THE COMMON REPORTING STANDARD (CRS)

AUTOMATIC EXCHANGE

OF FINANCIAL ACCOUNT INFORMATION

GUIDANCE NOTES

Revised October 2017

CONTENTS

1. BACKGROUND

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

1.2. The Standard consists of the following elements:

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

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

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

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

1.3. The CRS and a Model CAA, and commentaries on both, are included in the OECD publication "Standard for Automatic Exchange of Financial Account Information in Tax Matters"
http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm

1.4. Two other helpful publications in understanding the Standard are the Standard for Automatic Exchange of Financial Information in Tax Matters – Implementation Handbook and the OECD CRS-related Frequently Asked Questions
http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm

https://www.oecd.org/tax/exchange-of-tax-information/CRS-related-FAQs.pdf

1.5. The CRS and the Commentaries are extensive and their content is not repeated in these Guidance Notes. The Notes are to be seen as complementing these two source documents. The Handbook and the FAQs serve to clarify the interpretation of the CRS and the Commentaries. They do not change either.

1.6. To implement the CRS there is a need for domestic law. This is provided by the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015, adopted by the States on the 1st December 2015 with an entry into force date of the 1st January 2016 ("the Domestic Law"), as amended by the Taxation (Implementation)(International Tax Compliance)(Common Reporting Standard)(Amendment) (Jersey)Regulations 2017 which entered into force on the 17th October 2017.

https://www.jerseylaw.je/laws/revised/PDFs/17.850.35.pdf

https://www.jerseylaw.je/laws/enacted/PDFs/RO-104-2017.pdf

1.7. Following the approach adopted by the UK the Regulations have not replicated the Common Reporting Standard and/or the Commentaries on the Standard. However the requirements of both have to be complied with if the obligations that Jersey has adopted, and to which the Regulations refer, are to be fully met. In interpreting the CRS assistance can also be obtained from the UK HMRC International Exchange of Information Manual and the document prepared by STEP based on the HMRC Manual.

https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim400000

http://www.step.org/sites/default/files/Policy/HMRC_International_Exchange_of_Information_Manual.pdf

1.8. It should be noted that the Guidance provided does not replace the need to take independent professional advice on the implementation of the Standard.

2. THE DOMESTIC LAW

2.1. The CRS Regulations as amended (see 1.6 above) make clear in Regulation 12A that Financial Institutions (FIs) are required to comply with the CRS and the Commentaries.

2.2. There remain some issues of interpretation particularly in the treatment of trusts. As the position is further clarified by the OECD – for example, through the publication of further answers to FAQs – so the Guidance may need to be amended. However in this event Reporting Financial Institutions (RFIs) will be given due notice of any changes and provided with sufficient time to make the change and where necessary inform

counterparts of any change in client status. Such a change will not apply to the reporting in the year in which notice is given of the change.

2.3. The following are some key points from the Domestic Law:

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

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

- **Regulation 7** provides for flexibility in the application of the due diligence obligations in respect of jurisdictions listed in Schedules 3 and 4 of the Regulations.

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

- **Regulation 12A** provides that, in determining whether a person is liable to a penalty under the Regulations, the Comptroller shall take into account the CRS and the related Commentaries on the CRS published on the OECD's website.

3. CRS/FATCA IGA COMPARISONS

3.1. The CRS Implementation Handbook in Section III compares the Standard with the FATCA Model 1 IGA. In the previous editions of the Guidance Notes it was suggested that this was indicative of where the IGA Guidance might continue to be relied upon without affecting the purpose of the CRS. This is no longer the case.

3.2. The 2015 CRS Regulations have been assessed by the OECD Global Forum Secretariat as part of a general review of the legislation of all committed jurisdictions designed to give the jurisdictions advance warning of where their legislation is not thought to be fit for

purpose, so that the necessary amendments can be made before a comprehensive review of CRS compliance is undertaken in two or three years' time. The Assessment, which has been approved by the Global Forum AEOI Working Group, concluded that while Regulation 1(5) stated that in the Regulations a word or expression which is defined in the CRS has that meaning, there was an exception allowing Reporting Financial Institutions to use as an alternative a definition in any other international governmental agreement. The assessors have recommended that Jersey should ensure that only the defined terms in Section VIII of the CRS and its Commentary are being implemented by the Reporting Financial Institutions as required under the Standard.

3.3. The conclusion of the Secretariat is that there is no situation where it is possible to use a non-CRS Standard definition for the Standard. Therefore, allowing FIs to supplement definitions in the CRS Standard based on their interpretation of what might or might not undermine the purposes of the AEOI Standard was assessed to be a gap.

3.4. The CRS Regulations therefore have been amended to substitute for Regulation 1(5) the following –"(5) A word or expression used in these Regulations which is defined in the CRS has the meaning given in the CRS". Now only the CRS definitions can be used. However the amendment to the Regulations is not retrospective in its effect. Accordingly, if a FI has taken an informed view, in the reporting in 2017 of information on 2016 financial accounts, that the use of definitions in the IGA Guidance Notes does not frustrate the purposes of the CRS this will be accepted as being in compliance with the Regulations.

3.5. However for reporting in 2018 of information on 2017 financial accounts, and for subsequent years, the following sections of the IGA Guidance, which previous CRS guidance had indicated could be used subject always to the proviso that in their application the purposes of the CRS are not frustrated, will no longer be able to be used except in so far as they match the CRS :

- Section 3.2 - resident for tax purposes
- Section 3.9 – investment entity
- Section 3.12 – nominee companies
- Sections 7.1, 7.2, 7.3 on the treatment of Jersey trusts
- Section 7.8 which among other things refers to the position of a settlor who is specifically excluded from the trust
- Section 7.13 – Employee Benefit Trusts[1]
- Section 19.4 – Multiple Financial Institutions – Duplicate Reporting.

[1] See Section 6.4 of this guidance for further information relating to Employee Benefit Trusts

- Appendix 4 - which among other things indicates that a beneficiary of a pension scheme will not be treated as financial accounts until a benefit payment is made

4. OPTIONS

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

A. Reporting requirements (section I to the CRS)

1. Alternative approach to calculating account balances

CRS commentary on Section 1, paragraph 11

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

2. Use of other reporting period

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

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

3. Phasing in the requirement to report gross proceeds

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

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

4. Filing of nil returns

A jurisdiction may require the filing of a nil return by a Reporting Financial Institution to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period**. At present there is no obligation on any entity to file a nil return where it has no reportable accounts. However a mandatory nil return will be called for in 2018 and thereafter to make it easier for institutions to demonstrate, and for the Taxes Office to assess, compliance with the CRS.**

B. Due diligence (Sections II-VII of the CRS)

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

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

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

6. Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts

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

A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Pre-existing Accounts. This means, for example, a Financial Institution may elect to obtain a self-certification for all Pre-existing accounts held by individuals consistent with the due diligence procedures for New Individual Accounts. If a jurisdiction allows a Financial Institution to apply

the due diligence procedures for New Accounts to Pre-existing Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Pre-existing Accounts; or (2) with respect to any clearly identified group of such accounts (such as by line of business or location where the account is maintained). **This option is offered in Regulation 6 of the domestic law.**

7. Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts

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

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

8. Residence address test for Lower Value Accounts

CRS: Section III, subparagraph B(1); Commentary on Section III, subparagraph 7-13

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

9. Optional Exclusion from Due Diligence for Pre-existing Entity Accounts of less than $250,000

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

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

10. Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts

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

With respect to a group cash value insurance contract or annuity contract that is issued to an employer or individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary provided that certain conditions are met. These conditions are: (1) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five or more employees/certificate holders; (2) The employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and (3) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1 million. This provision is provided because the Financial Institution does not have a direct relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence. **This option is offered.**

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

CRS: Commentary on Section VIII, paragraph 154

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

12. Currency translation

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

All amounts in the Standard are stated in US dollars and the Standard provides for the use of equivalent amounts in other currencies as provided by domestic law. For example, a lower value account is an account with an aggregate account balance or value of less than $1 million. The Standard permits jurisdictions to include amounts that are equivalent (or approximately equivalent) in their

currency to the US dollars amounts as part of their domestic legislation. Further, a jurisdiction may allow a Financial Institution to apply the US dollar amount or the equivalent amounts. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. **This option is offered.**

C. Definitions (Section VIII of the CRS)

13. Expanded definition of Pre-existing Account

CRS: Commentary on Section VIII, paragraph 82

A jurisdiction may, by modifying the definition of Pre-existing Account, allow a Financial Institution to treat certain new accounts held by pre-existing customers as a Pre-existing Account for due diligence purposes. A customer is treated as pre-existing if it holds a Financial Account with the Reporting Financial Institution or a Related Entity. Thus, if a pre-existing customer opens a new account, the Financial Institution may rely on the due diligence procedures it (or its Related Entity) applied to the customer's Pre-existing Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the Reporting Financial Institution must be permitted to satisfy its AML/KYC procedures for such account by relying on the AML/KYC performed for the Pre-existing Account and the opening of the account does not require new, additional, or amended customer information. **This option is offered.**

14. Expanded definition of Related Entity

CRS Commentary on Section VIII, paragraph 82

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

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

CRS: Section VIII, subparagraph B(9)

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

16. <u>Reporting obligation on a beneficiary of a discretionary trust treated as a Passive NFE</u>

CRS commentary Section VIII Para 134

The definition of Controlling Person of a trust includes the settlor(s), trustee(s), beneficiary(ies), protector(s) and any other natural person exercising ultimate effective control over the trust. A jurisdiction may however allow Reporting Financial Institutions to align the scope of beneficiaries of a trust, who are treated as Controlling Persons of that trust, with the scope of the beneficiaries who are treated as Reportable Persons of a trust that is a Financial Institution.

In such cases, a Reporting Financial Institution would only need to report discretionary beneficiaries as Controlling Persons in the year they receive distributions from the Passive NFE trust. Jurisdictions allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a Controlling Person. For instance, the Reporting Financial Institution would require notification from the trustee that a distribution has been made to that discretionary beneficiary. **This option is offered.**

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

The CRS contains a so called “look-through” provision pursuant to which Reporting Financial Institutions must treat an account that is held by an Investment Entity which is not a Participating Jurisdiction Financial Institution as a Passive NFE and report the Controlling Persons of such entity that are Reportable Persons. This presents operational challenges given that certain

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

5. EXCLUDED ACCOUNTS

5.1. Certain Financial accounts are seen to be low risk of being used to evade tax and are specifically excluded from needing to be reviewed. These excluded accounts include several of the categories of accounts excluded from the definition of Financial Accounts in the FATCA IGA. The non- reportable accounts are jurisdiction specific in that what is low risk can vary from jurisdiction to jurisdiction. For Jersey the following are to be considered non-reportable accounts:

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

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

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

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

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

6. NON-REPORTING FINANCIAL INSTITUTIONS

6.1. The concept of Non-Reporting Financial Institution is similar to that in FATCA whereby some are specifically excluded from being required to report and some are reported by other Reporting Financial Institutions. For Jersey the list of non-reporting financial institutions will include the following:

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

Details of what is covered by the above categories is to be found in Section VIII of the CRS Commentaries. It is similar to the approach taken under the FATCA IGA.

6.2. Low risk non-reporting financial institutions can be specified if the CRS criteria set out in the Commentary on Section VIII (para 45) can be met.

6.3. In considering specific cases regard will be had for the approach adopted by the UK. For example the intention is to follow the UK Guidance Notes on CREST as follows:

> ***FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: CENTRAL SECURITIES DEPOSITORY***
>
> *In the UK a Central Securities Depository (CSD) will not be treated as maintaining financial accounts. The participants of UK securities settlement systems that hold interests recorded in the CSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor). It is these Financial Institutions that maintain the accounts and it is these participants and/or sponsors that are responsible for undertaking any reporting obligations.*
>
> *For example, members of the CREST securities settlement system operated by Euroclear UK & Ireland Limited (EUI), or the Financial Institution that accesses EUI on their behalf, are responsible for any reporting required in respect of securities held by means of EUI. EUI acting as the CSD is not required to undertake any reporting in respect of such securities.*

This treatment will also apply to a UK entity which is a direct or indirect subsidiary used solely to provide services ancillary to the business operated by that CSD (CSD Related Entity).

The relationship between the securities settlement system and its participants is not a financial account and accordingly the CSD and any CSD Related Entity is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants.

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

6.4. The UK Guidance is also followed in respect of equity and debt interests in an Investment Entity where those interests are regularly traded on an established securities market.

Where such interests are held in uncertified form through CREST, the CREST members and sponsors will be Reporting Financial Institutions and will be carrying out due diligence and reporting for CRS purposes. In those circumstances an ITC, for example, would not need to report in respect of its uncertified shareholders as that would otherwise lead to duplicated reporting.

Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required. The frequency of such checks will depend on the systems and processes that are in place. An annual check may be considered adequate if performed at the year-end if the systems in place are sufficiently robust. However, for operational reasons the registrar may perform the checks at six monthly or more frequent intervals.

For new primary market issues the share application form can be amended to include the self-certification required on new account opening. Any incomplete applications would need to be returned to the applicant. In accordance with existing AML practice, incomplete applications could be accepted and the missing information be requested but if the missing information was not received the shares could be re-allotted or sold to a third party and/or the register of members rectified, provided that the terms and conditions of the Offer allowed this.

6.5. On Employee Benefit Trusts (EBTs) the following UK guidance is being followed –

Shares held in trust may be in a Custodial Account and therefore subject to reporting by the trust as the Custodial Institution that holds the account. This may be the case where a trust such as an Employee Benefit Trust continues to hold financial assets, such as shares, for an employee after they have been granted.

Where an Employee Benefit Trust holds shares for the future benefit of employees, but the shares are not allocated, then under most circumstances this right to a future allocation would not fall to be a custodial account. Similarly, when shares are allocated and the trustee is directed to transfer the assets as soon as reasonably possible to the beneficiary, a broker, a custodian etc, then the trust will not be treated as maintaining a financial account for the duration of time it takes to complete the transfer.

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

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

7. INTENDED EXCHANGE PARTNERS

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

7.2. The latest position on the intended exchange partners is to be found in the Taxation(Implementation)(International Tax Compliance)(Common Reporting Standard)(Amendment of Regulations No. 2)(Jersey) Order 2017. https://www.jerseylaw.je/laws/enacted/PDFs/RO-075-2017.pdf

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

SECTION 7

Term of Agreement

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

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

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

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

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

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

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

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

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

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

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

3. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the Convention, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.

4. A Competent Authority may terminate its participation in this Agreement, or with respect to a particular Competent Authority, by giving notice of termination in writing to the Co-ordinating Body Secretariat. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the Convention.

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

7.5. The confidentiality safeguards will be considered to be in place if the jurisdiction has been assessed and found to be compliant by the Global Forum AEOI Working Group and/or the US assessment for reciprocity purposes.

8. EFFECTIVE DATES

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

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

8.3. As an "early adopter" with the CRS entering into effect from 1 January 2016:

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

8.4. Other relevant dates that relate to those account holders resident in Schedule 2 jurisdictions or, if the Reporting Financial Institution has adopted the wider approach, account holders resident in Schedule 3 and 4 jurisdictions are –

- Commencement date of New Account procedures – 01 January 2016
- Completion date for the review of High Value Individual Accounts – 31 December 2016
- Completion date for the review of Lower Value Individual and Entity Accounts – 31 December 2017
- For a financial account maintained by a Reporting Financial Institution (RFI) opened after 1 January 2016 first exchange will be by September 2017
- For a financial account maintained by a RFI as of 31 December 2015 first exchange for individual high value accounts will be by September 2107; for individual low value accounts by September 2017 or September 2018 depending on when specified as reportable; for entity accounts by September 2017 or September 2018 depending on when clarified as reportable.

9. INFORMATION TO BE REPORTED TO THE TAXES OFFICE

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

- All accounts
  - Name
  - Address
  - Jurisdiction of residence

- Tax Identification Number (TIN)
- Date of birth
- Account number or functional equivalent
- Name and identifying number (if any) of reporting financial institution
- Account balance or value
- Place of Birth is not required to be reported
- The CRS provides that a TIN is not required to be reported if a TIN is not issued by the relevant jurisdiction of residence or the domestic law of the relevant Reporting Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.[2]
- Note that for reporting purposes, the TIN element on the CRS Schema must include at least one character.
- The CRS provides that a date of birth is not required to be reported if it is not required to be collected by a Reporting FI under domestic law. However as Jersey AML law requires the date of birth to be collected this exemption does not apply to Jersey RFIs.
- For further information please refer to paragraphs 25 to 32 of the OECD CRS commentary on Section 1.

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

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

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

- Fully Disclosed Accounts

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

- Where wealth management services are provided it is common for Financial Institutions to enter into arrangements designed to facilitate the clearing and settlement of security transactions utilising a third party provider's 'IT' systems, specifically those that interface with the international securities settlement and clearing systems (clearing firms).
- A tri-partite relationship between the underlying customer, the broker/wealth manager and the clearing firm is created, by virtue of the fact that the broker has entered into a fully disclosed clearing relationship with the clearing firm on its own behalf, and is also acting as the agent of its underlying client.
- Where a broker/wealth manager has opened an account (or sub-accounts) with the clearing firm in the name of its underlying client, and fulfils all verification, due diligence and reporting requirements on them, then the financial accounts remain the responsibility of the broker/wealth manager and not the clearing firm.
- The broker/wealth manager may appoint the clearing firm as a service provider to undertake the reporting on its behalf.
- The broker/wealth manager will be the client of the clearing house. Where the clearing house is a Reporting Financial Institution it is the broker/wealth manager that is the person for which it maintains a financial account and will undertake reporting and classification accordingly.
- The term broker/wealth manager in respect of fully disclosed clearing and settlement would include any Financial Institution who acts on behalf of the underlying investor in respect of executing, placing or transmitting orders and would therefore include financial advisers if their business is more than simply advisory.

10. SELF-CERTIFICATION

10.1. Timing of self-certification for New Accounts

The Standard provides that a Reporting Financial Institution must obtain a self-certification upon account opening. Where a self-certification is obtained at account opening but validation of the self-certification cannot be completed because it is a "day two" process undertaken by a back-office function, the self-certification should be validated within a period of 90 days, There may be a limited number of instances where due to the specificities of a business sector it is not possible to obtain a self-certification on "day one" of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-

certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days.

Given that obtaining a self-certification for new accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts. In all cases, Reporting Financial Institutions shall ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened.

Where a Financial Institution is unable to obtain any valid self-certification within 90 days of opening the account, and there is no indicia of residence in any jurisdiction, the account is not reportable under the CRS. However, if there are indicia of residence in reportable jurisdictions then the account is reportable to those jurisdictions. There is no specific requirement under the CRS to close an account but the Reporting Financial Institution must report the account to the Comptroller of Taxes until such time as a valid self- certification is received.

10.2. Undocumented accounts

Under the CRS an undocumented account can only exist where the only indicators that the Financial Institution hold are a hold mail or in-care-of address and the Financial Institution has been unable to obtain a self-certification from the Account Holder to cure the inforamtion held.

Where the Financial Institution has identified and reported an account as an undocumented account the Financial Institution must repeat the enhanced review for high value individual accounts annually until the account ceases to be undocumented.

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

There is no specific requirement in the CRS for undocumented accounts to be closed. However having regard for the self-certification requirements of the CRS referred to above, it is implicit that such an Account should not remain open if those customer due diligence requirements are not met, and as such the Jersey authorities will utilise the penalty regime to encourage this.

PRACTICAL GUIDANCE ON REPORTING

In the previous Guidance notes it was stated that whether Reports are to be submitted on a jurisdictional basis or whether a composite return can be submitted was currently under review. In the practical guidance issued by the Taxes Office it is now stated that the Comptroller of Taxes will accept reports submitted under the CRS which include data to be reported to multiple jurisdictions (consolidated reports). However FIs which wish to do so may continue to submit single jurisdiction reports.

Separate reports must be made for FATCA and CRS purposes.

The Taxes Office practical guidance also covers the issue of trustee and third party reporting. Unlike FATCA it is not possible to report as a sponsor or intermediary under CRS. Third parties acting on behalf of multiple Jersey financial institutions may however report in a consolidated manner (akin to how a sponsor reports for FATCA) if they wish. Trustees reporting on behalf of multiple trusts may also submit consolidated reports. Where a trustee is submitting a report on behalf of a Trustee Documented Trust, the trustee reports for that Trust and the trustee (so long as this is a reportable FI) must report the information as the TDT would have reported (e.g to the same jurisdiction) and identify by name the Trust with respect to which it is fulfilling the reporting and due diligence obligations.

11. ADMINISTRATIVE MATTERS

11.1. Prevention of avoidance

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

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

11.2. Audit procedures

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

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

[i] For definition of a "controlling person" see Page 198 of the CRS Commentaries.