

THE BAHAMAS

Primary legislation

Automatic Exchange of Financial Account Information Act, 2016

[See below](#)

Automatic Exchange of Financial Account Information (Amendment) Act, 2017

[See below](#)

More information on the AEOI portal: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/>



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AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT, 2016

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No. 37 of 2016

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT, 2016

**AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE
COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR
FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS AND FOR
CONNECTED PURPOSES**

[Date of Assent - 29th December, 2016]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Automatic Exchange of Financial Account Information Act, 2016.
- (2) This Act shall come into force on the 1st day of January, 2017.

2. Interpretation.

- (1) In this Act —
 - “**Account Holder**” has the meaning given by Section VIII of the Common Reporting Standard;
 - “**Agreement**” means an arrangement between the Government of the Commonwealth of The Bahamas and the government of another country which makes provisions for the automatic exchange of financial account information in tax matters;

“Bahamas Financial Institution” means —

- (a) any Financial Institution organised under the laws of The Bahamas, but excluding any branch of such Financial Institution that is located outside The Bahamas; and
- (b) any branch of a Financial Institution not organised under the laws of The Bahamas, if that branch is located in The Bahamas;

“Common Reporting Standard” means the Standard as approved by the Council of the Organisation for Economic Co-operation and Development on 15 July, 2014 as set out in the Schedule;

“Competent Authority” means the Financial Secretary in the Ministry of Finance;

“Designated Officer” means an officer of the Ministry of Finance designated to carry out a specific function;

“Entity” means a legal person or a legal arrangement;

“Financial Account” has the meaning given by Section VIII of the Common Reporting Standard;

“Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company;

“Information Return” means a report which sets out certain information as specified by regulations;

“Minister” means the Minister of Finance;

“OECD” or **“Organisation for Economic Co-operation and Development”** means a standard setting body established by the Convention on the Organisation for Economic Co-operation and Development on 14 December, 1960;

“Reportable Account” has the meaning given by Section VIII of the Common Reporting Standard;

“Reporting Financial Institution” means any Bahamas Financial Institution that is not a Non-Reporting Financial Institution.

- (2) Unless otherwise defined in this Act or regulations made under this Act, or unless the context requires, words or expressions in this Act shall have the same meaning given by the Common Reporting Standard.

3. Purpose of Act.

The purpose of this Act is —

- (a) to give effect to the Common Reporting Standard;

- (b) to confer the necessary powers on the Competent Authority to enter into an Agreement with the government of another country for the automatic exchange of financial account information in tax matters;
- (c) to ensure the proper administration and enforcement of this Act; and
- (d) to ensure the performance of The Bahamas' obligations in an Agreement made under this Act.

PART II- REPORTING FINANCIAL INSTITUTIONS

4. Duty to register.

- (1) A Reporting Financial Institution shall apply to the Competent Authority to be registered.
- (2) An application for registration under subsection (1) shall be made by a Reporting Financial Institution —
 - (a) no later than 90 days after the commencement of this Act; and
 - (b) if the Financial Institution is not a Reporting Financial Institution on that date, no later than 90 days after the date on which the Financial Institution becomes a Reporting Financial Institution.
- (3) The procedure and requirements for registration under subsection (1) shall be prescribed by regulations.

5. Identification of Reportable Accounts.

A Reporting Financial Institution shall apply the due diligence rules and procedures under the Common Reporting Standard, The Bahamas' Anti-Money Laundering regime or similar requirements that the Reporting Financial Institution is subject to, in order to identify the Account Holder of any Reportable Account maintained by the Reporting Financial Institution.

6. Duty to obtain and file Information Return.

- (1) A Reporting Financial Institution shall obtain, prepare and file with the Competent Authority an Information Return related to Financial Accounts maintained by the Reporting Financial Institution.
- (2) The Information Return referred to under subsection (1) shall be —
 - (a) filed in the time and manner prescribed by regulations; and
 - (b) submitted in such manner as the Competent Authority may determine.

7. Duty to keep records, etc.

- (1) A Reporting Financial Institution shall —
 - (a) keep records including self-certifications and records of documentary evidence at its place of business, or such other place as may be prescribed by regulations; and
 - (b) hold the records referred to under paragraph (a), in the prescribed electronic readable format for a minimum period of 5 years after —
 - (i) in the case of self-certification, the last day on which a related Financial Account is opened;
 - (ii) in any other case, the end of the last calendar year in which the record is relevant.
- (2) Subject to subsection (1), a Reporting Financial Institution shall not destroy, conceal or alter books of accounts, records or other documents relating to its operations.
- (3) The records held by a Reporting Financial Institution shall —
 - (a) state the procedures by which the information required to be contained in the Information Return is determined by that Reporting Financial Institution; and
 - (b) be in English, or readily accessible and easily converted to English.
- (4) A Reporting Financial Institution which fails to comply with subsections (1) and (2) commits an offence and is liable on summary conviction to a fine of \$5,000.

8. Reliance on Third Party Service Providers.

- (1) A Reporting Financial Institution may engage a Third Party Service Provider to carry out any of its obligations under this Act.
- (2) Where a Third Party Service Provider is engaged under subsection (1), the Reporting Financial Institution shall —
 - (a) at all times, have access to the records and documentary evidence used to identify and report on Reportable Accounts and when requested, provide such records and documentary evidence to the the Competent Authority; and
 - (b) be liable for the Third Party Service Provider's failure to carry out its obligations under the contract.

PART III — COMPETENT AUTHORITY

9. Functions of the Competent Authority.

The functions of the Competent Authority are —

- (a) to administer and enforce compliance with this Act, regulations made under this Act and an Agreement;
- (b) to obtain and exchange information on Information Return.

10. Exchange of information.

The Competent Authority shall —

- (a) obtain from a Reporting Financial Institution the information specified under section 6; and
- (b) annually exchange the information referred to under section 6 within 9 months after the end of the calendar year to which the information relates in accordance with this Act.

11. Powers of the Competent Authority.

- (1) The Competent Authority shall have such power as may be requisite or incidental for or in connection with the performance of its functions.
- (2) Without prejudice to subsection (1), the Competent Authority may —
 - (a) enter into an Agreement with the government of another country for the automatic exchange of financial account information in tax matters;
 - (b) delegate, in writing, to a Designated Officer any function conferred on him under this Act.

12. Information required by the Competent Authority.

The Competent Authority may —

- (a) require an Entity or a director, officer or agent of that Entity to provide information in the form and at such time as the Competent Authority may determine; and
- (b) by notice in writing, request an Entity, a connected person, or a person reasonably believed to have information relevant to an inquiry conducted by the Competent Authority, to provide specified information and documents relating to the inquiry.

PART IV- EXCLUDED FINANCIAL ACCOUNTS

13. Excluded Accounts.

- (1) For the purposes of this Act, the following accounts, specified in Section VIII of the Common Reporting Standard are excluded from the term Financial Account —
 - (a) retirement or pension accounts;
 - (b) certain investment accounts;
 - (c) certain term life insurance contracts;
 - (d) an account maintained in The Bahamas that is held solely by an estate, if the documentation for such account includes a copy of the deceased's will or death certificate;
 - (e) escrow accounts;
 - (f) certain Depository Accounts;
 - (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in paragraphs (a) to (f), and as may be defined in law as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.
- (2) An Excluded Account under subsection (1) shall not be treated as a Reportable Account.

PART V - MISCELLANEOUS

14. Confidentiality.

- (1) Any law relating to confidentiality shall not apply to the disclosure of information by a Reporting Financial Institution to the Competent Authority that is required to be contained in an Information Return filed under this Act.
- (2) A person having an official duty, or being employed in the administration or enforcement of this Act, or any person who formerly had a duty or was formerly employed in the administration or enforcement of this Act, shall —
 - (a) treat information received from a Reporting Financial Institution as confidential; and

- (b) only disclose the information under paragraph (a) for the administration or enforcement of this Act or regulations made under this Act.
- (3) The Competent Authority shall treat information received from a Reporting Financial Institution as confidential and shall only disclose such information as may be necessary to carry out its obligations under this Act.
- (4) Information received from a Reporting Financial Institution may be disclosed in connection with court proceedings related to the performance of the Competent Authority under this Act.
- (5) No action, suit, prosecution or other proceedings shall be brought or instituted against the Competent Authority or a Bahamas Financial Institution, its employees, agents or assigns in respect of any lawful disclosure done *bona fide* in pursuance, or execution or intended execution, of this Act.

15. Anti-avoidance.

Where a Reporting Financial Institution enters into an arrangement or engages in a practice, the main purpose or one of the main purposes, of which can reasonably be considered to be to avoid an obligation imposed under this Act or the regulations made under this Act, the Reporting Financial Institution is subject to the obligation as if the Reporting Financial Institution had not entered into the arrangement or engaged in the practice.

16. Regulations.

- (1) The Minister may make regulations for giving effect to this Act.
- (2) Without prejudice to subsection (1), the Minister may make regulations —
 - (a) prescribing the procedures and requirements for registration of Reporting Financial Institutions;
 - (b) prescribing any forms under this Act;
 - (c) specifying the information required to be contained in the Information Return;
 - (d) prescribing the time and manner for filing Information Returns.

17. Amendments to the Schedule.

- (1) Where any amendment of the Common Reporting Standard is accepted by the Government of The Bahamas, the Minister may by Order amend the Schedule for the purpose of including the amendment accepted.

- (2) An Order made under this section may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the amendment and, without prejudice to the generality of the foregoing, may contain provisions amending references in this Act to specific provisions of the Common Reporting Standard.
- (3) Where the Schedule to this Act is amended pursuant to this section, a reference in this Act or in any other enactment or any instrument having effect under any such enactment to the Common Reporting Standard shall, unless the context otherwise requires, be construed as a reference to the Common Reporting Standard as amended.

18. Act binds the Crown.

This Act binds the Crown.

SCHEDULE

(section 2(1))

COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION ("COMMON REPORTING STANDARD")

Section I: General Reporting Requirements

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

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

Section II: General Due Diligence Requirements

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

Section III: Due Diligence for Preexisting Individual Accounts

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

A. Accounts Not Required to be Reviewed, Identified, or Reported.

A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.

B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts.

- 1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a

resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):
 - a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
 - b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
 - c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
 - d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
 - e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
 - f) a "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

5. If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.
 6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if:
 - a) the Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction, one or more telephone numbers in the Reportable Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and
 - ii) Documentary Evidence establishing the Account Holder's non-reportable status.
 - b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or
 - ii) Documentary Evidence establishing the Account Holder's non-reportable status.
- C. **Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search.** With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).
2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in subparagraph B(2):
 - a) the most recent Documentary Evidence collected with respect to the account;
 - b) the most recent account opening contract or documentation;
 - c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
 - d) any power of attorney or signature authority forms currently in effect; and
 - e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. **Exception To The Extent Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
 - a) the Account Holder's residence status;
 - b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
 - c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
 - d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);

- e)* whether there is a current “in-care-of” address or “hold mail” instruction for the Account Holder; and
 - f)* whether there is any power of attorney or signatory authority for the account.
- 4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
- 5. **Effect of Finding Indicia.**
 - a)* If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Reportable Person in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
 - b)* If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) of this Section and one of the exceptions in such subparagraph applies with respect to that account.
 - c)* If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
- 6. If a Preexisting Individual Account is not a High Value Account as of 31 December [xxxx], but becomes a High Value Account as of

the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
 8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
 9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Preexisting Individual Accounts must be completed by [xx/xx/xxxx].
- E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

Section IV: Due Diligence for New Individual Accounts

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

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

Section V: Due Diligence for Preexisting Entity Accounts

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

- A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December [xxxx], is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of the last day of any subsequent calendar year.
- B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds USD 250 000 as of 31 December [xxxx], and a Preexisting Entity Account that does not exceed USD 250 000 as of 31 December [xxxx] but the aggregate account

balance or value of which exceeds USD 250 000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

- C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
 - 1. **Determine Whether the Entity Is a Reportable Person.**
 - a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.
 - b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
 - 2. **Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons.** With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(2)(a) through (c) in the order most appropriate under the circumstances.

- a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
- b) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
 - i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance that does not exceed USD 1 000 000; or
 - ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes.

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

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250 000 as of 31 December [xxxx] must be completed by 31 December [xxxx].
2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed USD 250 000 as of 31 December [xxxx], but exceeds USD 250 000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to

know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

Section VI: Due Diligence for New Entity Accounts

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

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

1. Determine Whether the Entity Is a Reportable Person.

- a)* Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
- b)* If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable

Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.

- a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
- b) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

Section VII: Special Due Diligence Rules

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

- A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a

Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

C. Account Balance Aggregation and Currency Rules.

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than

in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

Section VIII: Defined Terms

The following terms have the meanings set forth below:

A. Reporting Financial Institution

1. The term **"Reporting Financial Institution"** means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.
2. The term **"Participating Jurisdiction Financial Institution"** means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term **"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term **"Depository Institution"** means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term **"Investment Entity"** means any Entity:
 - a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - ii) individual and collective portfolio management; or
 - iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

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

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

7. The term "Financial Asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.

8. The term **“Specified Insurance Company”** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

B. Non-Reporting Financial Institution

1. The term **“Non-Reporting Financial Institution”** means any Financial Institution that is:
- a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
 - b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
 - c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;
 - d) an Exempt Collective Investment Vehicle; or
 - e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term **“Governmental Entity”** means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a **“Governmental Entity”**). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.
- a) An **“integral part”** of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other

accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

- b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
 - i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
 - c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
3. The term **"International Organisation"** means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.
4. The term **"Central Bank"** means a bank that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

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

- b)* the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
 - c)* the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
 - d)* participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets; and
 - e)* the fund is subject to government regulation and provides information reporting to the tax authorities.
- 7. The term **"Pension Fund of a Governmental Entity, International Organisation or Central Bank"** means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
- 8. The term **"Qualified Credit Card Issuer"** means a Financial Institution satisfying the following requirements:
 - a)* The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
 - b)* Beginning on or before [xx/xx/xxxx], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term “**Exempt Collective Investment Vehicle**” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

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

C. Financial Account

1. The term “**Financial Account**” means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

- a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
- b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established

with a purpose of avoiding reporting in accordance with Section I; and

- c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

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

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

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

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

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

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

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

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

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

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

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

D. Reportable Account

1. The term “Reportable Account” means an account held by one or more Reportable Persons or by a Passive NFE with one or more

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

D. Reportable Account

1. The term “Reportable Account” means an account held by one or more Reportable Persons or by a Passive NFE with one or more

Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.

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

- a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

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

E. Miscellaneous

1. The term "Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the

beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

2. The term **"AML/KYC Procedures"** means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term **"Entity"** means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a **"Related Entity"** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity.
5. The term **"TIN"** means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term **"Documentary Evidence"** includes any of the following:
 - a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
 - b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
 - c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
 - d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

Section IX: Effective Implementation

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

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2017

Arrangement of Sections

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No. 18 of 2017

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2017

AN ACT TO AMEND THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT TO STRENGTHEN COMPLIANCE AND ENFORCEMENT WITH RESPECT TO THE COMMON REPORTING STANDARD

[Date of Assent - 11th December, 2017]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Automatic Exchange of Financial Account Information Act¹, may be cited as the Automatic Exchange of Financial Account Information (Amendment) Act, 2017.

2. Amendment of section 2 of the principal Act.

(1) Section 2 of the principal Act is amended —

(a) in subsection (1), by the deletion of the definition “Agreement” and the substitution of the following —

“**Agreement**” means the legal instrument providing the basis for the automatic exchange of financial account information under this Act and includes —

(a) the Convention, together with the MCAA;

(b) a CRS TIEA together with a competent authority agreement;

¹No. 37 of 2016.

- (c) a multilateral intergovernmental agreement or treaty binding on The Bahamas, for the exchange of information in tax matters that provides for the automatic exchange of financial account information under the CRS, together with a limited competent authority agreement;”;
- (b) by the deletion of the definition “Common Reporting Standard” and the substitution of the following —
 - .. “**Common Reporting Standard**” or “**CRS**” means the standard for the automatic exchange of financial account information approved by the Council of the Organisation for Economic Co-operation and Development on 15th July, 2014 as amended from time to time, as set out in the Schedule, and includes the Commentaries on the CRS published by the OECD for the purpose of assisting with the interpretation of the standard;”;
- (c) by the deletion of the definition “Competent Authority” and the substitution of the following —
 - .. “**Competent Authority**” means the Minister of Finance or the representative of the Minister duly authorised in writing;”;
- (d) by the insertion in the appropriate alphabetical order of the following words and phrases and their definitions —
 - .. “**Convention**” means the multilateral Convention on Mutual Administrative Assistance in Tax Matters developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010 to provide for the automatic exchange of financial account information under the Common Reporting Standard;”
 - “**CRS Guidelines**” means the guidelines issued by the Competent Authority under section 10A and includes —
 - (a) CRS Guidance Notes;
 - (b) CRS Recommended Practices and Procedures;
 - (c) CRS Practice Directions;”
 - “**CRS TIEA**” means a bilateral agreement under the International Tax Cooperation Act, 2010² for the exchange of information with respect to tax matters between The Bahamas and a foreign state that adopts, or has been amended to adopt, Article 5A of the OECD Model Protocol to permit the

automatic exchange of financial account information under the Common Reporting Standard;”

“Multilateral Competent Authority Agreement” or “MCAA” means the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information, a framework agreement based on Article 6 of the Convention to facilitate broad implementation of the automatic exchange component of the Common Reporting Standard, and opened for signature in Berlin on 29th October, 2014;”

“regulations” means regulations made under or pursuant to this Act;”

- (b) by the insertion immediately after subsection (2) the following subsection (3) —

“(3) Where in the Schedule to this Act, a reference is made to a date that is not specified therein, such date may be as is provided for in regulations.”.

3. Repeal and replacement of section 3 of the principal Act.

Section 3 of the principal Act is repealed and replaced as follows —

“3. Purpose of Act.

The purpose of this Act is —

- (a) to establish the requisite legislative framework for implementation of the Common Reporting Standard in accordance with the Convention;
- (b) to underpin and reflect the multilateral approach to the automatic exchange of financial account information, taken by The Bahamas on becoming a signatory to the MCAA ;
- (c) to confer the necessary powers on the Competent Authority to enter into an Agreement with the government of another country for the automatic exchange of financial account information in tax matters; and
- (d) to facilitate The Bahamas accession to the Convention and, thereafter, the fulfilment of The Bahamas' undertaking to commence the automatic exchange of financial account information with participating jurisdictions under the MCAA.”.

4. Repeal and replacement of section 5 of the principal Act.

Section 5 of the principal Act is repealed and replaced as follows —

“5. Identification of Reportable Accounts.

For the purpose of identifying Reportable Accounts maintained by a Reporting Financial Institution, the Reporting Financial Institution shall apply the due diligence rules and procedures under the Common Reporting Standard.”.

5. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) in the section head note, by the deletion of the words “obtain and”; and
- (b) in subsection (1), by the deletion of the words “obtain, ”.

6. Insertion of a new section 6A into the principal Act.

The principal Act is amended by the insertion immediately after section 6 of the following new section —

“6A. Duty to self-certify.

Where a Reporting Financial Institution requests or is required to obtain a self-certification from an Account Holder or Controlling Person, the Account Holder or Controlling Person shall provide a true and accurate self-certification to the Reporting Financial Institution.”.

7. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended —

- (a) in subsection (1)(b)(i), by the deletion of the word “opened” and the substitution of the word “closed”;
- (b) in subsection (3)(a), by the deletion of the words “state the procedures” and the substitution of the words “document the procedures as prescribed in regulations”; and
- (c) by the deletion of subsection (4).

8. Repeal and replacement of section 9 of the principal Act.

Section 9 of the principal Act is repealed and replaced as follows —

“9. Functions of Competent Authority.

The functions of the Competent Authority are —

- (a) to administer the implementation of the Common Reporting Standard and the automatic exchange of financial account information in relation to any Agreement;
- (b) to agree by mutual consent with exchange partners under an Agreement that bilateral automatic exchange takes place;
- (c) to issue CRS Guidelines; and

- (d) to administer and enforce compliance with —
 - (i) this Act, any regulations or CRS Guidelines made thereunder; and
 - (ii) any Agreement.”.

9. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended by the deletion of paragraph (b) and the substitution of the following —

- “(b) in accordance with this Act and the governing Agreement, annually exchange the information on the Information Return filed with the Competent Authority within nine months after the end of the calendar year to which the information relates.”.

10. Insertion of a new section 10A into the principal Act.

The principal Act is amended by the insertion immediately after section 10 of the following new section —

“10A. CRS Guidelines.

- (1) The Competent Authority may, in performing its functions in the administration of this Act, issue guidelines providing for such matters as may be necessary or expedient for giving effect to such functions and to the intent and purposes of this Act.
- (2) CRS Guidelines —
 - (a) may clarify, explain, illustrate or illuminate any procedure, process or matter in respect of the administration and enforcement of this Act and any regulations made thereunder; and
 - (b) shall be subject to the Act and any regulations made thereunder and, where a guideline conflicts with a regulation, the regulation shall prevail.
- (3) CRS Guidelines must be published in such manner as the Competent Authority may determine.
- (4) The Competent Authority may, from time to time, amend the CRS Guidelines.”.

11. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended by the deletion of subsection (2) and the substitution of the following —

- “(2) Without prejudice to subsection (1), the Competent Authority may delegate, in writing, to a Designated Officer any function conferred on the Competent Authority under this Act and the regulations.”.

12. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended by the deletion, wherever they appear in the section, of the words “Reporting Financial Institution” and the substitution of the word “person”.

13. Insertion of new sections 15A and 15B into the principal Act.

The principal Act is amended by the insertion immediately after section 15, of the following new sections —

“15A. Compliance notice by Competent Authority.

Without prejudice to any other action that may be instituted by the Competent Authority, if at any time it appears to the Competent Authority that—

- (a) a Reporting Financial Institution;
- (b) an Account Holder or Controlling person;
- (c) an Entity, or a director, officer or agent of that Entity; or
- (d) any other person,

has failed to comply with any of the requirements under this Act, the Competent Authority may, by written notice, direct any person referred to in paragraphs (a) through (d) to comply with the requirement within such period and on such terms and conditions as the Competent Authority may specify and such person shall comply with the notice.

15B. Administrative penalty.

- (1) The Competent Authority may in its discretion impose an administrative penalty upon —

- (a) a Reporting Financial Institution;
- (b) an Account Holder or Controlling person;
- (c) an Entity, or a director, officer or agent of that Entity; or
- (d) any other person,

who fails to comply with a notice of the Competent Authority.

- (2) If the Competent Authority considers in the public interest so to do, the Competent Authority may, upon a settlement or after a period of thirty days, order any person referred to in paragraphs (a) – (d) of subsection (1) that has breached any provision of this Act to pay to the Competent Authority an administrative penalty not exceeding three hundred thousand dollars for each contravention.

- (3) If any person referred to in paragraphs (a) - (d) of subsection (1) in breach of any provision of the Act solely by reason of failing to file with or deliver to the Competent Authority a document within the required time period, such person shall be subject to an administrative penalty of up to one thousand dollars, for every day from the date the document was required to be filed or delivered to the day the document was filed or delivered.”.

14. Amendment of section 16 of the principal Act.

Section 16 of the principal Act is amended by the insertion immediately after paragraph (d) of the following new paragraphs —

- “(e) prescribing offences in relation to a contravention of or non-compliance with —
 - (i) a provision of this Act, including penalties not exceeding twenty-five thousand dollars to be imposed for such offences, and a further fine not exceeding one thousand dollars per day or part thereof where the offence continues after conviction;
 - (ii) a provision of a regulation made under or pursuant to this Act, including penalties not exceeding five thousand dollars to be imposed for such offences, and a further fine not exceeding seven hundred and fifty dollars per day or part thereof where the offence continues after conviction;
- (f) prescribing the confidentiality and data protection requirements to govern the automatic exchange of financial account information with exchange partners pursuant to the MCAA;
- (g) giving effect to a multilateral intergovernmental agreement or treaty referred to in section 2;
- (h) prescribing the manner of carrying out all or any of the purposes of, or any matter requisite or convenient to give effect to this Act.”.