

# Tax Information Authority



**CAYMAN ISLANDS**

## The Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters

### **CRS GUIDELINES**

Issued pursuant to Regulation 5A of the *Tax Information Authority (International Tax Compliance)*  
*(Common Reporting Standard) Regulations, 2018*

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### Table of Abbreviations

<b>AEOI</b>	Automatic Exchange of Information
<b>AML/KYC</b>	Anti-Money Laundering / Know Your Customer
<b>AP</b>	Authorising Person
<b>CAA</b>	Competent Authority Agreement
<b>CIMA</b>	Cayman Islands Monetary Authority
<b>CIV</b>	Collective Investment Vehicle
<i>the Convention</i>	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
<b>CRS</b>	Common Reporting Standard
<b>CRS (Amendment) Regulations</b>	Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2020
<b>CRS Regulations</b>	Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (2018 Revision)
<b>DITC</b>	Department for International Tax Cooperation
<b>FATCA</b>	Foreign Account Tax Compliance Act (United States of America)
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	Cayman Financial Institution
<b>GIIN</b>	Global Intermediary Identification Number (United States of America)
<b>GP</b>	General Partner
<b>GR</b>	General Registry of the Cayman Islands
<i>the Islands</i>	Cayman Islands (Grand Cayman, Cayman Brac, Little Cayman)
<b>LLC</b>	Limited Liability Company
<b>LP</b>	Limited Partner
<b>MCAA</b>	Multilateral Competent Authority Agreement
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PPoC</b>	Principal Point of Contact
<b>Reg.</b>	Regulation
<b>Reporting FI</b>	Cayman Reporting Financial Institution
<b>S.</b>	Section
<b>SP</b>	Segregated Portfolio
<b>SPC</b>	Segregated Portfolio Company
<b>TDT</b>	Trustee Documented Trust
<b>TIA Law</b>	Tax Information Authority Law, as amended
<b>TIA; Authority</b>	Cayman Islands Tax Information Authority
<b>TIN</b>	Tax Identification Number
<b>UK</b>	United Kingdom

# 1. LEGISLATIVE FRAMEWORK

## A. Overview

The CRS is the global standard for the automatic exchange of Financial Account information for tax purposes and was developed by the OECD on the mandate of the G20. The CRS builds on the intergovernmental approach adopted by many jurisdictions for the implementation of the United States FATCA, but there are key differences to note between the two regimes.

Pursuant to the CRS and governing domestic laws, FIs must annually report specified Financial Account information to the Competent Authority of the Cayman Islands who automatically exchanges that information with exchange partners under the relevant exchange Agreement. The Competent Authority of the Cayman Islands is the Tax Information Authority. The functions of the Authority are carried out by the Department for International Tax Cooperation.

It should be noted that a contravention of the CRS Regulations may result in the application of an Administrative Penalty of up to \$50,000 for a body corporate, or otherwise \$20,000. In appropriate cases, criminal prosecution may also be initiated by the Director of Public Prosecutions.

## B. Exchange Agreements

The Cayman Islands is a [Participating Jurisdiction](#) of the [Convention on Mutual Administrative Assistance in Tax Matters](#), by territorial extension from the UK. In accordance with Article 6 of the Convention, the Cayman Islands is a [signatory](#) of the CRS MCAA, which provides the framework for the jurisdiction to exchange CRS information on a non-reciprocal basis. The MCAA contains the rules on the modalities of the exchange between the Cayman Islands Competent Authority and the Competent Authorities of its exchange partners. In addition to the MCAA, the Cayman Islands has entered into bilateral Agreements with other jurisdictions.

### i. Core Documents

The principal source for comprehensive CRS materials and resources is the [OECD Automatic Exchange Portal](#); however, a short list of useful resources is provided below:

- [Common Reporting Standard, Model CAA, and Commentaries](#)
- [CRS Implementation Handbook \(Version 2.0\)](#)
- [CRS-related FAQs](#)
- [CRS XML Schema](#)
- [CRS MCAA](#)

In addition to the above resources provided by the OECD, the DITC also provides resources to help FIs fulfil their obligations under the CRS, including technical guidance with respect to reporting on the DITC Portal. These resources, including the [DITC Portal User Guide](#), are available on the [DITC website](#).

### ii. Key dates under the CRS

The following are the effective dates for the implementation of the CRS in the Cayman Islands:

- The effective date for Pre-existing Accounts to be subjected to due diligence procedures are those Financial Accounts in existence as at 31 December 2015. New Accounts requiring self-certification are those opened on or after 1 January 2016. From 1 April 2018 onwards, FIs must use either the [Entity](#) or [Individual](#) self-certification template provided by the Authority.

- FIs are required to register on the DITC Portal by the next 30 April after the Entity became an FI.
- The annual reporting deadline for FIs to submit a CRS Returns / CRS Filing Declaration is 31 July.
- The CRS Compliance Form is required for all Entities that terminated after 16 April 2020.
- The annual reporting deadline for FIs to submit the CRS Compliance Form is 15 September.

Due to the COVID-19 pandemic, the deadline for reporting CRS information has been extended for the 2019 reporting period. Please monitor the [DITC website](#) for advisories on any amended deadlines.

### **C. Domestic Law**

The domestic law and regulations of the Cayman Islands that governs the exchange of information for tax purposes is the TIA Law and CRS Regulations, as amended. The TIA Law is the principal law for all forms of exchange of information for tax purposes in the Cayman Islands. The CRS Regulations were made pursuant to S.25 of the TIA Law and incorporate the CRS into domestic law.

- [Tax Information Authority Law \(2017 Revision\)](#)
- [Tax Information Authority \(Amendment\) Law, 2020](#)
- [CRS Regulations \(2018 Revision\)](#)
- [CRS \(Amendment\) Regulations, 2020](#)

### **D. Cayman Islands Competent Authority**

The Cayman Islands Competent Authority is the Tax Information Authority, who is designated by law as the Minister with responsibility for Financial Services, or their delegate. The delegated functions of the Authority are carried out by the Director and staff of the DITC.

FIs are to report information required under the CRS to the Authority via the DITC Portal. The Authority will then exchange that information with Reportable Jurisdictions that have satisfied the requisite confidentiality and data safeguards standards, and have the appropriate legal instruments and legislative frameworks in place. The DITC may contact FIs with regards to the accuracy of information submitted to the DITC Portal.

#### **i. Information requests under the TIA Law**

FIs should note that the Competent Authority of a Reportable Jurisdiction may make a formal request to the Authority to provide any information that is foreseeably relevant for the administration or enforcement of its tax laws under the normal principles of exchange of information upon request. Such a request may be made pursuant to the Convention or to another scheduled Agreement contained in the TIA Law. The TIA Law requires the Authority to execute any request it determines is in compliance with the TIA Law and the relevant scheduled Agreement.

Under the TIA Law, information means any fact, statement, document or record in any form. The information may relate, for example, to legal and beneficial ownership and accounting information of Cayman Entities which must generally be kept or available at the Entity's registered or principal office in the Islands. Cayman Entities should be mindful of this requirement in determining whether to rely on simplified customer due diligence that may be available under AML/KYC Procedures.

#### **ii. Compliance with an Information Request by the Authority**

A person may be criminally liable if they hinder the Authority in performing a function under the CRS Regulations or S.5 of the TIA Law. This could arise, for example, where a person fails to respond to the

Authority's requirement to produce information, whether the Authority gives the notice on its own initiative or pursuant to an information request by another Competent Authority.

A person may be criminally liable if they tamper with the information or authorise, advise or counsel someone else to do so. In this context, tampering occurs when a person alters, destroys, mutilates, defaces, hides or removes information in a way that causes the person or anyone else to contravene Part 2 of the CRS Regulations. This could arise, for example, where a person alters or removes Documentary Evidence which an FI must rely upon for the purpose of complying with its due diligence and reporting obligations.

If information the Authority wants or wants to inspect is outside the Islands, and the Authority requires the institution to bring the information to the Islands, the Authority shall specify a time that will enable the institution to bring the information to the Islands and the institution shall comply with the requirement.

## **E. DITC Portal**

The DITC Portal is the system through which FIs will fulfil their obligations under the CRS Regulations. FIs are required to register, confirm reporting obligations, submit any required reporting including the CRS Compliance Form, and deactivate from the Portal once the FI has been terminated. Please refer to the [DITC Portal User Guide](#) for technical guidance on how to complete these processes.

### **i. Confidentiality**

In accordance with S.20A of the TIA Law, information provided to or received by the Authority for the facilitation of the automatic exchange of information or otherwise for tax purposes shall be kept confidential. The Authority will only exchange CRS information with exchange partners that have adequate measures in place to ensure the required confidentiality and data safeguards are met. Any breach of confidential data will be reported in accordance with the relevant international standards.

It should be noted that, by virtue of the imputed liability outlined in Reg.21, representatives of the FI may be held criminally liable if the FI provides information to the DITC that causes the Authority to breach its statutory duty to keep the information it receives confidential.

## **F. Interpretation of the CRS Guidelines**

The DITC is responsible for the operation of all mechanisms for the exchange of information for tax purposes. Throughout these Guidelines, it should be understood that the DITC is carrying out the functions of the Authority. The DITC cannot provide legal advice and FIs are encouraged to seek professional advice if they are unsure of their obligations under the CRS framework.

As the CRS is a global standard, the OECD has developed extensive and comprehensive materials for the consistent application and interpretation of the Standard by all jurisdictions. These Guidelines are therefore limited to providing guidance on aspects of the CRS that are particular to the Cayman Islands and to addressing certain aspects of the CRS Regulations. They are not intended to replicate the information in the aforementioned OECD documents, which form the core of the Standard and its interpretation subject to the CRS Regulations, but are intended to be supplemental to the domestic legislative framework of the Cayman Islands and are not legally binding.

The CRS Regulations include several definitions to assist with interpretation of the Standard and also converts certain terms used in the CRS to be Cayman-specific. Please refer to the CRS Regulations for a full list of definitions, including the expanded definitions for Pre-existing Accounts and Expanded Related Entities.



## 2. ENTITY CLASSIFICATION

Each FI must determine its own “Entity classification” for the purposes of the CRS Regulations. If the classification of an Entity changes, the FI must notify the DITC of the change by submitting a CRS Change Form via the DITC Portal.

### A. Misclassification of an Entity

In order for the Authority to perform its functions it is important that all information provided by the FI is accurate: complete, correct and reliable. Prior to the Registration of an FI on the DITC Portal, the Entity must ensure that it has been classified correctly. The DITC will investigate instances of possible misclassification and may request additional information by way of a desk-based or on-site audit. Misclassification of an Entity may constitute an offence and includes the imputed criminal liability of representatives of FIs outlined in Reg.21.

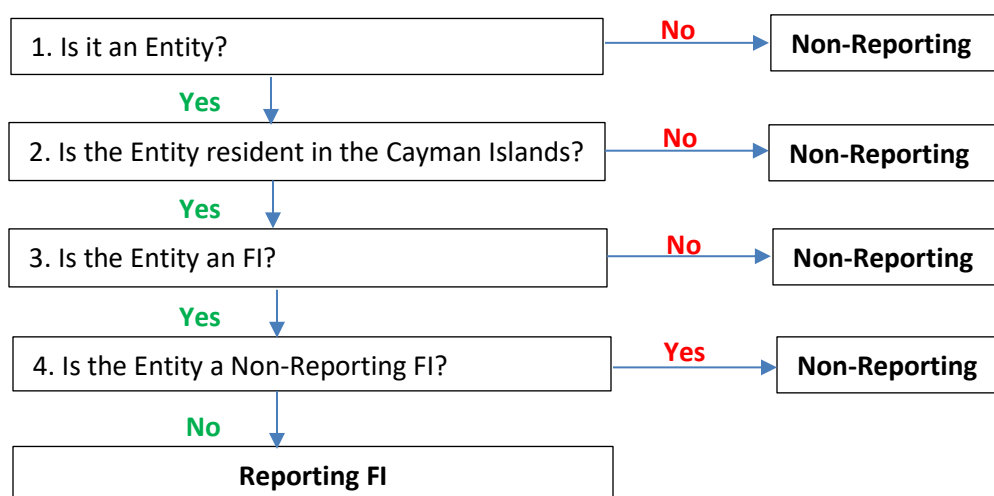
#### i. Misleading & Inaccurate Information Offences

S.24A of the TIA (Amendment) Law provides that a person who knowingly or wilfully supplies false or misleading information to the Authority is in contravention of the Law and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of 5 years, or to both. Additionally, Reg.16 of the CRS Regulations provides that it is an offence for an FI to give the Authority information that is materially inaccurate.

#### ii. Anti-avoidance

The CRS Regulations provide that if a person enters into any arrangement, the main purpose or one of the main purposes of which is to avoid any obligation under Part 2, the arrangement is deemed not to have been entered into by the person and the CRS Regulations are to have effect as if the arrangement had never been in existence. The situations in which the anti-avoidance rule may apply are wide and varied. The commentary on Section IX of the CRS provides some examples.

### B. Entity Classification Flow Chart



### **i. Definition of an Entity**

For the purpose of the CRS, only an Entity can be an FI. The term “Entity” is defined in the CRS Regulations as a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation. Individuals, including sole proprietorships, are excluded from the definition.

### **ii. Is the Entity resident in the Cayman Islands?**

As a general rule, Entities located in a jurisdiction, its branches located in that jurisdiction, and foreign Entities located in that jurisdiction are included in that jurisdiction's reporting nexus. For the Cayman Islands, “resident in the Islands”, means -

- (a) being incorporated or established in the Islands;
- (b) having in the Islands a place of effective management as defined under paragraph 109 of the commentary to the CRS; or
- (c) being subject to financial supervision in the Islands

Most FIs will be resident in the Islands because they are incorporated or established in the islands as described in (a) above. The Authority will regard a legal arrangement as being established in the Islands if it is a general partnership that carries on business in the Islands, a limited partnership or exempted limited partnership registered in the Islands, or a trust that has a trustee which is resident in the Islands.

For the purposes of (c) above, the Authority will regard all FIs not falling into (a) or (b) that are subject to the regulatory laws outlined in Part V of the [Monetary Authority Law \(2020 Revision\)](#), as being FIs on the basis that they are subject to financial supervision in the Islands by CIMA.

Entities will also be FIs for the purposes of (b) above if the Islands are the place where key management and commercial decisions necessary for the conduct of the its business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management. An Entity may have more than one place of management, but it can have only one place of effective management at any one time.

#### ***a) Determining residence of certain foreign Entities***

It is possible for an Entity established under the laws of another jurisdiction to be resident in the Cayman Islands for the purposes of the CRS, even where it does not have a branch in the Cayman Islands. Where a foreign limited partnership, a foreign LLC, or equivalent is organised or incorporated in a Non-Participating Jurisdiction, and:

- (a) its residency is not ascertainable pursuant to the tests set out in the CRS Commentary and CRS Implementation Handbook, and
- (b) it is not reporting its Financial Accounts to the relevant tax authority in another Participating Jurisdiction,

it will be regarded as being subject to the CRS Regulations, if it:

- i) has a general partner (or managing member, or equivalent) that is incorporated, registered or licensed in the Cayman Islands, or,
- ii) in the case of an individual general partner (or managing member, or equivalent), the person is resident in the Cayman Islands, or
- iii) in the case of a foreign company, foreign limited partnership, foreign LLC, or equivalent, its "place of effective management" (as described in paragraph 109 of the commentary on Section VIII) is in

the Cayman Islands, unless that foreign limited partnership, foreign LLC, or equivalent, has a tax residency in another jurisdiction.

#### ***b) Rules governing tax residence***

The [OECD Automatic Exchange Portal](#) provides an overview of the tax residency rules applicable in jurisdictions that are committed to automatically exchanging information under the CRS, as provided to the OECD Secretariat by those jurisdictions. Government bodies in certain jurisdictions may issue certificates of residence within the meaning of Section VIII.E.6.a) of Schedule 1 to the CRS Regulations. For the purposes of the CRS, all matters in connection with residence are determined in accordance with the Standard and its Commentaries.

The Cayman Islands does not have a system of direct taxation and therefore there are no domestic provisions which define tax residence generally, or which provide criteria for determining tax residence. The Cayman Islands does not issue certificates of residence for such purposes. A Person who is resident in the Cayman Islands may be resident for tax purposes in one or more other jurisdictions according to the domestic law of such other jurisdiction. Tax residence certificates formerly issued by the Authority for the purposes of reporting of savings income information to EU Member States are only intended to be used for such purposes.

#### ***c) Residence/Citizenship by Investment***

Residence and Citizenship by Investment schemes allow individuals to obtain citizenship or residence rights through local investments or for a flat fee. Although the reasons behind these schemes may be for perfectly legitimate reasons, they could potentially be misused to hide assets or circumvent CRS obligations. FIs should take these schemes into account when performing their due diligence obligations. If the FI has reason to know that the Account Holder or Controlling Person is claiming residence in a jurisdiction offering a potentially high-risk scheme, it should conduct further investigation. Information on potentially high-risk schemes is available on the [OECD website](#).

### **iii. Is the Entity a Financial Institution?**

The CRS Regulations broadly classify an Entity as either a Financial Institution (FI) or Non-Financial Entity (NFE). A “Cayman Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company -

- (a) resident in the Islands other than any of the institution’s branches outside the Islands; and
- (b) a branch in the Islands of a Financial Institution not resident in the Islands.

A “branch” is a unit, business, or office of an FI that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the FI. A branch includes a unit, business, or office of an FI located in a jurisdiction in which the FI is resident, and a unit, business, or office of an FI located in the jurisdiction in which the FI is created or organised. All units, businesses, or offices of a Reporting FI in a single jurisdiction shall be treated as a single branch.

#### ***a) Depository Institution***

Any Entity that accepts deposits in the ordinary course of a banking or similar business. This generally includes savings banks, commercial banks, savings and loan associations, and credit unions.

#### ***b) Custodial Institution***

A Custodial Institution is any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of:

- i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- ii) the period during which the Entity has been in existence.

#### ***c) Investment Entity***

An Investment Entity is any Entity that:

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

An Entity is treated as primarily conducting as a business one or more of the activities above, or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of the activities described above, if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of:

- i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- ii) the period during which the Entity has been in existence.

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "Financial Institution" in the Financial Action Task Force Recommendations. It should be noted that FIs cannot rely on the definition of "Investment Entity" in Article 1(1)(j) of the US-Cayman Model 1 IGA for the purpose of implementing the CRS. That definition is less prescriptive than the definition of Investment Entity in Section VIII(A)(6) of Schedule 1 to the CRS Regulations.

#### ***d) Specified Insurance Company***

A Specified Insurance Company is 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. This generally includes most life insurance companies.

#### **iv. Is the Entity a Non-Reporting Financial Institution?**

An FI that is not a Non-Reporting FI is a Reporting FI. Reporting FIs have reporting obligations whereas, except as provided for TDTs, Non-Reporting FIs do not. Reporting FIs have much broader obligations than Non-Reporting FIs under Part 2 of the CRS Regulations. Non-Reporting FIs include:

- International Organisation
- Broad Participation Retirement Fund
- Narrow Participation Retirement Fund
- Pension Fund of an International Organisation
- Qualified Credit Card Issuer
- Exempt Collective Investment Vehicle
- Trustee Documented Trust
- Exempted bodies:
  - i. The Cayman Islands Monetary Authority
  - ii. Governmental Entity
  - iii. Pension Fund of the Cayman Islands Monetary Authority
  - iv. Pension Fund of a Governmental Entity

#### ***a) Trustee Documented Trusts***

TDTs are treated differently than other types of Non-Reporting FIs. A trust that is an FI because it is an Investment Entity, is a Non-Reporting FI to the extent that the trustee of the trust is a Reporting FI and reports all information required to be reported:

- i) the reporting and due diligence obligations of a TDT will be transferred to the trustee;
- ii) the time and manner of the reporting and due diligence obligations remain the same as if they still were the responsibility of the TDT; and
- iii) the trustee must report such information as the TDT would have reported and identify the TDT with respect to which it fulfils the reporting and due diligence obligations.

A TDT's information notice that it is a Non-Reporting FI must include the name and FI number of its trustee in addition to the name and FI number of the TDT itself. The trustee will be required to make all CRS reports on behalf of the TDT via the TDT's FI Profile on the DITC Portal using the FI number issued by the DITC to the TDT. The TDT's CRS reports must name the TDT as the "Reporting FI". This is in contrast to the position under FATCA where the trustee of a TDT may use its own FI Profile and report as a sponsoring Entity on behalf of its TDTs.

#### **C. Non-Financial Entities**

An Entity that is not an FI is a NFE. A NFE that is not an Active NFE is a Passive NFE. The CRS requires a Passive NFE to disclose its Controlling Persons to any Reporting FI with which it has an account whereas an Active NFE is not required to disclose its Controlling Persons.

In particular, certain Entities classified as either Exempt Beneficial Owners or Non-Reporting FIs under Annex II of the US-Cayman IGA regarding FATCA are classified as Reporting FIs under the CRS and will therefore have reporting and other obligations under the CRS Regulations in addition to the notification obligation. This is because the CRS has a more limited definition of Non-Reporting FIs in paragraph B1 of Section VIII of Schedule 1 to the CRS Regulations.

The CRS commentary provides that an Entity's status as an FI or NFE should be resolved under the laws of the Participating Jurisdiction in which the Entity is resident. If an Entity is resident in a Non-Participating Jurisdiction, the rules of the Participating Jurisdiction in which the account is maintained, such as the Cayman Islands, determine the Entity's status as an FI or NFE since there are no other rules available. Therefore, when determining an Entity's status as an Active or Passive NFE, the rules of the jurisdiction in which the account is maintained determine the Entity's status.

#### **i. Active NFE**

The term Active NFE means an Entity, or Related Entity, the stock of which is regularly traded on an established securities market. The term "stock" is limited to shares in a corporation. Accordingly, only a corporation can qualify as an Active NFE on the basis of the fact that its stock is regularly traded on an established securities market.

#### **ii. Passive NFE**

A Reporting FI is required to determine the residence of every Controlling Person of a Passive NFE that is an Account Holder. Subparagraph D(6) of Schedule 1 to the CRS Regulations defines the term "Controlling Persons" and paragraphs 132 to 137 of the commentary on the CRS elaborate on the Controlling Persons of different types of Entities. "Controlling Person" corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the [FATF Recommendations](#). In applying the FATF Recommendation to Controlling Persons of Passive NFEs that are legal persons, the following should be noted:

- (a) In applying the first test of the FATF Recommendation, controlling ownership interest depends on the ownership structure of the company. In the Cayman Islands, a Controlling Person for CRS purposes would include (without limitation) any individual who would be regarded as a "beneficial owner" under the [Anti-Money Laundering Regulations \(2020 Revision\)](#). With effect from December 2017, the threshold is at least 10% for a controlling ownership interest of an Entity that is a legal person (i.e. not 25%)
- (b) In applying the second test of the FATF Recommendation, control through other means may be achieved through shareholder or nominee agreements.
- (c) In applying the third test of the FATF Recommendation, this may be a managing director or it could be all directors if there is no managing director or other person with a senior management position.

Entities that are regarded as Passive NFEs and have another Entity that holds a controlling ownership interest are subject to the same cascading tests – each of the FATF tests must be considered in turn against that next Entity. Limited partnerships that are legal persons under their governing law and which are Passive NFEs are subject to the Controlling Persons test referred to above in respect of legal persons.

For example – a Delaware limited partnership (which is a legal person under Delaware law) is an investor in a Cayman Islands investment fund. The Delaware limited partnership has twenty limited partners who are natural persons with interests of 5% each, a corporate GP and an external manager. Under the first control test, no limited partner has a controlling ownership interest of at least 10%. Under the second control test, if no natural person has control through other means the GP would be regarded as having control. As the GP is an Entity that controls the Delaware limited partnership, consider if any of the shareholders of the GP Entity have at least 10% ownership interests. If none, consider if any natural person has control of the GP through other means. If none, identify the natural person who holds the position of senior managing official of the GP Entity.

### **3. FINANCIAL ACCOUNTS**

A Financial Account is an account maintained by an FI and includes Depository Accounts, Custodial Accounts, Equity and Debt Interests, Cash Value Insurance Contracts, and Annuity Contracts.

#### **A. Excluded Accounts**

Certain Financial Accounts are seen to be low risk of being used to evade tax and are therefore specifically excluded from needing to be reviewed. These Financial Accounts are detailed in Section VIII.C.17 of Schedule 1 to the CRS Regulations and include:

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

##### **i. Dormant Depository Accounts are Excluded Accounts**

Reg.6A(4) of the CRS Regulations provides that a Depository Account is an “Excluded Account” in Section VIIC. of the CRS if it is a dormant account under section 4(1) of the Dormant Accounts Law (2011 Revision) with a balance that does not exceed US\$1,000. The 2016 Amendment to the CRS Regulations repealed the definition of Excluded Account in Schedule 2 of the original 2015 CRS Regulations.

#### **B. Accounts that need to be reviewed**

Reporting FIs are required to review the Financial Accounts they maintain to identify whether any of them need to be reported to the Authority. These Financial Accounts include –

- Depository Accounts
- Custodial Accounts
- Equity and Debt Interests
- Cash Value Insurance Contracts
- Annuity Contracts

##### **i. Depository Accounts**

A Depository Account includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by an FI in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

##### **ii. Custodial Accounts**

A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Asset for the benefit of another person.

### iii. Equity and Debt Interests

An Equity Interest is, in the case of a partnership that is an FI, either a capital or profits interest in the partnership. In the case of a trust that is an FI, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive, directly or indirectly (for example, through a nominee), a mandatory or discretionary distribution from the trust.

### iv. Cash Value Insurance Contracts

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

### v. Annuity Contracts

An Annuity Contract is a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

## C. Reportable Jurisdictions

A Reportable Jurisdiction is a jurisdiction with which an Agreement is in place pursuant to which there is an obligation to automatically exchange information on Reportable Accounts. With the exception of those Reportable Jurisdictions that are non-reciprocal, the Authority intends to exchange information with all Reportable Jurisdictions that have committed to the exchange, subject to satisfaction of the conditions in the relevant CAA or MCAA. The list of Cayman Islands Reportable Jurisdictions is updated periodically and published on the [DITC website](#). The OECD also provides a list of [Activated Exchange Relationships](#), which can be filtered by jurisdiction.

### i. Jurisdiction where the FI maintains its accounts

The general rule is that a Financial Account is an account maintained by an FI. Where an FI, other than a trust, is resident in the Islands and one or more other Participating Jurisdiction, the FI will be subject to the reporting and due diligence obligations of the jurisdiction in which it maintains its Financial Accounts. The following table shows which FI is considered to maintain each type of Financial Account:

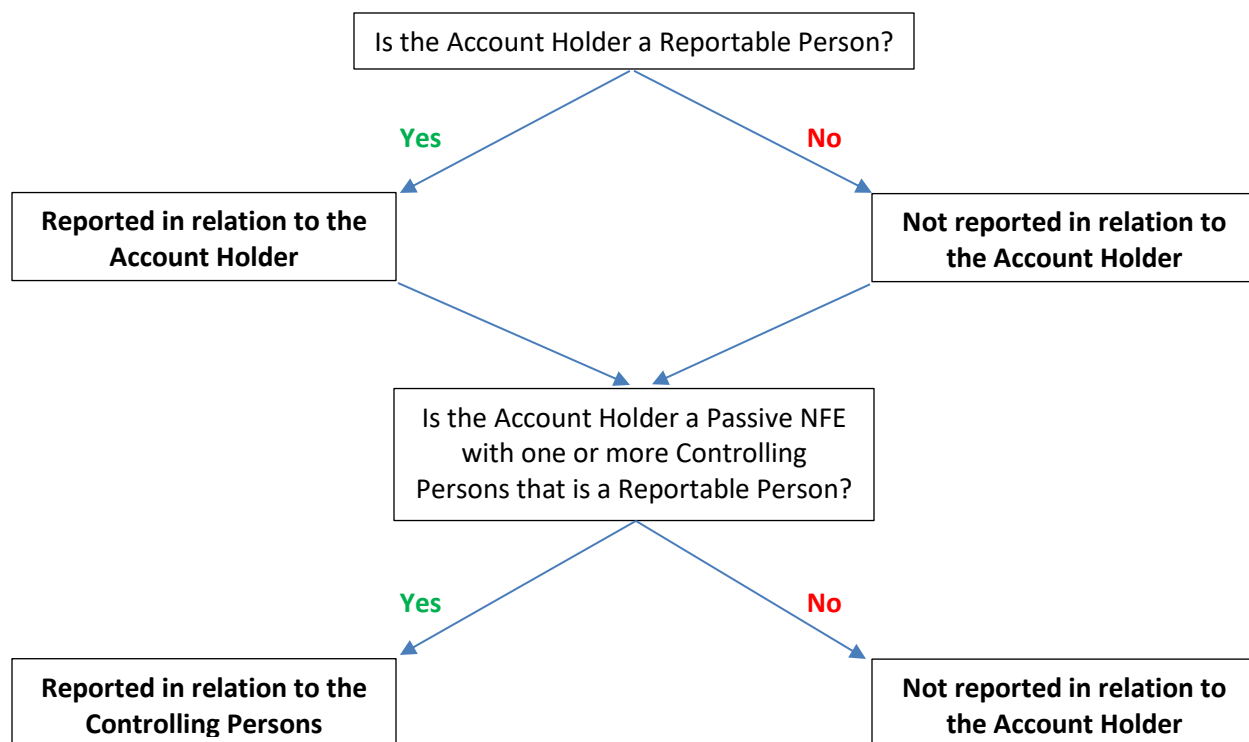
Accounts	Which Financial Institution is considered to maintain them
Depository Accounts	The FI that is obligated to make payments with respect to the account (excluding an agent of an FI).
Custodial Accounts	The FI that holds custody over the assets in the account.
Equity and debt interest in certain Investment Entities	The Equity or Debt Interest in an FI is maintained by that FI. An Investment Entity shall always perform its reporting obligations in the Cayman Islands
Cash Value Insurance Contracts	The FI that is obligated to make payments with respect to the contract.
Annuity Contracts	The FI that is obligated to make payments with respect to the contract.



An FI must advise the Authority if it determines that it will perform its CRS reporting obligations in another Participating Jurisdiction because, based on the applicable rule in the above table, it is where the FI maintains its Financial Accounts.

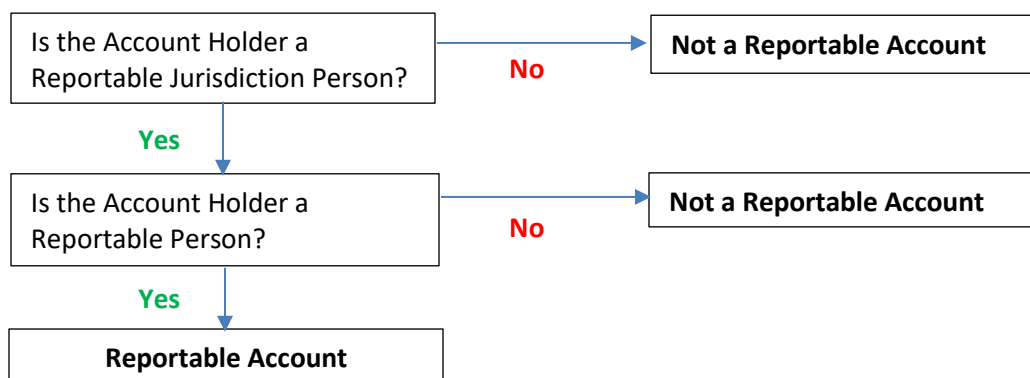
#### D. Reportable Financial Account Flow Chart

Once a Reporting FI has identified the Financial Accounts it maintains, it is required to review those accounts to identify whether any of them are Reportable Accounts. A Reportable Account is an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person. A two-part test is used to determine a Reportable Account:



##### i. Reportable Account by virtue of the Account Holder

The first test is a two-part test to determine whether the Financial Account is reportable by virtue of the Account Holder:



### (1) Is the Account Holder a Reportable Jurisdiction Person?

A Reportable Jurisdiction Person is an individual or Entity resident in a Reportable Jurisdiction for tax purposes. A Reportable Jurisdiction is a jurisdiction with which an Agreement is in place to automatically exchange information for tax purposes, as outlined in section C above.

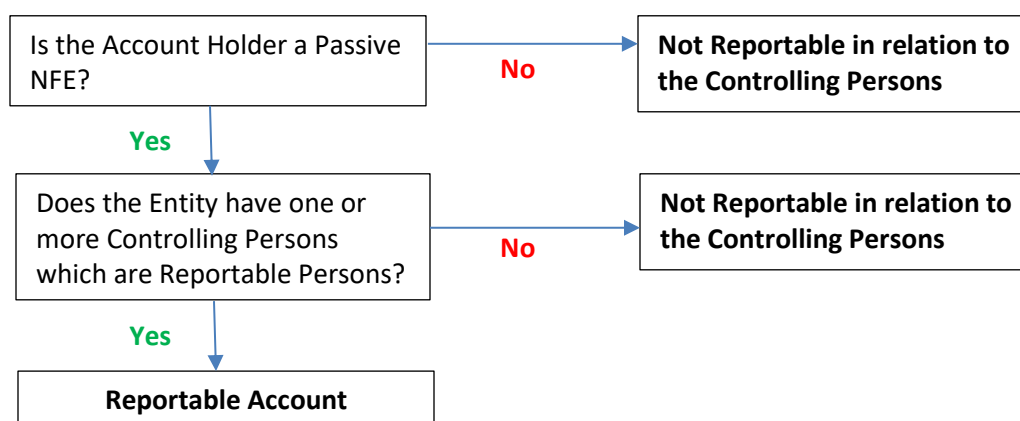
### (2) Is the Account Holder a Reportable Person?

If the individual is a Reportable Jurisdiction Person, they will also be a Reportable Person unless specifically excluded. The specific exclusions are:

- A corporation the stock of which is regularly traded on one or more established securities market and a Related Entity of theirs
- A Governmental Entity
- An International Organisation
- A Central Bank
- A Financial Institution (which would have its own obligation to report under the CRS)

### ii. Reportable Account by virtue of the Account Holder's Controlling Persons

Irrespective of whether a Financial Account is a Reportable Account by virtue of the Account Holder, there is then a second test in relation to the Controlling Persons of certain Entity Account Holders:



### (1) Is the Account Holder a Passive NFE?

As described in Section 2.C above, a Passive NFE typically receives passive income or primarily holds assets that produce passive income, such as dividends, interest, capital gains, and rent.

### (2) Does the Entity have one or more Controlling Persons which are Reportable Persons?

If the Account Holder is a Passive NFE, the FI must "look through" the Entity to identify its Controlling Persons. If the Controlling Persons are Reportable Persons, then information in relation to the Financial Account must be reported including details of the Account Holder and each reportable Controlling Person.

***(a) Identification of Controlling Persons of Passive NFEs with Financial Institutions in the chain of legal ownership***

The CRS status of intermediate Entities in the ownership chain is irrelevant for purposes of determining the Controlling Persons of a Passive NFE. That is, the CRS requires a Reporting FI, or TDT, to determine/report on such Controlling Person even if there is a Reporting FI in the ownership chain between the Passive NFE and the Controlling Person.

There is only one exception to the first sentence of the above paragraph and this is based on the Interpretative Note on Recommendation 10 to the FATF Recommendations. Where an intermediate Entity owning a controlling interest in a Passive NFE is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of the Controlling Person of such intermediate Entity.

***(b) Controlling Persons of a trust that is a Passive NFE***

The CRS defines the Controlling Persons of a Passive NFE that is a trust to include –

- the settlor(s)
- the trustee(s);
- the protector(s) (if any);
- the beneficiary(ies) or classes of beneficiary(ies); and
- any other natural person(s) exercising ultimate effective control over the trust.

It is necessary to “look through” any Entity with a controlling interest in such a trust for the natural person(s) exercising ultimate effective control over the trust even if that Entity is an FI or an Active NFE. In accordance with the option available under the CRS with respect to trusts that are Passive NFEs, Reporting FIs may align the scope of beneficiaries of a trust treated as Controlling Persons with the scope of beneficiaries treated as Reportable Persons where the trust itself is an FI. Therefore, Reporting FIs would only need to report discretionary beneficiaries of Passive NFE trusts for the reporting period in which they receive a distribution from the trust.

For a Reporting FI to apply this option, it must ensure that it has appropriate procedures in place to identify whether a distribution is made by the trust to a discretionary beneficiary in the reporting period. Reporting FIs may, for example, receive certifications from the trustees of the trust as to whether distributions have been made and, if so, to whom. Where no such procedures are in place to identify distributions to discretionary beneficiaries, the Reporting FI must continue to treat the discretionary beneficiary as a Controlling Person and report accordingly if that person is a Reportable Person.

***(c) Equity Interests of natural persons exercising ultimate effective control of a trust that is a Cayman Financial Institution***

In the case of a trust that is an FI, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.

In order to determine whether there is any other natural person exercising ultimate effective control, it will be necessary to look through any Entity exercising such control, such as a corporate protector or enforcer.

## **E. Non-Reporting Financial Accounts**

### **i. Financial Accounts of investment managers and advisers**

Cayman Islands investment managers and advisers are classified as Investment Entities and as Reporting FIs for CRS purposes. They will have all obligations under Part 2 of the CRS Regulations. This is in contrast to the position under similar regulations regarding FATCA which classify most investment managers and advisers as Non-Reporting FIs.

In contrast to the position on other Investment Entities, the CRS provides that the Equity and Debt Interests of investment managers or advisers will only be treated as a “Financial Account” if the class of interests was established with a purpose of avoiding the reporting obligation. Investment managers and advisers that confirm on the DITC Portal they have no Financial Accounts by virtue of Section VIII.C.1.a) of Schedule 1 to the CRS Regulations will not have a reporting obligation pursuant to the CRS unless and until such confirmation is no longer correct.

## **F. Account-specific Issues**

### **i. Undocumented Accounts**

For each New Account, an FI must obtain a valid self-certification. However, for a Pre-existing Account where the only indicium established is a “hold mail instruction” or “in-care-of address”, the FI should choose the Cayman Islands as the Receiving Country when submitting the CRS Return on the DITC Portal.

### **ii. Limited Life Debt Investment Entities**

Limited Life Debt Investment Entities (LLDIEs) are Reporting FIs for the purposes of the CRS. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has determined that LLDIEs cannot be considered as a jurisdiction specific low-risk Non-Reporting FI for the purposes of subparagraph B.1.c of Section VIII of Schedule 1 to the CRS Regulations. This changes the position stated by the Authority on 7 December 2015 in the [Gazette Notice](#) for CRS Non-Reporting FIs, which is now withdrawn.

### **iii. Determination of Equity Interest in the case of a widely-held Collective Investment Vehicle that is a Reporting Financial Institution**

Certain CIVs that are Reporting FIs and that are organised in the form of a trust may have the characteristics of publicly offered CIVs: the trustee and the beneficiaries are unrelated parties; the interests in the CIV are unitised; the CIV is required to keep an up-to-date register of the registered unit holders; certain registered unit holders are Custodial Institutions who maintain the units in the CIV on behalf of the investors in a Custodial Account; and the units are freely transferable financial instruments.

These CIVs can treat their registered unit holders as the Account Holders of the Equity Interests (unless they are persons other than an FI, holding the Equity Interest for the benefit or account of another person as described in Section VIII(E)(1)) of Schedule 1 to the CRS Regulations. The Custodial Institutions that are the registered unit holders will be responsible for reporting the Equity Interests in the CIV which they maintain for reportable Account Holders in a Custodial Account.

### **iv. Segregated Portfolio Companies, Umbrella Funds and Multi-issuance Entities**

Segregated Portfolio Companies (SPCs), umbrella funds and multi-issuance Entities may be considered as a whole and categorised accordingly. It is not necessary to treat each SP, fund or series (“sub-Entity”) as a separate Reporting FI (or other applicable classification for CRS purposes) unless the Entity wishes to do so. If one or more of such sub-Entity elects to avail itself of an exemption, such election shall not prevent

the Entity (as a whole) from electing to register on the DITC Portal and report in its own right with respect to its general assets and/or one or more other sub-Entities. However, where an SPC, umbrella fund or multi-issuance Entity is categorised as the Reporting FI for CRS purposes, it must ensure that the account number (or functional equivalent) in respect of any Reportable Account is sufficient to identify both the particular sub-Entity and Account Holder to which that Reportable Account relates.

#### **v. E-money providers – qualification as a Depository Institution**

No special rules apply to electronic money providers. Like other financial industry participants, they must determine whether they are an FI, as defined by the CRS. That determination will depend on the facts and circumstances. For instance, in order to determine whether an electronic money provider is a Depository Institution, the analysis must be done with reference to Section VIII(A)(5) of the CRS and the related Commentary, in particular paragraph 13.

#### **vi. Indirect distributions by a trust**

A Reportable Person will be treated as a beneficiary of a trust if such Reportable Person may receive, directly or indirectly, a discretionary distribution from the trust.

Indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of another person. For example, instances where a trust pays the tuition fees or repays a loan taken up by another person are to be considered indirect distributions by the trust. Indirect distributions also include cases where the trust grants a loan free of interest or at an interest rate lower than the market interest rate or at other non-arm's length conditions. In addition, the write-off of a loan granted by a trust to its beneficiary constitutes an indirect distribution in the year the loan is written-off.

In all of the above cases the Reportable Person will be person that is the beneficiary of the trust receiving the indirect distribution (i.e. in the above examples, the debtor of the tuition fees or the recipient of the favourable loan conditions). This replicates the [OECD CRS FAQ #11](#).

#### **vii. Group Cash Value Insurance Contracts or Group Annuity Contracts**

Under the CRS Regulations, an FI may treat an account that is a Group Cash Value Insurance Contract or a Group Annuity Contract, as a Non-Reportable Financial Account until the date on which an amount is payable to an employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- The Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- The employees/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- The aggregate amount payable to any employee/certificate holder or beneficiary does not exceed US\$1,000,000.

#### **viii. Holding companies and similar vehicles**

A holding company or intermediary vehicle may be classified as an Active NFE if it satisfies the criteria of any of subparagraphs D.9. a) to h) of Section VIII of Schedule 1 of the CRS Regulations and the commentary thereon. For example, paragraphs 129 and 130 of the commentary describes the criteria to qualify for the Active NFE status for "holding NFEs that are members of a nonfinancial group." A holding company

or intermediary that is not an Active NFE will generally be classified as a Passive NFE unless it falls within the definition of an Investment Entity.

**ix. Cayman Islands retirement and pension funds**

Cayman Islands retirement and pension funds that meet the definitions of Broad Participation Retirement Fund or Narrow Participation Retirement Fund under the CRS Regulations will be Non-Reporting FIs under the CRS.

For the purpose of the CRS Regulations, Cayman Islands retirement and pension funds are ‘subject to government regulation’ if they are registered with the Cayman Islands National Pensions Office. Cayman Islands pension funds managed and administered by the Public Service Pensions Boards are Non-Reporting FIs as Pension Funds of a Governmental Entity.

Cayman Islands retirement and pension funds availing themselves of the Non-Reporting FI Broad and Narrow Participation Retirement Fund definitions must submit an annual declaration to the Authority in order to satisfy the requirements under the CRS.

## 4. DUE DILIGENCE POLICIES & PROCEDURES

Each Reporting FI shall establish and maintain written policies and procedures to comply with Part 2 of the CRS Regulations. The Reporting FI must implement and comply with these policies and procedures, which shall:

- (a) identify each jurisdiction in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes or for the purpose of any tax imposed by the law of the jurisdiction that is of a similar character to either of those taxes;
- (b) apply the due diligence procedures set out in the CRS; and
- (c) ensure that any information obtained in accordance with the CRS Regulations or a record of the steps taken to comply with the CRS Regulations in respect of a Financial Account is kept for 6 years from the end of the year to which the information relates or during which the steps were taken.

A Reporting FI is deemed to have contravened the policies and procedures relating to a self-certification or Documentary Evidence if the institution -

- (a) knows, or has reason to believe, the instrument is inaccurate in a material way for the policies and procedures; and
- (b) it makes a return that relies on the instrument's accuracy.

Written policies and procedures should be appropriate for the type of institution and its Account Holders and should reflect any delegation to third parties. Given the variety of Reporting FIs, there will not be one style or approach which fits all institutions. In general, for Pre-existing Accounts, FIs must determine the residency of the Account Holder based on the information it has on file, whereas for New Accounts a self-certification is required from the Account Holder.

### A. AML/KYC for CRS purposes

In the CRS, references to “AML/KYC Procedures” is the customer due diligence procedures of a Reporting FI pursuant to the [Anti-Money Laundering Regulations \(2020 Revision\)](#). Applicable AML/KYC Procedures are those to which an FI is subject at a given moment in time, as long as, for New Accounts, such procedures are consistent with the [2012 FATF Recommendations](#).

Where there is an amendment to the applicable AML/KYC Procedures, FIs may be required to collect and maintain additional information for AML/KYC purposes in that jurisdiction. For the purposes of the due diligence procedures set out the CRS Regulations, the additional information obtained under such amended AML/KYC Procedures must be used to determine whether there has been a change of circumstances in relation to the identity or reportable status of Account Holders and/or Controlling Persons. If the additional information obtained is inconsistent with the claims made by a person in a self-certification, there has been a change in circumstances, and an FI will have a reason to know that a self-certification is unreliable or incorrect.

#### i. Look-through requirement for widely-held Collective Investment Vehicles and pension funds in the form of trusts in Non-Participating Jurisdictions

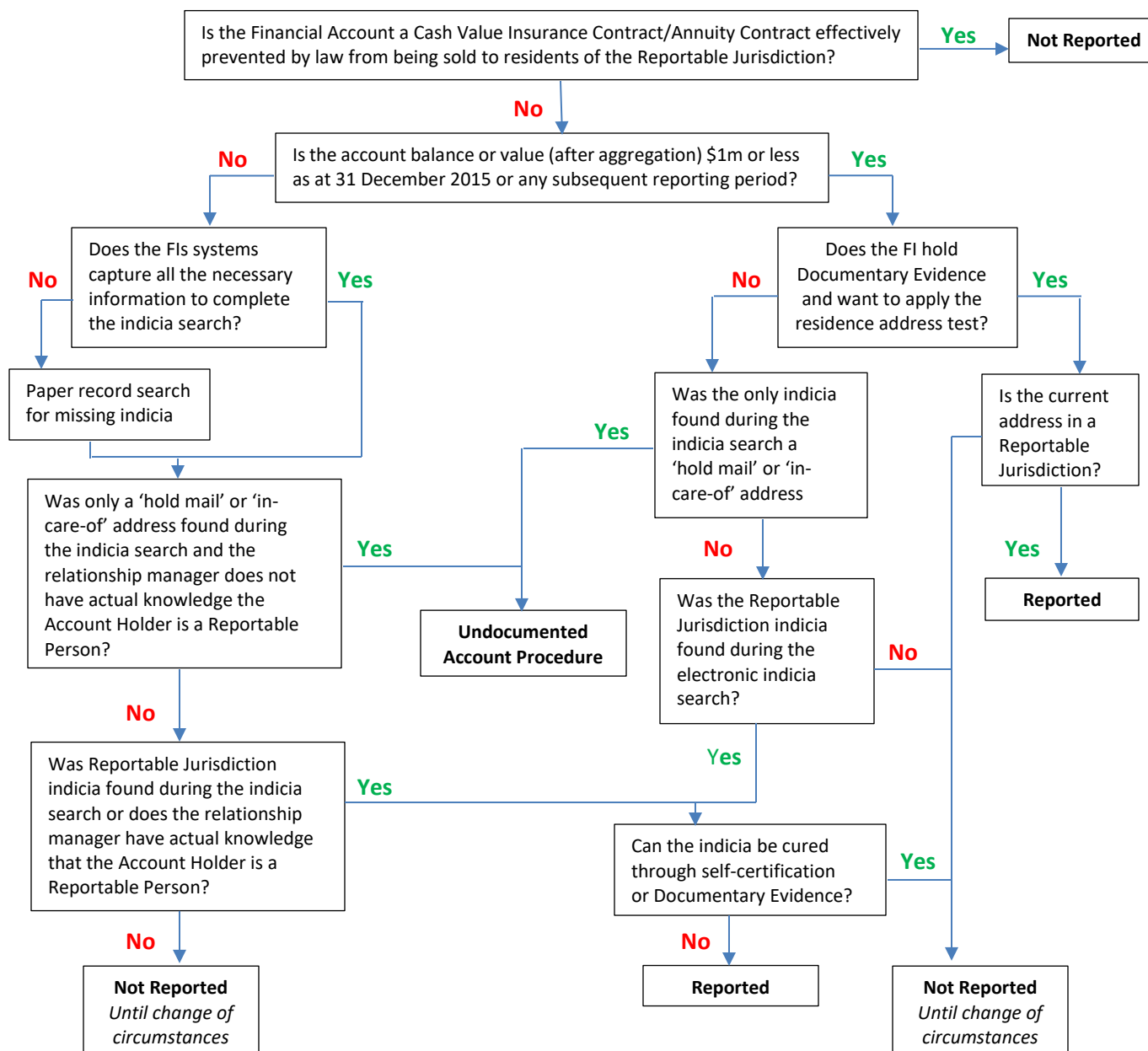
When determining the Controlling Persons for New Entity Accounts as part of the application of the “look-through” requirement with respect to an Investment Entity resident in a Non-Participating Jurisdiction that is a widely-held, regulated, trust-type CIV or a trust-type pension fund, a Reporting FI does not need to go beyond the information collected and maintained pursuant to domestic AML/KYC Procedures. This is consistent with Recommendations 10 and 25 of the FATF Recommendations and provided for in Paragraph 137 of the Commentary on Section VIII.

In practical terms, this means that a Reporting FI will not be required to identify the Controlling Persons of those types of Account Holders in circumstances where it is unnecessary to identify their "beneficial owners" for AML/KYC purposes by virtue of simplified measures under the [Proceeds of Crime Law \(2020 Revision\)](#). The simplified measures are currently comprised in the [Anti-Money Laundering Regulations \(2020 Revision\)](#). Simplified measures can only be relied upon in respect of New Entity Accounts in circumstances where there is a lower risk of money laundering or terrorist financing as contemplated by the FATF Recommendations.

## B. Pre-existing Accounts

Pre-existing Accounts are Financial Accounts in existence as at 31 December 2015. Accounts in existence on or before that date can rely on the due diligence procedures it already has on file.

### i. Pre-existing Individual Accounts





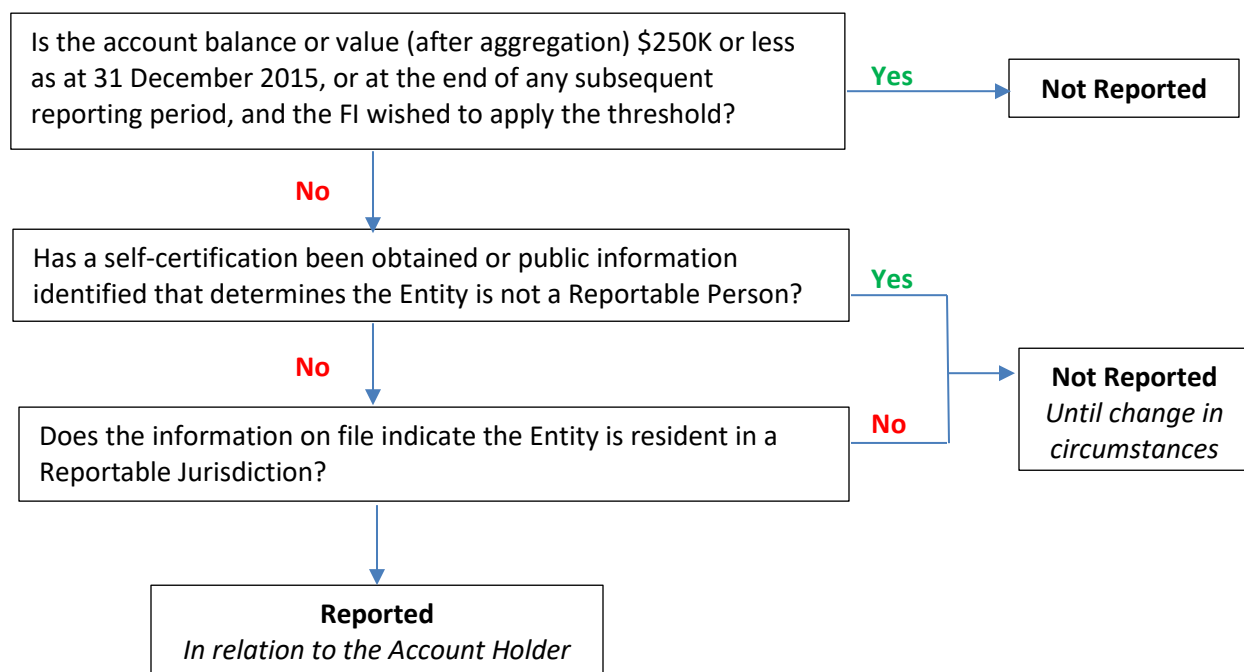
#### a) “Residence address” test for Lower Value Accounts

In respect of Lower Value Accounts only, the CRS Regulations permit FIs to determine an Account Holder’s residence based on the residence address provided by the Account Holder so long as the address is current and based on Documentary Evidence. The residence address test may apply to Pre-existing Lower Value Accounts held by Individual Account Holders. This test is an alternative to the electronic indicia search for establishing residence. If the residence address test cannot be applied, because, for example, the only address on file is an “in-care-of” address, the FI must perform the electronic indicia search.

#### b) Currency Translation

The CRS Regulations permit FIs to convert the threshold limits into the currency in which accounts are denominated before applying a threshold amount under the CRS. This allows a multinational FI to apply the amounts in the same currency in all jurisdictions in which they operate. For example, a Pre-existing Individual Lower Value Account is an account with an aggregate account balance or value of less than US\$1 million, and this threshold amount may be converted to the relevant currency for the FI by reference to the spot rate of exchange on the date for which the Reporting FI is determining that threshold amount. Please refer to Reg.6A(6) and Schedule 1 (Section VII paragraph C) of the CRS Regulations for further details on the currency translation and account balance aggregation rules.

#### ii. Pre-existing Entity Accounts



#### iii. Application of New Account procedures to Pre-existing Accounts – relationship manager inquiry

A relationship manager inquiry is not applicable where a Reporting FI applies the due diligence procedures for New Accounts also to Pre-existing Accounts. If a relationship manager is assigned to the account, the relationship manager and thus the Reporting FI may have reason to know that a self-certification is unreliable or incorrect. A Reporting FI may not rely on a self-certification if it has reason to know that the self-certification is incorrect or unreliable. A Reporting FI has reason to know that a self-certification is

unreliable or incorrect if its knowledge, including the knowledge of any relevant relationship manager, of relevant facts or statements contained in the self-certification is such that a reasonably prudent person in the position of the Reporting FI would question the claim being made.

### **C. New Individual/Entity Accounts**

FIs are required to collect self-certifications for all accounts opened after 1 January 2016 to determine the tax residence of each Account Holder and the reporting obligations resulting therefrom. From 1 April 2018, FIs are required to use the self-certification templates provided by the DITC to collect this information. These templates are available on the [DITC website](#), but are provided below for convenience:

- [Individual Self-certification Template](#)
- [Entity Self-certification Template](#)

### **D. CRS Self-Certifications**

#### **i. Template Forms**

Template self-certifications for CRS purposes were developed in conjunction with the local financial services industry. The Authority is satisfied that these forms may be used for the purposes of CRS and FATCA compliance. FIs may use these forms as a basis for self-certification and adapt or modify them as necessary to suit their own usage. The Business and Industry Advisory Committee to the OECD have also drafted template self-certification forms, and these can be accessed via the [OECD Automatic Exchange Portal](#).

#### ***a) Controlling Ownership Threshold***

In the Cayman Islands, a Controlling Person for CRS purposes would include (without limitation) any individual who would be regarded a “beneficial owner” under the [Anti-Money Laundering Regulations \(2020 Revision\)](#). This means that there is a 10% threshold for a controlling ownership interest of an Entity that is a legal person (i.e. not 25%), in line with the [OECD CRS FAQ #26](#). Accordingly, an FI must obtain an Entity self-certification based on the new template from any Entity that is a Passive NFE or an FI in a Non-Participating Jurisdiction:

- (a) upon opening any Financial Account for that Entity if the Financial Account is opened on or after 1 February 2018; and
- (b) by 31 December 2018 for any Financial Account existing on 31 January 2018 if that Entity is a legal person and was previously required to disclose its Controlling Persons to the FI pursuant to the CRS.

For the avoidance of doubt, there is no change to the ownership threshold for Controlling Persons of legal persons that are Passive Non-Financial Foreign Entities under FATCA.

Subject to the foregoing, self-certifications should be obtained and validated as part of an FI’s account opening procedures. Where it is not possible to obtain a self-certification on ‘day one’ of the account opening process, one should be obtained and validated as soon as practicable, and in any event, no later than 90 days after the account has been opened. If the self-certification is not obtained within 90 days then the account should be closed. This is in line with [OECD CRS FAQ #22](#).

#### **ii. Confirming the validity of self-certifications**

An FI is required to confirm the reasonableness of self-certifications obtained from Account Holders on the basis of other documentation, including any documentation collected pursuant to AML/KYC Procedures

that is at its disposal. For instance, the fact that the self-certification indicates that the Account Holder has no residence for tax purposes but the other documentation on file contains an address constitutes a reason to doubt the validity of the self-certification. In such cases, the FI must ensure that it obtains a reasonable explanation and documentation, as appropriate, that supports the reasonableness of the self-certification. If the FI does not obtain a reasonable explanation as to the reasonableness of the self-certification, the FI may not rely on the self-certification and must obtain a new, valid self-certification from the Account Holder or Controlling Person. FIs may want to inform their Account Holders, that as part of such procedures, jurisdictions may monitor and review Account Holders that have not indicated a tax residence as part of their self-certification.

### **iii. False self-certifications**

CRS compliance depends heavily upon the accuracy of self-certifications that are made by Account Holders and Controlling Persons and given to FIs. CRS reporting cannot be accurate if the due diligence upon which it is based is not accurate. Accordingly, the CRS Regulations provide that a person may be criminally liable if they make a self-certification that is false in a material manner, where the FI is given the self-certification for any purpose for which it was made or purports to have been made. It is no defence that the self-certification was made outside the Islands, that the person did not know or had no reason to know that the self-certification was false, or that the self-certification was given to the FI by someone else.

## **E. Examples of written policies and procedures**

### **i. No delegation of CRS obligations**

The policies and procedures of a Reporting FI which has not delegated performance of its CRS obligations to third parties should describe the performance of those CRS obligations in a way that is reasonable for the nature of its business.

### **ii. Delegation of CRS obligations**

Any Reporting FI may delegate performance of its CRS obligations and the DITC recognises that Investment Entities will typically do so. An Investment Entity which has decided to delegate its CRS obligations to a fund administrator should have written policies and procedures which describe:

- what functions have been delegated,
- the management/oversight of the delegation, and
- the performance of any CRS obligations that have not been delegated (e.g. management of the required information under Reg.8(4) of the CRS Regulations).

In circumstances where the Authority requires an Investment Entity to produce its written policies and procedures for CRS compliance, the FI may also be required to produce any agreement regarding delegation of the Investment Entity's CRS obligations together with the written policies and procedures for CRS compliance which the delegate uses for client Investment Entities.

### **iii. Segregated Portfolio Companies, Umbrella Funds and Multi-issuance Entities**

The written policies and procedures of an SPC, or equivalent, should include policies and procedures which apply to all of its SPs in respect of which it assumes notification and reporting obligations via the SPC's own profile on the DITC Portal. Those SPs, or equivalent, will not require their own written policies and procedures.

### **iv. Trustee of Trustee Documented Trusts**

The written policies and procedures of the Reporting FI that is a trustee of a TDT should include policies and procedures which apply to all of its TDTs since the trustee is responsible for all due diligence and reporting obligations of its TDTs. Those TDTs would not be expected to have their own written policies and procedures.

## **B. Record-keeping**

A Reporting FI shall retain for 6 years any book, document or other record, including any information stored by electronic means, which relates to the information required to be reported to the Authority under the CRS Regulations.

## 5. REPORTING OBLIGATIONS OF CAYMAN FINANCIAL INSTITUTIONS

Each FI, other than an Exempted Body, has an obligation to register on the DITC Portal. The [DITC Portal User Guide](#) provides technical assistance with respect to the Registration and Reporting process on the DITC Portal.

A Reporting FI may appoint a person as the institution's agent to carry out the duties and obligations imposed on it by Part 2 of the CRS Regulations. If an FI makes such an appointment, it shall ensure that it continues to have access to and is able to produce to the Authority records and Documentary Evidence used to identify and report on Reportable Accounts. The FI is responsible for any failure of an agent to satisfy its obligations under Part 2. FIs may be liable for the action or inaction of their agents and representatives. Conversely, representatives may be liable for the action or inaction of the FI.

### A. Annual Deadlines

Registration Notification ( <i>year 1 only</i> )	30 April
CRS Reporting	31 July
CRS Filing Declaration	31 July
CRS Compliance Form	15 September

### B. Registration on the DITC Portal

Under Reg.8 of the CRS Regulations, the deadline for initial Registration Notification was 30 April 2017. In the case of an Entity that becomes an FI after that date, the next 30 April. Once the Entity completes its Registration on the DITC Portal, the FI number will be automatically generated and emailed to the persons registered as the AP and PPoC. Registration is a one-off process and does not need to be repeated annually.

#### i. Required Information for Registration on the DITC Portal

Every FI must provide the required information specified in Reg.8(4) of the CRS Regulations. The PPoC must maintain a record of this information in a manner that can be accessed if the DITC Portal is offline. Failing to keep this information on record is a contravention of Reg.8, which may result in the application of an Administrative Penalty.

##### a) FI Name & FI Number

The legal name of the Entity must be provided as it appears on the Certificate of Registration, Trust Deed, or equivalent. The FI number will be automatically generated by the Portal and should be included in all communications with the DITC Portal Team.

##### b) General Registry Number

Each FI that registers on the Portal must include its GR Number, if one is available. If the FI is not registered on GR, it must indicate the reason why.

##### c) GIIN (if applicable)

If the FI has reporting obligations under FATCA, it will also be required to provide its GIIN, issued by the United States IRS. It should be noted that the FI number is not a tax identification number (TIN) in the strict

sense. The Cayman Islands does not issue TINs or equivalent identifiers for domestic tax collection purposes. GIINs issued by the IRS are publicly available on the [IRS website](#).

#### ***d) Reporting Obligations***

The FI must indicate the classification of the Entity and whether it is a Reporting or Non-Reporting FI for the purposes of the CRS. The FI must also specify whether it is an Investment Entity that has No Financial Accounts by virtue of Section VIII.C.1.a) of Schedule 1 to the CRS Regulations. The term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it:

- i) renders investment advice to, and acts on behalf of, or
- ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with an FI other than such Entity.

An FI that indicates it has No Financial Accounts will not be permitted to submit reporting via the DITC Portal and is not required to complete the CRS Compliance Form. In the event this classification changes, the FI is to submit an FI Change Form via the DITC Portal to update the FI's reporting obligations.

#### ***e) Details of the Authorising Person & Principal Point of Contact***

The FI must indicate those persons it authorises to act as the AP and PPoC. The FI is required to provide the details of both the AP and PPoC on the DITC Portal, including:

- Individual/Entity Name
- Entity Name *(if AP/PPoC is an individual)*
- Position
- Email Address
- Physical Address

It should be noted that the AP and PPoC can be the same person only if the person is an Entity licensed under the regulatory laws of CIMA. The Entity is required to provide its relevant CIMA number in support.

#### ***f) Letter of Authorisation***

A PDF version of the Letter of Authorisation must be uploaded to the Portal during Registration, or when submitting a change notice for the AP or PPoC, in the format of the [template](#) provided. The letter must include the following information:

- Date *(within the last 3 months)*
- FI Name
- FI Number *(except upon Registration)*
- FI GIIN *(if applicable)*
- Contact information of both the AP and PPoC: name, position, physical address, and email
- Name and title of signatory: must be a Director, General Partner, or Trustee of the FI.

For the avoidance of doubt, a service provider is not authorised to sign on behalf of the FI unless that person is a director, GP, or trustee of the FI. For example, the Managing Director of the corporate service provider is not authorised to sign the letter unless they are also a Director of that FI. The Letter of Authorisation is **not required** if the FI elects to have an Institutional User act as either its AP or PPoC.

## C. Authorised Users on the DITC Portal

The DITC can only communicate with individuals who are authorised by the FI on the DITC Portal. Only the AP is able to give a change notice to the DITC regarding the PPoC and, in turn, only the PPoC is able to provide a change notice to the DITC Portal regarding the AP. The PPoC, however, has more extensive permission in the DITC Portal than the AP, which are identified below. For technical advice on how to submit an FI Change Form or add Secondary Users to the FI, please consult the [DITC Portal User Guide](#).

### i. Institutional User

The CRS (Amendment) Regulations, 2020, removes the requirement for the AP and PPoC to be individuals and permits an Entity to act in either capacity. If the Entity is licensed under regulatory laws of [CIMA](#), a Letter of Authorisation is no longer required and the AP/PPoC can be the same person. This option is advantageous to service providers who act as the AP/PPoC for many FIs, as it alleviates the need to produce a new Letter of Authorisation due to staff turnover. Institutional Users can then add Secondary Users on the DITC Portal to perform the obligations of the FI at their convenience.

### ii. Authorising Person

The AP can be either an individual or an Entity. The AP has limited functionality on the DITC Portal and is restricted to only completing PPoC change forms. If the AP is an individual or Entity not licensed by CIMA, the Letter of Authorisation is still required.

### iii. Principal Point of Contact

The PPoC can be either an individual or an Entity and has the greatest range of functionality on the DITC Portal, including:

- AP Change Forms
- Submit Reporting (including the CRS Return, CRS Compliance Form, and CRS Filing Declaration)
- View Reporting History
- Submit Deactivations
- Add/Manage Secondary Users
- Submit FI Change Form (to change the reporting obligations of the FI)

If the PPoC is an individual or Entity not licensed by CIMA, the Letter of Authorisation is still required.

### iv. Secondary Users

PPoCs have the ability to add Secondary Users to FIs on the DITC Portal. Secondary Users have the ability to:

- Submit Reporting (including the CRS Return, CRS Compliance Form, and CRS Filing Declaration)
- View Reporting History

Details of the Secondary Users are not required to add, update, or remove a Secondary User and should not be included in the Letter of Authorisation.

## D. CRS Reporting

Each Reporting FI shall, for each year registered on the Portal, make a return to the Authority for each Reportable Account the FI maintained during the reporting period and, if the FI did not maintain any

Reportable Account in a Reportable Jurisdiction, a NIL return. It should be noted that the CRS Filing Declaration constitutes a NIL return.

#### **i. Required Information for the Account Holder**

The CRS Return is submitted via the DITC Portal and will require FIs to report the certain information in relation to the Account Holder or Controlling Person:

##### ***a) Name***

The FI must provide the full name of the Account Holder or Controlling Person. If the Account Holder is an Entity, the legal name of the Entity.

##### ***b) Address***

The address recorded for the Account Holder or Controlling Person pursuant to the due diligence procedures. For individuals, this will be the current residence address or mailing address if no current residence address is held.

##### ***c) Jurisdiction of Tax Residence***

For Pre-existing Accounts this will be based on the residence address test, an indicia search, or a self-certification if obtained. For New Accounts, this will be based on a self-certification. Further information on tax residency can be found on the [OECD website](#).

##### ***d) Tax Identification Number (TIN)***

Reporting FIs must also collect the Tax Identification Number (TIN), or functional equivalent, in respect of each Account Holder or Controlling Person who is a Reportable Person. The OECD has published an overview of domestic rules governing the issuance, structure, use and validity of [TINs or their functional equivalent](#).

##### ***e) Place of Birth***

The place of birth is not required to be reported for both Pre-existing and New Accounts unless the FI has the information available in its records.

##### ***f) Date of Birth***

The date of birth must be reported for New Accounts for which a self-certification is required. The date of birth is not required to be reported with respect to Pre-existing Accounts if it is not in the records of the Reporting FI, subject to reasonable efforts to obtain the information. If the FI does not have the date of birth, the field should be left blank when completing CRS Reporting.

##### ***g) Account Number***

The identifying number of the account or, if no such number is assigned to the account, a functional equivalent (i.e. a unique serial number, contract number or policy number, or other number). If the account number is in a specified format, IBAN for example, it must be reported in that specific format.

##### ***h) Account Balance or Value***

In general, the balance or value of a Financial Account is the balance or value calculated by the Financial Institution for purposes of reporting to the Account Holder. In the case of an Equity or Debt Interest in an



FI, the balance or value of an Equity Interest is the value calculated by the FI for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount. An account with a balance or value that is negative must be reported as having an account balance or value equal to zero. In the case of an account closure, the Reporting FI must only report that the account was closed. Where jurisdictions already require FIs to report the average balance or value of the account they are free to maintain reporting of that information instead of requiring reporting of the balance or value of the account.

#### ***i) Currency***

The information must be reported in the currency in which the account is denominated and the currency must be identified in the information reported. Any currency conversions, such as in relation to thresholds, must be calculated by applying a spot rate of exchange as at the last day of the reporting period.

#### ***j) Joint Accounts***

Each holder of a jointly held account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account.

### **ii. CRS Return Types**

The three most frequent CRS Returns that FIs submit on the DITC Portal are:

- OECD1 – New Data
- OECD2 – Corrected Data
- OECD3 – Deletion of Data

#### ***a) New Data Return (OECD1)***

A return that contains new information that has not previously been reported is an OECD1 (New Data) Return. Information that is submitted by the FI can be updated or deleted on the DITC Portal at any time before the reporting deadline, after which the information will be transmitted to an exchange partner and can no longer be deleted from the DITC Portal.

If an FI has omitted an Account Report, which has not yet been transmitted, it will have the option to submit another OECD1 (New Data) Return to include only the omitted account information or it may edit/delete the Return via the DITC Portal.

For the avoidance of doubt, an FI that wishes to change information submitted on a CRS Return must do so via the DITC Portal before that Return is transmitted to the exchange partner. Once the CRS Return has been transmitted, the below processes will apply

#### ***b) Corrected Data Return (OECD2)***

In the event an FI receives a CRS Status Message that identifies a CRS Return contains one or more Record/Field Level Errors, the FI is obligated to submit a correction or delete the information. In the event the FI cannot provide the information to correct the error, the Return will remain on the Portal with the error status. For example, if a CRS Return contains an error in relation to a TIN, the error will not be able to be corrected until the TIN is provided. If an FI is unable to correct a CRS Return because the TIN cannot be provided, it will not be assessed an Administrative Penalty, but may be subject to further compliance investigation or action by a tax administration of a partner jurisdiction.

### ***c) Deletion of Data Return (OECD3)***

If a CRS Return, or an Account Report within the return, is transmitted to an exchange partner in error, the FI will need to submit an OECD3 Return via the DITC Portal to identify only the Account or Return that requires deletion.

## **E. CRS Filing Declaration**

All Reporting FIs and TDTs are required to submit the CRS Filing Declaration annually via the DITC Portal. The CRS Filing Declaration must be submitted after the CRS Return, as it captures a summary of all Account Reports submitted by the FI. If a CRS Return is submitted after the CRS Filing Declaration, the FI will need to submit a supplementary Filing Declaration to supersede the previous and capture the additional Account Reports. The reporting deadline for the CRS Filing Declaration is 31 July for each reporting period.

### **i. NIL Return**

The CRS Filing Declaration constitutes a NIL Return, as it indicates the FI has not submitted any Account Reports for that FI. NIL Returns are mandatory for each Reporting FI and must be submitted annually via the DITC Portal, pursuant to Reg.9(1)(b). For the avoidance of doubt, NIL Returns are required for all Reporting FIs, including those that have no reportable investors or have failed to launch, for example.

## **F. CRS Compliance Form**

The CRS (Amendment) Regulations entered into force on 16 April 2020 and amend Reg.9 to require that FIs provide additional information annually to the Authority to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures in accordance with the CRS. The CRS Compliance Form is the mechanism by which the Authority will collect this information via the DITC Portal.

The Compliance Form can be completed using the online smart form or in a bulk CSV upload and must be completed annually by all Reporting FIs, including trusts, TDTs and PICs for the same reporting period as their CRS returns. The only exception is where the FI has indicated it is an investment manager or adviser that has No Financial Accounts pursuant to Section VIII.C.1.a) of Schedule 1 to the CRS Regulations. This provision provides that the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it:

- i) renders investment advice to, and acts on behalf of, or
- ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with an FI other than such Entity.

**When completing the CRS Compliance Form, FIs should apply the same rules as outlined in the CRS, its Commentary, and the CRS Regulations.**

## i. Required Information for the CRS Compliance Form

Number	Question	Response	Next option
Mandatory fields are marked with an *			
<b>Section 1 - Financial Institution Profile Data</b>			
1.1	FI Name	Smart form Pre-populated	
1.2	FI Number	Smart form Pre-populated	
1.3	Reporting Period*	Year 1 = 2019	
1.4	Is the FI Licensed or Registered with CIMA*	Yes	1.5 required
		No	1.6 required
1.5	Insert CIMA Number (option to add more than one number)	Number	Section 3 does not apply when valid CIMA number provided
1.6	Please confirm the nature of the FI's business (i.e. if not regulated by CIMA)	Drop down with the following options: 1 - Pension Fund 2 - Securitisation Special Purpose Vehicles 3 - Debt Issues and Debt Issuing Vehicles 4 - Schemes involving the issue of certificates representing investments 5 - Structured Finance Vehicles 6 - Preferred Equity Financing Vehicles 7 - A fund of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette 8 - Occupational and personal pension schemes 9 - Sovereign wealth funds 10 - Single family offices	Section 2
		11 - Other	1.7 required
1.7	Please provide explanation	Limit 250 Characters	Section 2.0
<b>Section 2 - Financial Account Data</b>			
2.0	Confirm currency used to complete this section*	Drop down of currencies	2.1 required
2.1	Please confirm the total value of the FI's Financial Accounts for the reporting period (e.g. Net Asset Value in the case of an investment fund)*	Insert Value	2.2 required
2.2	Does the FI have any Non-Reportable accounts for the reporting period*	Drop down - Yes	2.3 required
		Drop down - No	Section 3
		Drop down - Existence, number or value of Non-Reportable Accounts is unknown	2.5.3 required
2.3	Please confirm the reason the account(s) are considered to be Non-Reportable	Check Box - Financial Account(s) where the Account Holder is not a Reportable Person but is a Reportable Jurisdiction Person (e.g. FI resident in Canada)	2.4 required

2.3 (continued)		Check Box - Financial Account(s) where the Account Holder and all controlling persons are not Reportable Jurisdiction Persons (e.g. all resident in the Cayman Islands)	2.5 required
		Check Box - Both	2.4 and 2.5 Required
2.4	Please provide further classification details of the Financial Account(s) where the Account Holder is not a Reportable Person but is a Reportable Jurisdiction Person	Check Box - Financial Institution	2.4.1 required
		Check Box - Other	2.4.2 required
		Check Box - Both	2.4.1 and 2.4.2 Required
2.4.1	Financial Institution - Total number of Non-Reportable Accounts	Insert Number	
	Financial Institution - Total Value of Non-Reportable Accounts	Insert Value	
	Financial Institution - Total Number or USD Value of Non-Reportable Accounts is unknown	Check Box	2.5.3 required
2.4.2	Other - Total number of Non-Reportable Accounts	Insert Number	
	Other - Total Value of Non-Reportable Accounts	Insert Value	
	Other - Total Number or USD Value of Non-Reportable Accounts is unknown	Check Box	2.5.3 required
2.5	Please provide further classification details of the Financial Account(s) where the Account Holder and all controlling persons are not Reportable Jurisdiction Persons	Check Box - US Person	2.5.1 required
		Check Box - Other	2.5.2 required
		Check Box - Both	2.5.1 and 2.5.2 Required
2.5.1	US Person - Total number of Non-Reportable Accounts	Insert Number	
	US Person - Total Value of Non-Reportable Accounts	Insert Value	
	US Person - Total Number or USD Value of Non-Reportable Accounts is unknown	Check Box	2.5.3 required
2.5.2	Other - Total number of Non-Reportable Accounts	Insert Number	
	Other - Total Value of Non-Reportable Accounts	Insert Value	
	Other - Total Number or USD Value of Non-Reportable Accounts is unknown	Check Box	2.5.3 required
2.5.3	Please confirm why the existence, number or value of Non-Reportable Accounts is unknown.	Free Text - Limit 200 characters	Section 3
2.6	Total number of Non-Reportable Accounts	Pre-populated (using information provided above)	
2.7	Total Value of Non-Reportable Accounts	Pre-populated (using information provided above)	

Section 3 - AML/KYC and Accounting			
3.1	Does the FI have audited financial statements*	Drop down - Yes	3.2 required
		Drop down - No	3.2 required
3.2	Which Entity carries out the AML/KYC obligations*	FI itself	3.4 required
		Other	3.3 required
3.3	Name of Entity / service provider	Free Text	3.4 required
3.4	Location of Entity / service provider	Drop down of Countries	3.5 required
3.5	Are the AML/CFT obligations performed in accordance with Cayman Islands law*	Yes	Section 4
		No	3.6 required
3.6	Specify which jurisdiction's laws are applied in the performance of AML/CFT obligations.	Drop down of Countries	Section 4
Section 4 - CRS Process			
4.1	Which Entity reviews Account Holder information and drafts the Reportable Accounts list for review by the management of the FI*	FI itself	4.4 required
		Other	4.2 required
4.2	Name of Entity / service provider	Free Text	4.3 required
4.3	Location of Entity / service provider	Drop down of Countries	4.4 required
4.4	Please confirm the FI has established and maintained written policies and procedures which comply with the FI's obligations under the Cayman Islands CRS Regulations.*	Yes	4.5 required
		No	4.6 required
4.5	Please confirm the FI has implemented and complied with its said written policies and procedures	Yes	4.6 required
		No	4.6 required
4.6	Please confirm the FI has complied with Reg. 7(3) of the CRS Regulations in relation to self-certifications.*	Yes	
		No	

## ii. Section-specific Issues

The FI should apply the rules in the CRS and its Commentary to the following sections.

### a) Section 1

- 1.4 –** If an FI does not have a valid CIMA license to provide for the 2019 reporting period, the Entity should select 'No'. If the Entity subsequently obtained a CIMA license in 2020, the CIMA number

should be added during the 2020 reporting period. For a TDT, the FI should enter the CIMA number of its trustee.

- 1.5** – Where the FI provides a valid CIMA number, it will not be required to complete Section 3 of this form.
- 1.6** – Certain FIs are not required to be licensed or registered with CIMA. The drop down list of options provided as a response to this question are taken from the list of non-fund arrangements outlined in the PFL. If the Entity is a trust, it should select “Other” and write “trust”.

#### ***b) Section 2***

When reporting information under Section 2 of the CRS Compliance Form, FIs should use same rules as are outlined in the CRS Regulations. Section 2 of the CRS Compliance Form provides an option to confirm that the existence, number or value of Non-Reportable Accounts is unknown. Please note where this option is selected, it is likely the FI will be subject to follow up from the Authority.

- 2.0** – The currency used to complete this form should be the same as that used in the CRS report. Where multiple currencies are used, FIs should use the currency most frequently used.
- 2.2** – The balance as at the end of the relevant reporting period should be reported.
- 2.2** – Joint accounts should be counted as two separate accounts.
- 2.3** – The terms used in this question are those as defined in Section VIII Part D of the CRS Regulations.

#### ***c) Section 3***

- 3.1** – Where the FI does not have a calendar year end, the question on audited financial statements applies to the financial year ending in the calendar year on which you are reporting (i.e. Financial Year end is July, when completing the CRS Compliance Form for 2019, the question is - have the Financial Statements for the year ending July 2019 been subject to an audit).
- 3.3** – Location provided should reflect the location of where the work is actually performed.

#### ***d) Section 4***

- 4.3** – Location provided should reflect the location of where the work is actually performed.
- 4.4** – This question reflects the obligation outlined in Reg.7(1)(a) of the CRS Regulations.
- 4.5** – This question reflects the obligation outlined in Reg.7(1)(b) of the CRS Regulations.
- 4.6** – This question does not apply to undocumented accounts.

## 6. DEACTIVATION FROM THE DITC PORTAL

Prior to submitting the deactivation on the DITC Portal, each Reporting FI must complete any outstanding reporting obligations. For each year it is registered on the Portal, up to and including the date listed on the Certificate of Dissolution, the FI must submit a:

- CRS Return
- CRS Filing Declaration
- CRS Compliance Form (*for the 2019 reporting period and thereafter*)

Once the above obligations have been satisfied, the PPoC or Secondary Users assigned to the account will submit the FI Deactivation and upload the appropriate evidence. The FI can submit the deactivation return via the DITC Portal at any time during the calendar year; however, the 'End Date' of the return must be 31/12 of the year the FI terminated. For example, if the date listed on the Certificate of Dissolution is 19/02/2021 and the FI has obtained the required evidence listed above, the deactivation return can be submitted via the Portal on 20/02/2021 with the period end date of the return 31/12/2021.

A return in respect of any Reportable Account for the reporting period such final dissolution or winding up occurs should report all information specified in Section I.A. 1 to 7 of Schedule 1 to the CRS Regulations. This would confirm the closure of that Reportable Account (rather than the account balance or value) pursuant to Section 1.A.4 and also confirm the total gross amount of the relevant payments or proceeds of sale under the applicable paragraph Section 1.A 5, 6 or 7.

Please refer to the [DITC Portal User Guide](#) for details on how to complete the deactivation process, including how to upload the required Documentary Evidence, on the DITC Portal.

### A. The FI must be terminated

For the avoidance of doubt, an FI will, so long as it exists, continue to have the obligations which the CRS Regulations impose on it as a Reporting or Non-Reporting FI, as the case may be. An FI should obtain professional advice if it is uncertain when an account is closed.

#### i. FIs in liquidation or being wound up cannot be deactivated from the DITC Portal until the FI has been formally dissolved

Liquidators (or equivalent) must ensure that the FI continues to satisfy all of its obligations under Part 2 of the CRS Regulations. In particular, but without limitation, this includes the obligation to give the Authority a change notice regarding any User changes on the DITC Portal, any required reporting, and a deactivation notification upon final dissolution or winding up after the final return is submitted.

In the case of a Reporting FI, the liquidators (or equivalent) must ensure that it has complied with its reporting obligations in respect of (i) the previous calendar year and (ii) the current calendar year. An FI which is being liquidated or wound up should arrange for a third party to perform any obligations under the CRS which will arise prior to final dissolution and which cannot be completed prior to such final dissolution, whether that is due to the DITC Portal being offline or for any other reason. This is in line with [OECD CRS FAQ](#) #11.

Any liquidators or other representatives of an FI who are responsible for the final liquidation or dissolution of the FI have a duty to maintain the FI's records and to respond to the Authority's information requirements under Reg.12 of the CRS Regulations for 6 years after filing the final CRS return. These records may be held by a delegate.

## **ii. FIs that are “Active” on General Registry cannot deactivate from the DITC Portal**

Unlike the position regarding FATCA, an Investment Entity does not cease to be classified as such for the purposes of the CRS Regulations if it is either closed (i.e. there are no remaining participating investors, or equivalent, in the Investment Entity, and the Investment Entity is not open to further investors), or is in liquidation (i.e. a Liquidator has been formally appointed, but there remain residual assets and debtors, and realisation or recovery actions are being pursued).

## **iii. Reporting can be completed by either the SPC or its individual SPs**

FIs can elect to complete reporting under either the SPC or at the individual cell level. If the SPC is already registered on the DITC Portal and the FI wants to complete reporting at the SP level, the FI will be required to deactivate the SPC and register the applicable SPs individually on the Portal.

## **iv. FI should not be deactivated due to a change in service provider**

In the event that the FI changes its service provider, it should complete a PPoC or AP change via the DITC Portal to transfer access to the new User. Please contact the DITC Portal Team in the case of a PPoC resignation where a User Change on the Portal is not possible.

## **B. Evidence of Termination**

The FI must submit Documentary Evidence that supports it has been formally dissolved or otherwise ceases to exist. The date of dissolution or winding up refers to the date on which that takes effect as evidenced by a Certificate of Dissolution, or equivalent, in the case of a company. Some examples of Documentary Evidence are included below:

<b>Entity Type</b>	<b>Documentary Evidence</b>
Entities Registered on GR	Certificate of Dissolution, Strike-Off, or equivalent
Trusts & TDTs	Trust deed that clearly indicates the FI Name and date of termination
Segregated Portfolios	Directors resolution that the Entity is terminated or otherwise dissolved
Migration	Certificate of Migration, Transfer by Continuation, or equivalent
SPC or SP	A letter (on its letterhead) from the FI that reporting will be completed at the SPC or SP level.
Incorrect/Change in Classification of the FI	<p>A letter (on its letterhead) which:</p> <ul style="list-style-type: none"><li>explains the reason why the FI was initially classified as an “Investment Entity” based on the definition of that term in the CRS; and</li><li>explains the reason why the FI should now be reclassified as a “Passive/Active NFE” based on the definition of that term in the CRS, or the reason the Entity is not a Reporting FI; and</li><li>provides evidence supporting the incorrect or reclassification, such as termination of an investment management agreement or self-certification forms.</li></ul>

Please note that misclassification of an Entity for CRS purposes creates the risk that there is or has been a CRS avoidance arrangement. By submitting a deactivation return on the DITC Portal, the FI confirms that all information in the deactivation is accurate and acknowledges there are sanctions for providing inaccurate information to the Authority and for a contravention of the CRS Regulations.



\*\*\* END \*\*\*