



Common Reporting Standard (CRS) Guidance Notes

22 September 2020

Compliance Requirements for

Income Tax (Automatic Exchange of Financial Account
Information) Rules 2016

Income Tax (Automatic Exchange of Financial Account
Information) (Amendment) Rules 2017

Income Tax (Automatic Exchange of Financial Account
Information) (Amendment) Rules 2020

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Labuan Business Activity Tax (Automatic Exchange of Financial
Account Information) Regulations 2018

Labuan Business Activity Tax (Automatic Exchange of Financial
Account Information) (Amendment) Regulations 2020

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Table of Contents

1. Objective	1
2. Background	1
3. Effective implementation	2
4. Exchanging of CRS information	2
4.1. Mechanism.....	2
4.2. List of jurisdictions that Malaysia will exchange the CRS information	2
5. Implementation Timelines	3
5.1. General provision	3
5.2. Special provision for Pre-existing Individual Account	4
6. Financial Institutions	4
6.1. Overview	4
6.2. Related Entities	5
6.3. Custodial Institutions	5
6.4. Depository Institutions	6
6.5. Investment Entities	7
6.6. Collective Investment Schemes (CIS)	8
6.7. Non-Participating Jurisdictions Investment Entities	10
6.8. Fund Distributors	10
6.9. Advisory-only Distributors.....	11
6.10. Specified Insurance Companies.....	11
7. Non-Financial Entities (NFEs)	12
7.1. Overview	12
7.2. Active NFEs.....	12
7.3. Passive Income	14
7.4. Passive NFEs.....	14
8. Non-Reporting Malaysian Financial Institutions	15
8.1. Overview	15
8.2. Governmental Entities	15
8.3. International Organisations.....	16
8.4. Central Bank.....	16
8.5. Broad Participation Retirement Fund	16
8.6. Narrow Participation Retirement Fund	17

8.7.	Pension Funds of Government Entities, International Organisations or Central Banks.....	18
8.8.	Qualified Credit Card Issuers	18
8.9.	Other Low Risk Entities Defined in Domestic Law.....	18
8.10.	Exempt Collective Investment Vehicles.....	18
8.11.	Trust where the Trustee is a Reporting FI	19
9.	Financial Accounts	19
9.1.	Overview	19
9.2.	Reportable Accounts	20
9.3.	Account Holders	20
9.4.	Account Held by Non-FI Agents	20
9.5.	Joint Accounts.....	21
9.6.	Account Holders for Cash Value Insurance and Annuity Contracts..	21
9.7.	Depository Accounts	21
9.8.	Custodial Accounts.....	22
9.9.	Cash Value Insurance Contract.....	23
9.10.	An Equity or Debt Interest in Investment Entities	24
9.11.	Excluded Accounts.....	25
9.12.	Rollovers	28
9.13.	Syndicated Loans.....	28
10.	Due Diligence Procedures	29
10.1.	General Requirements	29
10.2.	Wider Approach on CRS	30
10.3.	Pre-existing Accounts.....	30
10.4.	High Value Pre-existing Individual accounts.....	30
10.5.	Lower Value Pre-existing Individual Accounts.....	31
10.6.	Residence Address Test	31
10.7.	Pre-existing Entity Accounts.....	32
10.8.	New Accounts	32
10.9.	New Individual Accounts	32
10.10.	New Entity Accounts Not Required to Be Reviewed, Identified or Reported.....	33
10.11.	New Entity Accounts Review Procedures.....	33

10.12. Alternative Procedures for Cash Value insurance and Annuity Contract	34
10.13. Account Balance Aggregation and Currency Translation Rule.....	35
10.14. Documentary Evidence	36
10.15. Self-certification.....	36
10.16. Tax Residency.....	37
11. Reporting.....	38
11.1. Overview	38
11.2. Registration	38
11.3. Information to be Reported.....	38
11.4. Explanation of Information Required	39
11.5. Reporting to IRBM.....	42
12. Compliance	42
12.1. Anti-Avoidance	42
12.2. Penalties.....	43
12.3. Others.....	43
13. Contact Information.....	43

1. Objective

- 1.1. The purpose of this Guidance Notes is to provide guidance to:
- a) Malaysian Financial Institutions (MYFIs) in meeting their due diligence and reporting obligations under the Common Reporting Standard (CRS).
 - b) Clarify the options which Malaysia has adopted in respect to the CRS implementation.

2. Background

- 2.1. The CRS was developed by the Organisation for Economic Development and Cooperation (OECD) to put a global model of automatic exchange of information into practice. It sets out the financial account information to be exchanged, the Financial Institutions (FIs) required to report, the different types of accounts and taxpayers covered, as well as due diligence procedures to be followed by FIs.
- 2.2. The CRS is contained in the OECD publication of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (Standard).
- 2.3. The Standard consists of:
- 2.3.1. The CRS which contains the due diligence rules for FIs to follow in order to collect and then report the required information;
 - 2.3.2. The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA) or any bilateral Competent Authority Agreement (CAA) which links the CRS to the legal basis for exchange and contains the detailed rules on the information to be exchanged; and
 - 2.3.3. The Commentaries that illustrate and interpret the MCAA and the CRS.
- 2.4. In certain areas the CRS provides optional approaches allowing jurisdictions to adopt the one most suited to their circumstances. Most of the optional provisions are intended to provide greater flexibility for FIs.
- 2.5. The OECD has also published a CRS Implementation Handbook (Implementation Handbook) which provides guidance on practical aspects and operation of the CRS.
- 2.6. This Guidance Notes includes quotations from an OECD publication: the Standard for Automatic Exchange of Financial Account Information, © OECD 2017. OECD is the copyright owner of this material.

3. Effective implementation

- 3.1. CRS obligations are imposed on MYFIs through the operation of the:
 - 3.1.1. Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 (CRS Rules) and Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017
 - 3.1.2. Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) Regulations 2018 (CRS Regulations)
- 3.2. For the effective implementation of the CRS, a MYFI must apply the CRS Rules or the CRS Regulations in force at the time with reference to the CRS itself and the OECD's guidance contained in the CRS Commentaries and the Implementation Handbook.

4. Exchanging of CRS information

4.1. Mechanism

In order for jurisdictions to exchange the information required by the CRS with one another on an automatic basis the jurisdictions must have the appropriate legal framework in place. The mechanism for the majority of exchanges between jurisdictions adopting the CRS will be the MCAA.

The MCAA is a multilateral framework agreement to automatically exchange information based on Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).

For jurisdictions that are not signatories to the MAC, exchanges can instead be undertaken where a bilateral CAA is in place between jurisdictions and there is a relevant automatic exchange article in the Double Taxation Agreement (DTA) or Tax Information Exchange Agreement (TIEA) between those jurisdictions.

4.2. List of jurisdictions that Malaysia will exchange the CRS information

- 4.2.1. The Inland Revenue Board of Malaysia (IRBM) will publish a list on its website, jurisdictions with which Malaysia will exchange information using the MCAA or CAA and MAC, DTA or TIEA.
- 4.2.2. Reporting MYFIs are required to check the published list to ensure that they report to IRBM the reportable accounts of all the jurisdictions with which Malaysia will exchange the CRS information.

- 4.2.3. The initial list of Reportable Jurisdictions will be published by **15 January 2018** and will be updated by **30 June 2018** as a **final list** of reportable jurisdictions for reporting to IRBM in **2018**. This list will be updated again on **15 January 2019** and **30 June 2019** for reporting to IRBM in **2019**. For **2020 reporting onwards**, the list will be updated and made final on 15 January each year for that reporting period.

5. Implementation Timelines

5.1. General provision

Subject	Timeline
Pre-existing accounts cut-off date	30 June 2017
New Account	Opened on or after 1 July 2017
Determination date whether pre-existing individual account meet the high value threshold (USD1,000,000)	30 June 2017, 31 December 2017 and 31 December of subsequent calendar years
Determination date whether pre-existing entity account meet the threshold for review (USD250,000)	30 June 2017, 31 December 2017 and 31 December of subsequent calendar years
Review of Pre-existing High Value Individual Account must be completed by	30 June 2018
Review of Pre-existing Lower Value Individual Account must be completed by	30 June 2019
Review of Pre-existing Entity Accounts must be completed by	30 June 2019
Reporting to IRBM	31 July 2018* 31 July 2019* 30 June 2020 and 30 June of subsequent years *Reporting for 2018 and 2019 for all accounts extended to 31 July to be in line with the special provision for Pre-existing Individual Accounts reporting requirement

5.2. **Special provision for Pre-existing Individual Account**

- 5.2.1. Pre-existing Individual Accounts that are high value accounts on **30 June 2017** must be reviewed by **30 June 2018** and if identified as Reportable must be reported to IRBM by **31 July 2018**.
- 5.2.2. Pre-existing Individual Account that was low value as at **30 June 2017** but meets the high value threshold as at the determination date of **31 December 2017** must be reviewed by **31 December 2018** and reported by **31 July 2019**.
- 5.2.3. Pre-existing Individual Accounts that are low value accounts on **30 June 2017** must be reviewed by **30 June 2019**. However, for any Pre-existing Individual Accounts identified as reportable by **31 December 2017**, they must be reported by **31 July 2018**. Accounts identified reportable from **1 January 2018 to 30 June 2019** should be reported by **31 July 2019**.

6. **Financial Institutions**

6.1. **Overview**

- 6.1.1. For the purpose of the implementation of the CRS Rules and CRS Regulations, the first step to be undertaken by an entity or its representative is to establish whether it is a FI. This will determine the extent of the obligations and requirements that need to be fulfilled.
- 6.1.2. Each category of FIs is determined by a set of criteria which must be met. Where an entity does not meet the definition of a FI then the entity will be regarded as a Non-Financial Entity (NFE).
- 6.1.3. Malaysian entities are regarded as MYFIs if they fall within any of, or more than one of, the following categories:
 - a) Custodial Institution
 - b) Depository Institution
 - c) Investment Entity
 - d) Specified Insurance Company
- 6.1.4. MYFIs will be classified either as a Reporting MYFI or a Non-Reporting MYFI.

6.1.5. A MYFI is:

- a) Any FI that is a tax resident in Malaysia under the ITA 1967 , but exclude any branch of the FI located outside Malaysia; or
- b) Any branch of a FI that is not tax resident under the ITA 1967, if the branch is located in Malaysia; or
- c) Any FI that is a tax resident in Malaysia under the ITA 1967 and also in another country.
- d) Any Labuan Entity under the Labuan Business Activity Tax Act 1990 that is a FI.

6.2. **Related Entities**

6.2.1. The definition for Related Entity given in Section VIII, E.4 of the CRS is replaced as follows as set in the CRS Rules and CRS Regulations which state that an entity is regarded as being related to another entity if:

- a) Either entity controls the other entity;
- b) The two entities are under common control; or
- c) The two entities are professionally managed Investment Entities (see Section 6.5), 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 or value in an entity.

6.3. **Custodial Institutions**

6.3.1. A Custodial Institution is an entity that holds financial assets for the account of others as a substantial portion of its business. A substantial portion means 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:

- a) 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
- b) The period since the entity commenced business.

6.3.2. Related financial services are any ancillary services directly related to the holding of financial assets by the entity on behalf of others. Income from such services include:

- a) Custody, account maintenance and transfer fees;
- b) Execution and pricing commission and fees from securities transactions;
- c) Income earned from extending credit to customers;
- d) Income earned from contracts for differences and on the bid-ask spread of financial assets; and
- e) Fees for providing financial advice, clearance and settlement services (an entity could qualify as a Custodial Institution even if the entity's sole business is to provide financial advice to clients, and it does not conduct any activities as a custodian or broker).

6.3.3. Such entity could include brokers (trading or clearing), custodian banks, trust companies and nominees. Insurance brokers that do not hold assets on behalf of clients do not fall within the scope of this provision.

6.3.4. In relation to a client of a holder of Capital Markets Services Licence, "Custodial Institutions" refer to "custodian" as defined under Section 121 of the Capital Markets & Services Act (CMSA) 2007.

6.4. **Depository Institutions**

6.4.1. A Depository Institution is an entity which accepts deposits in the ordinary course of banking or similar business. An entity is considered to be engaged in banking or similar business if the entity undertakes one or more of the following activities in the ordinary course of its business:

- a) Accepting deposits on current account, deposit account, savings account or other similar account;
- b) Paying or collecting cheques drawn by or paid in by customers;
- c) Provision of finance; or
- d) Accepting money under an investment account.

6.4.2. Entities that fall within this scope of institutions includes financial institutions regulated in Malaysia under the:

- a) Financial Services Act (FSA) 2013;
- b) Islamic Financial Services Act (IFSA) 2013;

- c) Development Financial Institutions Act 2002;
- d) Labuan Financial Services and Securities Act (LFSSA) 2010; and
- e) Labuan Islamic Financial Services and Securities Act (LIFSSA) 2010.

6.5. Investment Entities

6.5.1. Under the CRS Rules and CRS Regulations an entity will be an investment entity if:

- a) The entity 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 (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 funds or money on behalf of other persons: or
- b) The gross income of the entity is primarily attributable to investing, reinvesting, or trading in Financial Assets and is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in Section 6.5.1 (a).

6.5.2. An entity will be regarded as an Investment Entity under Section 6.5.1 (b) if its gross income from these activities is at least 50% of its total gross income during the shorter of either the:

- a) Three-year period ending 31 December in the year proceeding that in which its status as an Investment Entity is to be determined; or
- b) Period in which the entity has been in existence.

6.5.3. An entity is managed by another entity if the managing entity performs, either directly or through another service provider, any of the activities or operation under Section 6.5.1 on behalf of the entity.

6.5.4. An entity is regarded as not managing another entity if it does not have a discretionary authority to manage the entity's asset in whole or part.

6.5.5. The types of Investment Entities include:

- a) Collective Investment Schemes (see Section 6.6);
- b) Fund Distributors (see Section 6.8); and
- c) Advisory-only Distributors (see Section 6.9).

6.5.6. Investment entities also include the following:

- a) Fund Manager and/or Fund Administrator licensed pursuant to Part III of the LFSSA 2010;
- b) Securities Licensee licensed pursuant to Part IV of the LFSSA 2010;
- c) Islamic Fund Manager and Fund Administrator licensed pursuant to Part IV of LIFSSA 2010;
- d) Islamic Securities Licensee licensed pursuant to Part V of LIFSSA 2010; and
- e) A holder of Capital Markets Services Licence under Section 58(1) of the CMSA for any of the following regulated activities listed in Schedule 2 of CMSA:
 - i. Dealing in securities;
 - ii. Dealing in derivatives; or
 - iii. Fund management.

6.6. **Collective Investment Schemes (CIS)**

6.6.1. The account due diligence and reporting obligation on the Account Holders for CIS constituted in Malaysia lies with MYFIs. CIS constituted outside of Malaysia may still be a Reporting FI under the CRS Rules and CRS Regulations if such entities have their place of effective management in Malaysia or subject to financial regulation in Malaysia.

6.6.2. A CIS constituted in Malaysia means:

- a) Where the CIS is incorporated as a company, a Malaysian-incorporated company;
- b) Where the CIS is constituted under a trust structure, a CIS whose trust deed is subject to Malaysian laws and whose trustee is located and registered in Malaysia. A trust which is not registered in Malaysia regardless whether it is resident for tax purposes in Malaysia is still a Reporting FI under the CRS Rules and CRS Regulations if one or more of

its trustees are resident in Malaysia except if the trust reports all the information required to be reported pursuant to the CRS with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction because it is resident for tax purposes in such other Participating Jurisdiction; or

- c) Where the CIS is established under a custodial structure, a CIS whose custodian agreement is subject to Malaysian laws.

6.6.3. CIS include the following:

- a) Mutual Fund registered pursuant to Part III of the LFSSA 2010;
- b) Issuance of Securities approved pursuant to Part II of the LFSSA 2010;
- c) Islamic Mutual Fund registered pursuant to Part IV of LIFSSA 2010;
- d) Issuance of Securities approved pursuant to Part III of LIFSSA 2010; and
- e) Unit trusts schemes and prescribed investment schemes that are approved, authorised or recognised by the SC under the CMSA 2007. In this regard, CIS means, any arrangement where:
 - i. It is made for the purpose, or having the effect of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, derivatives or any other property (hereinafter referred to as scheme's assets) or sums paid out of such profits or income;
 - ii. The persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and
 - iii. The scheme's assets are managed by an entity who is responsible for the management of the scheme's assets and is approved, authorised or licensed by a securities regulator to conduct fund management activities.

6.6.4. For the purpose of the CRS Rules and CRS Regulations, any Investment Entity other than:

- a) A CIS; or
- b) A manager or operator for the CIS that is not constituted as an entity;

will not have any reporting responsibilities in relation to the interests in the CIS.

6.6.5. For unlisted CIS, the manager of that CIS will be responsible to carry out account due diligence and reporting obligations under the CRS Rules or CRS Regulations. The manager may appoint a third party service provider to fulfill the account identification and reporting requirements, but the manager remains responsible in ensuring that these requirements are fulfilled.

6.6.6. Account identification and reporting obligations apply only to direct Account Holders under the manager. For indirect individual accounts held through an intermediary MYFI (e.g. on a nominee basis or platform), the obligation of the manager is to identify the direct Account Holder (i.e. the intermediary MYFI) only. In turn, the intermediary MYFI has its own obligation to identify and report on its Account Holders under the CRS Rules and CRS Regulations.

6.7. **Non-Participating Jurisdictions Investment Entities**

6.7.1. MYFIs are required to treat Investment Entities that is managed by another entity referred to in Section 6.5.3 that are resident in or located in any Non-Participating Jurisdiction as Passive NFE and therefore report on the Controlling Persons of such entities that are Reportable Persons as defined in Section VIII, D.2 of the CRS.

6.7.2. The List of Participating jurisdictions is published on the IRBM website and is revised by 15 January every year.

6.8. **Fund Distributors**

6.8.1. Under the CRS Rules and CRS Regulations, Fund distributors fall within the definition of Investment Entity because of the role in distributing a CIS.

6.8.2. Fund distributors include:

- a) Financial advisers;
- b) Institutional Unit Trust Adviser (IUTA) registered with Federation of Investment Managers Malaysia (FIMM); and
- c) Corporate Unit Trust Adviser (CUTA) registered with FIMM.

6.8.3. There are two types of fund distributors:

- a) Those that act as an intermediary in holding the legal title to the CIS (such as a nominee); and
- b) Those that act on an advisory only basis.

6.8.4. Where a unit holder appears on a CIS's register, the responsibility to report on that unit holder lies with the MYFIs. Where a fund distributor appears on a CIS's register on behalf of their unit holder as nominees, the fund distributor will be responsible for reporting on its Financial Account.

6.8.5. A fund distributor may have a “mixed business” i.e. it acts as an adviser or “pure intermediary” between the investor and the underlying CIS, on behalf of some unit holder. In addition, it also holds legal title to interests on behalf of other customers. In the case where legal title is held, the fund distributor will be a MYFI, with a reporting obligation in respect of those interests.

6.9. **Advisory-only Distributors**

6.9.1. Financial advisers are those providing services limited to investment advice to their customers, acting as intermediary between a CIS, fund platform and customers. They do not hold legal title to the assets and therefore are not in the chain of ownership of a CIS and will not be regarded as the FIs that maintain the Financial Accounts of their customers. Such financial advisers may nevertheless be asked by FIs to provide assistance in identifying Account Holders and obtaining self-certifications.

6.9.2. The reason for FIs to depend on financial advisers is that such financial advisers often have the most in-depth knowledge of and direct access to the customer thus rendering them a good source for self-certification. However, because such financial advisers may not be FIs, they will only have obligations pursuant to contractual agreements with those FIs for which the financial advisers act as a third party service provider in relations to those Financial Accounts.

6.10. **Specified Insurance Companies**

6.10.1. A licensed insurer under FSA 2013 or the LFSSA 2010 or a licensed takaful operator under the IFSA 2013 or the LIFSSA 2010 or a holding company of a licensed insurer or of a takaful operator would be treated as a Specified Insurance Company under CRS Rules and CRS Regulations if it issues, or is obligated to make payments with respect to the following Insurance Contracts:

a) A Cash Value Insurance Contract (means an Insurance Contract, other than an Indemnity Reinsurance Contract between two insurance companies, a Term Life Insurance Contract and general insurance contract); or

b) An Annuity Contract.

6.10.2. Insurance brokers/takaful brokers will not be classified as a Specified Insurance Company unless they have obligation to make payments under the terms of the Insurance or Annuity Contract. An insurer or takaful operator that offers only general insurance contract is not generally treated as a FI under the CRS Rules and CRS Regulations. It is instead classified as a NFE unless it has financial accounts.

6.10.3. Any reference to insurance contract includes takaful contract.

7. Non-Financial Entities (NFEs)

7.1. Overview

7.1.1. An NFE is any entity that is not a FI. There are two categories of NFEs:

- a) Active NFEs; and
- b) Passive NFEs.

7.1.2. NFE has no reporting obligations to IRBM. However, it must determine its CRS classification and, where necessary, self-certify its classification to the Reporting MYFI that maintains its Financial Accounts.

7.1.3. A Passive NFE may be required to obtain self-certification from a Controlling Person of that NFE.

7.1.4. A Reporting MYFI must report Financial Accounts that are held by Passive NFEs with Controlling Persons that are non-residents.

7.2. Active NFEs

7.2.1. An Active NFE is defined as any NFE that meets any ONE of the following criteria:

- a) Less than 50% of the NFE's gross income for the preceding calendar year is Passive Income (see Section 7.3 on "Passive Income") and less than 50% of the assets held by the NFE during the preceding calendar year were assets that produce or are held for the production of passive income;
- b) The share of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an entity, the share of which is regularly traded on an established securities market (see Section 9.10);
- 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 share of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a FI, except that an entity shall not qualify for NFE 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 FI, provided that such a NFE shall not qualify for this exception after the date that is 24 months after the date of the initial incorporation of the NFE;
- f) The NFE was not a FI 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 FI;
- g) The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, 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 FI; 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 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 charity 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 government entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

7.2.2. The Malaysian Employees Provident Fund (EPF) which is established under the Employees Provident Fund Act 1991 is an active NFE based on subparagraph VIII.B.2 and VIII.D.9.c of the CRS. As a consequence EPF approved members investment schemes are out of scope under the CRS Rules and CRS Regulations.

7.3. **Passive Income**

7.3.1. Passive income means non-trading income and would include:

- a) Dividend;
- b) Interest;
- c) Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amount received depends in whole or part upon the performance of the pool;
- d) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFE;
- e) Annuities;
- f) Net gains from the sale or exchange of property that gives rise to passive income described under the above items; and
- g) Foreign currency gains.

7.3.2. Passive income does not include any income from interest, dividends, rents or royalties received or accrued from a related person to the extent such amount is properly derived from income of that related person that is not passive income. For purposes of the CRS Rules and CRS Regulations, a person is a related person with respect to the NFE if:

- a) Such a person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the NFE; or
- b) Such a person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the NFE.

7.4. **Passive NFEs**

7.4.1. A Passive NFE:

- a) is any NFE that is not an Active NFE; or

b) An Investment Entity that is not a Participating Jurisdiction FI.

7.4.2. MYFIs must assess the accounts of Passive NFEs when undertaking the due diligence procedures under the CRS Rules and CRS Regulations to identify Controlling Persons who are non-residents.

8. Non-Reporting Malaysian Financial Institutions

8.1. Overview

8.1.1. A Non-Reporting MYFI is any MYFI that falls within the various categories, listed below, as set out in the CRS Rules, CRS Regulations and Section VIII, B.1 of the CRS:

- a) Governmental Entities, International Organisations or a 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) Broad Participation Retirement Fund;
- c) Narrow Participation Retirement Fund;
- d) Pension Funds of Governmental Entities, International Organisations or Central Banks;
- e) Qualified Credit Card Issuers;
- f) Other Low Risk Entities Defined in Domestic Law;
- g) Exempt Collective Investment Vehicle; and
- h) Trusts where the Trustee is a Reporting FI.

8.2. Governmental Entities

8.2.1. Governmental entities include the following:

- a) All Malaysian Ministries and their wholly owned and controlled entities, whether held directly or indirectly;
- b) All Statutory Bodies and their wholly owned and controlled entities, whether held directly or indirectly;
- c) All State Government Authorities and their wholly owned and controlled entities, whether held directly or indirectly;

- d) All Local Authorities including City, Municipal and District Councils and their wholly owned and controlled entities, whether held directly or indirectly; and
- e) All Organs of Government.

8.3. International Organisations

8.3.1. This comprises any Malaysian office of any international organisations and any wholly owned agency or instrumentality thereof, as provided under the International Organisations (Privileges And Immunities) Act 1992 and also include the following entities:

- a) International Islamic Liquidity Management Corporation established under the International Islamic Liquidity Management Act 2011;
- b) Islamic Finance Services Board established under the Islamic Finance Services Board Act 2002;
- c) Islamic Development Bank Kuala Lumpur Regional Office; and
- d) ASEAN Infrastructure Fund Ltd.

8.4. Central Bank

This refers to Bank Negara Malaysia established under the Central Bank of Malaysia Act 2009 and all its wholly-owned subsidiaries and International Representative Offices.

8.5. Broad Participation Retirement Fund

8.5.1. A fund established in Malaysia to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or person designated by such employees) of one or more employers in consideration for services rendered, provided that 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 relevant authorities in Malaysia; 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 Section VIII, B.5 through B.7 of the CRS or from retirement and pension accounts described in subparagraph Section VIII, C.17(a) of the CRS from the 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 Section VIII, B.5 through B.7 of the CRS or retirement and pension accounts described in Section VIII, C.17(a) of the CRS, 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 Section VII, C of the CRS for account aggregation and currency translation.

8.6. Narrow Participation Retirement Fund

- 8.6.1. A fund established in Malaysia 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 all requirements listed below are satisfied:
- 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 Section VIII, C.17(a) of the CRS) 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 relevant authorities.

8.7. **Pension Funds of Government Entities, International Organisations or Central Banks**

8.7.1. This means a fund established by a Government 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 personal services performed for the Government Entity, International Organisation or Central Bank.

8.8. **Qualified Credit Card Issuers**

8.8.1. A MYFI that is a Qualified Credit Card Issuer may be treated as Non-Reporting FI for the purpose of CRS FI if it meets the following requirements:

- a) It is a MYFI solely because it is an issuer of credit cards that accepts deposits only when the customer makes a payment in excess of a balance due with respect to the credit card account and overpayment is not immediately returned to the customer; and
- b) It has implemented policies and procedures by 1 July 2017 either to prevent a customer deposit in excess of USD50,000 or to ensure that any customer deposit in excess of USD50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(For treatment of credit card accounts please refer to section 9.7.3 and 10.10)

8.9. **Other Low Risk Entities Defined in Domestic Law**

8.9.1. Under the CRS, participating jurisdictions can define any jurisdiction-specific low risk entities as Non-Reporting FIs in their domestic law. In order to comply with the CRS, the entity must have substantially similar characteristics to the types of Non-Reporting FIs defined in Section VIII, B.1 of the CRS.

8.9.2. Malaysia has not identified any low risk entities as Non-Reporting FIs.

8.10. **Exempt Collective Investment Vehicles**

This refers to 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.

8.11. Trust where the Trustee is a Reporting FI

A trust to the extent that the trustee of the trust is a Reporting MYFI and reports all information required to be reported with respect to all Reportable Accounts of the trust.

9. Financial Accounts

9.1. Overview

9.1.1. Financial Account means an account maintained by a MYFI.

9.1.2. Only accounts that fall within the 5 categories of Financial Accounts under the CRS need to be reviewed. The 5 categories are:

- a) Depository Accounts ;
- b) Custodial Accounts ;
- c) Cash Value Insurance Contracts ;
- d) Annuity Contracts; and
- e) Equity and Debt Interests in Investment Entities.

9.1.3. A reporting MYFI or a third party acting on behalf of a MYFI must follow the due diligence procedures under the CRS Rules or CRS Regulations, to identify:

- a) Whether it maintains any Financial Accounts;
- b) The type of Financial Accounts held; and
- c) Whether the Financial Accounts are Reportable Accounts.

9.1.4. Certain Accounts as sets out in Section VIII, C.17 of the CRS are excluded from being treated as Financial Accounts. As such, MYFIs will have no reporting obligations under the CRS Rules or CRS Regulations in respect of these accounts or products.

9.2. **Reportable Accounts**

- 9.2.1. A Financial Account is a reportable account if it is identified as being held by one or more reportable persons or by a passive NFE with one or more controlling persons who are reportable persons.
- 9.2.2. Once a MYFI has identified the financial accounts it maintains, it needs to review all those accounts to identify the jurisdiction in which the Account Holder is tax resident and maintain the information for future use. This is in accordance to the wider approach which Malaysia has adopted.
- 9.2.3. MYFI will only need to report the information of non-resident account holders of Reportable Jurisdictions. Please refer to section 4.2 for information regarding List of Reportable Jurisdictions.

9.3. **Account Holders**

- 9.3.1. An Account Holder is a person listed or identified as the holder or owner of the account with the MYFI that maintains the account. For example:
 - a) Where an individual is listed as the holder of a Financial Account, the individual is the Account Holder. However, accounts held by individual partners will be treated as Entity Accounts as long as the partners hold the accounts “on behalf of” the partnership rather than in their personal capacity.
 - b) Where a Partnership is listed as the holder of a Financial Account, the Partnership is the Account Holder, rather than the partners in the Partnership.
 - c) Where a Trust is listed as the holder of a Financial Account, the Trust is the Account Holder, rather than its owners or beneficiaries.
- 9.3.2. For avoidance of doubt, “person” for the purpose of CRS means an individual, or an entity, that means a partnership or a corporation.

9.4. **Account Held by Non-FI Agents**

- 9.4.1. A person, other than a FI, that holds a Financial Account for the benefit or account of another person, as agent, custodian, nominee, signatory, investment adviser or intermediary, is not treated as an Account Holder for the purpose of the CRS.

9.5. **Joint Accounts**

- 9.5.1. Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to each joint holder of the account, for both aggregation and reporting purposes. The due diligence requirements under the CRS should be applied separately to each of the joint account holder in relation to that account.
- 9.5.2. Where a Financial Account is jointly held, and if at least one of the joint holders is identified as a non-resident, the account is treated as a non-resident Account.

9.6. **Account Holders for Cash Value Insurance and Annuity Contracts**

- 9.6.1. The Account Holder of a cash value Insurance or Annuity Contract is the person entitled to access the contract's value (for example through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.
- 9.6.2. Where no person can access the contract's value or change a beneficiary, the Account Holder is:
- a) Any person named in the contract as a policy owner or takaful participant; and
 - b) Any person who is entitled to receive a future payment under the terms of the contract.
- 9.6.3. When an obligation to pay an amount under the contract becomes due, each person that is entitled to receive a payment is an Account Holder.

9.7. **Depository Accounts**

- 9.7.1. A Depository Account is any commercial, current, savings, or an account that is evidenced by a certificate of deposit, 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.
- 9.7.2. The account does not have to be an interest bearing account. A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card

company engaged in banking or similar business. However, credit cards will not be considered as Depository Accounts where the issuer meets the requirements to be deemed as a “Qualified Credit Card Issuer” (see Section 8.8).

9.7.3. A credit card account or revolving credit facility will not be considered a depository account, provided that the Reporting MYFI maintaining the account implements policies and procedures to prevent the account balance owed to the Account Holder to exceed USD50,000 or to refund any deposit in excess of USD50,000 to the customer within 60 days.

9.7.4. In relation to Insurance Contracts;

a) A Depository Account includes an amount that an insurance company holds under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon.

b) A Depository Account does not include an advance premium or premium deposit received by an insurance company provided the prepayment or deposit relates to an Insurance Contract for which the premium is payable annually and the amount of the prepayment or deposit does not exceed the annual premium for the contract. Such amounts are also excluded from Cash Value for purposes of determining whether a contract is a Cash Value Insurance Contract.

9.8. **Custodial Accounts**

9.8.1. A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment.

9.8.2. Financial instruments/contracts held in such accounts can include, but are not limited to:

a) A share in a corporation;

b) A note, bond, debenture, or other evidence of indebtedness;

c) A currency or commodity transaction;

d) A credit default swap;

e) A swap based upon a non-financial index;

f) A notional principal contract (in general, contracts that provide for the payment of amounts by one party to another at specified intervals. These are calculated by reference to a specified index upon a notional

principal amount in exchange for specified consideration or a promise to pay similar amounts);

- g) An Insurance Contract or Annuity Contract; and
- h) Any option or other derivative instrument for the benefit of another person.

9.8.3. Insurance Contract or Annuity Contract is not considered to be a Custodial Account. However, such contracts could be assets held in a Custodial Account. Where such contracts are held as assets in a Custodial Account, the insurer will need to provide the Reporting MYFI with the cash value or surrender value of the Contract.

9.9. **Cash Value Insurance Contract**

9.9.1. A Cash Value Insurance Contract is an insurance contract where the policyholder is entitled to receive payment on surrender or termination of the contract. An insurance contract will also be a Cash Value Insurance Contract where the policyholder can borrow against the contract.

A Cash Value Insurance Contract is an investment product that has an element of life insurance attached to it. The life insurance element usually is small compared to the investment element.

General insurance products such as term life insurance, property or motor insurance that do not carry any investment element are not financial accounts.

Cash Value

9.9.2. The term “Cash Value” means the amount:

- a) That the policyholder is entitled to receive upon surrender, termination or cancellation, (determined without reduction for any surrender charge or policy loan); or
- b) The policyholder can borrow under or with regard to the contract (for example, by pledging as collateral)

whichever is greater.

9.9.3. “Cash Value” does not include an amount payable:

- 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 a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- c) As a refund to the policyholder of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than a 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 insurance contract pays only the benefits in (b) above; or.
- e) As a return of an advance premium or premium deposit for an insurance contract where the premium is payable at least annually. In this case the advance premium or premium deposit must not exceed the amount due as the next annual premium payable under the contract.

Annuity Contract

9.9.4. An Annuity Contract is a contract:

- a) 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; or
- b) That is considered to be an annuity contract in accordance with the law, regulation or practice of Malaysia in which the contract was issued and under which the issuer agrees to make payments for a term of years.

9.9.5. Reinsurance of Annuity Contracts between two Insurance Companies is excluded from this definition.

9.10. An Equity or Debt Interest in Investment Entities

9.10.1. Where an entity is an Investment Entity solely because it is an asset manager or investment adviser, the debt and equity interests in the Investment Entity are excluded from being a Financial Account.

9.10.2. In the case of a Partnership that is a MYFI, the term Equity Interest means either a capital or profit interest in the Partnership.

9.10.3. In the case of a trust that is a MYFI, an Equity Interest means an interest held by:

- a) A settlor of the trust;

- b) A beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the trust;
- c) A beneficiary that receives a discretionary distribution (either directly or indirectly) from the trust in the calendar year; or
- d) Any other natural person exercising ultimate effective control over the trust.

Equity or Debt Interests Whether Regularly Traded or Not on an Established Securities Market

- 9.10.4. Under the CRS, equity or debt interests in Investment Entities whether or not they are regularly traded on an established securities market are considered Financial Accounts maintained by the Financial Institution that issues such interest.

9.11. Excluded Accounts

Certain categories of accounts as set out under Section VIII, C.17 of the CRS have been excluded from being treated as Financial accounts as these categories have been identified as carrying a low risk of being used for tax evasion. MYFIs therefore will not have any reporting obligations for these accounts.

Retirement and Pension Accounts

- 9.11.1. This category must satisfy the requirements under Section VIII, C17(a) of the CRS as follows:
 - 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) of the CRS 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 Section VIII, C(17)(a) or (b) of the CRS or from one or more retirement or pension funds that meet the requirements of any of Section VIII, B(5) through (7) of the CRS

Non-Retirement Savings Account

9.11.2. This refers to an account maintained in Malaysia (other than an Insurance or Annuity Contract) that satisfies the following requirements under the laws of Malaysia:

- a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
- b) The account is tax-favoured (*i.e.*, contributions to the account that would otherwise be subject to tax in Malaysia 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) or state-subsidised;
- c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- d) Annual contributions are limited to USD50,000 applying the rules set forth for account aggregation and currency translation.

Accounts of Deceased Persons/ Estates

9.11.3. Accounts of deceased persons will not be Financial Accounts where the MYFI that maintains them has received and is in possession of a formal notification of the Account Holder's death (for example a copy of the deceased's death certificate). Such an account will not be reportable in the year of the Account Holder's death or in subsequent years.

Intermediary Accounts (Escrow Accounts)

- 9.11.4. Accounts that meet the conditions below will not be considered as Financial Accounts.
- 9.11.5. Accounts held by a MYFI for a non-Financial Intermediary (such as a firm of solicitors or estate agents) and established for the purposes of:
- a) a court order or judgment on which the non-Financial Intermediary is acting on behalf of its client; or
 - b) a sale, exchange, or lease of real or personal property where it also meets the following conditions:
 - i. The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction;
 - ii. The account is established and used solely to secure the obligation of the parties to the transaction;
 - iii. The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed;
 - 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 a credit card account or other revolving credit facility that allow overpayments in excess of USD50,000.
- 9.11.6. Accounts provided by a non-Financial Intermediary as an Intermediary (such as non-legal Escrow type accounts) that meet the conditions above will not be considered as Financial Accounts.

Dormant Accounts

- 9.11.7. Under the CRS Rules and CRS Regulations MYFIs may treat dormant account (other than an Annuity Contract) with a balance that does not exceed USD1,000 as excluded accounts:
- a) In the case of a depository accounts, if the following conditions are fulfilled:
 - i. The account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the Reporting MYFI in the previous three years; and

- ii. The account holder has not communicated with the Reporting MYFI regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years
- b) In the case of a Cash Value Insurance Contract, where the Reporting MYFI has not communicated with the account holder regarding the account or any other account held by the account holder with the Reporting Financial Institution in the previous six years.

End of Dormancy

9.11.8. An account will no longer be dormant when:

- a) The Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the MYFI;
- b) The Account Holder has communicated with the MYFI that maintains such account regarding the account or any other account held by the Account Holder with the MYFI; or

9.11.9. For such account, the responsible MYFI would then have to establish the Account Holders' status as if the account were a New Account and to carry out the necessary due diligence procedures and reporting obligation under the CRS.

9.12. Rollovers

9.12.1. Where some or all of the proceeds of a maturing fixed term product are rolled over, automatically or with the Account Holder's interaction, into a new fixed term product this shall not be deemed to be the creation of a New Account.

9.13. Syndicated Loans

9.13.1. In relation to syndicated loan activities, an entity acting as a lead manager/ fronting bank/agent ("Agent") of a syndicated Invoice Finance facility would not be an Investment Entity or Custodial Institution provided no other business activities would bring the entity into these classifications.

9.13.2. Where a borrower requires a large or sophisticated facility, or multiple types of facility, this is commonly provided by a group of lenders, known as a syndicate, under a syndicated loan agreement.

- 9.13.3. To facilitate the process of administering the loan on a daily basis, one bank from the syndicate is typically appointed as Agent. The Agent's role is to act as the agent for the lenders, (i.e. not of the borrower) and to coordinate and administer all aspects of the loan once the loan agreement has been executed, including acting as a point of contact between the borrower and the lenders in the syndicate and monitoring the compliance of the borrower with certain terms of the facility.
- 9.13.4. In essence, the Agent performs exclusively operational functions. For example, the borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Agent and the Agent then passes these monies back to the lenders to which they are due. Similarly, the lenders advance funds to the borrower through the Agent. The terms of a syndicated loan agreement usually entitle the Agent to undertake the roles described above in return for a fee.
- 9.13.5. In these circumstances the participation of a lender in a syndicated loan, where an Agent acts for and on behalf of a syndicate of lenders which includes that lender, does not lead to the creation of a "Custodial Account" held by the Agent.
- 9.13.6. The lenders hold their interests in a loan directly rather than through the Agent and, therefore, the participation of a lender does not amount to a "Custodial Account" held by an Agent.

10. Due Diligence Procedures

Due diligence procedures are the procedures a Reporting MYFI is required to undertake to determine whether there are any Reportable Accounts among the Financial Accounts that it maintains.

10.1. General Requirements

- 10.1.1. Reporting MYFIs may use third party service providers to fulfil some or all of their due diligence obligations but the obligations remain the responsibility of the MYFI. Any failure by the third party service provider would be regarded as a failure by the MYFI.
- 10.1.2. An account is treated as Reportable Account as of the date it is identified as such pursuant to the due diligence procedures that MYFIs must follow.

10.2. **Wider Approach on CRS**

- 10.2.1. The due diligence procedures in the CRS are designed to identify accounts which are held by residents of jurisdictions with which the implementing jurisdiction exchanges information under the standard. It is expected that these jurisdictions will increase over time. In view of this, the approach taken for due diligence` obligation under the CRS Rules and CRS Regulations is the wider approach.
- 10.2.2. Under the wider approach, MYFIs are required to identify and maintain a record of all jurisdictions in which an Account Holder or a Controlling Person is resident for income tax purposes regardless whether Malaysia has a CRS agreement with that jurisdiction. This approach is taken to minimise the need to perform the due diligence process when a new jurisdiction commits to CRS.

10.3. **Pre-existing Accounts**

- 10.3.1. A Pre-existing Account (**Individual or Entity**) is any Financial Accounts maintained by a MYFI as at **30 June 2017**.
- 10.3.2. The CRS Rules and CRS Regulations permit MYFIs to apply the due diligence procedures for New Accounts, as set out in the CRS, to Pre-existing Accounts should the MYFI choose to do so.
- 10.3.3. Where a MYFI uses New Account due diligence procedures for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts continue to apply.

10.4. **High Value Pre-existing Individual accounts**

- 10.4.1. High Value Accounts are Pre-existing Individual accounts with a balance or value that exceed USD1,000,000 as at **30 June 2017, 31 December 2017 or 31 December of any subsequent year**.
- 10.4.2. The review of pre-existing Accounts that are High Value Accounts at 30 June 2017 must be completed by **30 June 2018**.
- 10.4.3. Where the balance or value of an account does not exceed USD1, 000,000 at **30 June 2017**, but does at **31 December 2017 or of 31 December of a subsequent calendar year**, the MYFI must perform the enhanced procedure described for High Value Account by **31 December** following the year in which the balance or value exceed USD1,000,000.
- 10.4.4. The enhanced review procedures for High Value Accounts are as follows:

- a) Electronic record search of data maintained by MYFI;
- b) Paper record search if the electronic record search do not capture all the required information; and
- c) Relationship Manager inquiry for actual knowledge on any High Value Account assigned to a Relationship Manager

10.5. **Lower Value Pre-existing Individual Accounts**

- 10.5.1. Lower Value Accounts are Pre-existing Individual Accounts with a balance or value that does not exceed USD1,000,000 at **30 June 2017**.
- 10.5.2. The review of Pre-existing Individual Accounts that are Lower Value Accounts at **30 June 2017** must be completed by **30 June 2019**.
- 10.5.3. Pre-existing Lower value Accounts that are identified as reportable by **31 December 2017 must be reported by 31 July 2018** and those identified from **1 January 2018 to 30 June 2019** should be reported by **31 July 2019**.

10.6. **Residence Address Test**

- 10.6.1. The CRS Rules and CRS Regulations allow MYFIs to apply either the:
 - a) Residence address test; or
 - b) Electronic record search
 to identify if a Pre-existing Lower Account Value is reportable.
- 10.6.2. In order to use the “Residence Test” a MYFI must have policies and procedures in place to verify an Account Holder’s residence address based on documentary evidence.
- 10.6.3. For the purpose of determining whether an individual Account Holder is a Reportable Person, the MYFI may treat such an individual as being a resident for tax purposes in the jurisdiction in which an address is located if:
 - a) The Reporting MYFI has in its records a residence address for the Individual Account Holder;
 - b) Such residence address is current; and
 - c) Such residence address is based on documentary evidence.
- 10.6.4. “P.O.Box” and “Care-Of” addresses are not considered to be residence addresses. A residence address is considered to be “current” where it is the

most recent residence address recorded by the MYFI but it cannot be considered to be “current” where mail has been returned undelivered from it.

- 10.6.5. In the event that the MYFI applies the residence address test and this does not determine the residence of the individual Account Holder then it must also apply the electronic record search.

10.7. **Pre-existing Entity Accounts**

- 10.7.1. The CRS Rules and CRS Regulations allow MYFIs to apply the threshold exemption for review, identification and reporting of Pre-existing Entity Accounts.

- 10.7.2. If a MYFI elects to apply the threshold exemption, accounts with a balance or value not exceeding USD250,000 at **30 June 2017** do not need to be reviewed, identified or reported until the account balance exceeds USD250,000 at **31 December 2017** or **31 December of a subsequent year**.

- 10.7.3. The review of Pre-existing Entity Accounts must be completed by **30 June 2019**.

- 10.7.4. Accounts identified as reportable by **31 December 2017** should be reported by **31 July 2018**. Accounts identified as reportable from **1 January 2018 to 30 June 2019** should be reported by **31 July 2019**.

- 10.7.5. Accounts identified as reportable by **31 December 2019** and **31 December of subsequent years** should be reported by **30 June of the following year**.

10.8. **New Accounts**

- 10.8.1. New Accounts (Individual or Entity) is any Financial Accounts opened by a MYFI on or after **1 July 2017**.

10.9. **New Individual Accounts**

- 10.9.1. The due diligence procedure for New Individual Accounts require that a self-certification is obtained from the Account Holder.

- 10.9.2. The wider approach which Malaysia has adopted requires MYFIs to identify the jurisdiction in which a person is tax resident, irrespective of whether or not that jurisdiction is a Reportable Jurisdiction.

10.10. **New Entity Accounts Not Required to Be Reviewed, Identified or Reported**

10.10.1. A credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, if the Reporting MYFI maintaining such account implements policies and procedures to prevent a customer from making an overpayment in excess of USD50,000 or to ensure that any customer overpayment is refunded to the customer within 60 calendar days.

10.11. **New Entity Accounts Review Procedures**

10.11.1. The due diligence procedures for New Entity Accounts are generally the same as for the Pre-existing Entity Accounts except that in the case of New Entity Accounts the minimum threshold of USD 250,000 for reviewing the accounts is not available. Therefore all accounts regardless of its account balance or value must be subject to review.

10.11.2. Reporting MYFIs must determine whether a New Entity Account is held by:

- a) One or more Entities that are Reportable Persons; and
- b) One or more Entities that are Passive NFEs with one or more Controlling Persons who are Reportable Persons.

10.11.3. To determine whether a New Entity Account is held by one or more Entities that are Reportable Persons, MYFIs must obtain a self-certification as part of the account opening procedure and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

10.11.4. Examples of the application of the reasonableness test are available in the Commentary on Section VI, 14 of the CRS.

10.11.5. If the self-certification fails the reasonableness test, a new valid self-certification must be obtained.

10.11.6. The due diligence procedures provide an exception to the requirement to obtain a self-certification where MYFI can reasonably determine, based on information the MYFI has in its possession or based on information publicly available, the Account Holder is not a Reportable Person. Example of such situation is where the information shows that the entity is a corporation that is publicly traded or a Government Entity.

10.11.7. MYFIs may rely on information collected and maintain pursuant to AML/KYC Procedures for the purpose of determining the Controlling Persons of an Account Holder.

10.11.8. MYFIs may only rely on self-certification from either the entity Account Holder or the Controlling Person for the purpose of determining whether a Controlling Person of a Passive NFE is a Reportable Person.

10.11.9. Professionally managed investment entity resident in a non-participating jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a FI if it were resident in a Participating Jurisdiction. This treatment is to ensure that it is not possible for Controlling Persons to avoid reporting by setting up such entities in non-Participating Jurisdictions

10.12. Alternative Procedures for Cash Value insurance and Annuity Contract

Individual Beneficiary of Cash Value Insurance Contract or an Annuity Contract

10.12.1. A Reporting MYFI 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 a Non-Reportable Account unless the Reporting MYFI has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting MYFI has reason to know that a beneficiary of the Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting MYFI and associated with the beneficiary contains indicia as described in Section III, B of the CRS.

Group Cash Value Insurance Contract or Group Annuity Contract

10.12.2. A Reporting MYFI may treat an Account that is Group Cash Value Insurance Contract or a Group Annuity Contract that meets the following requirements as a Non- Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary:

- a) The Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employee/certificate holders;
- b) 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
- c) The aggregate amount payable to any employees/certificate holder or beneficiary does not exceed USD1,000,000.

10.13. **Account Balance Aggregation and Currency Translation Rule**

Aggregation of Individual Accounts

10.13.1. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting MYFI is required to aggregate all Financial Accounts maintained by the Reporting MYFI, or by a Related Entity, but only to the extent that the Reporting MYFI's computerised systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

For a jointly held Financial Account the entire balance or value of the jointly held account is attributed to each holder of the account for purposes of applying the aggregation requirement.

Aggregation of Entity Accounts

10.13.2. For purposes of determining the aggregate balance or value of Financial Accounts held by an entity, a Reporting MYFI is required to take into account all Financial Accounts that are maintained by the Reporting MYFI, or by a Related Entity, but only to the extent that the Reporting MYFI's computerised systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

Special Aggregation Rule Applicable to Relationship Managers

10.13.3. 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 MYFI is also required to aggregate all Financial Accounts held by that person which 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.

Currency Translation Rule

10.13.4. For the purposes of determining whether a Pre-existing Individual Account is below the threshold of a high value (USD1,000,000) and whether a Pre-existing Entity Accounts is below the threshold of USD250,000 to be eligible for election not to review the account, a Reporting MYFI shall convert the account balance or value into US dollar as follows:

- a) For ringgit denominated balance or value, the Kuala Lumpur USD/MYR reference rate published by BNM (<http://www.bnm.gov.my/index.php?ch=statistic&pg=kualalumpurUSDmyrreference>);
- b) For other currencies, an acceptable published spot rate such as by Reuters or Bloomberg as at 5.00 pm Malaysian time.

10.14. **Documentary Evidence**

10.14.1. Acceptable documentary evidence includes any of the following:

- a) A certificate of residence issued by an authorised 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 authorised 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 authorised 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 organised.
- d) Any audited financial statement, third-party credit report, bankruptcy filing, or Securities and Exchange Commission report.

10.15. **Self-certification**

10.15.1. A "self-certification" is a certification by the Account Holder that provides the Account Holder's status and any other information that may be reasonably requested by the Reporting Financial Institution to fulfil its reporting and due diligence obligations, such as whether the Account Holder is resident for tax purposes in a Reportable Jurisdiction.

10.15.2. MYFIs should ensure that Account opening processes facilitates collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone.

10.15.3. In a limited circumstances for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market, it may not be possible to obtain a self-certification on account opening day. In such

circumstances, MYFIs are required to obtain the self-certification within 90 days from the account opening day.

10.15.4. Given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, MYFIs are required to have strong measures to ensure that valid self-certifications are always obtained for New Accounts. Failure of the account holder to provide a valid self-certification must result in the account being suspended and closed.

10.15.5. With respect to New Individual Accounts, a self-certification is valid only if it is signed (or otherwise positively affirmed) by the Account Holder, it is dated at the latest at the date of receipt, and it contains the Account Holder's:

- a) Name;
- b) Residence address;
- c) Jurisdiction(s) of residence for tax purposes;
- d) TIN with respect to each Reportable Jurisdiction ; and
- e) Date of birth

10.15.6. A self-certification is not invalid solely because a foreign TIN is not provided if a reasonable explanation is provided (see Section 11.4)

10.15.7. Positive affirmation refers to a credible demonstration that the self-certification was positively affirmed. This could be in the form of signature, voice recording or thumbprint of the person making the self-certification. The approach taken by the MYFI in obtaining the self-certification is expected to be in a manner consistent with the procedures followed by the MYFI for the opening of the account. The MYFI will need to maintain a record of this process for audit purposes, in addition to the self-certification itself.

10.15.8. Reporting MYFIs should notify any person providing a self-certification of the person's obligation to notify the MYFI of a change in circumstances.

10.16. **Tax Residency**

10.16.1. MYFIs may rely on a self-certification made by the customer unless the MYFI knows or has reason to know that the self-certification is incorrect or unreliable, which will be based on the information obtained in connection with the opening of the account, including any documentation obtained pursuant to AML/KYC procedures.

11. Reporting

11.1. Overview

11.1.1. Once a MYFI has applied the due diligence procedures under the CRS Rules or CRS Regulations in respect of the accounts it holds and has identified Reportable Accounts, it must report certain information regarding those accounts to IRBM in accordance with the timeline in Section 5 of this Guidance Notes.

11.1.2. A Reporting MYFI with no Reportable Accounts is required to make a **nil return** annually to IRBM.

11.2. Registration

11.2.1. Registration with IRBM is required where a FI has reporting obligations under the CRS Rules or CRS Regulations to IRBM.

11.2.2. Information regarding registration will be provided by IRBM on its website.

11.3. Information to be Reported

11.3.1. In relation to:

- a) Each Reportable Person that is the holder of a Reportable Account;
- b) Each Passive NFE that is identified as having one or more controlling person that is Reportable Person; and
- c) Each Controlling Person of a Passive NFE that is a Reportable Person

the information to be reported is:

- i. Name;
- ii. Address;
- iii. Taxpayer Identification Number(s) (TINs);
- iv. Jurisdiction(s) of residence where the information is reportable;
- v. Date of birth (in the case of individual);
- vi. The account number or the functional equivalent of an account number where applicable; and
- vii. The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value) as of the end of the calendar year.

11.3.2. **In addition** to information (i) to (vii) above, the following information in relation to the calendar year must also be reported:

a) In the case of any **Custodial Account**:

- i. The total gross amount of interest paid or credited to the account;
- ii. The total gross amount of dividends paid or credited to the account;
- iii. The total gross amount of other income paid or credited to the account; and
- iv. The total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account.

b) In the case of any **Depository Account**:

- i. The total gross amount of interest paid or credited to the account.

c) In the case of any account other than a Custodial Account or a Depository Account:

- i. The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the Account Holder.

11.3.3. Currently, under the CRS Rules and CRS Regulations, there is no requirement to report the Place of Birth of a Reportable Person as it is not otherwise required under the domestic law in Malaysia. Should the relevant legal pre-conditions change, however, and the conditions for exception otherwise set out in Subparagraph A(E) of the Standard be no longer satisfied, the place of birth would become a reportable item.

11.4. **Explanation of Information Required**

Address

11.4.1. The address to be reported with respect to an account held by non-resident is the current residence address recorded by the Reporting MYFI for the Account Holder or, if no residence address is, the address for the account used for mailing or other purposes by the Reporting MYFI.

11.4.2. In the case of an account held by an entity that is identified as having one or more Controlling Persons that is non-resident, the address to be reported is the address of the entity and the address of each Controlling Person of such entity that is non-resident.

Taxpayer Identification Numbers (TINs)

- 11.4.3. TIN is a taxpayer identification number. It is a unique identifier assigned by a jurisdiction to an individual or entity for the purposes of administering the tax law of that jurisdiction. Where it has been established that an Account Holder is a non-resident, a Reporting MYFI is required to obtain the Account Holder's TIN.
- 11.4.4. TIN is not required to be reported with respect to a Reportable Account held by a Reportable Person to whom a TIN has not been issued or where the Reportable Jurisdiction does not issue TIN. TIN is also not required to be collected where the domestic law of the Reportable Jurisdiction does not require the collection of TIN. This is the case of Australia. However, a Reportable Account remains reportable even when the TIN is not available.
- 11.4.5. MYFIs can find further information with respect to issuance, collection and the structure of a Reportable Jurisdiction's TIN online at the OECD AEOI Portal (<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/#d.en.347759>)
- 11.4.6. A Reporting MYFI is not required to obtain TINs issued by the IRBM to Malaysian tax resident Account Holders. This include TINs issued to a foreign citizens who are Malaysian residents for tax purposes. However if a Malaysian tax resident is also a tax resident in another jurisdiction, the TIN of that other jurisdiction must be obtained.
- 11.4.7. In the case of a Reportable Person that is identified as having more than one jurisdiction of tax residence, the TIN to be reported is the Account Holder's TIN with respect to each Reportable Jurisdiction.
- 11.4.8. With respect to Pre-existing Accounts, MYFIs is required to use reasonable efforts to obtain the TIN(s) and date of birth by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.
- 11.4.9. Reasonable efforts means genuine attempts to obtain the required information at least once a year. These efforts include sending of a letter, email or telephone call to the Account Holder.
- 11.4.10. A Reporting MYFI will not be held accountable where information supplied by an individual proves to be inaccurate and the Reporting MYFI has no basis to believe that it is inaccurate.

Account Number

11.4.11. This is the identifying number, code or description that is sufficient for the Reporting MYFI to identify the non-resident Reportable Account held by the named Account Holder.

Account Balance or Value

11.4.12. The Reporting MYFI must report the balance or value of the account as of the end of the calendar year. For cash Value Insurance or Annuity Contract, the Reporting MYFI must report the cash value or surrender value of the account.

a) General

- i. An account with a balance or value that is nil or negative must be reported as having an account balance or value equal to zero.
- ii. The account balance or value of an account may be reported in US dollars or in the currency in which the account is denominated.

b) Valuation

- i. In arriving at the balance or value the Reporting MYFI will use the valuation methods that it applies in the normal course of its business. Any valuation method adopted must be consistent and verifiable.
- ii. Where it is not possible to, or usual to value an account at 31 December, a Reporting MYFI should use the normal valuation point for the account that is nearest to 31 December.
- iii. Where the 31 December falls on a weekend or non-working day, the date to be used is the last working day before that 31 December.
- iv. The balance or value of an Equity Interest is the value calculated by the Reporting MYFI for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.
- v. The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges for which the Account Holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

c) Joint Accounts

- i. Where a Financial Account is jointly held, the balance or value to be reported in respect of the non-resident is the entire balance or value of the account. The entire balance or value should be attributed to each holder of the account.

Example

For example where a jointly held account has a balance or value of USD100,000 and one of the Account Holders is a non-resident then the amount to be attributed to that person would be USD100,000.

If both Account Holders were non-resident then each would be attributed the USD100,000 and reports would be made for both.

Reporting requirement in the year of Account closure

- 11.4.13. Where an account was closed during the year, the requirement is to report the fact of the closure of the Account. Although MYFIs need not report the account balance as at the closure of the account, MYFIs are **required to report the amounts paid or credited to the account in the reporting period (before the closure of the Account)**.

11.5. Reporting to IRBM

- 11.5.1. The format in which reporting will be required is the CRS XML Schema. Reporting MYFIs are required to develop their system application to collate the required data in accordance to the XML Schema.

- 11.5.2. Reporting MYFIs shall submit the information to be reported to IRBM electronically.

- 11.5.3. Further guidance on transmission will be provided on the IRBM website.

12. Compliance

12.1. Anti-Avoidance

- 12.1.1. IRBM may disregard any arrangements entered or actions taken by any person or MYFI to avoid its due diligence and reporting requirements under the CRS Rules and CRS Regulations.

12.2. Penalties

12.2.1. A fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding six months or to both under the CRS Rules and a fine of not more than RM1,000,000 or imprisonment for a term not more than two years or to both under the CRS Regulations may be imposed on any person on conviction of the following offences:

- a) Failure to provide IRBM with information in the form, manner and frequency as prescribed in the CRS Rules and CRS Regulations.
- b) Failure to comply with the due diligence and other obligations as prescribed in the CRS Rules and CRS Regulations.
- c) Reporting of false information to IRBM.

12.3. Others

12.3.1. Notwithstanding the provisions under this Guidance Notes, MYFIs are still required to comply with any relevant laws and regulations of Malaysia.

13. Contact Information

For enquiries on this Guidance Notes, please contact:

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Inland Revenue Board of Malaysia
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