



## THE COMMON REPORTING STANDARD IN THE CAYMAN ISLANDS

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### The Common Reporting Standard

At the request of G20 countries, the OECD developed the standard for Automatic Exchange of Financial Account Information in Tax Matters (“CRS”). The CRS sets out a minimum standard for financial account information to be exchanged between participating jurisdictions.

### Applicability of CRS to the Cayman Islands

Following an endorsement of the CRS by G20 Finance Ministers and Central Bank Governors in 2014, the Cayman Islands entered into a Multilateral Competent Authority Agreement, agreeing to exchange financial account information with certain “Participating Jurisdictions”. Not long after (in December 2015), the Cayman Islands passed regulations in relation to the CRS, making it mandatory for a “Reporting Financial Institution” to report certain information related to its “Reportable Accounts” to the Cayman Islands Tax Information Authority (“Cayman CRS Regulations”).

### Determining Whether You Are a Reporting Financial Institution

Generally speaking, a Reporting Financial Institution is one which is tax resident in a Participating Jurisdiction and is not otherwise exempted from reporting under the Cayman CRS Regulations. The list of Participating Jurisdictions may be found on the website of the Cayman Tax Information Authority; it includes the United Kingdom, The Bahamas, Germany and the

Netherlands, to name a few. The USA is not currently on the list of Participating Jurisdictions.

### Further Breakdown of Reporting Financial Institutions

The following types of entities will be caught by the definition of ‘Financial Institution’ under the Cayman CRS Regulations, if tax resident in a Participating Jurisdiction:

- a custodial institution - any entity that holds, as a substantial portion of its business, financial assets (securities, partnership interests, commodity swaps and equity swaps) 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 a specified period;
- a depository institution - an entity that accepts deposits in the ordinary course of a banking or similar business);
- an investment entity - generally speaking, an entity that primarily conducts as a business one or more of certain activities or operations (including trading in money market instruments, foreign exchange, exchange, interest rate, index instruments, transferable securities and commodity futures trading);

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- a specified insurance company (generally speaking, 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;

### **What Are Your Obligations as a Reporting Financial Institution?**

Under the Cayman CRS Regulations, a Reporting Financial Institution must establish policies and maintain procedures designed to identify "Reportable Accounts". Reportable Accounts include depository accounts, custodial accounts, and, in the case of an investment entity (subject to certain exceptions), includes any equity or debt interest where the account holder or any person exercising control over an account holder which is an entity ("controlling person"), is tax resident in a Participating Jurisdiction.

The policies and procedures established by a Reporting Financial Institution must:

- identify each jurisdiction in which an account holder or a controlling person is resident for the purpose of income tax, corporation tax or similar taxes imposed by the law of the jurisdiction;
- apply the due diligence procedures set out in the Cayman CRS Regulations;
- ensure that any information obtained in accordance with the Cayman CRS Regulations or a record of the steps taken to comply with them in respect of a Financial Account is kept for six years from the end of the year to which the information relates or during which the steps were taken.

### **How Much Time Do You Have To Comply With Reporting Obligations?**

Under the Cayman CRS Regulations, Reporting Financial Institutions must apply the due diligence procedures and comply with their reporting obligations as of 1 January 2016.

### **Cayman Tax Information Authority to be Notified of Reporting Obligations**

A Reporting Financial Institution that has reporting obligations under the Cayman CRS Regulations shall notify the Cayman Tax Information Authority of that fact, along with details of the categorization of the Reporting Financial Institution as determined in accordance with the Cayman CRS Regulations and the full name, address, designation and contact details of the individual authorized by the Reporting Financial Institution to be the Reporting Financial Institution's principal point of contact for all purposes of compliance with the Cayman CRS Regulations. This notification must be completed electronically no later than 30th April in the first calendar year in which the Reporting Financial Institution is required to comply with reporting obligations under the Cayman CRS Regulations (the first calendar year being 2016).

### **Obligation to Make a Return Following Notification**

Under the Cayman CRS Regulations, a Reporting Financial Institution shall make a return on or before 31st May of the year following the calendar year to which the return relates (the first return is required to be made on or before 31 May 2017). The information to be set out in the return includes the name, address, jurisdiction of residence, tax identification number and date of birth of

each Reportable Person who is an account holder and any controlling persons.

#### **Other Important Timelines**

The due diligence procedures for identifying high-value pre-existing (i.e. existing as of 31 December 2015) individual accounts with balances exceeding USD 1,000,000 will be required to be completed by 31 December 2016.

The due diligence procedures for lower-value pre-existing individual accounts with balances not exceeding USD 1,000,000 and for entity accounts with account balances greater than USD 250,000 as of 31 December 2015 will be required to be completed by 31 December 2017.

#### **Ability to Rely on Self-Certification**

In connection with the completion of required due diligence procedures and in order to comply with its reporting obligations under the Cayman CRS Regulations, a Reporting Financial Institution may generally rely on self-certification forms (confirming tax residence) completed by or on behalf of its account holders.

#### **Restrictions on Reliance on Self-Certification**

A Reporting Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

#### **Steps to Take Now**

If you are a Reporting Financial Institution under the Cayman CRS Regulations, you should bear in mind the above timelines and obligations.

#### **Further Legislation Expected**

Further guidance notes and regulations are expected to be issued in the first quarter of 2016 to cover enforcement, penalties and the method of electronic reporting by Reporting Financial Institutions. An update will be dispatched at that time.

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