of being used to evade tax, (ii) the account has substantially similar characteristics to a category of Excluded Accents foreseen by the Standard, (iii) the account is defined as Excluded Account by domestic law and (iv) the status of the account as an Excluded Account does not frustrate the purposes of the Standard. **In that context, paragraph 103 of the Commentary to Section VIII contains an example with respect to requirement (ii), stating that a penalty regime (such as a high-rate flat tax) on early withdrawals from an Annuity Contract, treated as an Excluded Account pursuant to subparagraph C(17)(a), can present a substitute requirement for not limiting the contributions to such an Annuity Contract.** **How is this example to be interpreted, in particular, in light of the fact that the Account Holder of an Annuity Contract may not be resident for tax purposes in the jurisdiction of the Financial Institution issuing the Annuity Contract?** The penalty regime on early withdrawals of the jurisdiction of the Financial Institution that has issued the Annuity Contract to a non-resident must ensure that such penalties can be effectively levied by the jurisdiction of the Financial Institution. In particular, the jurisdiction of the Financial Institution should ensure that applicable international tax law, including its Double Tax Conventions, do not prevent the effective levying of such penalties.

6. Excluded Accounts – substitute requirements – reporting to tax authorities
In the context of Excluded Accounts, the fact that the information in relation to an account is required to be reported to the tax authorities constitutes both an indicator for low risk in the context of preparing the jurisdiction-specific list of low-risk Excluded Account under subparagraph C(17)(g) of Section VIII and a characteristic for qualifying a retirement or pension account as an Excluded Account pursuant to subparagraph C(17)(a) of Section VIII. **Does the fact that the information in relation to an account is required to be reported to the regulatory and/or social security authorities of the jurisdiction of the Reporting Financial Institution represent a substantially similar characteristic for the purposes of qualifying accounts as Excluded Accounts?** The fact that the information in relation to an account is required to be reported to the regulatory and/or social security authorities of the jurisdiction of the Reporting Financial Institution does only represent a substantially similar characteristic to the extent it is ensure under relevant domestic law that such information is made readily available to the tax authorities of the jurisdiction of the Reporting Financial Institution.

D. REPORTABLE ACCOUNT

1. Reporting of certain Controlling Persons

Does an Entity's Controlling Person(s) resident in the same jurisdiction as the Reporting Financial Institution need to be reported?

The Standard only requires the reporting of Reportable Jurisdiction Persons. Reportable Jurisdiction Persons are persons resident in a particular set of jurisdictions, as set out in the domestic implementing legislation of the Participating Jurisdiction where the Reporting Financial Institution is located (Section VIII, D, (3)). At a minimum, this list must include jurisdictions with which the Participating Jurisdiction has an agreement to automatically exchange information under the Standard. This would therefore not include persons resident solely in that Participating Jurisdiction itself.

There is, though, an approach discussed in the Standard which would allow a Participating jurisdiction to extend reporting to cover their own residents that are Controlling Persons, although this is not a requirement of the Standard (Paragraph 5 of Annex 5 to the Standard).

2. Passive Non-Financial Entities

An Entity is an Active Non-Financial Entity if less than 50% of its income is passive income and less than 50% of its assets produce or are held for the production of passive income. What if the assets could produce passive income but do not actually produce any income in the period concerned?

The test of whether an asset is held for the production of passive income (Section VIII, D, (9), a) and the associated Commentary) does not require that passive income is actually produced in the period concerned. Instead, the asset must be of the type that produces or could produce passive income. For example, cash should be viewed as producing or being held for the production of passive income (interest) even if it does not actually produce such income.

3. Passive Income

The CRS does not define passive income; however, the Commentary provides a list of items that should generally be considered passive income. The Commentary further provides that the determination of passive income may be made by "reference to each jurisdiction's particular rules." See Commentary on Section VIII, paragraph 126. In determining passive income, what is meant by the reference to each jurisdiction's particular rules?

To facilitate effective implementation of the Standard, a jurisdiction's definition of passive income should in substance be consistent with the list provided in the Commentary. Each jurisdiction may define in its particular rules the items contained in the list of passive income (such as, income equivalent to interest) consistent with domestic rules.

4. Reportable Person – regularly traded definition
Section VIII (D)(2)(a) provides that "a corporation the stock of which is regularly traded on one or more established securities market" is not a Reportable Person. **In this respect, paragraph 112 of the Commentary on Section VIII provides that stock is "regularly traded" if there is a meaningful volume of trading with respect to the stock on an on-going basis.** **Paragraph 113 of the Commentary provides further guidance as to the meaning of "meaningful volume of trading with respect to the stock on an on-going basis" with respect to each share class of the stock of the corporation.** **How is the term "each share class of the stock of the corporation" to be interpreted?** For the purposes of the Standard, "each share class of the stock of the corporation" means one or more classes of the stock of the corporation that (i) were listed on one or more established securities markets during the prior calendar year and (ii), in aggregate, represent more than 50% of (a) the total combined voting power of all class of stock of such corporation entitled to vote and (b) the total value of the stock of such corporation.

5. Protectors of a trust that is a Reporting Financial Institution
Are protectors of a trust that is a Reporting Financial Institution considered to be Account Holders of the trust in all instances or only in circumstances where their powers are such that they could be regarded as exercising control over the trust? The protector must be treated as an Account Holder irrespective of whether it has effective control over the trust.

6. Payment type code with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest
May code CRS504 be used to identify all the payment types that are reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest? Yes, code CRS504 may be used to identify all the payment types that are reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest, including where such payments are dividends, interest, gross proceeds or redemption payments. The Standard does not require the use of a specific code (i.e. CRS501, CRS502 or CRS503) to identify each payment type that is reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest or a debt interest.

E. MISCELLANEOUS
1. Related Entity definition in case of indirect ownership

In order to determine whether an Entity is related to another Entity, it is required, pursuant to subparagraph E(4) of Section VIII of the Standard, to verify whether either Entity controls the other Entity or whether the two entities are under common control. The same provision states that control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

In the case of indirect ownership of vote and value of one Entity in another Entity, must the ownership be measured proportionally or not?

Example:

Entity A owns 51% of the total voting power and 51% of the total value of the stock of Entity B. Entity B on its turn owns 51% of the total voting power and 51% of the total value of the stock of Entity C. Are Entity A and Entity C Related Entities? Under a proportional rule, the Entities would not be related because the rule would require the percentages of vote and value to be multiplied, whilst in reality Entity A effectively controls Entity C.

Entities are considered Related Entities, if these Entities are connected through one or more chains of ownership by a common parent Entity and if the common parent Entity directly owns more than 50% of the stock or other equity interest in at least one of the other Entities. A chain of ownership is to be understood as the ownership by one or more Entities of more than 50 percent of the total voting power of the stock of an Entity and more than 50 percent of the total value of the stock of an Entity.

Example:

Entities A and C are considered "Related Entities" pursuant to subparagraph E(4) of Section VIII because Entity A has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity B, and because Entity B has a direct ownership of more than 50 percent of the total voting power of the stock and more than 50 percent of total value of the stock of Entity C. Entities A and C are, hence, connected through chains of ownership. Notwithstanding the fact that Entity A proportionally only owns 26 percent of the total value of the stock and voting rights of Entity C, Entity A and Entity C are Related Entities.

OTHER ISSUES
1. Data Safeguards – ISO-27000

The Standard refers to the ISO-27000 series in relation to safeguarding data. It is a requirement of the Standard that the series is applied and, if so, is a certification required?

Rather than being prescriptive, the ISO-27000 series provide an approach to managing risk through best practice recommendations on information security management, risks and controls. The precise approach taken will be shaped by the context of the overall information security management system a tax administration has. Furthermore, there are other approaches that can be seen as providing equivalent protection. There is therefore an expectation that jurisdictions either apply the ISO 27000-series, an equivalent standard or have a reasonable justification of why it is reasonable to depart from it in the context of a particular tax administration. (References to the ISO-270000 series can be found in paragraph 13 to the Commentary on Section 3 and paragraph 12 to Commentary on Section 5 of the Model Competent Authority Agreement).