COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

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COMMONWEALTH OF DOMINICA

ACT NO. 6 OF 2019

I assent

LS

CHARLES A. SAVARIN
President

1st May, 2019

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE OBLIGATIONS OF DOMINICA ARISING UNDER THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AND FOR RELATED MATTERS.

(*Gazetted* 2nd May, 2019.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

1. This Act may be cited as the – Short title.

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (COMMON REPORTING STANDARD) ACT, 2019.

Interpretation.

2. (1) In this Act —

"Appeal Commissioners" means the Appeal Commissioners appointed under section 89 of the Income Tax Act;

Chap. 67:01.

"competent authority" means the Comptroller of the Department appointed under section 3 of the Income Tax Act;

"Convention" means the Convention on Mutual Administrative Assistance in Tax Matters signed by the Government on the 25th day of April, 2019, the text of which is set out in the First Schedule;

"Department" means the Inland Revenue Division;

"designated officer" means with respect to any function, the officer of the Department designated to carry out that function;

"Minister" means the Minister responsible for finance;

"Organisation for Economic Co-operation and Development" means the Organisation for Economic Co-operation and Development which was established by the Convention on the Organisation for Economic Co-operation and Development signed in Paris on the 14th day of December, 1960;

"regulations" means regulations made under this Act;

"Reporting Financial Institution" means any Dominica financial institution that is not a non-reporting financial institution;

"return" means a return referred to in section 7;

"Standard" -

(a) means the Common Standard on Reporting and Due Diligence for Financial Account Information the text of which is set out in the Second Schedule; and Second Schedule.

(b) includes the commentaries on the Common Standard on Reporting and Due Diligence for Financial Acount Information which is any explanatory material made and published by the Organisation for Economic Corporation and Development for the purposes of assisting with the interpretation of the Common Standard of the Reporting and Due Diligence for Financial Account Information;

(2) For the purposes of the Standard, wherever the expression "Jurisdiction Financial Institution" occurs in subparagraph (A)(1) of Section VIII of the Standard, it shall be interpreted as follows:

"Jurisdiction Financial Institution" means,

(a) a financial institution that is resident in Dominica, but excludes any branch of that financial institution that is located outside of Dominica; and

(b) a branch of a financial institution that is not resident in Dominica, if that branch is located in Dominica.

(3) Any word or expression which has a meaning given to it by the Standard shall, where it is used in this Act or regulations made under this Act and unless the contrary intention appears, have the same meaning in this Act or those regulations as it has in the Standard.

Convention to have the force of law.

3. The Convention has the force of law in Dominica.

Inconsistent laws.

4. In the event of an inconsistency between this Act or the Convention and the provisions of any other law, this Act and the Convention prevail to the extent of the inconsistency.

Amendment to Convention.

5. (1) Where an amendment to the Convention is accepted by the Government and the Council of the Organisation for Economic Co-operation and Development, the Minister may by Order published in the Gazette amend the First Schedule for the purpose of including the amendments.

(2) Where the Schedule is amended in accordance with this section, any reference in this Act or in any other enactment or in any instrument having effect under any such enactment shall, unless the context otherwise requires, be construed as a reference to the Convention as amended.

Functions and Powers of Competent Authority.

6. (1) The Competent Authority shall administer and enforce compliance with the provisions of the Convention, this Act and the regulations.

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(2) The Competent Authority may exercise all powers vested in him under the Income Tax Act to administer and enforce compliance with the provisions of the Convention, this Act and the regulations.

(3) The Competent Authority may delegate, in writing, to any designated officer, any power or duty conferred on the Competent Authority by this Act or the regulations.

(4) The Competent Authority or designated officer may request information from a Reporting Financial Institution and may, at any reasonable time, enter any premises or place of business of a Reporting Financial Institution for the purposes of –

(a) determining whether information included in a

return made under the regulations by the reporting

financial institution is correct and complete;

(b) determining whether information not included in a return was correctly not included; or

(c) examining the procedures put in place by the reporting financial institution for the purposes of ensuring compliance with that institution's obligations under this Act or the regulations.

Return.

7. (1) A Reporting Financial Institution shall, in respect of the calendar year 2018 and every subsequent calendar year, make a return setting out the information required to be reported under Section I of the Standard in relation to a Reportable Account that is maintained by the Reporting Financial Institution.

(2) A Reporting Financial Institution shall submit a return under subsection (1) to the Competent Authority on or before the 31st day of June of the year following the calendar year to which the return relates.

(3) A Reporting Financial Institution shall treat an account balance with a negative value as having a nil value.

(4) If, when a Reporting Financial Institution is applying the Standard, the balance or value of an account is denominated in a currency other than United States dollars, the Reporting Financial Institution shall convert to United States dollar amount, the other currency, by reference to the spot rate of exchange on the date for which the Reporting Financial Institution is determining that amount.

(5) Where a Reporting Financial Institution does not have a Reportable Account in a calendar year, the Reporting Financial

Institution shall prepare and submit to the Competent Authority a nil return for that calendar year that includes —

(a) the name of the Reporting Financial Institution;

(b) the address of the registered office of the Reporting Financial Institution;

(c) the company registration number;

(d) other prescribed information.

Confidentiality.

8. (1) A law relating to confidentiality does not apply to the disclosure of information by a Reporting Financial Institution to the Competent Authority that is required to be included in a return filed under this Act or the regulations and, accordingly, this section applies to information to which, but for this subsection, the law would apply.

(2) A person who has an official duty or is employed in the administration or enforcement of the Convention, this Act or the regulations or any person who formerly had a duty or was formerly employed in the administration or enforcement of the Convention, this Act or the regulations shall –

(a) treat as confidential information received from a Reporting Financial Institution or from a participating jurisdiction or information received from a Competent Authority of another jurisdiction under an agreement;

(b) only disclose information that is necessary for the purpose of the administration or enforcement of the Convention, this Act or the regulations.

Penalty.

9. (1) A reporting financial institution that fails to make a return as and when required under this Act is liable to a penalty of five thousand dollars for such failure and a penalty of two

thousand dollars for each month or part of a month that the failure continues.

(2) A Reporting Financial Institution that makes a false statement or omission in respect of information required to be included on a return is liable to a penalty of ten thousand dollars for each failure.

(3) A person who does not comply with the requirement of the competent authority in the exercise or performance of the Competent Authority's powers or duties under this Act is liable to a penalty of fifty thousand dollars.

Liability to penalty.

10. (1) Subject to subsection (4), liability to a penalty does not arise if the person satisfies the Competent Authority or a court of competent jurisdiction that there is a reasonable excuse for the failure.

(2) For the purposes of this Act the following is not a reasonable excuse —

(a) that there is an insufficiency of funds to perform an act; or

(b) that a Reporting Financial Institution relies on another person to perform an act.

(3) If a person had a reasonable excuse for a failure but the excuse no longer exists, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse existed.

Assessment of penalty.

11. (1) If a person becomes liable to a penalty under section 9, the Competent Authority shall assess the penalty, and notify the person of the assessment.

(2) An assessment of a penalty shall be made within the period of twelve months beginning with the date on which –

(a) the person became liable to the penalty; or

(b) the inaccuracy first came to the attention of the Competent Authority.

Right to appeal against penalty.

12. A person may appeal against a penalty assessment on the grounds that –

(a) liability to a penalty under section 9 does not arise; or

(b) the amount of the penalty is in dispute.

Procedure on appeal against penalty.

13. (1) Notice of an appeal under section 12 shall be made in writing setting out the grounds of appeal and shall be lodged with the Competent Authority before the end of the period of thirty days beginning with the date on which notification under section 11 was provided.

(2) An appeal shall be referred to the Appeal Commissioners.

(3) Where an appeal is referred to the Appeal Commissioners –

(a) under section 12*(a)*, the Appeal Commissioners may confirm or cancel the assessment; and

(b) under section 12*(b)*, the Appeal Commissioners may substitute another assessment that the Competent Authority had the power to make.

(4) Subject to this section and section 14, the provisions of the Income Tax Act relating to appeals apply in relation to an

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appeal under this Act as they apply in relation to an appeal against a tax assessment.

Enforcement of penalty.

14. (1) A penalty under this Act shall be paid to the Competent Authority within thirty days after –

(a) the date on which notification under section 11 is provided in respect of the penalty; or

(b) the date on which an appeal against a penalty assessment is finally determined or withdrawn.

(2) If any amount is respect of a penalty is not paid by the due date described in subsection (1), interest on the amount owing shall be charged for the period during which the amount is outstanding.

(3) The rate of interest charged under subsection (2) shall be three percent per annum.

Immunity from suit.

15. (1) The Competent Authority or any person employed in carrying out the provisions of or having any official duty under the Convention or this Act who exchanges information in accordance with the Convention does not commit an offence under any other law in force in Dominica by reason only of the exchange.

(2) An exchange of information under subsection (1) is not a breach of a confidential relationship between the person who exchanges the information and any other person, and no claim or action lies against the person making the disclosure by reason of the exchange.

Anti-avoidance.

16. If a person enters into any arrangements or engages in a practice, the main purpose of which can reasonably be considered to be to avoid an obligation imposed under this Act or Regulations made under this Act, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

Offence.

17. A person who makes a false statement or omission in respect of any information required to be included on a return, under this Act or under the regulations, is guilty of an offence and is liable, on summary conviction, to a fine of twenty-five thousand dollars or imprisonment for two years, unless in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

Amendment of Second Schedule.

18. The Minister may by order published in the Gazette amend the Second Schedule.

Regulations.

19. (1) The Minister may make Regulations to give effect to the provisions of the Convention and this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations –

(a) respecting non-reporting financial institutions;

(b) respecting participating jurisdictions;

(c) prescribing the manner in which an information return must be filed;

(d) specifying the information to be reported in a return in relation to certain financial accounts and, where different information is to be reported for different years, specify the information to be reported for each of those years;

(e) requiring Reporting Financial Institutions to identify certain financial accounts;

(f) specifying the records and documents that must be examined or the procedures to obtain records and documents by a Reporting Financial Institu-

tion to enable the institution to identify certain financial accounts;

(g) specifying the records and documents used to identify certain financial accounts that must be retained by a Reporting Financial Institution;

(h) setting out the conditions under which a Reporting Financial Institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations;

(i) respecting any of the matters specified in paragraphs *(a)* to *(h)*, determining the manner of keeping records and setting the period for the retention of records kept; and

(j) enabling the authorization of designated officers requiring the production of books, records or other documents and the provision of information in relation to financial accounts within a time specified in the regulations.

(3) Regulations made under this section shall be subject to negative resolution of the House.

FIRST SCHEDULE (Section 2)

THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June 2011.

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every

person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new cooperative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,
Have agreed as follows:

Chapter I – Scope of the Convention

Article 1 – Object of the Convention and persons covered

1. The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.

2. Such administrative assistance shall comprise:

a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;

b. assistance in recovery, including measures of conservancy; and

c. service of documents.

3. A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2 – Taxes covered

1. This Convention shall apply:
   a. to the following taxes:

      i. taxes on income or profits,

      ii. taxes on capital gains which are imposed separately from the tax on income or profits,

      iii. taxes on net wealth,

imposed on behalf of a Party; and

   b. to the following taxes:

      i. taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,

      ii. compulsory social security contributions payable to general government or to social security institutions established under public law, and

      iii. taxes in other categories, except customs duties, imposed on behalf of a Party, namely:

         A. estate, inheritance or gift taxes,

B. taxes on immovable property,

C. general consumption taxes, such as value added or sales taxes,

D. specific taxes on goods and services such as excise taxes,

E. taxes on the use or ownership of motor vehicles,

F. taxes on the use or ownership of movable property other than motor vehicles,

G. any other taxes;

iv. taxes in categories referred to in sub-paragraph iii above which are imposed on behalf of political subdivisions or local authorities of a Party.

2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.

3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

4. The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

Chapter II – General definitions

Article 3 – Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a. the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;

b. the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;

c. the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

d. the term "competent authority" means the persons and authorities listed in Annex B;

e. the term "nationals" in relation to a Party means:

i. all individuals possessing the nationality of that Party, and

ii. all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2. As regards the application of the Convention by a Party,

any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.

3. The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

Chapter III – Forms of assistance

SECTION I – EXCHANGE OF INFORMATION

Article 4 – General provision

1. The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.

2. Deleted.

3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5 – Exchange of information on request

1. At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.

2. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6 – Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7 – Spontaneous exchange of information

1. A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

a. the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;

b. a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;

c. business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;

d. a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

2. Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8 – Simultaneous tax examinations

1. At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

2. For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9 – Tax examinations abroad

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.

2. If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.

3. A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10 – Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

SECTION II - ASSISTANCE IN RECOVERY

Article 11 – Recovery of tax claims

1. At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.

2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12 – Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13 – Documents accompanying the request

1. The request for administrative assistance under this section shall be accompanied by:

a. a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,

b. an official copy of the instrument permitting enforcement in the applicant State, and

c. any other document required for recovery or measures of conservancy.

2. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14 – Time limits

1. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.

2. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15 – Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16 – Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

SECTION III – SERVICE OF DOCUMENTS

Article 17 – Service of documents

1. At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.

2. The requested State shall effect service of documents:

a. by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

b. to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.

3. A Party may effect service of documents directly through the post on a person within the territory of another Party.

4. Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.

5. When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

Chapter IV – Provisions relating to all forms of assistance

Article 18–Information to be provided by the applicant State

1. A request for assistance shall indicate where appropriate:

a. the authority or agency which initiated the request made by the competent authority;

b. the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;

c. in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;

d. in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

e. in the case of a request for service of documents, the nature and the subject of the document to be served;

f. whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.

2. As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19 – Deleted

Article 20 – Response to the request for assistance

1. If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.

2. If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.

3. If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21 – Protection of persons and limits to the obligation to provide assistance

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

a. to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;

b. to carry out measures which would be contrary to public policy (*ordre public*);

c. to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;

d. to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (ordre public);

e. to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or

to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

f. to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;

g. to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;

h. to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.

3. If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.

4. In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution,

nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 22 – Secrecy

1. Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.

2. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes.

They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

3. If a Party has made a reservation provided for in subparagraph a of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party,

subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23 – Proceedings

1. Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.

2. Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.

3. As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

Chapter V – Special provisions

Article 24 – Implementation of the Convention

1. The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more

Parties may mutually agree on the mode of application of the Convention among themselves.

2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

3. A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.

4. A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.

5. Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.

6. The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25 – Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26 – Costs

Unless otherwise agreed bilaterally by the Parties concerned:

a. ordinary costs incurred in providing assistance shall be borne by the requested State;

b. extraordinary costs incurred in providing assistance shall be borne by the applicant State.

Chapter VI – Final provisions

Article 27 – Other international agreements or arrangements

1. The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

2. Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

Article 28 – Signature and entry into force of the Convention

1. This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.

2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

3. In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

4. Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27th May 2010 (the "2010 Protocol"), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.

5. After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this

Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.

6. The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable period

7. Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

Article 29 – Territorial application of the Convention

1. Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In

respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.

3. Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30 – Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:

a. not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;

b. not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

c. not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;

d. not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

e. not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;

f. to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.

2. No other reservation may be made.

3. After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.

4. Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.

5. A Party which has made a reservation in respect of a provision of this Convention may not require the application of that

provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.

3. Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32 – Depositaries and their functions

1. The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance or approval;

c. with the provisions of Articles 28 and 29;

d. any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;

e. any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;

f. any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;

g. any other act, notification or communication relating to this Convention.

2. The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Done at Strasbourg, the 25th day of January 1988, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of the Council of Europe and the other in the archives of OECD. The Secretaries General of the Council of Europe and of OECD shall transmit certified copies to each member State of the Council of Europe and of the member countries of OECD.

SECOND SCHEDULE (Section 2)

COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION

Section I: General Reporting Requirements

A. Subject to paragraphs C through E, each Reporting Financial Institution must report the following information with

respect to each Reportable Account of such Reporting Financial Institution:

1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;

2. the account number (or functional equivalent in the absence of an account number);

3. the name and identifying number (if any) of the Reporting Financial Institution;

4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) at the end of the relevant calendar year or other appropriate period or, if the account was closed during such year or period, the closure of the account;

5. in the case of any Custodial Account:

    a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.

C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account or with respect to each Financial Account that is opened prior to becoming a Reportable account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.

D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if

(i) a TIN is not issued by the relevant Reportable Jurisdiction or

(ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

Section II: General Due Diligence Requirements

A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

B. A Reporting Financial Institution, which pursuant to the procedures described in Sections II through VII, identifies any account as a Foreign Account that is not a Reportable Account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.

C. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

D. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value

must be determined as of the last day of the reporting period that ends with or within that calendar year.

E. Reporting Financial Institutions may apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where New Account due diligence procedures are used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

Section III: Due Diligence for Preexisting Individual Accounts

The following procedures apply with respect to Preexisting Individual Accounts.

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

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

B. **Lower Value Accounts.**

The following procedures apply with respect to Lower Value Accounts.

1. Residence Address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. Electronic Record Search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):

a) identification of the Account Holder as a resident of a Foreign Jurisdiction;

b) current mailing or residence address (including a post office box) in a Foreign Jurisdiction;

c) one or more telephone numbers in a Foreign Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;

d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Foreign Jurisdiction;

e) currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction; or

f) a "hold mail" instruction or "in-care-of" address in a Foreign Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.

3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

4. If any of the indicia listed in subparagraph B(2)(a) through

(e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

5. If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.

6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Foreign Jurisdiction if:

a) the Account Holder information contains a current mailing or residence address in the Foreign Jurisdiction, one or more telephone numbers in the Foreign Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

i) A self-certification from the Account Holder of

the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; and

ii) Documentary evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.

b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

i) A self-certification from the Account Holder of the juriscition(s) of residence of such Account Holder that does not include such Foreign Jurisdiction; or

ii) Documentary evidence establishing the Account Holder's residence for tax purposes other than such Foreign Jurisdiction.

C. **Enhanced Review Procedures for High Value Accounts.**

The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search**. with respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).

2. **Paper Record Search**. If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3),

then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia decribed in subparagraph B(2):

a) the most recent Documentary Evidence collected with respect to the account;

b) the most recent account opening contract or documentation;

c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

d) any power of attorney or signature authority forms currently in effect; and

e) any standing instructions (other than with respect to a Depository Account to transfer funds currently in effect.

3. **Exception To The Extent Databases Contain Sufficient Information**.

A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:

a) the Account Holder's residence status;

b) the Account Holder's residence address and mailing

address currently on file with the Reporting Financial Institution;

c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;

d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);

e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and

f) whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge**.

In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

5. **Effect of Finding Indicia**.

a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a resident for tax purposes in a Foreign Jurisdiction in subparagraph C(4), then further action is not required until there is a change in

circumstances that results in one or more indicia being associated with the account.

b) If any of the indicia listed in subparagr agraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

c) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtains from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.

6. If a Preexisting Individual Account is not a High Value Account as of 31 December 2018, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting

Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.

8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Foreign Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.

D. Review of Preexisting High Value Individual Accounts must be completed by 31 December 2019. Review of Preexisting Lower Value Individual Accounts must be completed by 31 December 2020.

E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

Section IV: Due Diligence for New Individual Accounts

The following procedures apply with respect to New Individual Accounts.

A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.

C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

Section V: Due Diligence for Preexisting Entity Accounts

The following procedures apply with respect to Preexisting Entity Accounts.

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250000 as of 31 December 2018, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of the last day of any subsequent calendar year.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250000 as of 31 December 2018, and a Preexisting Entity Account that does not exceed USD 250 000 as of 31 December 2018 but the aggregate account balance or value of which exceeds USD 250 000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required. For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures:

1. Determine the Residence of the Entity.

(a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the Account Holder's residence. For this purpose, information indicating that the Account Holder's residence includes a place of incorporation or organization, or an address in a Foreign Jurisdiction.

b) If the information indicates that the Account Holder is a Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. Determine the Residence of the Controlling Persons of a Passive NFE. With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Controlling persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account is treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs C(2)(a) through (c) in the order most appropriate under the circumstances.

a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive

NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

c) Determining the residence of a Controlling Person of a Passive NFE. For the purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on:

i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1,000,000; or

ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax pur-

poses. If a self-certification is not provided, the Reporting Financial Institution will establish such residence(s) by applying the procedures described in paragraph C of Section III.

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

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250,000 as of 31 December 2018 must be completed by 31 December 2020.

2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December 2018, but exceeds USD 250 000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.

3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph C.

Section VI: Due Diligence for New Entity Accounts

The following procedures apply with respect to New Entity Accounts.

A. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required. For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures:

1. Determine the residence of the Entity.

a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.

b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that

is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

2. Determine the Residence of the Controlling Persons of a Passive NFE.

With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must identify whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.

a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Reporting Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

b) Determining the Controlling Persons of an Account Holder. For purposes of determining the

Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

Determining the residence of a Controlling Person of a Passive NFE. For purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

Section VII: Special Due Diligence Rules

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

A. Reliance on Self-Certifications and Documentary Evidence.

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

Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowl-

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

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements: (i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders; (ii) the employee/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 (iii) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1 000 000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a

premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obliges are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

B. Account Balance Aggregation and Currency Rules.

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by

a Related Entity, but only to the extent that the Reporting Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number of TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregated all such accounts.

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

Section VIII: Defined Terms

The following terms have the meanings set forth below:

A. Reporting Financial Institution

1. The term "**Reporting Financial Institution**" means any Participating Jurisdiction Financial Reporting Financial Institution that is not a Non-Reporting Financial Institution.

2. The term "**Participating Jurisdiction Financial Institution**" means

(i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and

(ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

3. The term "**Financial Institution**" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

4. The term "**Custodial Institution**" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

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

6. The term "**Investment Entity**" means any Entity:

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

i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.): foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

ii) individual and collective portfolio management; or

iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or

b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year pre-

ceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

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

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

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

B. Non-Reporting Financial Institution

1. The term "**Non-Reporting Financial Institution**" means any Financial Institution that is:

a) a Government Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;

c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraph B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;

d) an Exempt Collective Investment Vehicle; or

e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term "Governmental Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing

(each, a "Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

a) An "integral part" of a jurisdiction means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:

i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.

Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the

programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term "International Organisation" means any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.

4. The term "Central Bank" means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

5. The term "Broad Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) or one or more employers in consideration for services rendered, provided that the fund:

a) does not have a single beneficiary with a right to more than five per cent of the fund's assets;

b) is subject to government regulation and provides information reporting to the tax authorities; and

c) satisfies at least one of the following requirements:

i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;

ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a) from sponsoring employers;

iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a), or penalties apply to distributions or withdrawals made before such specified events; or

iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

6. The term "**Narrow Participation Retirement Fund**" means a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

a) the fund has fewer than 50 participants;

b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;

c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;

d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets; and

e) the fund is subject to government regulation and provides information reporting to the tax authorities.

7. The term "**Pension Fund of a Governmental Entity, International Organisation or Central Bank**" means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of person services performed for the Governmental Entity, International Organisation or Central Bank.

8. The term "**Qualified Credit Card Issuer**" means a Financial Institution satisfying the following requirements:

a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

b) beginning on or before 1 January 2019, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of USD 50 000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does not include credit balances resulting from merchandise returns.

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

C. Financial Account

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

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

b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and

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

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

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

3. The term "**Custodial Account**" means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person.

4. The term "**Equity Interest**" means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership.

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

5. The term "**Insurance Contract**" means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

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

7. The term "**Cash Value Insurance Contract**" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term "**Cash Value**" means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract:

a) solely by reason of the death of an individual insured under a life insurance contract;

b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or

e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term "**Preexisting Account**" means:

a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2018;

b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9)(a);

ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

iii) with respect to a Financial Account that is subject to AML/ KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/ KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a); and

iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the CRS.

10. The term "**New Account**" means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2019.

11. The term "**Preexisting Individual Account**" means a Preexisting Account held by one or more individuals.

12. The term "**New Individual Account**" means a New Account held by one or more individuals.

13. The term "**Preexisting Entity Account**" means a Preexisting Account held by one or more Entities.

14. The term "**Lower Value Account**" means a Preexisting Individual Account with an aggregate balance or value as of 31 December 2018 that does not exceed USD 1 000 000.

15. The term "**High Value Account**" means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1000 000 as of 31 December 2018 or 31 December of any subsequent year.

16. The term "**New Entity Account**" means a New Account held by one or more Entities.

17. The term "**Excluded Account**" means any of the following account:

a) a retirement or pension account that satisfies the following requirements:

i) the account is subject to regulation as a personal

retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

iii) information reporting is required to the tax authorities with respect to the account;

iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

v) either (i) annual contributions are limited to USD 50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

b) an account that satisfies the following requirements:

i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;

ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;

iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

iv) annual contributions are limited to USD 50,000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract exceed the aggregate premiums paid for the contract, less the sum or mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

v) the contract is not held by a transferee for value.

d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

e) an account established in connection with any of the following:

i) a court order or judgment;

ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

iii) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when property is sold, exchanged, or surrendered, or the lease terminates;

iv) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and

v) the account is not associated with an account described in subparagraph C(17)(f).

iii) a Depository Account that satisfies the following requirements:

i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolv-

ing credit facility and the overpayment is not immediately returned to the customer; and

ii) beginning on or before 1 January 2019, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is defined in domestic law as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

D. Reportable Account

1. The term "**Reportable Account**" means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.

2. The term "**Reportable Person**" means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets;

(ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.

3. The term "**Reportable Jurisdiction Person**" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

4. The term "**Reportable Jurisdiction**" means a jurisdiction (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and (ii) which is identified in a published list.

5. The term "**Participating Jurisdiction**" means a jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and (ii) which is identified in a published list.

6. The term "**Controlling Persons**" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settler(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

7. The term "**NFE**" means an Entity that is not a Financial Institution.

8. The term "**Passive NFE**" means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.

9. The term "**Active NFE**" means any NFE that meets any of the following criteria:

a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;

d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;

f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

h) the NFE meets all of the following requirements:

i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

ii) it is exempt from income tax in its jurisdiction of residence;

iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organization, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

E. Miscellaneous

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

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

2. The term "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.

3. The term "Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

4. An Entity is a "Related Entity" of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in subparagraph A(6) (b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

5. The term "TIN" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

6. The term "**Documentary Evidence**" includes any of the following:

a) a certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.

b) with respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.

c) with respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organized.

d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

7. With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

8. The term "**Foreign Jurisdiction**" means any jurisdiction other than the jurisdiction of the Reporting Financial Institution.

Section IX: Effective Implementation

A jurisdiction must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

1. rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;

2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;

3. administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;

4. administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and

5. effective enforcement provisions to address non-compliance.

Passed in the House of Assembly this 29th day of April, 2019.

DANIEL JAMES (MR.)
Clerk of the House of Assembly

DOMINICA
Printed by the Government Printer at the Government Printery, Roseau
(Price $17.20 cents)