



## **Bank of East Asia (Trustees) Limited – MPF Business**

# Common Reporting Standard (“CRS”)

## Entity Classification Guide

**Version 2 – September 2021**

### **Important Note**

The materials in this Entity Classification Guide are provided by Bank of East Asia (Trustees) Limited – MPF Business (“BEAT MPF”) and reflect the information as of **30<sup>th</sup> September, 2021**. The contents are intended to provide a general guidance on determination of entity classification under the Common Reporting Standard and should not be treated as a substitute for obtaining legal and/or tax advice concerning individual situations. You may not copy or modify the materials or use them for any commercial purpose without the express prior written consent of BEAT MPF.

# General Information

## Purpose of these guidelines

In order to enhance transparency and fight against cross-border tax evasion, the Organisation for Economic Co-operation and Development (“OECD”) published the Standard for Automatic Exchange of Financial Account Information in Tax Matters (“AEOI”), including the Commentary on the Common Reporting Standard (“CRS”) in July 2014. Currently, over 100 countries have committed to the implementation of compliance of the CRS. Under the CRS, Financial Institutions (“FIs”) are required to:

- Establish the country of tax residence of their new and existing account holders through performing due diligence procedures; and
- Report the financial account information of those account holders of reportable accounts to the FIs’ local government, which will then exchange this information with the governments of relevant countries where the account holders are tax resident.

In Hong Kong, the Inland Revenue Department (“IRD”) has committed to implementing the AEOI standard with appropriate partners on a reciprocal basis and the relevant tax legislation (i.e. the Inland Revenue (Amendment)(No. 3) Ordinance 2016) came into effect on 30<sup>th</sup> June, 2016 and set forth the regulatory framework for implementation of the AEOI.

In order to comply with the relevant CRS requirements under the local laws, the documentation requirements of Bank of East Asia (Trustees) Limited – MPF Business (“our” or “we”) have been necessarily updated and enhanced. The documentation that we require from our account holders depend on the account holders’ classification under CRS. This Entity Classification Guide (“Guide”) focuses on the classification of account holders, which are entities that fall within the definition of company under the Companies Ordinance (Cap. 622) along with legal arrangements including partnerships and any other body of persons (incorporated or unincorporated) and trusts. Alternatively, if accounts are held by individuals directly, this Guide is not applicable.

Determining the classification of entity for CRS purpose can be a complicated and extensive process. This Guide provides only a sample approach for determining account holder’s CRS classification. However, these are intended to be used only as a guide in making the determination of CRS classification and account holders are suggested to seek for professional tax advice whenever necessary.

# Overview of Entity Type under CRS

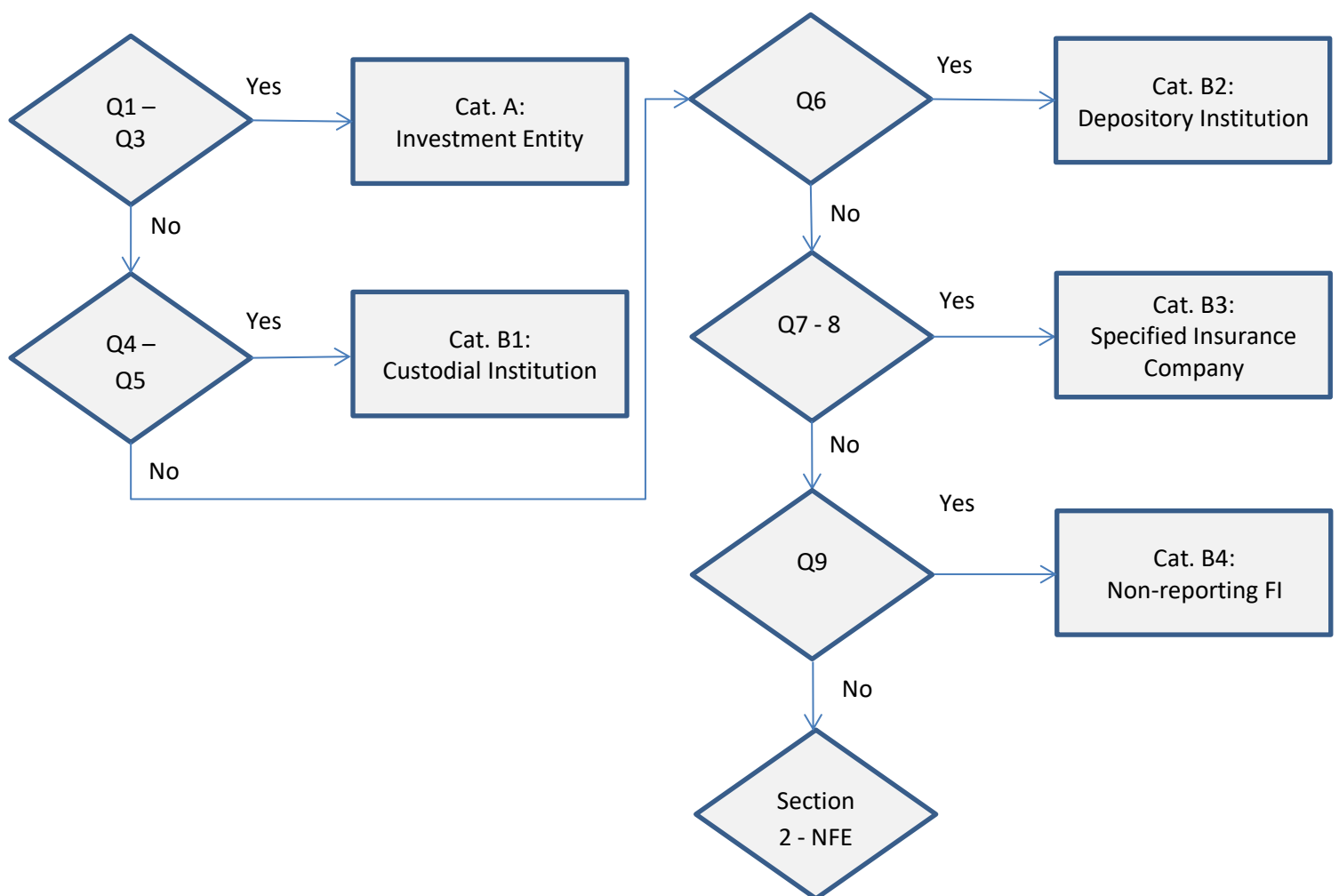
For CRS reporting purposes, an entity will be either an FI or a Non-Financial Entity (“NFE”).

The purpose of this section is to assist you in determining your entity type for completion of the CRS self-certification.

## Section 1 - Financial Institution

Under the CRS, an FI includes the following:

- (a) Custodial Institution
- (b) Depository Institution
- (c) Investment Entity
- (d) Specified Insurance Company



## Category A – Investment Entity

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**Question 1:** Does the Entity conduct as its business one or more of the following activities or operations for or on behalf of a customer?

- (i) Trading in –
    - a. Money market instruments;
    - b. Foreign exchange;
    - c. Exchange, interest rate and index instruments;
    - d. Transferable securities; or
    - e. Commodity futures.
  - (ii) Individual and collective portfolio management; or
  - (iii) Investing, administering, or managing financial assets<sup>1</sup> or money on behalf of other persons.
- (a) If yes, move to Question 2.  
(b) If no, move to Question 3.

**Question 2:** Is 50% or more of the Entity's gross income attributable to activities or operations defined in Question 1?

- (a) If yes, the Entity is likely to be an FI - Investment Entity. You should however also need to consider if the Entity is a Managed Investment Entity as mentioned in Question 3 below.
- (b) If no, move to Question 3.

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### Examples of FI – Investment Entity:

Generally these include:

- **Collective investment vehicles**
- **Different types of funds, including mutual funds, private equity funds, hedge funds**
- **Venture capital**

But do not include:

- **An entity that is an Active NFE solely because it falls within certain descriptions in the definition of Active NFE.**
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<sup>1</sup> Financial assets includes:

- (a) any security (including share units of a 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);
- (b) partnership interest;
- (c) commodity;
- (d) swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements);
- (e) insurance contract or annuity contract; and
- (f) any interest (including a futures or forward contract or option) in any of the assets mentioned in paragraphs (a), (b), (c), (d) and (e), but does not include a non-debt direct interest in real property.

**Question 3:** Is the Entity managed by (see Note 1 below) another entity that is a Custodial Institution, a Depository Institution, a Specified Insurance Company, or an entity mentioned in Question 1 and 2 above?

**AND**

Is 50% or more of the Entity's gross income primarily attributable to investing, reinvesting, or trading in financial assets?

- (a) If yes, the Entity is likely to be an FI - Managed Investment Entity. See Note 2 below.
- (b) If no, move to Question 4 of Category B1.

**Note 1: An entity manages another entity if it has discretionary authority to manage all or some of the assets of the other entity.**

**Note 2: Under CRS, Managed Investment Entity that is a resident in a non-Participating Jurisdiction<sup>2</sup> will be regarded as Passive NFE instead of FI. Please refer to Category G.**

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**Examples of FI – Managed Investment Entity:**

Generally these include:

- Trust with a corporate trust
  - Entities whose assets are managed by a bank of asset manager based on a discretionary asset management mandate
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**Category B1 – Custodial Institution**

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**Question 4:** Does the Entity hold financial assets for the account of others?

- (a) If yes, move to Question 5.
- (b) If no, move to Question 6 of Category B2.

**Question 5:** Does the Entity's gross income attributable to the holding of financial assets and related financial services equal or exceed 20% of the Entity's gross income during the preceding 3 years?

- (a) If yes, the Entity is likely to be an FI – Custodial Institution.
- (b) If no, move to Question 6 of Category B2.

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**Examples of FI – Custodial Institution:**

Generally these include:

- Custodian banks
  - Brokers
  - Central securities depositories
  - Trust companies
  - Clearing houses
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<sup>2</sup> A Non-participating Jurisdiction is a jurisdiction that has not agreed to automatically exchange the information set out in the CRS.

## **Category B2 – Depository Institution**

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**Question 6:** Does the Entity accept deposit in the ordinary course of banking or similar business?

- (a) If yes, the Entity is likely to be an FI – Depository Institution.
- (b) If no, move to Question 7 of Category B3.

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### **Examples of FI – Depository Institution:**

**Generally these include:**

- **Savings or commercial banks**
  - **Credit Unions**
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## **Category B3 – Specified Insurance Company**

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**Question 7:** Is the Entity an insurance company or the holding company of an insurance company that:-

- (i) Is regulated as an insurance business in the country where it conducts business;
- (ii) Its gross income of which arising from insurance, reinsurance, and annuity contracts for the last 1 year exceeds 50% of the total gross income for that year; or
- (iii) The aggregate value of its assets of which associated with insurance, reinsurances, and annuity contracts at any time during the last year exceeds 50% of the total assets at any time during that year.

- (a) If yes, move to Question 8.
- (b) If no, move to Question 9 of Category B4.

**Question 8:** Does the Entity issues, or obliged to make payments with respect to a Cash Value Insurance Contract or an Annuity Contract?

- (a) If yes, the Entity is likely to be an FI – Specified Insurance Company.
- (b) If no, move to Question 9 of Category B4.

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### **Examples of FI – Specified Insurance Company:**

**Generally these include:**

- **Life insurance companies**

**But do not include:**

- **Insurance companies that only provide the following products:**
    - **General insurance;**
    - **Term life insurance;**
  - **Insurance brokers**
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## Category B4 – Non-reporting FI

Question 9: Does the Entity falls into one of the classifications below?

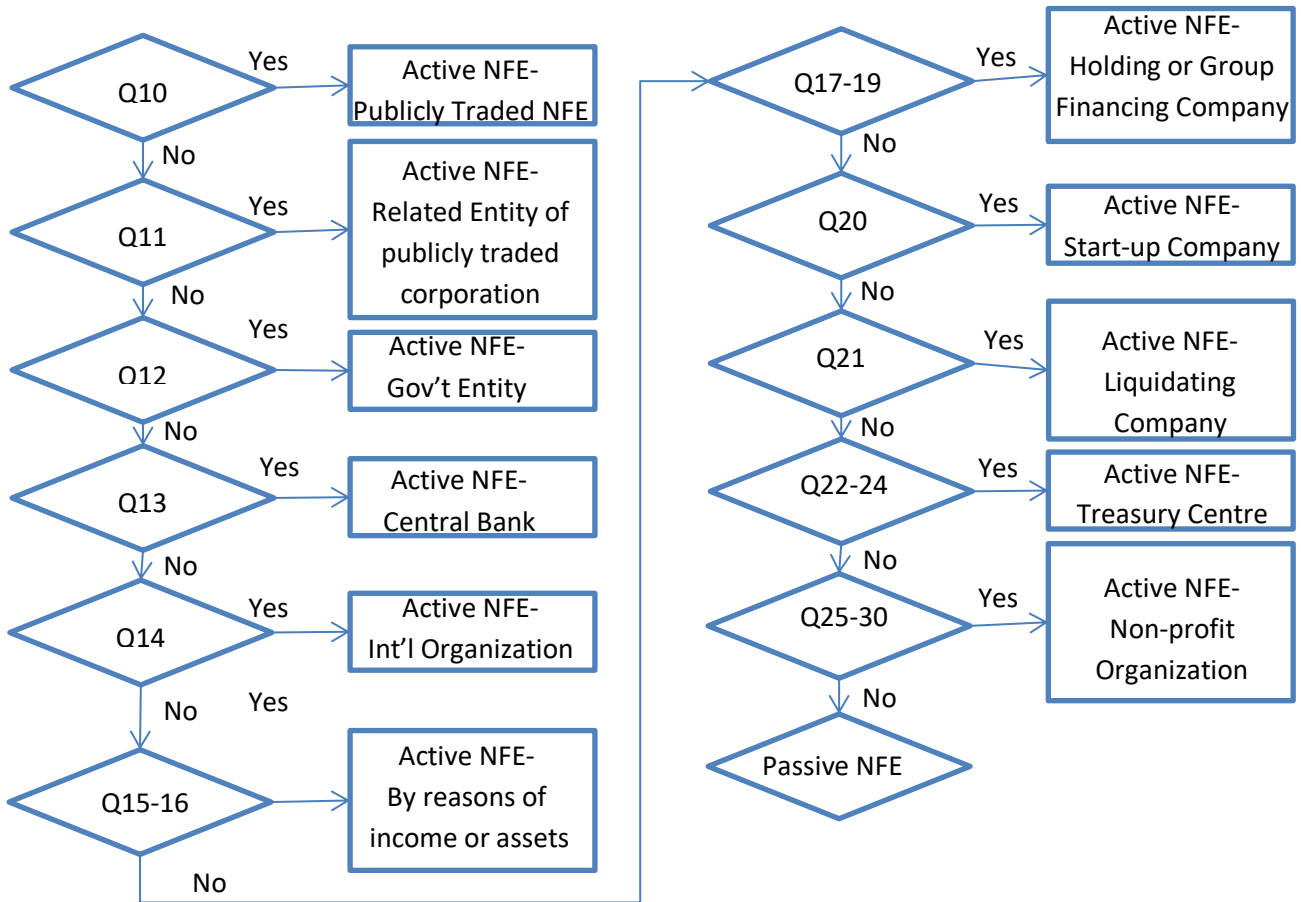
	Types of Non-reporting FI	Remarks
(A)	Governmental Entity	This includes statutory body and entities which are wholly owned by the government.
(B)	International Organization	-
(C)	Central Bank	-
(D)	Hong Kong Monetary Authority	-
(E)	Pension Fund of Governmental Entity, International Organization or Hong Kong Monetary Authority	A fund that is established to provide retirement, disability, or death benefits to the current or former employees or beneficiaries/participants in consideration of personal services rendered to the Governmental Entity, International Organization or Hong Kong Monetary Authority.
(F)	Broad or Narrow Participation Retirement Fund	A fund that is established to provide retirement, disability, or death benefits to the current or former employees or beneficiaries/participants in consideration of personal services rendered.  <b><u>AND</u></b>  It is subject to government regulation.
(G)	Qualified Credit Card Issuer	The Entity is an issuer of credit cards that accepts deposits only when a customer makes a payment (limited to HK\$390,000 or if not limited, refunded the overpayment in excess of HK\$390,000 to the customer within 60 days) in excess of a balance due with respect to the credit card.
(H)	Exempt Collective Investment Vehicle	It is an Investment Entity that is regulated as a collective investment vehicle and all interests in the collective investment vehicle are held by or through one or more non-reportable person(s).
(I)	Trustee-documented Trust	It is a trust, to the extent that the trustee is a Reporting FI and reports all information required to be reported with respect to all the reportable accounts of the trust.
(J)	Grant Schools Provident Fund and Subsidized Schools Provident Fund	These are Grant Schools Provident Fund and Subsidized Schools Provident Fund registered under the respective rules.

(a) If yes, the Entity is likely to be a Non-reporting FI.

(b) If no, move to Question 10 of Section 2.

# Section 2 – Non-Financial Entity

The purpose of Section 2 is to assist you in determining the specific NFE sub-status of the Entity.





### **Category C – Active NFE – Publicly Traded NFE**

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**Question 10:** Is the stock of the NFE regularly traded on an established securities market (See Note 3 below)?

- (a) If yes, the Entity is likely to be an Active NFE – Publicly Traded NFE.
- (b) If no, move to Question 11 of Category D.

**Note 3:** Established securities market means an exchange-

- that is officially recognized and supervised by a government authority of a territory in which the exchange is located; and
- that has an annual value of shares traded on it (or on its predecessor) exceeding HK\$7.8 billion during each of the last 3 calendar years.

### **Category D – Active NFE – Related Entity of Publicly Traded Corporation**

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**Question 11:** Is the Entity a Related Entity of a Publicly Traded Corporation (See Note 4 below)?

- (a) If yes, the Entity is likely to be an Active NFE – Related Entity of Publicly Traded Corporation.
- (b) If no, move to Question 12 of Category E1.

**Note 4:** It is irrelevant whether the Publicly Traded Corporation is an FI or an NFE.

### **Category E1 – Active NFE – Governmental Entity**

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**Question 12:** Is the Entity a government of a jurisdiction, a government of any political subdivision of a jurisdiction or a statutory body/entity which is wholly owned by the government of a jurisdiction?

- (a) If yes, the Entity is likely to be an Active NFE – Governmental Entity.
- (b) If no, move to Question 13 of Category E2.

### **Category E2 – Active NFE – Central Bank**

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**Question 13:** Is the Entity a bank that is by law or government sanction the principal authority (other than the government in that jurisdiction) issuing instruments intended to circulate as currency, or an entity which is wholly owned by a Central Bank?

- (a) If yes, the Entity is likely to be an Active NFE – Central Bank but you may double check that the Entity is not already an FI under Section 1 and Section 2.
- (b) If no, move to Question 14 of Category E3.

### **Category E3 – Active NFE – International Organization**

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**Question 14:** Is the Entity an International Organization or an entity which is wholly owned by an International Organization?

- (a) If yes, the Entity is likely to be an Active NFE – International Organization.
- (b) If no, move to Question 15 of Category F1.

## **Category F1 – Active NFE – By Reason of Income or Assets**

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**Question 15:** Was less than 50% of the Entity's gross income for the preceding calendar year or other reporting period Passive Income (See Note 5 below)?

- (a) If yes, move to Question 16.
- (b) If no, move to Question 17 of Category F2.

**Note 5:** **Passive Income means the portion of gross income that consists of:**

- **Dividend;**
- **Interest (including income equivalent to interest);**
- **Rent and royalties (other than rents and royalties derived from the active conduct of a business undertaken, at least in part, by the employees of the NFE);**
- **Annuities;**
- **The excess of gains over losses from the sale or exchange of Financial Assets that give rise to the Passive Income described above;**
- **The excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;**
- **The excess of foreign currency gains over foreign currency losses;**
- **Net income from swaps; or**
- **Amounts received under Cash Value Insurance Contracts.**

**Question 16:** Was less than 50% of the assets held by the Entity during the preceding calendar year or other reporting period assets that produce or are held for the production of Passive Income?

- (a) If yes, the Entity is likely to be an Active NFE – Others (by reason of income and assets).
- (b) If no, move to Question 17 of Category F2.

## **Category F2 – Active NFE – Holding or Group Financing Company**

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**Question 17:** Do 80% or more of the activities of the entity consist of:

- (i) holding (in whole or in part) the outstanding stock of one or more subsidiaries that engage in trades or businesses other than the business of an FI (“holding activities”); and/or
- (ii) providing financing and services to one or more subsidiaries that engage in trades or businesses other than the business of an FI (“group financing activities”)?

**Note 6:** **Even if the holding and group finance activities of the Entity constitute less than 80% of its activities but the Entity receives also Active Income (i.e. income that is not Passive Income) otherwise, it nevertheless meets the definition above provided that the total sum of such activities equals or exceeds 80% of its total activities.**

- (a) If yes, move to Question 18.
- (b) If no, move to Question 20 of Category F3.

**Question 18:** Does the entity function or hold itself out as an investment fund, including private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies, and then to hold interests in those companies as capital assets for investment purposes?

- (a) If yes, the Entity may be an FI under Section 1. If the Entity is not an FI, move to Question 20 of Category F3.
- (b) If no, move to Question 19.

**Question 19:** Is the entity part of a group that is primarily engaged in a business other than that of an FI?

- (a) If yes, the Entity is likely to be an Active NFE – Others (Holding or Group Financing Company).
- (b) If no, move to Question 20 of Category F3.

#### **Category F3 – Active NFE – Start-up Company**

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**Question 20:** Is the Entity not yet operating a business and having no prior operating history but is investing capital into assets with the intent to operate a business other than that of an FI and not more than 24 months have elapsed since the date of the incorporation?

- (a) If yes, the Entity is likely to be an Active NFE – Others (Start-up Company).
- (b) If no, move to Question 21 of Category F4.

#### **Category F4 – Active NFE – Liquidating Company**

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**Question 21:** Is the entity not an FI in the past 5 years and is in the process of:

- (i) liquidating its assets; or
- (ii) reorganizing with the intent to continue or recommence operations in a business other than that of an FI?

- (a) If yes, the Entity is likely to be an Active NFE – Others (Liquidating Company).
- (b) If no, move to Question 22 of Category F5.

#### **Category F5 – Active NFE – Treasury Centre**

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**Question 22:** Is the Entity primarily engaged in financing and hedging transactions with or for its Related Entities that are not FIs?

- (a) If yes, move to Question 23.
- (b) If no, move to Question 25 of Category F6.

**Question 23:** Does the Entity provide financing or hedging services to any entity that is not its Related Entity?

- (a) If yes, move to Question 25 of Category F6.
- (b) If no, move to Question 24.

**Question 24:** Is the Entity part of a group that is primarily engaged in a business other than that of an FI?

- (a) If yes, the Entity is likely to be an Active NFE – Others (Treasury Centre).
- (b) If no, move to Question 25 of Category F6.

#### **Category F6 – Active NFE – Non-profit Organization**

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**Question 25:** Is the NFE established and operated in its jurisdiction of residence for tax purposes exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes?

- (a) If yes, move to Question 26.
- (b) If no, move to Category G.

**Question 26:** Is the NFE established and operated in its jurisdiction of residence for tax purposes, and is it 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?

- (a) If yes, move to Question 27.
- (b) If no, move to Category G.

**Question 27:** Is the NFE exempt from income tax in its jurisdiction of residence for tax purposes?

- (a) If yes, move to Question 28.
- (b) If no, move to Category G.

**Question 28:** Have the NFE shareholders or members who have a proprietary or beneficial interest in its income or assets?

- (a) If yes, move to Category G.
- (b) If no, move to Question 29.

**Question 29:** Under the applicable laws of the NFE's jurisdiction of residence for tax purposes or the NFE's formation documents, is it permitted that any income or assets of the NFE is 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 Entity has purchased?

- (a) If yes, move to Category G.
- (b) If no, move to Question 30.

**Question 30:** Under the applicable laws of the NFE's jurisdiction of residence for tax purposes or the NFE's formation documents, is it required that, upon the NFE's liquidation or dissolution, all of its assets are distributed to a Governmental Entity or

other Non-profit Organization, or escheated to the government of the NFE's jurisdiction of residence for tax purposes or any political subdivision thereof?

- (a) If yes, the Entity is likely to be an Active NFE – Others (Non-profit Organization).
- (b) If no, move to Category G.

### **Category G – Passive NFE**

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Based upon your responses above, the Entity is likely to be a Passive NFE.

A Passive NFE refers to:

- (i) An NFE that is not an Active NFE defined in Category C to F above; or
- (ii) A Managed Investment Entity that is a resident in a non-Participating Jurisdiction.

If the Entity is a Passive NFE, each of its “Controlling Persons” will need to provide their tax residence and Taxpayer Identification Number on the CRS self-certification for Controlling Persons.

### Controlling Persons

The term “Controlling Person” means any natural person who exercises control over an Entity. Control over an Entity that is a legal person is generally exercised by the natural person who ultimately has a controlling ownership interest in the Entity (i.e. more than the specified percentage<sup>^</sup> of issued share capital/capital/profits).

Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means (i.e. more than the specified percentage<sup>^</sup> of voting rights). Where no natural person(s) is identified as exercising control over the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of a trust (and similar legal arrangement such as foundations), the term “Controlling Persons” means the settlor(s), the trustee(s), the protector(s) (if any), the enforcer(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust (or, in case of a similar legal arrangement, any natural person in an equivalent position). The settlor(s), the trustee(s), the protector(s) (if any), the enforcer(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust.

<sup>^</sup> With effect from 1<sup>st</sup> January, 2021, the specified percentage is: 25% in relation to a corporation; and 0% in relation to a partnership.

# Glossary

## **“Account Holder”**

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

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, intermediary, or legal guardian, is not treated as the Account Holder. In these circumstances that other person is the Account Holder. For example in the case of a parent/child relationship where the parent is acting as a legal guardian, the child is regarded as the Account Holder.

With respect to a jointly held account, each joint holder is treated as an Account Holder.

## **“Active NFE”**

An NFE is an Active NFE if it meets any of the criteria listed below. In summary, those criteria refer to:

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

An entity will be classified as Active NFE if it meets any of the following criteria:

- (a) less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- (c) the NFE is a governmental Entity, an international organisation, a central bank, or an Entity wholly owned by one or more of the foregoing;

- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) the NFE is not yet operating a business and has no prior operating history, (a “start-up NFE”) but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) the NFE meets all of the following requirements (a “non-profit NFE”) :
  - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - (ii) it is exempt from income tax in its jurisdiction of residence;
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - (v) the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents require that, upon the NFE’s liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFE’s jurisdiction of residence or any political subdivision.

## **“Control”**

“Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest (typically on the basis of a certain percentage) in the Entity. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is/are identified as exercising control of the Entity through ownership interests, the Controlling Person of the Entity is deemed to be the natural person who holds the position of senior managing official or exercises ultimate control over the management of the Entity.

## **“Controlling Person(s)”**

“Controlling Persons” are the natural person(s) who exercise control over an Entity. In the case of a trust, the Controlling Person(s) include the settlor(s), the trustee(s), the protector(s) or, enforcer(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) or, enforcer(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.

Where the settlor, trustee, protector or enforcer, or beneficiary of a trust are themselves Entities then the Controlling Persons of the settlor, trustee, protector or enforcer, or beneficiary must be treated as Controlling Persons of the trust.

In the case of a legal arrangement other than a trust, “Controlling Person(s)” means persons in equivalent or similar positions to those of a trust.

## **“Custodial Institution”**

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

## **"Depository Institution"**

The term “Depository Institution” means an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155) or any Entity that accepts deposits in the ordinary course of a banking or similar business.

## **“Entity”**

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



### **“Financial Institution”**

The term “Financial Institution” means a “Custodial Institution”, a “Depository Institution”, an “Investment Entity”, or a “Specified Insurance Company”.

### **“Investment Entity”**

The term “Investment Entity” means:

- (a) a corporation licensed under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities –
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) leveraged foreign exchange trading;
  - (iv) asset management;
- (b) an institution registered under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities –
  - (i) dealing in securities;
  - (ii) trading in futures contracts;
  - (iii) asset management;
- (c) a collective investment scheme authorized under the Securities and Futures Ordinance (Cap. 571);
- (d) an Entity 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 entity or individual. Such activities or operations do not include rendering non-binding investment advice to a customer.
- (e) the second type of “Investment Entity” (“Investment Entity managed by another Financial Institution”) is any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets where the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in (a), (b), (c) or (d) above.

### **“Investment Entity managed by another Financial Institution and located in a Non-Participating Jurisdiction”**

The term “Investment Entity that is managed by another Financial Institution and located in a Non-Participating Jurisdiction” means any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets if the Entity

is (i) managed by a Financial Institution and (ii) not a Participating Jurisdiction Financial Institution.

#### **“Investment Entity managed by another Financial Institution”**

An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider on behalf of the managed Entity, any of the activities or operations described in paragraph (d) above in the definition of “Investment Entity”.

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

#### **“NFE”**

An “NFE” is any Entity that is not a Financial Institution.

#### **“Participating Jurisdiction”**

A “Participating Jurisdiction” means a jurisdiction outside Hong Kong that is specified in Part 2 of Schedule 17E of the Inland Revenue Ordinance (Cap. 112).

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

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

#### **“Passive NFE”**

A “Passive NFE” means any: (i) NFE that is not an Active NFE; and (ii) Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution.

#### **“Related Entity”**

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

#### **“Resident for tax purposes”**

Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction. 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. A trust is treated as resident where one or more of its trustees is resident. For additional information on tax residence, please talk to your tax adviser or refer to the OECD Automatic Exchange Portal at the following link:

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>.

### **“Specified Insurance Company”**

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

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

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

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/>

Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include –

- (a) (for individuals) a social security/insurance number, citizen/personal identification/service code/number, and resident registration number.
- (b) (for Entities) a Business/company registration code/number.