

30 June 2015

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

Dear Sir/Madam,

**Re: Proposed Model for the Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong –  
Response to FSTB Consultation Paper**

---

On behalf of the Asia Securities Industry & Financial Markets Association ("ASIFMA")<sup>1</sup> and the Capital Markets Tax Committee of Asia ("CMTC")<sup>2</sup>, we welcome the opportunity to respond to the FSTB's *Consultation Paper on Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong* ("the Consultation Paper"). Set out in this letter and the attached matrix are the comments of our members, including recommendations and comments for development of a framework for implementation of the Automatic Exchange of Financial Account Information scheme ("AEOI") in Hong Kong.

We understand and support the commitment that Hong Kong has made to the implementation of the new standard on AEOI as a necessary response to global developments in the pursuit of tax transparency and to preserve Hong Kong's standing as a key international financial centre.

---

<sup>1</sup> ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional service firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

<sup>2</sup> CMTC is a financial services industry body consisting of a number of banks, investment banks, securities firms and other diversified financial services institutions operating in Asia who are represented through their regional tax directors. The main objects of the CMTC, according to its Constitution, are "to provide a forum for discussion by corporate tax managers responsible for the tax affairs of investment banks, securities firms, banks and other diversified financial services institutions of topical taxation issues in Asia affecting their capital and securities markets and similar activities; ... to keep members informed of up to date information on taxation matters affecting capital and securities markets, and to exchange views on the technical analysis thereof; [and] to represent the interests of its members through acting as the respected voice of investment banks, securities firms, banks and other diversified financial services institutions; and to participate in liaison or advocacy activities on tax matters either directly or indirectly through representation with other groups or societies concerned with or by fiscal matters."

We also appreciate the steps taken by the Financial Services and the Treasury Bureau ("FSTB") to consult on implementation of the framework for AEOI with the stated intention to adopt a 'pragmatic approach' and of keeping the cost of compliance as low as possible for affected Financial Institutions ("FIs").

As requested in Chapter 4 of the Consultation Paper, we have provided our views on the issues raised by FSTB. More specific comments are listed in the schedule attached as **Appendix 1** of this letter.

To provide context for those specific matters, we have set out in this letter comments on a number of overarching principles and themes which we consider should guide the development of the AEOI framework for Hong Kong. In our submission, the comments made in this letter and the specific matters addressed in **Appendix 1** are consistent with the pragmatic approach espoused by FSTB in implementing the framework for AEOI.

We would welcome the opportunity to meet with FSTB and other Hong Kong Government bodies to expand upon the matters included in this submission and to further assist in development of the framework.

## **1. Maximum consistency and harmonisation**

To the maximum extent possible, we submit that the framework for implementation of AEOI in Hong Kong, any departures from the Common Reporting Standard ("CRS"), as issued by the OECD, should only be made where they are absolutely necessary. Such necessity may, for example, be as a result of elements of the legislative and regulatory framework applicable to the finance industry in Hong Kong (e.g. personal data privacy and anti-money laundering provisions).

Minimising departures from the CRS is consistent with the FSTB's stated aim of facilitating a pragmatic implementation and seeking to limit the compliance burden imposed on FIs.

Our membership comprises FI groups which typically have a presence in multiple jurisdictions and will be subject to rules for AEOI in participating jurisdictions. While we cannot control whether other jurisdictions will adhere to a standardised approach to the implementation of AEOI, we request minimal departure from OECD guidance to ensure Hong Kong retain its competitiveness amongst neighbouring jurisdictions while meeting the requirements. Limiting the cost of compliance for FIs operating in Hong Kong will be aided by ensuring the guidance applicable to each jurisdiction is standardised to the maximum degree possible. In turn, standardisation between jurisdictions will be optimised where departures from CRS by Hong Kong are kept to a minimum.

There are approximately 50 areas where there is potential for Hong Kong to adopt variations from the OECD guidance for the implementation of AEOI. **Appendix 2** contains a listing of these potential variations and comments in relation to each of these areas. This document was first compiled by a working group consisting of various global industry bodies (including ASIFMA) to support a white paper which was presented to the OECD. It has since been adapted to include our members' comments directed at limiting the areas where Hong Kong would seek to adopt measures which depart from the CRS and related commentary.

In addition to this desire for Hong Kong to pursue consistency with the CRS, as published by the OECD, we submit that the framework for implementing AEOI in Hong Kong should limit any divergence from the rules and framework that exists for compliance with the requirements of FATCA. Some divergence from FATCA is unavoidable, however given the costs and resources which our members have deployed for the purposes of meeting the due diligence and reporting requirements of FATCA, to the extent the framework for AEOI can accommodate members' FATCA solutions, the opportunity to limit the cost of complying with AEOI will be maximised. A number of the specific comments in **Appendix 1** are directed at maximising the utility of FATCA processes and solutions by leveraging them in the proposed AEOI framework.

Furthermore, where the implementation of AEOI in Hong Kong requires provisions in addition to the requirements of CRS, we request that these additions be aligned with the current requirements under Anti-Money Laundering Ordinance ("AMLO") and Personal Data Privacy Ordinance ("PDPO") where appropriate.

## **2. Proposed enforcement powers and sanctions**

By far, the aspect of the Consultation Paper which attracted the most comments from our members was the section at para 2.23 – 2.26 setting out the proposed scope of enforcement provisions. The consistent themes in these comments is a recognition that enforcement powers will be essential to ensuring the IRD's capacity to ensure compliance with AEOI balanced against a concern that such powers and sanctions for non-compliance are proportionate to the objectives of the AEOI framework, i.e. AEOI is a framework for transparency in relation to taxation issues and not a framework to combat money laundering or terrorism financing.

With respect to the powers proposed to be granted to the IRD (as set out in para 2.23), our members accept that these powers are necessary for the effective administration of the AEOI framework. However, we strongly recommend that the IRD provide detailed guidance as to how it would propose to exercise these powers, in particular the right to access business premises and systems of FIs. In this respect, we would anticipate a cooperative regime would be implemented except in cases where the IRD had cause for concern that non-compliance by an FI was aggravated or of a repetitive nature. In our submission, a cooperative approach between the IRD and FIs would limit the potential for disruption to business activities and would be consistent with the aim stated in the Consultation Paper of not imposing an undue compliance burden on FIs.

Similarly, in relation to the sanctions proposed in para 2.24, our members request that the IRD provide guidance on the circumstances in which it would seek to impose such sanctions. Our members are heartened by comments in the Consultation Paper that 'the absence of knowledge about the inaccuracy may be a defence for FIs'. There are many elements of the CRS where judgment is required to be exercised by FIs and where there is a requirement to rely on information provided by Account Holders, for example, in seeking to establish residence status.

Therefore, it would assist FIs and their employees if FSTB / IRD could provide guidance as to:

- What constitutes 'reasonable excuse' for failure to comply with the various requirements of the AEOI (i.e. a safe harbour standard of care which can be applied by FIs as evidence it has diligently sought to comply with its AEOI compliance obligations); and
- What will be sufficient to demonstrate the 'absence of knowledge' that inaccurate AEOI returns have been furnished.

With respect to the sanctions proposed para 2.24(c), more clarification is required. The preamble to para 2.24 refers to sanctions that can be imposed on FIs, in which case imprisonment would appear inapplicable. If, in the alternative, the intention is to apply that sanction against employees or officers of FIs, then we submit that the circumstances in which such a significant penalty could be imposed need to be very tightly defined and used only in situations of aggravated non-compliance.

Members understand the rationale for penalties applicable to employees of an FI as proposed in para 2.25, however given the areas of judgment required to be exercised in seeking to assist an FI comply with its obligations under the AEOI framework, these penalties must be tightly circumscribed and only applied in the case of conscious and wilful acts.

As an example, in the Consultation Paper, it is recognised that the tax residence of an Account Holder is a fundamental and important concept under AEOI. FIs need to collect data from Account Holders as the basis for reporting to the jurisdiction of residence. Para 3.5 says an FI is “limited to performing a reasonableness test of the self-certification with a view to confirming the residence for tax purposes indicated by an account holder” and is “not expected to carry out any independent legal analysis of relevant tax laws”. In this regard, and with other areas of judgment required to be exercised by employees, our members are concerned about the punitive nature of the sanctions proposed in para 2.25.

The pervasive nature of the AEOI framework and the procedures required to be carried out in completing the due diligence and reporting obligations of an FI will typically be carried out by employees at an operational level, following policies and procedures set at an organisational level. Bearing this in mind, the punitive nature of the penalty provisions on both employees and management of an FI as currently drafted is considered excessive. In our view, the circumstances in which sanctions can be applied against employees and management of an FI must be very tightly proscribed.

Consistent with our comments regarding the sanctions set out in para 2.25, we urge the authorities to include in the enabling legislation a definition of ‘reasonable excuse’ and to ‘wilfully defraud’. We also submit that examples of ‘safe harbours’ (or circumstances where the IRD would not apply the sanctions against employees/management) be set out in a DIPN to be issued by the IRD following the enactment of the AEOI framework. We would welcome the opportunity to workshop with FSTB/IRD on the development of such examples.

Our members submit that such safe harbour are required in order to protect FIs that have appropriate processes in place but have submitted an incorrect return due to administrative errors. There are a vast number of accounts that FIs may need to investigate (often in the millions) and it is not likely that all the information will be 100% accurate despite the best efforts of staff of an FI. Therefore, where FIs have in place appropriate policies, have undertaken ‘reasonable endeavours’ to comply and where there is no mischief at hand, the FIs should not be penalised.

We support the imposition of reasonable sanctions against Account Holders who provide a false self-certification. Self-certification forms a vital component of an effective framework for the AEOI and it is important that Account Holders have an incentive to apply due diligence in completing the self-certification. However, consistent with the comments made above, the circumstances in which the penalties may be applied are proportionate and take account of the fact that determining the tax residence of an Account Holder can be a complex matter. Accordingly, we recommend that there should first be a demonstrated level of culpability by an Account Holder before the sanctions are applied.

### **3. Rules for collecting information from Account Holders**

In relation to the collection of information obtained from the performance of due diligence procedures on Account Holders, there are two options proposed in the Consultation Paper. The first option is for FIs to only identify, furnish and report information on Account Holders who are residents of Reportable Jurisdictions (i.e. only those jurisdictions with Competent Authority Agreements (“CAAs”) in place with Hong Kong).

An alternative, referred to as the ‘wider approach’, is for FIs to identify and keep information on all Account Holders regardless of whether the jurisdiction is a Reportable Jurisdiction. We understand that the FSTB has a concern that the collection of information under this wider approach may not comply with Hong Kong data privacy regime as it currently stands.

In the view of our members, adoption of the ‘wider approach’ is a vital element of the effectiveness of the AEOI framework and the absence of an ability for FIs to apply such an approach would be inconsistent with the stated aim of

ensuring FIs do not face an excessive compliance burden and the FSTB's desire to be 'pragmatic' in setting the framework for the AEOI.

We understand the concern of the FSTB that endorsing the wider approach may not be in compliance with Hong Kong's data privacy laws and submit that it is unreasonable to place the onus on FIs to ensure compliance with data privacy laws in the context of implementing a new regime such as the AEOI. In implementing the AEOI framework we urge the FSTB to recommend laws which give FIs the capacity to collect the necessary information from all Account Holders but only authorise the reporting of information pertaining to Account Holders who are determined to be resident in a jurisdiction with which Hong Kong has entered into a valid CAA. This approach will substantially reduce the compliance costs borne by FIs, and reduce the likelihood of inadvertent non-compliance.

In the absence of the wider approach being specifically allowed, FIs are at risk of breaching data privacy laws in duly implementing the AEOI. In order to make the judgment required by the AEOI (refer para 3.5 of the Consultation Paper), FIs need to collect information from Account Holders. If an Account Holder is subsequently determined not to be a resident of a Reportable Jurisdiction, the onus of meeting the requirements of the data privacy regime will fall upon the FI. In our view, this 'reverse' onus is unfair and in implementing the framework for the AEOI, the FSTB should take steps to ensure that FIs are not placed in this position.

In the absence of the wider approach, apart from the prospect of breaching data privacy laws, FIs will need to establish a process which monitors when Hong Kong enters into a new CAA and modify their due diligence procedures to identify and retain information pertaining to Account Holders who are tax residents of the new CAA jurisdiction. This will result in an unnecessary additional compliance burden and cost for FIs.

We understand that the wider approach may require consideration of amendment to Hong Kong's data privacy laws, however, we believe it is appropriate for the FSTB to recommend such amendments rather than create a situation where there may be uncertainty for FIs and which imposes significant additional costs on FIs.

#### **4. Staged implementation of reporting obligations**

It is expected to be a feature of the implementation of CRS, with early and late adopting countries and the need for CAAs to be agreed (whether bilateral or multilateral), that the legal framework for exchange of information will come into place on a staged basis. This expectation is amplified by the fact that, in the circumstances of Hong Kong, there are currently 39 countries with which a CAA could potentially be concluded. This process, including the need to ensure that a CDTA/TIEA partner has in place appropriate laws and rules to safeguard data privacy and confidentiality, could take a reasonable period to complete.

Given this expectation, to give effect to FSTB's desire not to impose an undue compliance burden on FIs, the obligation to report Account Holder information should only be applied on a prospective basis. That is, reporting should only be required in respect of residents of a particular jurisdiction for years commencing on or after the date on which the relevant CAA and enabling framework is concluded.

#### **5. Flexibility in updating the AEOI framework**

We appreciate the FSTB's endeavours to ensure that appropriate measures are in place for AEOI to be flexible and to be updated easily. Given the staged adoption of AEOI by different countries, it is important that Hong Kong retain this flexibility.

We support the intention to include the list of 'Reportable Jurisdictions', 'Excluded Accounts', and the list of 'non-reporting FIs' in schedules to the Inland Revenue Ordinance ("IRO"). The ability for the Secretary of Financial Service

and the Treasury to amend these schedules via a notice in the Gazette (subject to negative vetting by the Legislative Council) will provide for greater flexibility and capacity for Hong Kong to keep its framework for AEOI current and in line with ongoing global developments.

### **Conclusion**

In summary, we welcome the FSTB's desire to adopt a pragmatic approach for implementing AEOI and its intent to keep compliance costs as low as possible. To further this objective we submit that the FSTB should reflect the overarching principles set out above in the AEOI framework.

As mentioned previously, in **Appendix 1** we have included more specific comments regarding the issues raised in Chapter 4 of the Consultation Paper.

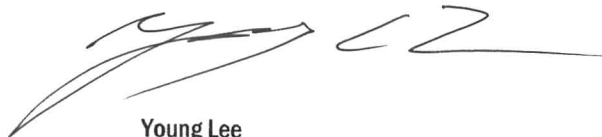
The members of the ASIFMA and CMTC working group on the AEOI would welcome the opportunity to meet with FSTB/IRD to further explain these comments and to assist in developing a pragmatic and workable framework for AEOI. We would welcome any chance to meet for a constructive dialogue.

For further information, please contact Patrick Pang, ASIFMA at office: +852 2537 4711 or email at [ppang@asifma.org](mailto:ppang@asifma.org).

Yours sincerely,



Mark Austen  
Chief Executive Officer  
ASIFMA



Young Lee  
Chairman  
CMTC

## Appendix 1

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
<b>(a) Feedback on the proposed scope of FIs (paragraph 2.12), non-reporting FIs (paragraph 2.15 and 2.16) and excluded accounts (paragraph 2.17) within the framework allowed under CRS?</b>				
1.	2.12	Definitions generally	<p>Please confirm our understanding that the defined terms in Section VIII of the CRS will be incorporated into the IRO with the addition of items specific to Hong Kong as listed in para 2.12 (e.g. ‘a trust company registered under the Trustee Ordinance’).</p> <p>To achieve the objective of not imposing an undue the compliance burden for FIs operating in Hong Kong, most of whom will have operations in other jurisdictions intending to adopt the CRS, deviations from the CRS should be kept to a minimum.</p>	Confirmation that there will be minimal deviation from the OECD model for AEOI and then only for circumstances specific to the legislative and regulatory framework in Hong Kong.
2.	2.12(b)	“Depository Institution”	<p>The Consultation Paper suggests that “Depository Institution” will be defined as an authorized institution licensed or registered under the Banking Ordinance (Cap. 155); or a credit union registered under the Credit Unions Ordinance (Cap. 119).</p> <p>In Hong Kong, deposit-taking companies include specialized companies such as Octopus Cards Limited, a company that takes deposits but does not really perform any banking activities listed in the CRS commentary (Section VIII, page 161, para. 13).</p> <p>By including such deposit-taking companies, the IRD would be expanding the definition of “Depository Institution” beyond what was envisaged by the OECD.</p>	<p>This is not a significant issue for ASIFMA and CMTC members but we recommend consideration be given to either:</p> <ol style="list-style-type: none"> <li>1. defining “Depository Institution” as an authorized institution licensed or registered under the Banking Ordinance (Cap. 155); or a credit union registered under the Credit Unions Ordinance (Cap. 119) <i>that accepts deposits in the ordinary course of a banking or similar business</i> (as summarized in the commentary to the CRS); or</li> <li>2. define the term “Non-Reporting FI” to include a “Depository Institution” that does <u>not</u> <i>accept deposits in the ordinary course of a banking or similar business</i>.</li> </ol>
3.	2.12(a) and 2.12(d)(iii)	The definition of “Custodial Institution” and “Investment Entity”.	<p>A trust company registered under the Trustee Ordinance (Cap. 29) appears to be included in the definition of both “Custodial Institution” (under 2.12(a)) and “Investment Entity” (under 2.12(d)(iii)).</p> <p>Although both definitions would qualify a trust company as a FI, since the nature of “Financial Accounts” held by a “Custodial Institution” would differ from that of an “Investment Entity”, the overlapping definition may cause confusion.</p>	We recommend removing the reference to a trustee company registered under the Trustee Ordinance (Cap. 29) from the “Investment Entity” definition in 2.12(d)(iii).

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
4.	2.18	Schedule of “Non-Reporting FI”	<p>We support the schedular approach to listing “Non-Reporting FIs”.</p> <p>The ability for the SFST to update these categories by notice in the Gazette should provide for a more efficient approach than requiring legislative amendment.</p>	For purposes of maximizing consistency with FATCA and thereby reducing compliance costs for FIs, we recommend including entities listed in Annex II of the HK-US IGA in the Schedule for Non-Reporting FI, on the basis that these entities should satisfy the criteria for low-risk Non-Reporting FI.
5.	2.18	Schedule of “Non-Reporting FI”	Under FATCA, Owner Documented Foreign Financial Institutions (“ODFFI”) are not specified in Annex II of the HK US IGA, however it will satisfy the definition of a deemed compliant FFI. The definition of a Non-Reporting FI would typically include all deemed-compliant FFIs (refer page 171, para 49 of the Commentary).	We support the inclusion of ODFFIs in the Schedule of Non-Reporting FIs to maintain consistency with FATCA and the stated aim of reducing compliance costs.
6.	2.16	Treatment of Investment Advisors and Managers	It is specifically mentioned in paragraph 2.16 that investment entities wholly owned by exempt beneficial owners and investment managers/advisors should not have account holders who are persons triggering any reporting responsibilities.	We recommend including these entities into the Schedule of Non-reporting FIs. This will exclude the requirement for such entities to conduct due diligence and nil reporting (if included in the Hong Kong framework). This is consistent with the objective of minimising compliance costs where the aims of CRS would not otherwise be frustrated.
7.	2.16	Treatment of Sponsored entities	<p>We would welcome further guidance on the proposed treatment of the various types of Sponsored Entities listed in Annex II of the HK-US IGA.</p> <p>We would also welcome clarification on whether Sponsoring Entities will be allowed to perform reporting for all reportable accounts of Sponsored Entities as is permitted under FATCA.</p>	Please provide clarification on this requirement. We recommend similar provisions be made for Sponsoring Entities to discharge the obligations for FIs which it sponsors.
8.	2.16	Treatment of MPF and ORSO	We understand that it is envisaged Mandatory Provident Funds and Occupational Retirement Schemes Ordinance will be “Non-Reporting FIs”.	Please confirm if this is proposed to be restricted to mandatory contributions?
9.	2.18	Schedule of “Excluded Accounts”	<p>We understand that there will be an “open” category of “Excluded Accounts” that meet the criteria set out the Section VIII B(17)(g) of the CRS.</p> <p>Various types of Employee Incentive Share Schemes are listed in Annex II of the IGA between Hong Kong and the United States.</p>	<p>For purposes of consistency with FATCA, we recommend including the same accounts into the Schedule for Excluded Accounts for CRS purposes.</p> <p>We also recommend inclusion of DvP accounts established purely for trade execution purposes and where there is no custodial/deposit balance maintained.</p>

**(b) Feedback on the proposed reporting requirements proposed in paragraph 2.19**

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
10.	2.19(a)	Reporting of TIN	<p>The proposed exception to the reporting of a TIN places the onus on FIs to determine which jurisdictions do not issue a TIN (or functional equivalent number) and which jurisdiction does not require the collection of TIN under that jurisdiction's domestic law. This will be burdensome for FIs, especially those with more limited global presence. This will also require FIs to keep abreast with changes in the law where reporting jurisdictions update their laws to include provision for TINs</p> <p>We understand that the OECD plans to compile a list of reporting jurisdictions that do not require the collection of TINs, and will update such list on a regular basis.</p>	We recommend the IRO include reference to this list in the IRO and make specific provision which allows FIs to rely on the list for the purposes of determining whether there is an obligation to report TINs.
11.	2.19(c)	FI Identifying number	We understand that the identifying number of the FI shall be reported if available. Per the OECD Commentary (para. 9, page 98), Hong Kong has the ability to determine which number which be the identifying number.	For convenience, we recommend the use of the IRD "Filing Number".
12.	2.19	Currency translation	Please confirm our understanding, that for currency translation, the FSTB will follow the suggested approach in OECD Commentary para 24 on page 102 (i.e. the spot rate at the end of the calendar year will be used).	<p>Please confirm if it is intended that rates published on the IRD website for "Average Exchange Rates of Major Foreign Currencies for Profits Tax Purposes" are sufficient for the purposes of currency translation.</p> <p>Please also advise which rates should be used for currencies not listed on the IRD website (e.g. can the FI use the rate published by a third party such as Bloomberg).</p>
<b>(c) Feedback on the due diligence procedures proposed in paragraph 3.1</b>				
13.	3.1	Flexibility in due diligence procedures	<p>In order to provide flexibility and provide the ability for FIs to minimise compliance costs, we recommend providing the elective option for FIs to apply the more vigorous New Account due diligence procedures for Pre-existing Accounts, and Higher-Value account due diligence procedures for Lower-Value accounts.</p> <p>This flexibility would provide FIs with the option of having only need to have 2 sets of procedures in place (rather than 4). This alternative is contemplated in Section II E of the OECD CRS.</p>	We recommend the FSTB adopt the alternative approach offered by the OECD and that the election not be required to be made on a 'whole of entity basis'. The election should be available on a line of business or defined class of accounts where the FI determines that to be suitable in the specific circumstances.

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
14.	3.1	Alternate definition for “Pre-existing Account”	<p>For the definition of “Pre-existing Account” (including the adoption of a definition for “Related Entity”), we recommend incorporating the alternate definition described in the OECD Commentary (para. 82, page 181).</p> <p>ASIFMA and CMTC members consider this option will reduce the compliance burden associated with a pre-existing account holder opening a new account with a Reporting FI, or a Related Entity of the Reporting FI.</p>	We recommend the FSTB adopt the alternative approach offered by the OECD. There are sufficient safeguards contained in this alternative that will require the FI to conduct due diligence on the Account Holder if other provisions of the law or regulation in Hong Kong so requires.
15.	3.1(a)	Pre-existing individual accounts	<p>The OECD Commentary (para. 5, page 111), offers an option for FIs to use either the “residence address test” or the “electronic record search test” (rather than only the “electronic search test”) with certain safeguards as contained in para. 6, page 111.</p> <p>This will provide flexibility to FIs, and provide them with the option to adopt a methodology that is most suitable for their business and thereby will facilitate reduced compliance costs</p>	We recommend the FSTB adopt the alternative approach offered by the OECD.
16.	3.1(a)	Pre-existing individual accounts	<p>In cases where an ‘indicia’ of residence are identified, an FI should have the option to either:</p> <ol style="list-style-type: none"> <li>1. treat the account as a Reportable Account with respect to the reportable jurisdiction for which an indicium is identified; or</li> <li>2. obtain a self-certification from the account holder that declares another status.</li> </ol> <p>In other words, the request for self-certification after identification of “indicia” should be an optional process rather than a mandatory process.</p> <p>As such, the statement in paragraph 3.1(a) that “a self-certification <b>will</b> be required in case of conflicting indicia” would seem to suggest that the IRD intends to make self-certification a mandatory requirement in these circumstances.</p>	We would welcome clarification of this issue. In the view of members, an FI should be able to treat an Account Holder as resident of all jurisdictions for which indicia is found. Consistent with the underlying principles of AEOI, the onus of ascertaining tax residence should rest with Account Holders.
17.	3.1(c)	Pre-existing entity accounts	We recommend the FSTB retain the flexibility for FIs to utilize the US\$250,000 de minimis threshold for performing pre-existing entity account due diligence as proposed in OECD CRS Section V(A).	We recommend the FSTB retain the alternative approach offered by the OECD and that it be available, at the election of an FI either with respect to all Pre-existing Entity Accounts or to any clearly identified group of such accounts

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
<b>(d) Feedback on the requirements for FIs to identify and keep information of accounts concerning reportable jurisdictions in paragraph 2.20</b>				
18.	2.20	FIs collecting and retaining information	<p>It would be beneficial to ensure alignment with the anti-money laundering and data privacy laws, or provide an alternative mechanism in the IRO to support adopting the ‘wider approach’ outlined in para 2.20 of the Consultation Paper (i.e. to collect relevant information for <b>all</b> non-Hong Kong tax resident-account holders, and not just those that are from a jurisdiction with which Hong Kong has a CAA).</p> <p>As a minimum, in view of the time that Hong Kong may take to enter into a CAA with each of the potential jurisdictions with CDTA/TIEA with Hong Kong, the FSTB should permit FIs to collect and retain information of residents of those jurisdictions which Hong Kong has a CDTA/TIEA but a CAA has not yet been concluded. Such approach would provide some certainty to FIs as to information that will eventually need to be reported, rather than having to perform the due diligence exercises every time Hong Kong signs a CAA with another jurisdiction.</p>	<p>We recommend the FSTB pursue measures to enable the adoption of the ‘wider approach’. Of all the proposals in the Consultation this is the measure which members considered most likely to lead to an escalation of compliance costs.</p> <p>The onus of confirming that an Account Holder is, in fact, a resident of a Reportable Jurisdiction should not fall on FIs. There is a risk that an FI could make an inadvertent breach where, acting in a bona fide manner, it concludes that an Account Holder is a resident of a Reportable Jurisdiction but it ultimately emerges that assessment was incorrect.</p> <p>Further, as the list of Reportable Jurisdictions with whom Hong Kong has concluded a CAA will evolve over time, the onus should not be on FIs to monitor that list and repeat their due diligence on a recurring basis. From the commencement of the AEOI framework, FIs should have the authority under Hong Kong law to collect and retain the information required by the due diligence procedures regardless of the tax residence of the Account Holder. If there is no obligation on the FI to report this information then its collection and retention should be subject to appropriate safeguards.</p>
<b>(e) Feedback on the proposed sanctions in paragraph 2.24, 2.25 and 2.26</b>				

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
19.	2.23 to 2.25	Penalty provisions	<p>Are the proposed sanctions to be read in conjunction with the current sections 80 and 82 of the IRO? That is, will phrases such as “reasonable excuse”, “causing non-compliance”, etc. take on the same meaning as provided in sections 80 and 82 of the IRO?</p> <p>We would welcome practical guidance of situations which would qualify as “reasonable excuse”, “causing non-compliance”, etc.</p> <p>Further details regarding the application of these provisions would be of great assistance.</p> <p>Without clear guidance, the application of the penalty provisions could potentially be very broad and unreasonable. For example, we note that FIs must “performing a reasonableness test of the self-certification with a view to confirming the residence for tax purposes indicated by an account holder”. Such a test would most likely require the expertise of tax professionals as the concept of tax residence is complex. Accordingly, given the potentially significant amount of self-certifications, small number of tax professionals, and highly punitive penalty provisions, this could cause unnecessary burden on both the FI and its employees.</p>	<p>We recommend the issuance of a Departmental Interpretation and Practice Notes (‘DIPN’) with detailed commentary and examples explaining the operation of the proposed penalty provisions.</p> <p>We would also welcome the inclusion of a process to notify FIs prior to the commencement of the process for any penalty imposition.</p>
20.	2.23(b)	Penalty provisions	<p>The proposed enforcement provisions envisage very broad and extensive powers being granted to the IRD. Under the current IRO, whilst the IRD may conduct field audits and investigations, it does not typically exercise the power to access business premises and computer systems of FIs.</p> <p>These powers need to be clearly defined, and specify precisely when they would be exercised</p>	<p>The DIPN referred to above should set out in detail the manner in which the IRD proposes to monitor compliance with the AEOI framework and the circumstances in which it would propose to exercise its powers of enforcement.</p> <p>For example, is it envisaged that the IRD would conduct compliance/enforcement activities by periodically reviewing the activities of an FI, or only upon indications of non-compliance emerging. We do not suggest that the powers of the IRD be fettered in this regard, simply that guidance be provided such that FIs have a better picture of what they can expect.</p>
21.	2.24(c)	FIs wilfully making a return to mislead or deceive	<p>In relation to the penalty concerning wilfully making a return to mislead or deceive, the sanction mentions imprisonment. As these are sanctions against an FI, which is a legal person (not a natural person), we do not believe this to be appropriate.</p>	<p>Please provide clarification. If it is intended to apply this sanction against employees/officers of FIs, given the potential severity of the sanction, we request specific guidance or examples of the standard of conduct that would constitute wilful behaviour.</p>

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
22.	2.25	Penalty provisions on employee of FIs	The imposition of penalties on employees should detail which particular employee shall be responsible for penalty. There could be numerous employees involved in the various due diligences and reporting processes, and the relevant provisions in the IRO or other administrative guidance should be specific as to which employee may be held responsible for causing the FI to fail to comply.	Applying sanctions at the employee level is unprecedented in Hong Kong tax law. The circumstances in which such sanction may apply need to be precisely defined and should include clear 'safe harbours' where standards of behaviour by employees will not be considered in breach of the AEOI framework.
23.	2.26	Sanction against false self-certification from individual account holders	We agree with the OECD's recommendation to include specific sanction provision for signing (or affirming) a false self-certification.	We recommend that sanctions should not only be limited to "Account Holders" and should be extended to controlling persons of passive NFEs, recognising that these extended sanctions may be difficult to enforce.
<b>(f) Feedback on the confidentiality and notification safeguards in para 2.33</b>				
24.	2.33	FIs duty to inform account holders	The Consultation Paper envisages that FIs will "inform both new and existing account holders regarding the possible use of the personal data collected". If this notification is to be in the form of separate letters sent to each account holder, the administrative burden would be extremely strenuous.	Rather than a notification in the form of a letter, we recommend a clause in the Terms and Conditions of a Financial Account (which states words to the effect that the information of account holders may be retained and provided to reportable jurisdictions as part of the AEOI) provided to account holders will be sufficient for this purpose.
25.	2.33	Confidentiality	Many FIs may have in place mechanisms that meets the confidentially safeguard required to satisfy the IGA between Hong Kong and US for implementing FATCA. However, the IGA is based on the Model 2 agreement, and it is not clear whether such mechanisms are sufficient for transferring information to other jurisdictions following initial reporting to the IRD (more akin to a Model 1 IGA).	We recommend the FSTB provide specific guidance on what mechanism a FI should have in place to satisfy data privacy issues in Hong Kong to facilitate reporting to the IRD

No.	Reference	Topic	Issue for Consideration	Request/Recommendation
<b>(g) Feedback on the IT system and related considerations</b>				
26.	3.9	IT Systems	<ol style="list-style-type: none"> <li>1. We agree the FSTB should adopt the CRS Schema so that the format is consistent across all jurisdictions and is also consistent with the FATCA Schema, which would relieve FIs operating in multiple jurisdictions from having different schema for different jurisdictions.</li> <li>2. Upon uploading the data files to the system, it is recommended that the system provide confirmation and notify the FIs that the data file was submitted successfully and the IRD has accept the file as valid.</li> <li>3. For some FIs the number of reportable accounts could be quite low (e.g., financial institutions with mostly HK resident clients). We recommend that the FSTB allow for paper/manual lodgement of such AEOI returns (as the cost of setting up an electronic lodgement system for these FIs will be impractical). Would nil AEOI returns also be allowed to paper/manual lodge?</li> </ol>	Please provide clarification on this CRS requirement.
<b>Other Comments</b>				
27.	3.7	AEOI Return	<p>Please advise when the AEOI Return form is expected to be available for public review?</p> <p>We understand that FIs have to file AEOI returns even if there are no reportable accounts for a particular year. We recommend the FSTB clarify whether FIs need to file a return stating no reportable accounts for a particular jurisdiction? For example, if HK enters into 5 CAAs and FI has only reportable accounts for 3 jurisdictions, would the FI need to file a return advising the IRD that for the remaining 2 jurisdictions there are no reportable accounts?</p>	Please provide clarification.
28.	3.1	Service Providers	Consistent with OECD CRS Section II D, we recommend that the FSTB provide FIs with the option of using a service provider to assist in fulfilling their CRS obligations, both due diligence and reporting.	Please confirm.

29.	Other	Self-Certification Form	For FIs which have a presence in multiple jurisdictions that plan to implement CRS, there is concern regarding the appropriate format of the self-certification form.	<p>In this regard, we recommend the FSTB provide FIs with the flexibility of adopting their own self-certification form. We note that this flexibility would assist in reducing the compliance costs for FIs.</p> <p>Furthermore, we note that the OECD Business and Industry Advisory Committee (“BIAC”) has published a draft self-certification form template. Please refer to <b>Appendix 3</b> and <b>Appendix 4</b> for the BIAC self-certification form for individuals and entities respectively. We note that both these templates are currently in draft format and may still be subject to updates. We recommend the FSTB make reference to the final version of these templates (once available), perhaps as an attachment to a DIPN, in order to provide FIs with some guidance.</p>
-----	-------	-------------------------	---	---

## Appendix II – Areas of potential jurisdictional differences within the CRS

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
1	73	Commentary on Section 3	Time and Exchange of Information; 3	Exchange of Information	Prior year exchange of information	A jurisdiction may choose, subject to its domestic law, to exchange with respect to the earlier years in which case this is also consistent with the CRS and the Model CAA.	Elec.	Reporting in respect to earlier years should not be adopted. ASIFMA and CMTC interpret the FSTB's comments in the Consultation Paper as consistent with this position and support that approach.
2	73	Commentary on Section 3	Time and Exchange of Information; 5	Reporting	Gross proceeds	When implementing the CRS, jurisdictions may choose to gradually introduce the reporting of gross proceeds.	Elec.	A definition of gross proceeds, aligned to the FATCA definition, should be adopted. The timing of a requirement to report gross proceeds under CRS should also be aligned with the requirements of FATCA.
3	77	Commentary on Section 4	Collaboration on Compliance and Enforcement	Exchange of Information	Direct contact between CA and Reporting FI	The CAA does not contemplate direct contact between the CA from one jurisdiction with a Reporting FI in the other jurisdiction. As an alternative, two CA's may wish to allow for direct contact between a CA in one jurisdiction and a Reporting FI in the other jurisdiction in case of administrative or other minor errors. The decision to include such option will depend on the domestic law in the respective jurisdictions and may also be influenced by the volume of inquiries that a CA expects to receive.	Elec.	ASIFMA and CMTC members are of the view that provision for direct contact between CAs and foreign reporting financial institutions should not be included in CAAs to be executed by Hong Kong.
4	108	Commentary on Section II	General Due Diligence Requirements	Due Diligence	Service Providers	Each jurisdiction may allow Reporting FIs to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting FIs	Elec.	Hong Kong's framework for the implementation of AEOI must allow flexibility to use third-party service providers. This could be a key measure in assisting FIs to reduce their cost of compliance. FIs would remain primarily responsible for the obligations under AEOI, together with obligations under domestic law relating to confidentiality and data protection.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
5	108	Commentary on Section II	General Due Diligence Requirements	Due Diligence	Pre-existing accounts	Each jurisdiction may allow Reporting FIs to apply the due diligence procedures for New Accounts to Pre-existing accounts	Elec.	Hong Kong must allow FIs the flexibility to apply the DD procedures for new accounts to pre-existing accounts. This also achieves the goal of maintaining consistency with FATCA wherever possible.
6	108	Commentary on Section II	General Due Diligence Requirements	Due Diligence	Lower Value Accounts	Each jurisdiction may allow Reporting FIs to apply the due diligence procedures for High Value accounts to Lower Value accounts	Elec.	Hong Kong must allow FIs the flexibility to apply the DD procedures for high value accounts to lower value accounts. The choice should be able to be applied by business line or by defined grouping of accounts and not imposed across all accounts of the FI. This also achieves the goal of maintaining consistency with FATCA wherever possible.
7	127	Commentary on Section IV	Due Diligence for New Individual Accounts	Due Diligence	Account Holder's residence for tax purposes	The domestic laws of the various jurisdictions lay down the conditions under which an individual is to be treated as fiscally "resident".	Diff.	Although the OECD/Competent Authorities are expected to release further guidance on this matter, this should remain a priority issue. Hong Kong should seek to adopt a 'safe harbour' of what is deemed reasonable steps by FIs to confirm tax residence of Account Holders and monitor global developments on this issue with the aim of adopting an approach consistent with other CAs.
8	141	Commentary on Section V	Due Diligence for Pre-existing Entity Accounts	Due Diligence	Timing of review procedures for identifying Reportable Accounts	Selection of the date by which review procedures for identifying Reportable Accounts must be completed is a decision of the jurisdiction implementing the CRS.	Elec.	Hong Kong should adopt an approach consistent with CAs in other countries adopting a similar timetable for the implementation of CRS.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
9	144	Commentary on Section VI	Due Diligence for New Entity Accounts	Due Diligence	Account Holder's residence for tax purposes	The domestic laws of the various jurisdictions lay down the conditions under which an Entity is to be treated as fiscally "resident".	Diff.	Although the OECD/Competent Authorities are expected to release further guidance on this matter, this should remain a priority issue. Hong Kong should seek to adopt a 'safe harbour' of what is deemed reasonable steps by FIs to confirm tax residence of Account Holders and monitor global developments on this issue with the aim of adopting an approach consistent with other CAs.
10	171	Commentary on Section VIII	Defined Terms	Defined Terms	Non-Reporting FIs	The FI should be defined in domestic law as a Non-Reporting FI. This is satisfied where a jurisdiction defines a specific type of FI as a Non-Reporting FI, and that definition is contained in domestic law. This would typically be consistent with the types of FI treated as "exempt beneficial owners" or "deemed compliant FFIs" in the IGAs under FATCA.	Elec.	Hong Kong should adopt a definition of Non-Reporting FI which is consistent with those under FATCA but should also consider additional classes of FI that it considers to be low risk of being used for tax evasion. We recommend including a list of Non-Reporting FIs in a schedule to the IRO and providing the ability for that schedule to be updated by SFST by Gazette notice.
11	181	Commentary on Section VIII	Defined Terms	Defined Terms	New accounts of pre-existing customers	When implementing the CRS, jurisdictions are free to modify the definition of a Financial Account in order to also include certain new accounts of pre-existing customers within the meaning of Pre-existing Account.	Elec.	Hong Kong needs to adopt a consistent position with respect to all CAAs that it enters into such that the definition of Pre-existing Account is identical, whether it makes the modification contemplated in the Commentary on page 184 or retains the base case position.
12	184	Commentary on Section VIII	Defined Terms	Defined Terms	Excluded Accounts	Typically, excluded account categories are consistent with the types of accounts excluded from the definition of Financial Accounts in the IGA concluded between a jurisdiction and the US under FATCA.	Elec.	Hong Kong should ensure consistency with the definitions in the IGA with the US under FATCA. In addition, Hong Kong should consider the treatment and definition of other accounts of low risk of being used for the purpose of tax evasion, such as collateral accounts and DvP brokerage accounts (without a custodial feature).

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
13	196	Commentary on Section VIII	Defined Terms	NFE	Passive income	In determining what is meant by "passive income", reference must be made to each jurisdiction's particular rules.	Elec.	Additional clarity of what constitutes passive income would be welcome. This is a key component of determining whether NFEs are Reportable Persons. ASIFMA and CMTC appreciates it is difficult for Hong Kong to impose a definition on other jurisdictions but may consider including a definition in negotiated CAAs.
14	209	Commentary on Section IX	Effective Implementation	Compliance	Compliance of Reporting FIs	<p>Jurisdictions are required to have administrative procedures in place for the following:</p> <ol style="list-style-type: none"> <li>1. verify the compliance of Reporting FIs with the reporting and due diligence procedures set out in the CRS;</li> <li>2. follow up with a Reporting FI when undocumented accounts are reported;</li> <li>3. ensure that the Entities and Accounts defined in the domestic law as Non-Reporting FIs and Excluded Accounts continue to have a low risk of being used to evade tax</li> </ol>	Elec.	ASIFMA and CMTC understand that the IRD intends to issue a DIPN setting out its intended approach to the many administrative issues arising from the implementation of AEOI. ASIFMA and CMTC would welcome the opportunity to consult with IRD and assist in developing guidelines for compliance activity that may be undertaken by the IRD and with FSTB/IRD on processes for ensure that the definitions in the Schedules to the IRO remain consistent with the objectives of the AEOI.
15	210	Commentary on Section IX	Effective Implementation	Compliance	Compliance of Reporting FIs	Jurisdictions should have procedures in place to periodically verify the compliance of Reporting FIs.	Elec.	As for the previous item, guidance on the nature of the procedures contemplated by FSTB/IRD will be required.

#### Less significant issues

1	65	A. Commentaries on the Model CAA	Introduction; 3	CAA	Multilateral agreements	The Model CAA is drafted as a bilateral reciprocal agreement however the CAA could also be implemented on the basis of a multilateral CAA. Note, although the agreement would be multilateral, the exchange of information itself would be on a bilateral basis.	Elec.	ASIFMA and CMTC supports Hong Kong's proposal to enter bilateral CAAs.
---	----	----------------------------------	-----------------	-----	-------------------------	--	-------	--

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
2	65	A. Commentaries on the Model CAA	Introduction; 4	CAA	Non-reciprocal agreements	The Model CAA may also be entered into between jurisdictions on a non-reciprocal bilateral agreement (e.g. where one jurisdiction does not have an income tax).	Elec.	ASIFMA and CMTC support Hong Kong's proposal to enter bilateral CAAs.
3	69	Commentary on Section 1	Definitions; 6	CRS	Updates to the CRS	It is possible that the CRS, including the IT modalities, will be updated from time to time as more jurisdictions implement and obtain experience with, the CRS.	Other	Any modifications to CRS should only be implemented by Hong Kong on a prospective basis after giving FIs sufficient notice to adapt any compliance processes and systems that will be affected by the changes.
4	72	Commentary on Section 3	Time and Exchange of Information; 2	Exchange of Information	Period to exchange	Information must be exchanged within 9 months after the calendar year to which the information relates. This however, is a minimum standard and jurisdictions are free to agree on shorter timelines	Elec.	Hong Kong is contemplating a 5 month period after year end for submitting AOI returns to the IRD.
5	80	Commentary on Section 5	Confidentiality and Data Safeguards	Exchange of Information	Information Confidentiality	All information exchanged is subject to the confidentiality rules and other safeguards provided for in the underlying legal instruments.	Diff.	ASIFMA and CMTC supports FSTB's strong focus in ensuring counterparties to a CAA have in place appropriate data privacy and confidentiality safeguards.
6	98	Commentary on Section I	General Reporting Requirements	Reporting	Average balance	The Reporting FI must report the balance or value of the account as of the end of the calendar year or other reporting period. Some jurisdictions, however, already require FIs to report the average balance or value of the account during the calendar year or other appropriate reporting period. These jurisdictions are free to maintain reporting of that information instead of requiring reporting of the balance or value of the account as of the end of the calendar year or other reporting period.	Diff. and Elec.	Not applicable to Hong Kong under present laws.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
7	99	Commentary on Section I	General Reporting Requirements	Reporting	Closed accounts	In determining when an account is 'closed' reference must be made to the applicable law in a particular jurisdiction.	Diff.	Is it clear under Hong Kong law when each category of account is taken to be closed?
8	108	Commentary on Section II	General Due Diligence Requirements	Due Diligence	Group of Pre-existing accounts	It may also permit Reporting FIs to make such an election with respect to all pre-existing accounts, or separately with respect to any clearly identified group of such accounts.	Elec.	Hong Kong should retain this flexibility for applying New Account due diligence procedures to Pre-existing Accounts.
9	110	Commentary on Section III	Due Diligence for Pre-existing Individual Accounts	Due Diligence	Pre-existing Individual Accounts - Cash Value Insurance/Annuity Contracts	The CRS exempts from review all pre-existing Individual Accounts - Cash Value Insurance/Annuity Contracts provided that the Reporting FI is effectively prevented by law from selling such contracts to residents of a Reportable Jurisdiction.	Diff.	Note only.
10	112	Commentary on Section III	Due Diligence for Pre-existing Individual Accounts	Due Diligence	Residence address for pre-existing Individual Accounts	Jurisdictions may determine other special circumstances where an "in-care-of" address or a post office box is used that clearly identify a residence address provided that such determination does not frustrate the purposes of the CRS.	Elec.	No special circumstances identified by members.
11	112	Commentary on Section III	Due Diligence for Pre-existing Individual Accounts	Due Diligence	Dormant accounts	An account may be considered as a "dormant account" under applicable laws or regulations or the normal operating procedures of the Reporting FI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction.	Diff.	Note only.
12	127	Commentary on Section IV	Due Diligence for New Individual Accounts	Due Diligence	Account Holder's residence for tax purposes	The domestic laws of the various jurisdictions cover cases where an individual is deemed to be resident of that jurisdiction. To solve cases of double residence, tax conventions contain special rules which give the attachment to one jurisdiction a preference over the attachment of the other jurisdiction.	Diff.	Guidance from the IRD on the extent of inquiry FIs are expected to go to (a 'safe harbour') in resolving such cases would be valuable

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
13	128	Commentary on Section IV	Due Diligence for New Individual Accounts	Due Diligence	Determining residence for tax purposes	Participating Jurisdictions are expected to help taxpayers determine, and provide them with information with respect to, their residence for tax purposes.	Elec.	When negotiating CAAs it would be helpful if Hong Kong were to obtain guidelines from the other jurisdiction on its rules relating to tax residence and maintain a publicly available source for reference by FIs.
14	135	Commentary on Section V	Due Diligence for Pre-existing Entity Accounts	Due Diligence	Exemption from review of Pre-existing entity Accounts	The application of exemption from review of all Pre-existing Entity Accounts with an account balance that does not exceed USD 250,000 is subject to the implementing jurisdiction allowing Reporting FIs to apply the exception.	Elec.	FIs in Hong Kong should have the flexibility to apply this exemption where it would reduce the associated compliance burden
15	137	Commentary on Section V	Due Diligence for Pre-existing Entity Accounts	Due Diligence	Publicly available information	"Publicly available information" includes information published by an authorised government body of a jurisdiction; information in a publicly accessible register maintained or authorised by an authorised government body of a jurisdiction.	Diff.	Note only.
16	154	Commentary on Section VII	Special Due Diligence Requirements	Due Diligence	Account aggregation	In some jurisdictions, domestic law does not allow the application of the account aggregation rules.	Diff.	Note only.
17	156	Commentary on Section VII	Special Due Diligence Requirements	Due Diligence	Currency translation	All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law. When implementing the CRS, jurisdictions are expected to use the amounts that are equivalent in their currency to the US dollar threshold amounts described in the Standard.	Elec.	Note only.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
18	166	Commentary on Section VIII	Defined Terms	Defined Terms	Non-Reporting FIs	Determination of a Non-Reporting Financial Institution	Elec.	Hong Kong authorities should include in the Schedule to the IRO a comprehensive list of Non-Reporting Financial Institution. The starting point should be those classes of FI included the FATCA IGA, expanded to include other classes of FI that present a low risk of being used to evade tax.
19	171	Commentary on Section VIII	Defined Terms	Defined Terms	Non-Reporting FIs	Each jurisdiction may evaluate the application of the requirement for the FI to have substantially similar characteristics to any of the FIs described in the Standard.	Elec.	As above.
20	172	Commentary on Section VIII	Defined Terms	Defined Terms	Non-Reporting FIs	Jurisdictional monitoring of whether the status of an FI as a Non-Reporting FI does not frustrate the purposes of the Common Reporting Standard including, a) administrative procedures; b) potential suspension of a CAA; c) a mechanism to review the implementation of the CRS	Elec.	The list of Non-Reporting FIs should be monitored on an ongoing basis to ensure categories listed in the Schedule are not like to subsequently frustrate the purposes of AEOI.
21	173	Commentary on Section VIII	Defined Terms	Defined Terms	Collective investment vehicles	Option for a rule to be used where a jurisdiction has previously allowed collective investment vehicles to issue bearer shares.	Diff.	Note only.
22	176	Commentary on Section VIII	Defined Terms	Defined Terms	Maintaining an account	Jurisdictions have diverse legal, administrative and operational frameworks and different financial systems, and the meaning of "maintaining an account" may vary among jurisdictions depending on how a particular financial industry is structured.	Diff.	Note only.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
23	187	Commentary on Section VIII	Defined Terms	Defined Terms	Low-risk excluded accounts	The category of Excluded Accounts is intended to accommodate jurisdiction-specific types of accounts.	Elec.	Hong Kong authorities should include in the Schedule to the IRO a comprehensive list of Low-risk Excluded Accounts. The starting point should be those types of accounts excluded from the scope of FATCA reporting in the IGA, expanded to include other categories of low-risk accounts which would not frustrate the purposes of AEOI if treated as Excluded Accounts.
24	188	Commentary on Section VIII	Defined Terms	Defined Terms	Excluded Accounts	A jurisdiction defines a specific type of account as an Excluded Account and that definition is contained in domestic law.	Elec.	As above.
25	191	Commentary on Section VIII	Defined Terms	Reportable Account	Treatment of partnerships	Domestic laws differ in the treatment of partnerships (including LLPs). Some jurisdictions treat partnerships as taxable units whereas other jurisdictions adopt the fiscally transparent approach under which the partnership is disregarded for tax purposes. Where a partnership is treated as a company or taxed in the same way, it would generally be considered to be a resident of the Reportable Jurisdiction that taxes the partnership.	Diff.	Note only.
26	198	Commentary on Section VIII	Defined Terms	NFE	Non-profit NFE	One of the requirements for "non-profit NFE" to qualify for the Active NFE status is that the applicable laws of the NFE's jurisdiction of residence or 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.	Diff.	Note only.
27	207	Commentary on Section IX	Effective Implementation	Compliance	Enforcement procedures	A jurisdiction must have rules and administrative procedures in place to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures set out in the CRS.	Elec.	Note only.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
28	208	Commentary on Section IX	Effective Implementation	Anti-avoidance rule	General / specific anti-avoidance rules	Many jurisdictions have enacted a general anti-avoidance rule in their tax legislation which may also be supplemented by specific anti-avoidance rules. In other jurisdictions, the legislation may include only specific anti-avoidance rules.	Elec.	ASIFMA and CMTC members recommend strong measures to discourage avoidance of the obligations of AEOI. This should extend not only to the due diligence and reporting obligations of FIs, but also to the self-certification by Account Holders.
29	208	Commentary on Section IX	Effective Implementation	Self-certifications	False self-certification	Jurisdictions are expected to include a specific provision in their domestic legislation imposing sanctions for signing (or otherwise positively affirming) a false self-certification.	Elec.	ASIFMA and CMTC support the inclusion of sanctions against Account Holders in these circumstances, including a clear process that is to be followed if the Account Holder fails to co-operate with the FI.
30	209	Commentary on Section IX	Effective Implementation	Due Diligence	Records and evidence of due diligence	Jurisdictions should have rules in place requiring Reporting FIs to keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures as set out in the CRS.	Elec.	Note only.
31	209	Commentary on Section IX	Effective Implementation	Compliance	Records	Jurisdictions are required to have adequate measures to obtain the records from the Reporting FIs and periodically verify the compliance of Reporting FIs	Elec.	ASIFMA and CMTC request the publication of guidelines setting out how it will perform compliance activities, including seeking access to FI records.
32	210	Commentary on Section IX	Effective Implementation	Compliance	Undocumented accounts	A jurisdiction must have procedures in place to follow up with a Reporting FI when undocumented accounts are reported	Elec.	As above. The guidance should also include clarification on what is deemed reasonable or adequate in terms of FIs following up with the Account Holder of undocumented accounts?
33	210	Commentary on Section IX	Effective Implementation	Compliance	Enforcement procedures	A jurisdiction must have procedures in place to ensure that Non-Reporting FIs and Excluded Accounts defined in the domestic law continue to have a low risk of being used to evade tax.	Elec.	Note only.

No.	Page	Section	Reference	Topic	Specific Topic	Detail	Type <sup>#</sup>	Comments
34	211	Commentary on Section IX	Effective Implementation	Compliance	Enforcement provisions	<p>Once a jurisdiction determines that a type of Entity or an account no longer meets the requirement of posing a low risk for evading tax, it shall take all necessary steps as soon as possible to remove such an Entity or account from the list of Non-Reporting FIs or Excluded Accounts.</p> <p>Non-compliance could result in a suspension of the Model CAA by the exchange partner.</p>	Elec.	Note only.
35	211	Commentary on Section IX	Effective Implementation	Compliance	Enforcement provisions	A jurisdiction must have effective enforcement provisions to address non-compliance.	Elec.	ASIFMA and CMTC request the publication of guidelines setting out how it will perform compliance activities, including seeking access to FI records.

<sup>#</sup> In the column “Type”, the abbreviations have the following meaning:

Abbreviation	Meaning
Diff.	General jurisdictional difference
Elec.	CRS specific jurisdiction election
Other	Other

### **Appendix 3**

The Following pages contain an example of a form that could be used to collect data from individual customers and clients in relation to the CRS.

This form has been devised following the input of various industry experts on CRS, as an example, as to what could be used in order to attempt to create some market consistency and assist Financial Institutions in developing validation systems.

This is an example of the type of form that could be used by a financial Institution. It should not be seen as a mandatory form.

Each Financial Institution is free to use its own form, but as a minimum a Financial Institution should collect the mandatory data detailed in the CRS commentary.

(Mandatory fields are marked with a \*)

## Individual tax residency self-certification form

Please read these instructions before completing the form

- Based on the OECD Common Reporting Standard, **[applicable national regulations]** require **[insert FI's name]** to collect and report certain information about an Account Holder's tax residency status. Please complete the sections below as directed and provide any additional information requested.
- If the tax residence of an Account Holder is located outside **[country where the FI is located]** in a Reportable Jurisdiction then the Account Holder will be a Reportable Person and we are legally bound to report the relevant information on this form to the tax authorities of **[country where the FI is located]**.
- To enable **[FI name]** to comply with its obligation to report to the relevant tax authorities, you are required to state the residency (or residencies) for tax purposes of the person or persons identified as the holder(s) of a Financial Account. On this form these persons are cumulatively referred to as the "Account Holder(s)".
- You are required to state the residency for tax purposes of the Account Holder. This is the person or persons entitled to the income and/or assets associated with a Financial Account. Definitions to assist you in identifying who the Account Holder is and for other terms used in this form can be found in the Appendix-Definitions.
- Please complete the sections below as directed and provide any additional information requested.
- For joint or multiple account holders, use a separate form for each person
  - If you are not the Account Holder but are completing the form on the Account Holder's behalf then please indicate the capacity in which you have signed in **Part 6**.
  - Do not use this form if the Account Holder is not an individual. Instead you should complete and provide the "Entity tax residency self-certification". However, this form should be used for a sole trader.
  - Do not use this form if the account is in relation to the Account Holder's role as a Controlling Person of an Entity. Instead complete and provide the "Controlling Person tax residency self-certification" form.
  - If the Account Holder is a "US Person" under US Internal Revenue Service ("IRS") regulations IRS Form W-9 should also be completed
  - If you have any remaining questions about how to complete this form or about how to determine your tax residency status you should contact your tax adviser; local tax authority; or seek further information from the OECD Automatic Exchange of Information Portal [\[Link to OECD\]](#). **[Insert FIs name]** will not be in a position to provide assistance beyond the information contained within this guide as by law we are not permitted to give tax advice.

### Part 1 – Identification of Individual Account Holder

#### A. Name of Account Holder:

Family Name or Surname(s): \*

Title:

First or Given Name: \*

Middle Name(s):

#### B. Current Residence Address:

Line 1 (e.g. House/Apt/Suite Name, Number, Street)

Line 2 (e.g. Town/City/Province/County/State)\*

Country:\*

Postal Code/ZIP Code:

**C. Mailing Address:** *(please only complete if Section B above not completed)*

Line 1 *(e.g. House/Apt/Suite Name, Number, Street)*

Line 2 *(e.g. Town/City/Province/County/State)*

Country:

Postal Code/ZIP Code:

**D. Date of Birth\*** *(dd/mm/yyyy)*

**E. Place of Birth**

Town or City of Birth \*

Country of Birth\*

**Part 2 – Country of Residence for Tax Purposes**

Country of residence for tax purposes of the Account Holder:\*

**Note:** Please consult your local tax authorities or tax advisor if you are not sure about the Account Holder's tax residence.

**Part 3 – Taxpayer Identification Number ("TIN") or functional equivalent\***

Please complete one of the boxes in the following sections (a)-(d)

(a) TIN in the country of residence for tax purposes shown in **Part 2**

(b) The country of residence in Part 2 does not issue TINs to its residents (tick box if relevant) ☐

(c) No TIN required. *(Only tick this box if the Account Holder is a tax resident of the same jurisdiction as the Reporting Financial Institution)* ☐

(d) The Account Holder is otherwise unable to obtain a TIN *(tick box if relevant)* ☐

If **Box (d)** above is ticked please explain why you are unable to obtain a TIN.

**Please now complete either Part 4 or Part 5 (as applicable)\* and read and sign Part 6 (Declaration)\***

**Part 4 – Confirmation of Sole Residency for Tax Purposes**

I certify that for the purposes of taxation the Account Holder is NOT tax resident in any other country other than the country indicated in **Part 2** above.



## Part 5 – Additional Countries of Residence for Tax Purposes

For the purposes of taxation, I certify that in addition to the country set out in **Part 2** the Account Holder is tax resident in the following countries, the Account Holder's TIN in each additional country is set out below or I have ticked the box to indicate that a TIN is unavailable: *(use a separate sheet if tax resident in more than two additional countries)*

Country: \_\_\_\_\_ TIN: \_\_\_\_\_ or TIN Unavailable: ☐

Country: \_\_\_\_\_ TIN: \_\_\_\_\_ or TIN Unavailable: ☐

Please explain why you are unable to obtain a TIN if 'TIN Unavailable' box is ticked

---

---

## Part 6 – Declarations and Signature\*

I understand that the information supplied by me is covered by the full provisions of the terms and conditions governing the Account Holder's relationship with *[insert FI's name]* setting out how *[insert FI's name]* may use and share the information supplied by me to *[insert FI's name]*.

I acknowledge that the information contained in this form and information regarding the Account Holder may be reported to the tax authorities of the country in which this account(s) is/are maintained and exchanged with tax authorities of another country or countries in which the Account Holder may be tax resident where those countries (or tax authorities in those countries) have entered into Agreements to exchange financial account information.

I certify that I am the Account Holder (or am authorised to sign for the Account Holder) of all the account(s) to which this form relates.

**I declare that all statements made in this declaration are, to the best of my knowledge and belief, correct and complete.**

I undertake to advise *[insert FI's name]* [within XX days] of any change in circumstances which affects my tax residency status or causes the information contained herein to become incorrect, and to provide *[insert FI's name]* with a suitably updated self-certification and Declaration within [up to 90] days of such change in circumstances.

Signature: \* \_\_\_\_\_

Print name: \* \_\_\_\_\_

Date: \* \_\_\_\_\_

**Note:** If you are not the Account Holder please indicate the capacity in which you are signing the form. If signing under a power of attorney please also attach a certified copy of the power of attorney.

Capacity: \* \_\_\_\_\_

## Appendix – Definitions

**Note:** These are selected definitions provided to assist you with the completion of this form. Further details can be found within the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information (the CRS) and the associated Commentary to the CRS. This can be found at the following link [\[OECD\]](#)

If you have any questions about these definitions or require further detail then please contact your tax adviser or local tax authority.

**“Account Holder”** The term “Account Holder” means the person listed or identified as the holder of a Financial Account. A person holding a Financial Account for the benefit of another person as an agent, a custodian, a nominee, a signatory, an investment advisor, an intermediary, or as a legal guardian, is not treated as the Account Holder. In these circumstances that other person is the Account Holder. For example in the case of a parent/child relationship where the parent is acting as a legal guardian, the child is regarded as the Account Holder. With respect to a jointly held account, each joint holder is treated as an Account Holder.

**“Reportable Person”** The CRS defines the Account Holder as a “Reportable Person”. A Reportable Person is further defined as an individual who is tax resident in a Reportable Jurisdiction under the laws of that jurisdiction.

**“Financial Account”** A Financial Account is an account maintained by a Financial Institution and includes: Depository Accounts; Custodial Accounts; Equity and debt interest in certain Investment Entities; Cash Value Insurance Contracts; and Annuity Contracts.

**“Reportable Jurisdiction”** A Reportable Jurisdiction is a Participating Jurisdiction with which an obligation to provide financial account information is in place.

**“Participating Jurisdiction”** A Participating Jurisdiction means a jurisdiction with which an intergovernmental agreement is in place pursuant to which it will provide the information required on the automatic exchange of financial account information set out in the Common Reporting Standard.

### **“Controlling Person”**

This is a natural person who exercise control over an entity. Where that entity is treated as a Passive Non-Financial Entity (“NFE”) then such persons are regarded as the Account Holder(s). This definition corresponds to the term “beneficial owner” as described in Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012). If the account is maintained in relation to the Account Holder in their role as a Controlling Person then the form “*Controlling Person tax residency self-certification*” should be completed.

**“Entity”** The term “Entity” means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation.

### **“TIN” (including “functional equivalent”)**

The term “TIN” means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Further details of acceptable TINs can be found at the following link [\[OECD Portal\]](#)

Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include, for individuals, a social security/insurance number, citizen/personal identification/service code/number, and resident registration number.

## **Appendix 4**

The Following pages contain an example of a form that could be used to collect data from Entities in relation to the CRS.

This form has been devised following the input of various industry experts on CRS, as an example, as to what could be used in order to attempt to create some market consistency and assist Financial Institutions in developing validation systems.

This is an example of the type of form that could be used by a financial Institution. It should not be seen as a mandatory form.

Each Financial Institution is free to use its own form, but as a minimum a Financial Institution should collect the mandatory data detailed in the CRS commentary.

Mandatory fields are marked on the form with a \*.

Please read these instructions before completing the form

- Based on the OECD Common Reporting Standard, **[applicable national regulations]** require **[insert FI's name]** to collect and report certain information about an Account Holder's tax residency status. Please complete the sections below as directed and provide any additional information requested. If the tax residence of an Account Holder is located outside **[country where the FI is located]** in a Reportable Jurisdiction then the Account Holder will be a Reportable Jurisdiction Person and we are legally bound to report the relevant information on this form to the tax authorities of **[country where the FI is located]**.
- You are required to state the residency (or multiple residencies if applicable) for tax purposes of the Account Holder. This is the person or persons entitled to the income and/or assets associated with an account. Definitions to assist you in identifying who the Account Holder is, and for other terms used in this form can be found in the *Appendix-Definitions*.
- Where the Account Holder is a Passive NFE, or an Investment Entity located in a Non-Participating Jurisdiction managed by another Financial Institution, then you are also required to provide information on the natural person(s) who exercise control over the Entity ("the Controlling Person(s)") by completing a "Controlling Person tax residency self-certification form" for each Controlling Person.
- For joint or multiple Account Holders, please complete a separate form for each Account Holder
- A branch of an Entity is treated as an Entity for the purposes of the CRS and the form should be completed with details for the branch, and not that of its parent.
- If you are completing the form on the Account Holder's behalf then you should indicate the capacity in which you have signed in Part 7.
- Do not use this form if the Account Holder is an individual or sole trader. Instead you should complete and provide the "Individual tax residency self-certification form"
- If the Account Holder is a "US Person" under US Internal Revenue Service ("IRS") regulations an IRS Form W-9 should also be completed.
- If you have any remaining questions about how to complete this form or about how to determine your tax residency status you should contact your tax adviser; local tax authority; or seek further information from the OECD Automatic Exchange of Information Portal [\[Link to OECD\]](#). **[Insert FI's name]** will not be in a position to provide assistance beyond the information contained within this guide as by law we are not permitted to give tax advice.**

## Part 1 –Identification of Account Holder

A. Legal Name of Entity/Branch\*

---

B. Country of incorporation or organisation

---

C. Current Residence Address

Line 1 (e.g. House/Apt/Suite Name, Number, Street)

---

Line 2 (e.g. Town/City/Province/County/State)\*

---

Country \*

---

Postal Code/ZIP Code

---

Line 1 (e.g. House/Apt/Suite Name, Number, Street)

Country

Postal Code/ZIP Code

### 1. (a) Financial Institution – Investment Entity

- i. An Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution** ☐

*Note: if ticking this box please also complete **Part 2(2)** below*

- ## ii. Other Investment Entity □

- (b) Financial Institution – Depository Institution, Custodial Institution or Specified Insurance Company ☐

If you have ticked **(a)** or **(b)** above, please provide, if held, the Account Holders Global Intermediary Identification Number ("GIIN") obtained for FATCA purposes.

						.						.			.			
--	--	--	--	--	--	---	--	--	--	--	--	---	--	--	---	--	--	--

- (c) Financial Institution - Non-Reporting. *Please specify the category of Non-Reporting Financial Institution*

- |       |   |                          |
|-------|---|--------------------------|
| i.    | Governmental Entity   | <input type="checkbox"/> |
| ii.   | International organisation  | <input type="checkbox"/> |
| iii.  | Central Bank  | <input type="checkbox"/> |
| iv.   | Broad participation Retirement Fund   | <input type="checkbox"/> |
| v.    | Narrow Participation retirement Fund  | <input type="checkbox"/> |
| vi.   | Pension Fund of (i) – (iii) above   | <input type="checkbox"/> |
| vii.  | Exempt Collective Investment Vehicle  | <input type="checkbox"/> |
| viii. | Trustee-Documented Trust  | <input type="checkbox"/> |
| ix.   | Qualified Credit Card Issuer  | <input type="checkbox"/> |
| x.    | Other (only tick if the entity type is contained within your local jurisdiction legislation where you are resident) | <input type="checkbox"/> |

- (d) Active NFE** – a corporation the stock of which is regularly traded on an established securities market or a related entity of such a corporation ☐

If you have ticked **(d)**, please provide the name of the established securities market on which the corporation is regularly traded:

If you are a Related Entity of a regularly traded corporation, please provide the name of the regularly traded corporation that the Entity in (d) is a Related Entity of:

- (e)** Active NFE – a Government Entity ☐
- (f)** Active NFE – an International Organisation ☐
- (g)** Active NFE – other than **(d)**-(f) ☐
- (h)** Passive NFE ☐

2. If you have ticked 1(a)(i) or 1(h) above, then please:

a. Indicate the name of any Controlling Person(s) of the Account Holder:

---

---

---

b. Complete "Controlling Person tax residency self-certification form" for each Controlling Person.\*

*Note: If there are no natural person(s) who exercise control of the Entity then the Controlling Person will be the natural person(s) who hold the position of senior managing official. (See definition of Controlling Person in Appendix)*

### Part 3 – Country of Residence for Tax Purposes

Country of residence for tax purposes of the Account Holder:\*

**Note:** Please consult your local tax authorities or tax advisor if you are not sure about the Account Holder's tax residence.

### Part 4- Taxpayer Identification Number ("TIN") or functional equivalent\*

Please complete the following sections (a)-(d)

(a) TIN in the country of residence for tax purposes shown in Part 3:\*

(b) The country of residence in Part 3 does not issue TINs to its residents (tick box if relevant) ☐

(c) No TIN required. (Only tick this box if the Account Holder is a tax resident of the same jurisdiction as the Reporting Financial Institution) ☐

(d) The entity is otherwise unable to obtain a TIN (tick box if relevant) ☐

If Box (d) above is ticked then please provide an explanation of why you are unable to obtain a TIN.

Please now complete either Part 5 or Part 6 (as applicable)\* and read and sign Part 7 (Declaration)\*

### Part 5 – Confirmation of Sole Residency

I certify that for the purposes of taxation the Account Holder is not tax resident in any other country other than the country indicated in Part 3 above. ☐

### Part 6 – Additional Countries of Residency for Tax Purposes

For the purposes of taxation, I certify that in addition to the country set out in Part 3, the Account Holder is tax resident in the following countries; the TIN in each additional country is set out below; or I have ticked the box to indicate that a TIN is unavailable: (please use a separate sheet if tax resident in more than two additional countries)

Country \_\_\_\_\_ TIN \_\_\_\_\_ or TIN unavailable ☐

Country \_\_\_\_\_ TIN \_\_\_\_\_ or TIN unavailable ☐

Please explain why you are unable to obtain a TIN if 'TIN unavailable' is ticked.

## Part 7 – Declaration and Signature\*

I understand that the information supplied by me is covered by the full provisions of the terms and conditions governing the Account Holder's relationship with *[insert FI's name]* setting out how *[insert FI's name]* may use and share the information supplied by me to *[insert FI's name]*.

I acknowledge that the information contained in this form and information regarding the Account Holder may be reported to the tax authorities of the country in which this account(s) is/are maintained and exchanged with tax authorities of another country or countries in which the Account Holder may be tax resident where those countries (or tax authorities in those countries) have entered into Agreements to exchange financial account information with the country/ies in which this account(s) is/are maintained.

I certify that I am authorised to sign for the Account Holder in respect of all the account(s) to which this form relates.

**I declare that all statements made in this declaration are, to the best of my knowledge and belief, correct and complete.**

I undertake to advise *[insert FI's name]* [within XX days] of any change in circumstances which affects my tax residency status or causes the information contained herein to become incorrect, and to provide *[insert FI's name]* with a suitably updated self-certification and Declaration within [up to 90] days of such change in circumstances.

Signature:\* \_\_\_\_\_

Print name:\* \_\_\_\_\_

Date:\* (dd/mm/yyyy) \_\_\_\_\_

**Note:** Please indicate the capacity in which you are signing the form (for example 'Authorised Officer').

If signing under a power of attorney please also attach a certified copy of the power of attorney.

Capacity: \* \_\_\_\_\_

## Appendix – Definitions

**Note:** These are selected definitions provided to assist you with the completion of this form. Further details can be found within the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information (the “CRS”) and the associated Commentary to the CRS. This can be found at the following link [\[OECD\]](#)

If you have any questions about these definitions or require further detail then please contact your tax adviser or local tax authority.

### “Entity”

The term “Entity” means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation. This term covers any person other than an individual (i.e. a natural person), in addition to any legal arrangement.

### “Related Entity”

An Entity is a “Related Entity” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

### “Account Holder”

The “Account Holder” is the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. This is regardless of whether such person is a flow-through Entity. Thus, for example, if a trust or an estate is listed as the holder or owner of a Financial Account, the trust or estate is the Account Holder, rather than its owners or beneficiaries. Similarly, if a partnership is listed as the holder or owner of a Financial Account, the partnership is the Account Holder, rather than the partners in the partnership.

### “Reportable Person”

A “Reportable Person” is defined as a “Reportable Jurisdiction Person”, other than:

- a corporation the stock of which is regularly traded on one or more established securities markets;
- any corporation that is a Related Entity of a corporation described in clause (i);
- a Governmental Entity;
- an International Organisation;
- a Central Bank; *or*
- a Financial Institution (except for an Investment Entity described in Sub Paragraph A(6) b) of the CRS that are not Participating Jurisdiction Financial Institutions, which are treated as Passive NFE’s.)

### “Reportable Jurisdiction”

A Reportable Jurisdiction is a Participating Jurisdiction with which an obligation to provide financial account information is in place.

**“Participating Jurisdiction”** A Participating Jurisdiction means a jurisdiction with which an Intergovernmental or Competent Authority Agreement is in place pursuant to which it will provide the information required on the automatic exchange of financial account information as set out in the CRS.

### “Reportable Jurisdiction Person”

A reportable jurisdiction Person is an Entity that is tax resident in a Reportable Jurisdiction(s) under the tax laws of such jurisdiction(s) - by reference to local laws in the country where the Entity is established, incorporated or managed. 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. As such if an Entity certifies that it has no residence for tax purposes it should complete the form stating the address of its principal office.

Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to determine their residence for tax purposes.

#### **"Financial Institution"**

The term "Financial Institution" means a "Custodial Institution", a "Depository Institution", an "Investment Entity", or a "Specified Insurance Company". Please see the relevant Tax Regulations and the CRS for further classification definitions that apply to Financial Institutions.

#### **"Custodial Institution"**

The term "Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. This is where 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.

#### **"Depository Institution"**

The term "Depository Institution" means any Entity that accepts deposits in the ordinary course of a banking or similar business.

#### **"Investment Entity"**

The term "Investment Entity" includes two types of Entities:

**(i)** an Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

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

Such activities or operations do not include rendering non-binding investment advice to a customer.

**(ii)** "The second type of "Investment Entity" ("Investment Entity managed by another Financial Institution") is any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets where the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity.

#### **"Investment Entity managed by another Financial Institution"**

"An Entity is "managed by" another Entity if the managing Entity performs, either directly or through another service provider on behalf of the managed Entity, any of the activities or operations described in (a) – (c) above in the definition of 'Investment Entity'.

An Entity only manages another Entity if it has discretionary authority to manage the other Entity's assets (either in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity, if any of the managing Entities is such another Entity.

Under the CRS where this type of Entity is located in a Non-Participating Jurisdiction and managed by another Financial Institution then it is treated as Passive NFE.

### **“Specified Insurance Company”**

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.

### **“Participating Jurisdiction Financial Institution”**

The term “Participating Jurisdiction Financial Institution means (i) any Financial Institution that is tax resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside of that jurisdiction, and (ii) any branch of a Financial Institution that is not tax resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

### **“Non-Reporting Financial Institution”**

A Non-Reporting Financial Institution” means any Financial Institution that is:

- 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;
- 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;
- an Exempt Collective Investment Vehicle; or
- a Trustee-Documented Trust: a trust where the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the trust;
- any other defined in a countries domestic law as a Non-Reporting Financial Institution.

### **“Controlling Person(s)”**

“Controlling Persons” are the natural person(s) who exercise control over an entity. Where that entity is treated as a Passive Non-Financial Entity (“Passive NFE”) then a Financial Institution is required to determine whether or not these Controlling Persons are Reportable Persons. This definition corresponds to the term “beneficial owner” described in Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012).

In the case of a trust, the Controlling Person may be the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). Under the CRS the settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, are always treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.

Where the settlor(s) of a trust is an Entity then the CRS requires Financial Institutions to also identify the Controlling Persons of the settlor(s) and when required report them as Controlling Persons of the trust. In the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

### **“Control”**

“Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means.

Where no natural person(s) is/are identified as exercising control of the Entity (for example where no underlying person has control of greater than 25% of the entity) then under the CRS the Controlling Person is deemed to be the natural person who hold the position of senior managing official.

### **“Related Entity”**

An entity is a Related Entity of another entity if either entity controls the other entity, or 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.

### **“NFE”**

Means any Entity that is not a Financial Institution

### **“Passive NFE”**

Under the CRS a “Passive NFE” means any: (i) NFE that is not an Active NFE; and (ii) an Investment Entity described in subparagraph A(6)(b)Section VIII of the CRS.

### **“Active NFE”**

Any NFE can be an Active NFE, provided that it meets any of the criteria listed below. In summary, those criteria refer to:

- active NFEs by reason of income and assets;
- publicly traded NFEs;
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities;
- holding NFEs that are members of a nonfinancial group;
- start-up NFEs;
- NFEs that are liquidating or emerging from bankruptcy;
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

An entity will be classified as Active NFE if it 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

### **"FATCA"**

FATCA stands for The Foreign Account Tax Compliance Act which was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. FATCA creates a new information reporting and withholding regime for payments made to certain foreign financial institutions and other foreign entities

### **"TIN" (including "functional equivalent")**

The term "TIN" means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Further details of acceptable TINs can be found at the following link [\[OECD Portal\]](#)

Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for Entities, a Business/company registration code/number.