AUTOMATIC EXCHANGE OF INFORMATION

GUIDANCE

5 December 2022

Version 2.0

LIST OF REVISIONS

Version	Date	Notes
1	**2/06/2016**	
1.2	**April 2017**	- Correction of clerical errors; - Inclusion of details relating to legislative changes or for clarification purposes
1.3	**July 2017**	- Amendments to paragraph 12.32 relating to the timing of the submission of self-certifications for natural persons' new accounts
2	**5 December 2022**	- Implementation of paragraph 9; - Inclusion of paragraphs 14, 15 and 16

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1. GUIDANCE

This manual on automatic exchange of information contains some guidelines to be used by San Marino Tax Administration and by private entities interested in the application of international agreements entered into by San Marino in relation to automatic exchange of information in financial matters.

The drafting of this Guidance stems from the manual "Standard for Automatic Exchange of Financial Account Information in Tax Matters" issued by the OECD.

This Guidance may be supplemented in the light of any new agreements, new legislative updates or any needs for additional clarifications that may arise from the application of Law no. 174 of 27 November 2015 (Law on International Tax Cooperation) and subsequent amendments and integrations.

Feedback
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2. AUTOMATIC EXCHANGE OF INFORMATION

Exchange of information between States is the most important expression of international tax cooperation.

Over the last years, the developments in terms of fight against tax evasion and avoidance have led the OECD to identify automatic exchange of information at a multilateral level as the most effective instrument of international cooperation. Article 6 of the 1988 Multilateral Convention on Mutual Administrative Assistance in Tax Matters (hereinafter "Multilateral Convention") represents its legal basis. The purpose of the Multilateral Convention is to allow each contracting State to combat international tax evasion and apply more effectively the internal legislation in this field, while respecting taxpayers' rights. Exchange of information upon request, spontaneous exchange of information, simultaneous tax examinations, tax examinations abroad and assistance for the recovery of tax claims fall within the scope of the Multilateral Convention. Under Art. 6 of the Multilateral Convention, automatic exchange of information applies to certain categories of cases and in conformity with procedures established by mutual agreement between the contracting States.

The Protocol amending the Multilateral Convention, adopted on 31 March 2010, has adapted the provisions of the Convention to the internationally accepted standards of transparency and exchange of information, which involve, among others, the obligation to exchange information covered by bank secrecy, as well as in the absence of a specific interest of the requested State.

In line with the mandate of the G20 leaders to step up action against international tax evasion and fraud, the OECD has presented, in the context of the powers recognised to the States under Art. 6 of the Multilateral Convention, the Standard for Automatic Exchange of Financial Account Information, which represents the multilateral model for automatic exchange of information between States in tax matters. While, in the past, exchange of information upon request was deemed a sufficient mechanism to guarantee a certain level of transparency, the special features of tax avoidance and evasion in an increasingly globalised and digitised economic context have stressed the need to identify innovative instruments: in this regard, automatic exchange of information is currently considered the most adequate solution.

The commitments made by the Republic of San Marino in terms of international tax cooperation

In 2009, following the guidelines on transparency adopted by the OECD in the context of the G20 in London on 2 April 2009, the Republic of San Marino decided to accelerate its process towards international cooperation in tax matter, with the (achieved) objective to be fully included among the so-called cooperative jurisdictions. As part of this process of alignment with international standards of transparency and cooperation among States, the Republic of San Marino has started negotiations for the conclusion of bilateral agreements on exchange of information with an increasing number of jurisdictions.

Considerably important are also the objectives achieved in terms of automatic exchange of information at a multilateral level. Indeed, the Republic of San Marino ratified and implemented the Multilateral Convention, as amended by the 2010 Protocol. On 29 October 2014, during the meeting of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, held in Berlin, the Republic of San Marino officially committed to implementing the Global Standard on automatic exchange of financial information, definitively approved by the OECD on 21 July 2014, based on Art. 6 of the Multilateral Convention.

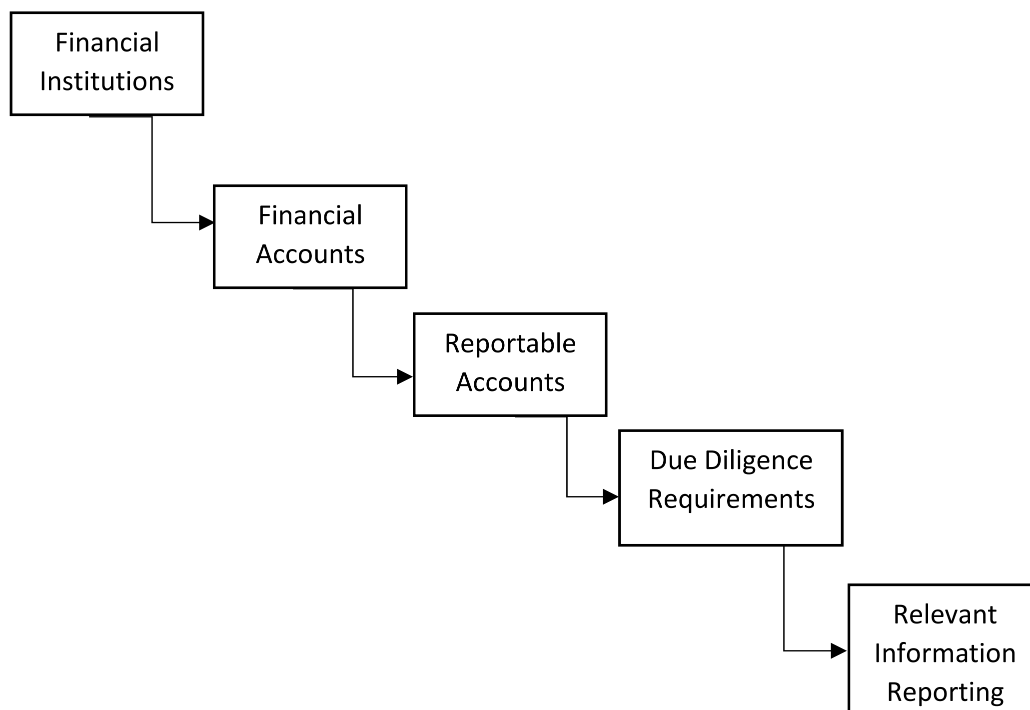
Finally, with the aim of developing relations and friendship with the United States of America and to ensure effective cooperation in tax matters between the two countries, San Marino signed the Agreement for Cooperation to Facilitate the Implementation of FATCA (Foreign Account Tax Compliance Act), i.e. Intergovernmental Agreement IGA 2 providing for data transmission by San Marino financial institutions directly to the U.S. tax authority (IRS).

Through its adherence to the Global Standard on automatic exchange of information in tax matters in October 2014, the Republic of San Marino committed to implementing the procedures necessary to ensure that San Marino financial institutions comply with due diligence procedures and report data to San Marino competent authority (Central Liaison Office), which is required to transmit the data received to the competent authorities of the other contracting States.

Finally, on 8 December 2015, San Marino signed the Protocol amending the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. Under this Protocol, the Agreement between San Marino and the European Community, ratified with Decree no. 42 of 22 March 2005, becomes the "Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance". The Agreement has been provisionally applied through Delegated Decree no. 186/2015 (hereinafter abbreviated as A.EU).

3. FUNCTIONING OF AUTOMATIC EXCHANGE

The process at the basis of automatic exchange is common in the case of the CRS and A.EU while, in the case of San Marino, under IGA 2, San Marino financial institutions directly transmit to the IRS (U.S. Internal Revenue Service) the information requested under FATCA.



Steps:

- Financial institutions identify the financial accounts to be reported.
- They meet due diligence requirements for tax purposes.
- They transmit the requested information:
    a) For the CRS and A.EU: to the competent authority;
    b) For FATCA: directly to the IRS.

4. THE "WIDER APPROACH"

The "Wider Approach" is the principle, contained in the Global Standard, according to which due diligence procedures are applied to all non-resident customers irrespective of the fact that a bilateral agreement has been signed with the customer's jurisdiction providing for automatic exchange of information.

The "Wider Approach" is intended to enable reporting financial institutions to capture and maintain information on the tax residence of account holders irrespective of whether or not that account holder is a Reportable Person for any given reportable period.

The due diligence procedures for tax purposes in each of the agreements are designed to identify accounts which are held by the residents of the jurisdictions with which information is exchanged. However, the number of these jurisdictions is not fixed and under the CRS more jurisdictions may be added.

For this reason, the option has been exercised to perform due diligence for all non-residents irrespective of their place of residence.

However, Financial Institutions shall in any case identify the jurisdiction where the person (Reportable Natural Person and Controlling Person) is resident for tax purposes, and shall keep this information up to 31 December of the fifth year following that in which due diligence was performed - this term is extended to 10 years in case of failure to report (Article 34 of Law no. 174/2015). This allows to reduce costs and simplify procedures in case the jurisdiction in which the person is resident is added to the list of participating jurisdictions. Financial Institutions will only need to verify the residence for tax purposes in those cases where there has been a change in circumstances.

The main concern is to provide Financial Institutions with the legal cover they require in the context of data protection law. This option imposes an obligation on Financial Institutions without any discretion on their part to collect this information.

It is important to note that Financial Institutions are required to collect and keep this information, but they shall transmit it to the Central Liaison Office (CLO) only when the interested jurisdiction becomes a Reportable Jurisdiction or when there is the legal basis for exchanging information. Worth recalling is that with EU countries, with the exception of Austria, information is exchanged already with reference to 2016.

5. SUMMARY TABLE OF DEADLINES AND REFERENCE DATES FOR THE VARIOUS AGREEMENTS

	FATCA	A.EU/CRS
Pre-existing Financial Accounts to be subjected to due diligence procedures are those in existence as of:	30 June 2014	31 December 2015
New Financial Accounts requiring self-certification by the customer are those opened on or after:	1 July 2014 *	1 January 2016
First reporting period:	1/01/2014-31/12/2014	1/01/2016-31/12/2016**
Financial Institutions shall report information to the Competent Authority in respect of the first reporting period by:	(direct report to the IRS by Financial Institutions)	31 March 2017
Information shall be exchanged with the other partner jurisdictions by:	(see above)	30 September 2017

*see paragraph 12.47 for alternative procedures in relation to accounts opened from 1 July 2014 to 31 December 2014.

** the first reporting period for Austria is 2017

Subsequent reporting periods ending on 31 December each year are reportable to the Competent Authority by 31 March next following - with exception of FATCA. Where 31 March falls on a weekend or Bank Holiday, then the deadline for submitting reportable information is the next following working day, pursuant to Article 6 of Law no. 59/2002. Data must be sent to the Competent Authority by this date to enable it to be processed for exchange by 30 September. Not all financial account information is reportable in the first reporting period.

6. SUMMARY OF REPORTABLE INFORMATION: A.EU/CRS

The table below sets out the information to be reported to the Competent Authority for each reporting year in respect of the Protocol amending the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Directive 2003/48/EC of the Council, now called "Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance" and based on the Multilateral Convention and the relevant CRS.

Reporting is required to the Competent Authority by 31 March next following the reporting year for which the information is required. The same term applies both under the A.EU and according to the CRS.

Reporting year	In respect of	Information to be reported
2016 and subsequent years	Each Reportable Person either: - Holder of a Reportable Account, or - A person controlling the account of any Passive Non-Financial Entity (Passive NFE) (beneficial owner)	- Name - Address - Country of residence for tax purposes - Tax Identification Number (TIN)* - Date of birth - Place of birth - Account number - Name and identifying number of the Reporting Financial Institution (business name and economic operator identification code) - Account **balance** or value as of the end of the calendar year **
	in addition, for Custodial Accounts	- Total gross amount of **interest** paid or credited to the account - Total gross amount of **dividends** paid or credited to the account - Total gross amount of **other income** generated with respect to the assets held in the account, which have been paid or credited to the account - Total **gross revenues** from the sale or redemption of financial assets, which have been paid or credited to the account and for which account the Financial Institution has acted as custodian, intermediary, holder or as agent for the Account Holder (value calculated before deduction of costs directly attributable to the sale)
	in addition, for Depository Accounts	- Total gross amount of **interest** paid or credited to the account in the calendar year
	in addition, for Other Accounts	- total gross amount paid or credited to the Account Holder in the calendar year for which the Financial Institution is the obligor or debtor, including the aggregate amount of any

		redemption payments made to the Account Holder

* the TIN is not required to be reported if a TIN is not issued by the the customer's jurisdiction of residence.

** if the account is closed during the year, for the purposes of the CRS and A.EU, the Reporting Financial Institution must report the fact of the closure but is not required to report the balance or value of the account at closure.

7. SUMMARY OF REPORTABLE INFORMATION: FATCA

The table below sets out the information to be reported directly to the IRS for each reporting year in respect of FATCA and the related IGA model 2 agreement.

Reporting is required to the IRS by 31 March next following the reporting year for which the information is required.

Reporting year	In respect of	Information to be reported
2014 and subsequent years	Each Reportable Person either: - Holder of a Reportable Account, or - A person controlling the account of any Passive Non-Financial Entity (Passive NFE) (beneficial owner)	- Name - Address - U.S. Taxpayer Identification Number (U.S. TIN)* - Account number - Name and identifying number of the Reporting Financial Institution (business name and GIIN code) - Account balance or value as of the end of the calendar year **
	in addition, for Custodial Accounts	- Total gross amount of **interest** paid or credited to the account - Total gross amount of **dividends** paid or credited to the account - Total gross amount of **other income** generated with respect to the assets held in the account, which have been paid or credited to the account - Total **gross revenues** from the sale or redemption of financial assets, which have been paid or credited to the account and for which account the Financial Institution has acted as custodian, intermediary, holder or as agent for the Account Holder (value calculated before deduction of costs directly attributable to the sale)

	in addition, for Depository Accounts	- Total gross amount of **interest** paid or credited to the account in the calendar year
	in addition, for Other Accounts	- total gross amount paid or credited to the Account Holder in the calendar year for which the Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder

** if the account is closed during the year, the Reporting Financial Institution must report the balance or the value immediately before the closure - The Financial Institution may report the balance or value existing in the 5 working days prior to the time when it has received the order by the holder to close the account, or it may consider the most recent balance or value obtainable after receiving the order to close the account if it is not able to trace back the value existing at the time of the holder's request. This may include a balance or value preceding the closing instructions if this is the most recent available value.

8. USEFUL OR RECURRENT TERMS:

A.EU/CRS

Reportable Jurisdiction: EU Member States, as well as any jurisdiction with which San Marino signed an agreement under which said jurisdiction will receive from San Marino the information to be exchanged.

Participating Jurisdiction: EU Member States, as well as any jurisdiction with which San Marino signed an agreement under which said jurisdiction will transmit to San Marino the information to be exchanged.

These terms are relevant to the notion of Reporting Financial Institutions and Reportable Account Holders, as well as to the obligation to carry out verifications on professionally managed Investment Entities that are resident in a Non-Participating Jurisdiction.

Although the terms seem similar, there is a significant difference: the term Participating Jurisdiction refers to a jurisdiction with which an agreement on the automatic exchange of information on financial accounts is in force, whereas the term Reportable Jurisdiction refers to a Participating Jurisdiction with which there is an obligation to provide financial account information.

The following examples may help:

Example 1 (Reciprocal exchange): Jurisdiction A and Jurisdiction B have a reciprocal agreement on the automatic exchange of financial account information in place. Pursuant to that agreement, both Jurisdictions are obliged to exchange the information specified in Section I. Because Jurisdiction A has an agreement with Jurisdiction B pursuant to which there is an obligation in place to provide the information specified in Section I, from the perspective of Jurisdiction A, Jurisdiction B is both a Participating Jurisdiction and a Reportable Jurisdiction. The same applies from the perspective of Jurisdiction B with respect to Jurisdiction A.

Example 2 (Nonreciprocal exchange): Jurisdiction X, which does not have an income tax, and Jurisdiction Y have a nonreciprocal agreement on the automatic exchange of financial account information in place. Pursuant to that agreement, only Jurisdiction X is obliged to exchange the information specified in Section I. Because Jurisdiction X has an agreement with Jurisdiction Y pursuant to which there is an obligation in place to provide the information specified in Section I, from the perspective of Jurisdiction X, Jurisdiction Y is both

a Participating Jurisdiction and a Reportable Jurisdiction. However, because Jurisdiction Y has an agreement with Jurisdiction X, but it does not have an obligation in place to provide the information specified in Section I pursuant to that agreement, from the perspective of Jurisdiction Y, Jurisdiction X is a Participating Jurisdiction, but not a Reportable Jurisdiction.

The link to the OECD website to verify whether a country is considered a Reportable Jurisdiction and/or a Participating Jurisdiction is the following:

http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships

The website is constantly updated and entering "San Marino" in the string "*From jurisdiction*" and "Select All" in the string "*To jurisdiction*" the list of all countries considered Reportable Jurisdictions will appear.

Entering "Select All" in the string "*From jurisdiction*" and "San Marino" in the string "*To jurisdiction*" the list of Participating Jurisdictions will appear. As can be seen, this list is more numerous than the previous one because there are some jurisdictions (such as Bermuda) that are non-reciprocal and are consequently obliged to transmit information to San Marino (assuming, of course, they have data to be exchanged) but do not wish to receive it.

FATCA

U.S. Account: a financial account maintained by a Reporting San Marino Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that are Specified U.S. Persons. An account shall not be treated as a U.S. Account if such account is not identified as a U.S. Account after application of the due diligence procedures under Annex I of FATCA.

Non-Consenting U.S. Account: a Financial Account maintained by a Reporting San Marino Financial Institution as of 30 June 2014 with respect to which i) the Reporting San Marino Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures, ii) the laws of San Marino prohibit the reporting required under the agreement in the absence of consent by the Account Holder, iii) the Reporting San Marino Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder's U.S. TIN, and iv) the Reporting San Marino Financial Institution has reported, or was required to report, aggregate account information to the IRS.

Partner Jurisdiction: a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS publishes a list identifying all Partner Jurisdictions.

U.S. Person: a U.S. citizen or resident individual, a partnership or corporation organised in the United States or under the laws of the United States or any State thereof, a trust meeting specific requirements.

Common terms:

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

This term corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the FATF Recommendations (as adopted in February 2012),

and shall be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse, including with respect to tax crimes.

For an Entity that is a legal person, the term “Controlling Persons” means the natural person(s) who exercises control over the Entity. “Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A “control ownership interest” depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%). 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 identified as exercising control of 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, the term “Controlling Persons” means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), the trustee(s), the protector(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. It is for this reason that the second sentence of sub-paragraph D(6) of the CRS supplements the first sentence of such sub-paragraph. In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) shall also be treated as a Controlling Person of the trust. With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions shall also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiaries of trusts that are designated by characteristics or by class (e.g. heirs), Reporting Financial Institutions should obtain sufficient information concerning those beneficiaries to be able to establish the identity of the beneficiary at the time of the pay-out or at the time of the exercise by the beneficiary of its vested rights. Therefore, that occasion will constitute a change in circumstances and will trigger the relevant procedures.

Both the bare owner and the usufructuary may be considered as joint Account Holders or as Controlling Persons of a trust for due diligence and reporting purposes.

Reporting Financial Institutions may align the scope of beneficiaries of a trust, who are treated as Controlling Persons of that trust, with the scope of the beneficiaries of a trust who are treated as Reportable Persons of a trust that is a Financial Institution (see paragraphs 69-70 of the Commentary on Section III).

In the case of a legal arrangement other than a trust, the term “Controlling Persons” means persons in equivalent or similar positions as those that are Controlling Persons of a trust. Thus, taking into account the different forms and structures of legal arrangements, Reporting Financial Institutions should identify and report persons in equivalent or similar positions as those required to be identified and reported for trusts.

In relation to legal persons that are functionally similar to trusts (e.g. foundations), Reporting Financial Institutions should identify Controlling Persons through similar customer due diligence procedures as those required for trusts, with a view to achieving appropriate levels of reporting.

Account Holder: the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or on behalf of another person as agent, custodian, nominee, signatory, investment advisor or intermediary, shall not be treated as holding the account, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the

contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

Relationship Manager: an official or another employee of the Reporting San Marino Financial Institution entrusted, on an ongoing basis, with the responsibility of following one or more holders of accounts with a balance or value that exceeds an amount equivalent to USD 1,000,000, and of providing them with advice or other services and assistance. To calculate the above balance or value, the rules for account aggregation and currency translation shall apply.

9. REPORTING FINANCIAL INSTITUTIONS

On account of the commitments undertaken by San Marino (FATCA, A.EU, CRS) and of the recent Law on International Tax Cooperation (Law no. 174 of 27 November 2015) for automatic exchange of information, Reporting Financial Institutions shall be obliged to identify, maintain and report information on the residence for tax purposes of the persons and entities for whom they maintain financial accounts. Under the "wider approach", Financial Institutions shall maintain this information up to 31 December of the fifth year following that in which due diligence procedures were concluded (see Article 34 of Law no. 174/2015).

There are four categories of Financial Institution common to each of the agreements:

- Custodial Institution;

- Depository Institution;

- Investment Entity;

- Specified Insurance Company (i.e. an insurance company that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract. In the case of a Cash Value Insurance Contract, the account is considered to be maintained by the Financial Institution that is required to make payments with respect to the contract).

For San Marino, Reporting Financial Institutions are generally the parties authorised by the Central Bank to carry out the reserved activities set out in Annex 1 of Law no. 165 of 17 November 2005 (LISF). This category also includes Entities falling within the definition of Investment Entities in accordance with Section VIII, sub-paragraph A(6)(a) and Section VIII, sub-paragraph A(6)(b) of the Standard and the Commentary thereon, which may not require Central Bank authorisation.

The following shall be excluded from Reporting Financial Institutions:

Financial Institutions excluded by definition	Corresponding San Marino parties
A Governmental Entity, an International Organisation or a Central Bank	*Ecc.ma Camera* (State) on behalf of San Marino Government, Social Security Institute (SSI), Autonomous State Corporations, FONDISS, Social Services Fund, Poste S.p.A.*
A Broad Participation Retirement Fund, a Narrow Participation Fund, a Pension Fund of a Governmental Entity, of an International Organisation or of a Central Bank or a Qualified Credit Card Issuer	Pension Fund of the ISS, Pension Fund of FONDISS, pension funds of private companies, pension funds of not-for-profit entities
A Collective Investment Vehicle	
A trust to the extent that the trustee is a Reporting Financial Institution	

*Until it obtains the authorisation to carry out reserved activities

Where an entity does not meet the definition of Financial Institution, then it will be classified as Non-Financial Entity (NFE) or, for FATCA purposes, a Non-Financial Foreign Entity (NFFE). Throughout this Guidance, references to NFE should be read as including a reference to NFFE.

The definition of "Entity" covers legal persons, including companies with share capital, partnerships, trusts and foundations.

Natural persons and sole proprietorships are never included in the definition of Reporting Financial Institution or of Entity.

10. FINANCIAL ACCOUNTS

A Financial Account is an account maintained by a Financial Institution. Only accounts falling within any of the 5 categories of Financial Account defined by the various agreements on exchange of information shall be reviewed.

Where such an account is held by a Reportable Person it becomes a Reportable Account.

The 5 categories of Financial Account to be reviewed are:

Accounts	An account is considered to be maintained by a Financial Institution that:
Depository Accounts	is obligated to make payments with respect to the account
Custodial Accounts	holds custody over the assets in the account
Equity or Debt Interest	is the same party to which equity or debt interest refers
Cash Value Insurance Contracts	is obligated to make payments with respect to the contract
Annuity Contracts	is obligated to make payments with respect to the contract for a period of time determined by reference to the life expectancy of one or more natural persons

In order to properly apply the aggregation rules and identify the party responsible for carrying out due diligence and reporting procedures, it is necessary to understand with which party the financial capital is maintained; generally the criteria are those indicated in the table, but there are also more particular cases.

In the case of Cash Value Insurance Contracts placed by banks, the account shall be reported by the insurance company even if the bank could carry out formal due diligence procedures for tax purposes and subsequently transmit the relevant results to the company. In the event that the beneficiary is not known by the bank, the company shall carry out due diligence procedures directly. In any case, the responsibility for properly carrying out due diligence and reporting procedures shall lie with the insurance company.

Certain financial accounts are seen to be low-risk of being used to evade tax and are specifically excluded from needing to be reviewed.

The correct classification of the type of Financial Account is crucial to identify the specific information to be reported depending on the type of account.

10.1. REPORTABLE FINANCIAL ACCOUNT

Once a Financial Institution has identified the Financial Accounts it maintains, it needs to review all those accounts to identify the territory in which the Account Holder is tax resident and maintain the information for future use. This is the so-called "*wider approach*".

To the extent that any of the Account Holders are identified as tax resident in one or more Reportable Jurisdictions, the account will be a Reportable Account which must be reported to the CLO.

A Reportable Account is an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons (beneficial owners) that are Reportable Persons.

10.2. DEPOSITORY ACCOUNT

A Depository Account includes any commercial, current, savings, time or thrift account, or any account evidenced by a certificate of deposit, investment certificate, thrift 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.

A Depository Account also includes a credit balance on a credit card, for example where a purchase has been refunded, provided the credit card has been issued by a credit card company engaged in banking or a similar business.

Credit cards will not be reportable as Depository Accounts if the credit card issuer meets the conditions to be a qualified credit card issuer and is therefore considered a Non-Reporting Financial Institution. Where a Financial Institution fails to meet the requirements to be a qualified credit card issuer, but it accepts deposits when a customer makes a payment in excess of the balance due with respect to a credit card or other revolving credit facility, it may still not report the account as a Depository Account if it qualifies as an Excluded Account.

“E-money” providers that are governed by the provisions of the European Union Electronic Money Directive (2009/110/EC) (EMD) are not deposit takers for the purposes of the Banking Consolidation Directive (2006/48/EC). Indeed, recital 13 to the EMD specifically states that “The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount and not as means of saving”. Consequently, such providers will not fall within the definition of Depository Institution that requires deposits to be accepted in the ordinary course of a banking or similar business. Moreover, the granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money shall be prohibited.

A Qualified Credit Card Issuer is a Financial Institution meeting the following requirements:

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

2) beginning on or before 1 January 2016, it implements policies and procedures either to prevent a customer from making an overpayment in excess of the balance due with respect to the card and higher than an amount equivalent to USD 50,000 or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days. The amount is established by applying account aggregation and currency translation rules. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

Depository Accounts include the following:

- current accounts;

- savings passbooks;

- thrift accounts;

- certificates of deposit;

- savings certificates;

- investment certificates;

- registered prepaid cards and bearer cards with IBAN (only inbound prepaid cards with IBAN, which are not interest bearing and are always below the threshold of € 2,500.00, are excluded from due diligence and reporting procedures). For these typologies, only the value of the balance as of 31 December shall be reported, since these instruments are not interest bearing.

In the case of Depository Accounts, in addition to the balance as of 31 December, only the total gross amount of interest paid or credited to the account in the calendar year shall be reported.

10.3. CUSTODIAL ACCOUNT

A Custodial Account is an account (other than an insurance or annuity contract) for the benefit of another person that holds one or more Financial Assets subscribed through, or deposited with, another party acting on behalf of the customer and in its own name.

Cash Value Insurance Contracts and Annuity Contracts are not considered to be Custodial Accounts, but these could be assets held in a Custodial Account. Where they are assets in a Custodial Account, the insurer will only need to provide the custodian with the balance or value of the Cash Value Insurance Contract.

A Custodial Account does not include financial instruments or contracts (for example, units or shares in a company) maintained with a nominee sponsored by the issuer of its own shares, which are in every other respect similar to those entered in the register of the issuer's shares.

Custodial Accounts include the following:

- shares, bonds;

- transactions in derivatives (credit default swaps, options, etc....);

- currency transactions and commodity transactions;

- repos.

In the case of Custodial Accounts, in addition to the balance as of 31 December, the following shall be reported: total gross amount of interest, total gross amount of dividends and total gross amount of other income generated with respect to the assets held in the account, as well as total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year. In particular: in the case of shares, the dividends and gross proceeds from their sale shall be reported; in the case of bonds, the interest (i.e. the gross amount of the coupon paid or credited) and gross proceeds from the sale or refund of the bond shall be reported; in the case of repos, other proceeds shall be reported.

10.3.1. CUSTODIAL ACCOUNT: COLLATERAL ACCOUNTS

Collateral accounts are accounts which are maintained for the benefit of another, or arrangements pursuant to which an obligation exists to return cash or assets to another.

Transactions which include the collection of margin or collateral on behalf of a counterparty may fall within the definition of Custodial Account. The exact terms of the contractual arrangements will be relevant in

applying this interpretation. However, if collateral is provided on a full title transfer basis, so that the collateral holder becomes the full legal and beneficial owner of the collateral during the term of the contract, this will not constitute a Custodial Account for the purposes of the automatic exchange agreements.

10.4. CASH VALUE INSURANCE CONTRACT

A Cash Value Insurance Contract is an investment product that has an element of life insurance attached to it. The life insurance element is often small compared to the investment element of the contract. General insurance products, such as term life insurance, property or motor insurance, that do not carry any investment element are not financial accounts.

A Cash Value Insurance Contract is an insurance contract where the policyholder is entitled to receive payment on surrender or termination of the contract.

The cash value of such a contract is the greater of:

1. the amount that the policyholder is entitled to receive on the surrender or termination of the contract without reduction for any surrender charge or loans outstanding against the policy, and

2. the amount the policyholder can borrow against or with regard to the contract. It is the amount that the policyholder could expect to borrow against the Cash Value Insurance Contract should they choose to use it as collateral for a loan. If it is not envisaged that the policyholder receives an amount upon surrender or termination of the contract and that he/she can borrow an amount under or with regard to the contract, the cash value is assumed equal to the actuarial reserve.

The cash value does not include any amount payable under an insurance contract:

a) solely by reason of the death of a natural person insured under a life insurance contract;

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

c) as a refund of a previously paid premium, less cost of insurance charges, due to cancellation or termination of the insurance contract (other than an investment-linked life insurance or annuity contract), reduction in the amount insured or arising from the correction of a posting or similar error in relation to the premium;

d) as a policyholder dividend, other than a termination dividend, provided that the insurance contract pays only the benefits in b) above. The policyholder dividend is the return of the premium, under the terms of the policy, resulting from an excess annuity compared to the losses and costs;

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 amount of the advance premium or premium deposit shall not exceed the next annual premium that will be payable under the contract.

The following shall be excluded:

- indemnity reinsurance contracts between insurance companies;

- non-life, sickness and accident insurance contracts;

- certain term life insurance contracts.

In the case of Cash Value Insurance Contracts, in addition to the balance as of 31 December, the following shall be reported: total gross amount paid or credited upon surrender - also including the value of premiums paid - besides the gross amount of any proceeds paid or credited with regard to the contract.

10.5. ANNUITY CONTRACTS

The Annuity Contract is a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more natural persons.

The following are not considered to be Reportable Annuity Contracts for the purposes of automatic exchange of information:

- pension annuities;

- immediate needs annuities;

- periodic payment orders.

Reinsurance of Annuity Contracts between insurance companies are not annuities.

In the case of Annuity Contracts, in addition to the balance as of 31 December, the following shall be reported: total gross amount paid or credited upon surrender - also including the value of premiums paid - besides the gross amount of any proceeds paid or credited with regard to the contract.

10.6. EQUITY OR DEBT INTEREST

In the case of an Investment Entity, any equity or debt interest in the Financial Institution shall be treated as Financial Account. However, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it renders investment advice to or manages portfolios for a customer, provided that the purpose is to manage or administer Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity and that the Entity is not a collective investment undertaking.

The equity or debt interest may vary depending on the nature of the investment entity. In the case of a partnership that is a Financial Institution, the term "Equity Interest" means either a capital or profits interest in the partnership.

In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or any part of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory or discretionary distribution from the trust. In the latter case, the status of beneficiary of a trust shall be considered for reports relating to the calendar year or other reporting period in which the distribution is or can be made.

10.7. EXCLUDED ACCOUNTS

References can be found, with regard to FATCA: in Annex II to IGA, Section V, paragraphs (A) to (E); with regard to A.EU: in Annex I, Section VIII, sub-paragraph (C)(17), letters a) to g); with regard to the CRS: in Section VIII, sub-paragraph (C)(17), letters a) to g).

All three regimes for automatic exchange of information allow for various categories of account to be excluded from being Reportable Financial Accounts. These are excluded because they have been identified as carrying a low risk of use for tax evasion, generally because of the regulatory regimes under which they function.

The agreements for automatic exchange provide for the list of Excluded Accounts to be updated, either to allow for other low risk products to be added or to remove products that are no longer regarded as low risk.

10.7.1. EXCLUDED ACCOUNTS: RETIREMENT AND PENSION ACCOUNTS

Retirement and pension accounts that meet the following requirements shall be treated as Excluded Accounts:

1) 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);

2) 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);

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

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

5) either i) annual contributions are limited to an amount corresponding to USD 50,000 or less, or ii) there is a maximum lifetime contribution limit to the account of an amount corresponding to USD 1,000,000 or less, in each case applying account aggregation and currency translation rules.

The references to the requirements of excluded retirement and pension accounts can be found in Annex II, Section V A(1) of IGA and are substantially similar to the definition of retirement and pension accounts in Section VIII C(17)(a) of the CRS and A.EU.

Consequently they are Excluded Accounts and Financial Institutions will have no due diligence or reporting obligations in respect of these accounts or products. This applies to both the accumulation and decumulation phases of a pension scheme, contract or arrangement.

Accumulation and Decumulation Phase:

The accumulation phase is the accumulation of savings (or accrual of benefit) in a registered pension scheme or other pension arrangement.

The decumulation phase is the use of those accumulated funds to take a pension for the remainder of the individual's or their dependant's life.

10.7.2. EXCLUDED ACCOUNTS: NON-RETIREMENT INVESTMENT OR SAVINGS ACCOUNTS

Non-retirement investment or savings accounts shall be included among Excluded Accounts if the accounts meet the following requirements according to San Marino legislation:

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

2) 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);

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

4) annual contributions are limited to an amount corresponding to USD 50,000 or less, applying the account aggregation and currency translation rules.

The references to the requirements of excluded investment or savings accounts can be found in Annex II, Section V A(2) of IGA and are substantially similar to the definition of the accounts in Section VIII C(17)(b) of the CRS and A.EU.

10.7.3. EXCLUDED ACCOUNTS: CERTAIN TERM LIFE INSURANCE CONTRACTS

These contracts are life insurance contracts with a coverage period that will end before the insured individual attains age 90 and are Excluded Accounts provided that the contract meets the following requirements:

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

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

3) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity and expense charges, as well as any amounts paid prior to the cancellation or termination of the contract;

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

The references to the requirements of excluded contracts can be found in Annex II, Section V B of IGA and are substantially similar to the definition of the contracts in Section VIII C(17)(c) of the CRS and A.EU.

10.7.4. EXCLUDED ACCOUNTS: ESTATE ACCOUNTS

Estate accounts are accounts held solely by an estate, provided that the documentation for such accounts includes a copy of the deceased's will or death certificate.

The account shall be treated as having the same status as prior to the Account Holder's death until such documentation has been provided.

Once the documentation has been provided the account is not reportable in the year of the Account Holder's death or any subsequent year.

The references to the requirements of excluded estate accounts can be found in Annex II, Section V C of IGA and are substantially similar to the definition of the accounts in Section VIII C(17)(d) of the CRS and A.EU.

10.7.5. EXCLUDED ACCOUNTS: ESCROW ACCOUNTS

An escrow account is an account held by a third party on behalf of the beneficial owner of the money in the account. It shall be established in connection with any of the following:

1) a court order or judgement under which the third party is acting on behalf of the beneficial owner and is appointed by the court to look after the affairs of a "vulnerable" person (for example in the case of disqualified persons, minors, etc.);

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

- 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;

- the account is established and used solely to secure the obligation of the parties to the transaction;

- 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;

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

- the account is not associated with a credit card account;

3) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;

4) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time. Accounts provided by a non-financial intermediary acting in that capacity (such as non-legal escrow type accounts) that meet the conditions above will also be Excluded Accounts.

The references to the requirements of excluded escrow accounts can be found in Annex II, Section V D of IGA and are substantially similar to the definition of the accounts in Section VIII C(17)(e) of the CRS and A.EU.

10.7.6. EXCLUDED ACCOUNTS: DEPOSITORY ACCOUNTS WITH UNRETURNED OVERPAYMENTS

A Financial Institution that does not meet the requirements to be a qualified credit card issuer but which accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility may treat such Depository Accounts as Excluded Accounts if the following criteria are met:

1) the account exists solely because a customer makes a payment in excess of the outstanding balance due on the card and does not immediately return the overpayment to the customer; and

2) by 31 December 2015 (by 30 June 2014 for FATCA), the credit card issuer has implemented policies and procedures either to prevent a customer deposit in excess of an amount equivalent to USD 50,000 or to ensure that any customer deposit in excess of an amount equivalent to USD 50,000 is refunded to the customer within 60 days. The account aggregation and currency translation rules shall be applied. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

The policies and procedures referred to in sub-paragraph 2) above shall be implemented on or before the following dates:

For FATCA - 30 June 2014

For A.EU/CRS - 31 December 2015

The references to the requirements of excluded depository accounts can be found in Annex II, Section III(D) of FATCA and in Section VIII C(17)(f) of the CRS and A.EU.

10.7.7. EXCLUDED ACCOUNTS: LOW-RISK ACCOUNTS

An account may be excluded if:

1) it presents a low risk of being used to evade tax;

2) it has substantially similar characteristics to any of the Excluded Accounts described above;

3) it is defined in domestic law as an Excluded Account;

4) the status of such account as an Excluded Account does not frustrate the purposes of the agreements.

For Member States, such account is defined as excluded if it is included in the list of Excluded Accounts provided for in paragraph 7bis of Article 8 of Council Directive 2011/16/EU (A.EU) and published in the Official Journal of the European Union; in turn, San Marino, shall communicate it to the European Commission.

The references to the requirements of the other Excluded Accounts can be found in Section VIII C(17)(g) of the CRS and A.EU

11. REPORTABLE INFORMATION: GENERAL REQUIREMENTS

The agreements for automatic exchange of information require specific information to be reported in respect of Account Holders who are identified by Financial Institutions as holding Reportable Accounts.

Under all of the agreements the following information is required from Financial Institutions:

- Name;
- Address;
- Taxpayer Identification Number(s) (TIN);
- For natural persons, date and place of birth;
- Jurisdiction to which the information is reportable;
- Account number (or functional equivalent in the absence of an account number);
- Business name and economic operator identification code of San Marino Financial Institution;
- Account balance or value as of the end of the calendar year, or, if the account was closed during the year, the closure of the account (A.EU/CRS) or the balance immediately before the closure (FATCA) shall be reported.

Many of the above data should be among those already collected, and therefore maintained, by Financial Institutions to fulfil due diligence requirements in accordance with AML/KYC procedures and the relevant instructions issued by FIA (for example, Instruction no. 2008-01).

11.1. REPORTABLE INFORMATION: ADDRESS

Individual Account Holders

Where the Reportable Person is a natural person who is an Account Holder or is a Controlling Person (beneficial owner for the purposes of AML/KYC procedures) of an Entity, the address to be reported is the individual’s current residence address. If the Financial Institution does not hold this address in its records, then it should report the mailing address it has on file for that person.

In general, an “in-care-of” address or a post office box is not a residence address. A post office box that forms part of an address that also includes details such as a street or suite number such that a place of residence can be clearly identified can be accepted as a residence address.

Entity Account Holders

Where the Reportable Person is an Entity the address to be reported is the mailing address that the Financial Institution holds on file for that entity.

The address of the Entity's principal office is generally the place in which its place of effective management is situated.

11.2. REPORTABLE INFORMATION: TAX IDENTIFICATION NUMBER (TIN)

The tax identification number (TIN) is the number assigned to the Account Holder by the tax administration in the country of residence for tax purposes. It is a unique combination of letters and/or numbers used to identify a natural person or entity with respect to their tax obligations in the jurisdiction of residence for tax purposes.

Any code assigned by another jurisdiction for the purpose of applying to the person or entity the withholding tax on income produced therein shall not be reported, since this code is not the TIN assigned to the party.

The TIN shall be reported in the case of New Accounts; with respect to Pre-existing Accounts, the TIN is not required to be reported if such TIN is not in the records of the Financial Institution and is not otherwise required to be collected by such Financial Institution under domestic law. However, the Financial Institution is required to use reasonable efforts to obtain the TIN by the end of the second calendar year following the year in which the accounts were identified as Reportable Accounts.

As Reportable Persons may be resident for tax purposes in more than one jurisdiction, they may have two or more TINs that the Financial Institution shall report.

For those jurisdictions that do not issue a TIN, or do not issue a TIN to all residents, there will be nothing to report unless they use other numbers with an equivalent level of identification.

In the case of a resident in Italy, use shall be made of the tax code for natural persons and of the VAT identification number for entities, as issued by the Internal Revenue Service (*Agenzia delle Entrate*).

By way of example, the "Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance" reads as follows with regard to this issue:

“JOINT DECLARATION OF THE CONTRACTING PARTIES ON THE TERM “TIN”

The parties agree that the term “TIN”, in the context of a Member State Reportable Person or a Member State Account Holder, should refer to the tax identification numbers or equivalent, whose structure and format have been notified to the European Commission and have been published in the Official Journal of the European Union as a compiled list.”

The list of jurisdictions that do not issue a TIN and other useful information are published on the OECD website at: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/ where it is possible to directly access the various country profiles.

For member States, the following Internet address also provides information about the TIN structure and suggests where it can be found on customers’ personal documents: https://ec.europa.eu/taxation_customs/tin/tinByCountry.html. By clicking on the country profiles, it is possible to obtain more detailed information on the customer’s country of residence. The links to various documents relating to all European countries by subject can be found at the following address: https://ec.europa.eu/taxation_customs/tin/tinBySubject.html.

Warning: the European Commission website is currently being updated. It is therefore recommended, in case of doubt, to visit the OECD website.

For the purposes of FATCA, the reportable TIN is the Taxpayer's U.S. Tax Identification Number.

It is recommended to obtain and retain a copy of the document from which the customer’s tax identification number was taken.

11.3. REPORTABLE INFORMATION: JURISDICTION

San Marino has opted for the "wider approach", which requires Financial Institutions to retain data on the jurisdiction of residence of the customer, irrespective of whether or not that jurisdiction is a Participating Jurisdiction.

Financial Institutions are required to carry out due diligence procedures for tax purposes and where a person is identified as a Reportable Person include the jurisdiction of residence in the return of information to the Competent Authority. If a customer is resident in more than one jurisdiction, the relevant information shall be reported to all jurisdictions.

11.4. REPORTABLE INFORMATION: ACCOUNT NUMBER

The account number to be reported is the unique identifying number or code that the Financial Institution has assigned to the Reportable Account. For insurance contracts, policy numbers are equivalent to account numbers.

Where there is not a unique identifying number or code, Financial Institutions should report any functional equivalent that they use to identify the account. This may include non-unique identifiers that relate to a class of interests, which, along with the name of the Account Holder, enable the account to be identified.

Exceptionally, if the Reportable Account does not have any form of identifying number or code, the Financial Institution should report a description of the account sufficient to identify the account held by the named Account Holder in future.

11.5. REPORTABLE INFORMATION: DATA RELATED TO THE FINANCIAL INSTITUTION

The Financial Institution is required to report its name or business name, and its identifying number or Economic Operator Identification Code issued by San Marino Public Administration.

This is to enable the participating jurisdiction receiving the information to easily identify the source of it in the event that they have any follow-up questions in respect of the data reported or in case of any errors or incompleteness of the information received.

For FATCA, Financial Institutions having registered on the IRS website have obtained an identification number called GIIN (Global Intermediary Identification Number). This is the number to be reported for the purpose of transmitting information to the IRS.

11.6. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE

Reporting Financial Institutions shall report the balance or value of the account as of 31 December of each year (option 1 of the CRS). The value of the account shall be reported in the currency in which the account is denominated.

In general, the balance or value to be reported is that which the Financial Institution calculates for the purpose of reporting to the Account Holder. In case the date of reporting to the customer is different, the value shall in any case be reported as of 31 December.

Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the Financial Institution shall report the balance or value as nil (Article 27, paragraph 5 of Law no. 174/2015). This means that, for the purposes of account aggregation rules, any negative values cannot be used to offset positive values.

For Cash Value Insurance Contracts or Annuity Contracts, the account balance or value to be reported is the cash value or surrender value of the contract respectively.

For an equity interest in an investment entity, the amount to be reported is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value.

For a debt interest in an investment entity, the balance or value to be reported is the principal amount of the debt.

The balance or value of an account is the gross value which shall not be reduced either by any liabilities or obligations incurred by an Account Holder or 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.

11.7. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: JOINT ACCOUNTS

Each joint holder of an account is attributed the entire balance or value of the account, as well as the entire amounts paid or credited to the account.

For example, where a jointly held account has a balance of € 60,000 and one of the Account Holders is a Reportable Person (under any of the agreements), the amount attributable to that person will be € 60,000.

If both Account Holders in the above example are Reportable Persons, then each would be attributed € 60,000 in the report to the respective jurisdictions of residence.

Similarly, if a Passive NFE has more than one Controlling Person, each beneficial owner of the Entity is attributed the entire balance or value of the account.

11.8. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: MULTIPLE JURISDICTIONS

In case of a beneficial owner of an Entity or an Account Holder that is a Reportable Person and is identified as having more than one jurisdiction of residence, the entire balance or value of the account, as well as the entire amount paid or credited to the account, shall be reported with respect to each jurisdiction of residence.

In case of an account held by a Passive NFE that is a Reportable Person with a Controlling Person that is a Reportable Person, the entire balance or value of the Reportable Account, as well as the entire amount paid or credited to the account, shall be reported both with respect to the jurisdiction of residence of the Passive NFE and to that of the beneficial owner.

11.9. REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: ACCOUNT CLOSURE

In the case of an account closure, the Reporting Financial Institution has no obligation to report the account balance or value before or at closure, but shall report that the account was closed.

In determining when an account is “closed”, reference shall be made to the applicable domestic law.

An account is regarded as closed according to the normal operating procedures of the Financial Institution that are consistently applied for all accounts that it maintains. For example, an equity interest in an investment entity would be considered closed when that interest is terminated by the transfer, surrender, redemption or cancellation of the interest or the liquidation of the entity.

An account with a balance or value equal to zero or which is negative will not be a closed account solely by reason of such a balance or value.

The information to be reported in case of closure of the accounts depends on the regime under which the report must be made.

FATCA

The intention is to establish the amount withdrawn from the account with respect to closure operations.

The Financial Institution may consider:

- the balance or value existing in the 5 working days prior to the time when it has received the order by the holder to close the account, or

- the most recent balance or value obtainable after receiving the order to close the account if it is not able to trace back the value existing at the time of the holder’s request. This may include a balance or value preceding the closing instructions if this is the most recent available value.

In the case of accounts closed to be transferred to another bank, the balance is calculated considering the transferable value.

A.EU/CRS

When an account is closed, the Financial Institution shall report that the account is closed without reporting the account balance or value as of the date of closure. Any amount paid or credited to the account during the reporting period until the closure shall be reported.

11.10. REPORTABLE INFORMATION: DATE AND PLACE OF BIRTH

Since this information is mandatory for the purposes of due diligence for AML/KYC procedures (see FIA Instructions 2008/1 and 2013/6), the date and place of birth shall be included among the reportable data.

11.11. REPORTABLE INFORMATION: CUSTODIAL ACCOUNTS

In addition to general information common to all types of account, where the Reportable Account is a Custodial Account, the information to be reported for each reporting period is:

1) total gross amount of interest paid or credited to the account during the calendar year;

2) total gross amount of dividends paid or credited to the account during the calendar year;

3) total gross of other income generated with respect to the assets held in the account during the calendar year;

4) total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year.

11.12. REPORTABLE INFORMATION: CUSTODIAL ACCOUNTS: GROSS PROCEEDS

In the case of any Custodial Account, reportable information shall include the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the reporting year and with respect to which the Reporting Financial Institution acted as a custodian, broker or otherwise as an agent for the Account Holder.

The term “sale or redemption” means any sale or redemption of Financial Assets, determined without regard to whether the owner of such Financial Assets is subject to tax with respect to such sale or redemption or gross of any taxes.

With respect to a sale that is effected by a broker, the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment (see also Commentary on the CRS, page 101). The balance to be considered is the accounting balance as of 31 December and not the cash or available balance.

The total gross proceeds from a sale or redemption means the total amount realised as a result of a sale or redemption of Financial Assets. In the case of a sale effected by a broker, the total gross proceeds means the total amount paid or credited to the account of the person entitled to the payment increased by any amount relative to commissions due to the broker with respect to the sale.

In the case of a sale of an interest bearing debt obligation, gross proceeds includes any interest accrued between interest payment dates (see Commentary on page 101).

The total gross proceeds from the sale or redemption of a Financial Asset is the total amount credited to the account of the person entitled to the payment without regard to any sums netted off against the payment to satisfy outstanding liabilities. For example, a loan used to fund acquisition of the asset may be repaid from the proceeds of sale. This shall not be deducted from the amount reportable.

In case of sale or redemption of assets, the reportable amount shall be net of commissions and fees paid.

If foreign taxes have been deducted from the amounts to be reported, the reportable value is net of foreign taxes (but gross of expenses/commissions and national taxes).

Reportable amounts are established on a cash basis, therefore the amounts accrued in the account but not yet credited shall not be considered.

Paragraph F, Section I contains some exceptions with respect to the year these values are to be reported. Since it may be difficult for Financial Institutions to complete procedures to obtain the total gross proceeds from the sale or redemption of Financial Assets, jurisdictions may consider gradually introducing the reporting of such gross proceeds. San Marino has exercised this option (option 3 of the CRS), therefore gross proceeds may be reported starting from 2018 (with respect to 2017 information).

Since the Agreement with the European Union does not provide for the possibility of exercising this option, in the case of EU Member States all information must be reported starting from 2017.

11.13. REPORTABLE INFORMATION: DEPOSITORY ACCOUNTS

In addition to the general reporting requirements, where the Reportable Account is a Depository Account, the information to be reported for each year is the gross amount of interest paid or credited to the account during that year.

So, in the case of checking accounts, the amount of interest shall be reported but no further proceeds such as dividends, coupons and capital gains credited to the account.

Also in the case of certificates of deposit, only the amount of interest paid at maturity shall be reported. In case of surrender/termination, the component relating to the refund shall not be reported.

11.14. REPORTABLE INFORMATION: OTHER ACCOUNTS

In addition to the general reporting requirements, in the case of any account other than a Depository Account or a Custodial Account, the information to be reported for each year is the total gross amount paid or credited to the Account Holder during that year with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during that year.

The total gross amount includes, for example, the aggregate amount of:

- any redemption payments made (in whole or in part) to the Account Holder during the calendar year; and

- any payments made to the Account Holder under a Cash Value Insurance Contract or an Annuity Contract during the calendar year, even if such payments are not considered “Cash Value” in accordance with sub-paragraph C(8) of Section VIII.

11.15. REPORTABLE INFORMATION: CURRENCY

All amounts to be reported by Financial Institutions shall be identified in the currency in which the accounts and amounts are denominated.

In the case of an account denominated in more than one currency, the Reporting Financial Institution may elect to report the information in a currency in which the account is denominated.

CURRENCY TRANSLATION RULES ACCORDING TO THE VARIOUS AGREEMENTS:

FATCA: For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting San Marino Financial Institution must convert the U.S. dollar threshold amounts described in Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting San Marino Financial Institution is determining the balance or value.

CRS: All dollar amounts are in U.S. dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law. If the balance or value of a Financial Account or other amount is denominated in a currency other than the currency used by a Participating Jurisdiction when implementing the Common Reporting Standard (for purposes of thresholds or limits), a Reporting Financial Institution must calculate the balance or value by applying a spot rate to translate such balance or value into the currency equivalent. The spot rate must be determined as of the last day of the calendar year for which the account is being reported.

A.EU: according to the Agreement with the European Union, the currency translation rule provides for the inclusion of equivalent amounts in other currencies. All amounts denominated in dollars or in the domestic currency of each Member State or of San Marino shall be read to include equivalent amounts in other national currencies, as determined by domestic law.

Under Law no. 174/2015, San Marino has decided to apply currency translation rules Dollar/Euro with respect to the amounts denominated in dollars in the various agreements (see Annex B, Section VII, sub-paragraph D(6) - Law no. 174/2015).

11.16. REPORTABLE INFORMATION: EXCEPTIONS

TIN and DATE OF BIRTH

Paragraphs C, D and E contain some exceptions with respect to the acquisition of data relating to the TIN, date of birth and place of birth.

Paragraph C of Section I of the CRS contains some exceptions applicable to Pre-existing Accounts: the TIN or date of birth is not required to be reported if such TIN or date of birth is not in the records of the Financial Institution, and there is not otherwise a requirement for such data to be collected and kept by such Financial Institution under domestic law.

However, such information is required to be reported if either:

- the TIN or date of birth is in the records of the Reporting Financial Institution (whether or not there is an obligation to have it in the records); or

- the TIN or date of birth is not in the records of the Reporting Financial Institution, but it is otherwise required to be collected by such Reporting Financial Institution, for example for the purposes of AML/KYC procedures.

The “records” of a Financial Institution include the customer master file and electronically searchable information. A “customer master file” includes the primary files of a Reporting Financial Institution for maintaining account holder information, such as information used for contacting account holders and for meeting AML/KYC procedures.

Financial Institutions would generally have a two-year period to complete the review procedures for identifying Reportable Accounts among Lower Value Accounts and, thus, could first review their electronic and paper records to obtain the TIN or date of birth of the Account Holder.

Although a Reporting Financial Institution does not have such data for a Pre-existing Account, it is required to use reasonable efforts to obtain them by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts, unless one of the exceptions in paragraph D of Section I of the CRS applies with respect to the TIN and it is not required to be reported.

“Reasonable efforts” means genuine attempts to acquire the TIN and date of birth. Such efforts must be made, at least once a year, during the period between the identification of the Pre-existing Account as a Reportable Account and the end of the second calendar year following the year of that identification.

Examples of “reasonable efforts” include the following:

- contacting the Account Holder (e.g. by mail, in-person or by phone), including a request made as part of other documentation;

- contacting the Account Holder electronically (for example by e-mail);

- reviewing electronically searchable information maintained by a Related Entity of the Reporting Financial Institution, in accordance with the account aggregation principle (Commentary on page 103).

In any case, “reasonable efforts” do not necessarily require closing, blocking or transferring the account, nor conditioning or otherwise limiting its use, simply because the Account Holder does not meet these requests for information.

“Reasonable efforts” may continue to be made after the above mentioned period if the Financial Institution so chooses.

Section E contains some exceptions applying both to Pre-existing and New Individual Accounts with respect to the Account Holder’s place of birth.

As in the case of the TIN and the date of birth, the place of birth is not required to be reported unless the Financial Institution is otherwise required to obtain it under domestic law or it is available in the electronically searchable data. As already mentioned, the date of birth is a mandatory information for the purposes of AML/KYC procedures.

11.17. REPORTABLE INFORMATION: REPORTABLE JURISDICTIONS AND PARTICIPATING JURISDICTIONS

The term "Reportable Jurisdiction" is relevant to determine for whom Reporting Financial Institutions shall transmit information relating to Financial Accounts to San Marino Competent Authority.

The following countries are Reportable Jurisdictions depending on the regimes.

FATCA

United States of America

A.EU

All Members States of the European Union.

CRS

With regard to the CRS, San Marino and more than 60 jurisdictions have signed the Multilateral Competent Authority Agreement (MCAA). The list of signatory jurisdictions can be found on the OECD website at the following address: http://www.oecd.org/tax/exchange-of-information/MCAA-Signatories.pdf. The MCAA and other agreements with competent authorities as the case may be, along with formal bilateral agreements between San Marino and other jurisdictions with which it intends to exchange information, will be added to the number of Reportable Jurisdictions and the list will be published in due time to enable Financial Institutions to first report on 31 March 2017.

Under Article 17, paragraph 6 of Law no. 174/2015, the list of States with which information is automatically exchanged will be published by means of a Congress of State Decision.

The terms Reportable Jurisdictions and Participating Jurisdictions have different meanings. Participating Jurisdictions are the jurisdictions that have signed a commitment to exchange information under the A.EU/CRS as such.

See the details provided in paragraph 8.

Under A.EU, this term means:

a) any Member State with regard to reporting to San Marino;

b) San Marino with regard to reporting to a Member State; or

c) any other jurisdiction i) with which the relevant Member State or San Marino, as the context requires, has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and ii) which is identified in a list published by that Member State or San Marino and notified to San Marino or to the European Commission, respectively;

d) with regard to Member States, any other jurisdiction i) with which the European Union has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and ii) which is identified in a list published by the European Commission.

12. DUE DILIGENCE: GENERAL REQUIREMENTS

Due diligence requirements for tax purposes apply for both “new” accounts and “pre-existing” accounts.

Under all agreements on exchange of information, Financial Institutions are required to capture, maintain and transmit information on the residence for tax purposes of Account Holders and, in case these are U.S citizens, regardless of whether they are resident for tax purposes in a Reportable Jurisdiction. As we have already seen, this is the "wider approach".

Financial Institutions shall complete due diligence procedures for tax purposes with respect to Financial Accounts that they maintain to establish whether the Account Holder is resident for tax purposes in a jurisdiction with which San Marino has an agreement to exchange information automatically. To exchange information automatically with the United States under FATCA, Financial Institutions are required to establish whether the Account Holder is resident for tax purposes in the United States or is a U.S. citizen independently of his/her country of residence.

If the Account Holder is identified as being resident for tax purposes in one of the jurisdictions with which San Marino has agreed to exchange information on a reciprocal basis, then this Account Holder is a Reportable Person and the account is a Reportable Account.

An account is treated as a Reportable Account from the date it is identified as such pursuant to the due diligence procedures that Financial Institutions are required to follow. Financial Institutions have the option to exclude from their due diligence procedures Pre-existing Accounts below a minimum threshold.

12.1. DUE DILIGENCE: GENERAL REQUIREMENTS: INFORMATION TO BE TRANSMITTED TO ACCOUNT HOLDERS

For the purposes of the Agreement with the European Union, Reporting Financial Institutions are required to inform their customers, if they are Reportable Persons, that the information relating to them will be collected and transferred in accordance with the agreements; in addition, under domestic data protection legislation (for San Marino, reference is made to Law no. 70 of 23 May 1995), at least the following information shall be transmitted to customers:

- the purpose of the processing of their personal data;

- the legal basis of the processing operation (Law no. 174/2015);

- the recipients of their personal data (San Marino Competent Authority and subsequently the Jurisdiction of their residence for tax purposes);

- the identity of the data controllers (referred to in Art. 43 of Law no. 174/2015);

- the time-limits for storing the data (Financial Institutions shall keep documents and evidence used in order to fulfil due diligence requirements for tax purposes and requirements to obtain data on Financial Accounts for the purposes of automatic exchange of information until 31 December of the fifth year following that in which the due diligence requirement is fulfilled; in case of non-reporting, this deadline shall be extended until the subsequent tenth year - see Article 34 of Law no. 174/2015);

- the existence of the right to request access to, rectification and erasure of their personal data from the controller;

- the right to seek administrative and/or judicial redress and the procedure to do so;

- the right to have recourse to the competent data protection supervisory authority or authorities and the relevant contact details (Guarantor for the protection of the confidentiality of personal data referred to in Chapter V of Law no. 70/1995).

This information shall be provided in sufficient time for the individual to exercise his/her data protection rights and, in any case, before the Financial Institution concerned reports the information to the Competent Authority, i.e. by 31 March of the year following that to which the information refers (see Article 6 of the A.EU).

This requirement shall be fulfilled only once: it is not necessary to repeat the procedure once it has been completed for a specific account.

12.2. DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFICATION OF ACCOUNT HOLDERS

An account is treated as a Reportable Account from the date it is identified as such pursuant to the due diligence procedures for tax purposes. Information with respect to such account must be reported annually to the Competent Authority during the calendar year following the year to which the reportable information relates.

Once an account is a Reportable Account, it maintains such status until the date it ceases to be a Reportable Account, even if the account balance or value is equal to zero or is negative, or there was not any amount paid or credited to the account (or with respect to the account) (see Commentary on the Standard).

It may cease to be a Reportable Account in the following cases:

1) the Account Holder ceases to be a Reportable Person;

2) the account is closed or transferred to another Financial Institution in its entirety (where it may become a Reportable Account);

3) the account becomes an Excluded Account;

4) the Reporting Financial Institution becomes a Non-Reporting Financial Institution.

If the account remains a Reportable Account, it must be reported even where the balance or value of the account is zero or negative (in the latter case, it is treated as having a zero balance). The account remains reportable even if no operations have been carried out on or in relation to the account during the reportable period.

When an account ceases to be a Reportable Account, it no longer needs to be reported, but if the account is closed, the information concerning this account until the date of its closure shall be reported according to the rules envisaged by each agreement (see also INFORMATION TO BE TRANSMITTED: ACCOUNT BALANCE OR VALUE: ACCOUNT CLOSURE).

In relation to the Global Standard and the Agreement with the European Union, if Financial Institutions have not maintained any Reportable Account during the reference period, they shall in any case be required to file a nil return by 31 March of each year (paragraph 6 of Article 29 of Law no. 174/2015). Such nil return shall be transmitted to the Competent Authority (CLO) by registered mail with acknowledgement of receipt or by email or fax to the contacts indicated in the introduction to this Guidance (in the latter cases, requesting acknowledgement of receipt).

In the case of insurance policies, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract (therefore, including any person holding a power of attorney). If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a policy, each person entitled to receive a payment under the contract is treated as an Account Holder.

Therefore, the person entitled to access the Cash Value or change the beneficiary of the contract is, as a rule, the Contracting Party; on the contrary, beneficiaries are not always identified upon signing of the contract, or they can be generically indicated (i.e. heirs, children, ...) or they can change during the term of validity of the policy.

As a consequence, upon signing and during the term of validity of the policy:

- the holder is, as a rule, represented by the contracting party;

- if identified in a generic way, beneficiaries are not relevant until the expiry of the policy;

- if identified in a precise manner with name and surname, but without any indicia relative to residence for tax purposes in a reportable jurisdiction, beneficiaries may be treated as "*non-reportable*" and are not relevant until the expiry of the policy;

- if the Company may have any indicia suggesting that the specified beneficiary is a Reportable Person, the policy should be considered as a Reportable Account, but only in case the beneficiary is entitled to access the Cash Value, for example, by requesting early repayment thereof or a loan in relation thereto.

Upon expiry or settlement of the insurance policy, the Insurance Company is instead required to identify the beneficiaries of the payment (usually they are contacted directly by the Company, in some cases through the placing bank). Based on the information collected, upon repayment, the Company shall consider as a Reportable Account a policy whose beneficiary is a person resident for tax purposes in a Reportable Jurisdiction.

12.3. DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFICATION OF REPORTABLE ACCOUNTS: EXAMPLES

The following examples illustrate the circumstances whereby an account becomes or ceases to be a Reportable Account.

1. **An account becomes a Reportable Account**: a Financial Institution carries out due diligence procedures with respect to Lower Value Pre-existing Accounts maintained as of 31 December 2015 - for the purposes of the A.EU/CRS - between 1 January 2016 and 31 December 2017. On 22 March 2017, the Financial Institution identifies an account held by a person residing in Italy. The account becomes a Reportable Account starting from that date (i.e. from 2017 and not from 2016). The information concerning this account will cover the full calendar year 2017 and shall be transmitted as from 2018 and annually for all subsequent years.

2. **An account becomes a Reportable Account after a change in circumstances**: a new account is opened by a natural person on 20 June 2016. The self-certification provided by the individual on opening the account

shows that he/she is resident for tax purposes in San Marino. The account is not a Reportable Account. On 13 September 2018, the individual notifies the Financial Institution that he/she has moved his/her residence for tax purposes to Italy. The account becomes a Reportable Account from that date (i.e. from 2018 and not before); information on this account will cover the full calendar year 2018 and shall be transmitted starting from 2019 and annually for all subsequent years.

3. **An account ceases to be a Reportable Account**: the Account Holder in example 1 above notifies the Financial Institution that he/she has moved permanently to San Marino and is now resident here (and nowhere else) for tax purposes with effect from 17 April 2019. As a result, the individual ceases to be a Reportable Person. Similarly, the account ceases to be a Reportable Account starting from 2019 and no report from the Financial Institution is required in 2020 or any subsequent calendar year unless the account becomes reportable once again.

4. **Closed accounts**: a Reportable Account is closed by the Account Holder on 14 August 2018. The Financial Institution must report in 2019 that the account has been closed, along with information in respect of that account for the period from 1 January 2018 to the date of closure. The type of information to be transmitted will depend on the regime under which there is an obligation to report.

5. **The account ceases to be reportable and is then closed**: the Account Holder in example 3 above closes the account with the Financial Institution on 11 October 2019. As the closure occurred after the account ceased to be reportable, information with respect to the account is not required to be reported in 2020.

12.4. DUE DILIGENCE: GENERAL REQUIREMENTS: DETERMINING THE ACCOUNT BALANCE OR VALUE

The balance or value of a Reportable Account is part of the reportable information that shall be automatically exchanged. It is also relevant for other purposes such as due diligence procedures for Pre-existing Entity Accounts and account balance aggregation rules.

The balance or value of the Reportable Account shall be determined as of the last day of the corresponding reporting year, i.e. as of 31 December. The balance or value may require translation from one currency into another.

If the balance or value of the account is negative, it shall be reported as a zero balance or value.

12.5. DUE DILIGENCE: GENERAL REQUIREMENTS: THRESHOLDS

According to paragraph E of Section II of the CRS and A.EU, each Jurisdiction may allow Financial Institutions to apply to Pre-existing Accounts the due diligence procedures for tax purposes envisaged for New Accounts, and the due diligence procedures envisaged for High Value Accounts to Lower Value Accounts. San Marino opted for this possibility (option 6). The other rules applicable to Pre-existing Accounts continue to apply.

Under certain thresholds, the intergovernmental agreement with the United States allows not to perform due diligence procedures, not only with respect to Pre-existing Entity Accounts but also to Pre-existing Individual Accounts. The CRS instead does not include either the USD 50,000 threshold for Pre-existing Individual Accounts or the USD 250,000 threshold for Cash Value Insurance Contracts or Annuity Contracts.

The choice can be made either with respect to some or to all of the following categories of Financial Accounts and may be applied to clearly identifiable groups of accounts, such as by line of business or location where the account is maintained. Financial Accounts to which this possibility with respect to the threshold may be applied are the following:

- Depository Accounts with a balance or value that does not exceed an amount equivalent to USD 50,000. This option is not allowed under the A.EU/CRS;

- Pre-existing Individual Accounts with a balance or value not exceeding an amount equivalent to USD 50,000 as of 30 June 2014 (until the account becomes a High Value Account at the end of a later period). This option is not allowed under the A.EU/CRS;

- Pre-existing Individual Accounts that are Cash Value Insurance Contracts or Annuity Contracts with a balance or value equivalent to USD 250,000 or less as of 30 June 2014. This option is not allowed under the A.EU/CRS;

- Pre-existing Individual Accounts that are Cash Value Insurance Contracts or Annuity Contracts provided that the legislation (not only of San Marino but also of the EU, or of the Reportable Jurisdiction or of the United States) prohibits the sale of such contracts to residents in the United States, the European Union or one of the Participating Jurisdictions (both FATCA and A.EU/CRS). **Note:** the prohibition concerns not only the conclusion of the contract but also all other circumstances such as, for example, transferability of the contract;

- Pre-existing Entity Accounts with a balance or value not exceeding an amount equivalent to USD 250,000 until such balance exceeds, respectively, USD 250,000 for the CRS and A.EU and USD 1,000,000 for FATCA. This option has been exercised by San Marino for the CRS (option 9).

Except for Depository Accounts, account aggregation rules shall be applied in order to determine whether an account is below the threshold to apply the option.

If the Financial Institution elects not to apply a particular exemption threshold, it shall examine all accounts to identify Reportable Accounts.

If the option relative to the threshold as of 30 June 2014 under FATCA is exercised, the account shall be re-examined on 31 December 2015 and annually thereafter; if the account becomes a High Value Account, it shall be subject to review and reporting procedures.

Effect of the application of the "wider approach"

As already mentioned, under this principle Financial Institutions are required to identify the Account Holder's country of residence for tax purposes, regardless of whether it is a Reportable Jurisdiction, and to apply due diligence procedures for tax purposes under each regime (FATCA, A.EU/CRS). As a result of this and of the absence of the de minimis threshold under the A.EU/CRS for individual accounts, the benefits of the threshold not exceeding USD 1,000,000 under FATCA for Pre-existing Individual Accounts terminate on 31 December 2015, since from this date Pre-existing Individual Accounts shall be identified for the purposes of the A.EU/CRS. This means that all individual accounts existing as of this date shall be reviewed. This includes the accounts that are below the threshold for the purposes of FATCA since, as of this date, their balance is higher than USD 50,000 but lower than USD 1,000,000 and they would not be subject to review in the absence of the A.EU/CRS.

Once the Pre-existing Individual Account has been identified, it will be a Reportable Account regardless of the previous threshold of USD 1,000,000.

12.6. DUE DILIGENCE: GENERAL REQUIREMENTS: DATE FOR DETERMINING THE BALANCE OR THE VALUE FOR THRESHOLDS

Thresholds may apply in a number of circumstances. For example, for the purposes of the A.EU/CRS, it is necessary to determine whether the aggregate value of an individual account exceeds an amount equivalent to USD 1,000,000 or the value of an entity account exceeds USD 250,000.

The threshold is applied on the last day of the reportable year. The balance or value threshold shall be determined as of the last day of a calendar year.

Where a Financial Institution values Financial Accounts at regular points during the year, the balance or value on the last such valuation may be used for this purpose.

12.7. DUE DILIGENCE: GENERAL REQUIREMENTS: RELIANCE ON SERVICE PROVIDERS

Financial Institutions may use service providers to fulfil due diligence and reporting obligations, but the obligations remain the responsibility of the Financial Institution.

When a Financial Institution relies on third parties, also for the purposes of AML/KYC procedures, and these parties keep the original documents or certified copies, if the Competent Authority requires sight of these documents from the Financial Institution, photocopies may be acceptable subject to the Financial Institution being able to obtain the original documents should that be necessary.

12.8. DUE DILIGENCE: GENERAL REQUIREMENTS: ALTERNATIVE PROCEDURES FOR PRE-EXISTING ACCOUNTS

Based on options 6 and 7 of the CRS exercised by San Marino, Reporting Financial Institutions may apply:

- due diligence procedures for New Accounts also to Pre-existing Accounts;

- due diligence procedures for High Value Accounts also to Lower Value Accounts.

Where a Financial Institution chooses to apply one or both of these alternatives, it may do so with respect to all its Pre-existing Accounts or, separately, to any clearly identified group of such accounts.

Where a Financial Institution chooses to apply the new account procedures to Pre-existing Accounts, the rules that otherwise apply to Pre-existing Accounts continue to apply. For example, the Financial Institution can still rely on the exception for reporting a TIN or date of birth if it is not in its records and is not otherwise required to be collected by domestic law. Similarly, it may rely on the residence address test if applying new account procedures to Pre-existing Lower Value Accounts.

12.9. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS

For the purposes of the A.EU/CRS, Pre-existing Accounts are accounts maintained by a Reporting Financial Institution as of 31 December 2015. Based on the options exercised by San Marino, it is possible to include in the definition of Pre-existing Account any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, provided that **i)** the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under the general rule (31 December 2015); **ii)** the Financial Institution treats both of the aforementioned Financial Accounts and any other Financial Accounts of the Account Holder as a single Financial Account; **iii)** AML/KYC Procedures are performed for all accounts held by the Account Holder; **iv)** the opening of the new account by the pre-existing customer does not require the provision of new information other than for the purposes of the agreements on automatic exchange of information.

Attention should be paid to the fact that the four conditions to be met are not alternatives to each other and therefore they could be quite burdensome. Indeed, verification is necessary with the competent authorities in the field of anti-money laundering (with regard to condition ii)) but especially condition iv) is the most complex to verify since the request for additional information refers not only to requests contained in laws and regulations but also in domestic practices ("*as a result of a legal, regulatory, contractual or any other requirement*" - see FAQ OECD November 2015 sub-paragraph 12 Section II-VII - link http://www.oecd.org/tax/automatic-exchange ----What's new ---November 2015 ---CRS Related FAQs).

By treating these accounts as New Accounts (therefore not exercising the option), the alternative is limited to requesting a self-certification of residence for tax purposes.

Under FATCA, Pre-existing Accounts are instead accounts maintained by the Reporting Financial Institution as of 30 June 2014.

Pre-existing Accounts are those in existence at the point that the various automatic exchange of information regimes fix the deadlines for due diligence and reporting requirements.

Pre-existing Individual Accounts are accounts held by a Reportable Person who is a natural person. These are split between High Value Accounts and Lower Value Accounts and there are different due diligence procedures for each type.

High Value Pre-existing Accounts are defined as accounts with an aggregate balance or value that exceeds an amount equivalent to USD 1,000,000 as of 31 December of the reportable year. For reporting in 2017 under the A.EU/CRS, the accounts in scope are those Reportable Accounts in existence as of 31 December 2015.

Lower Value Pre-existing Individual Accounts are those with an aggregate account balance or value that does not exceed an amount equivalent to USD 1,000,000 as of 31 December.

Financial Institutions have longer to carry out their due diligence on Lower Value Accounts compared to High Value Accounts. However, to the extent that Lower Value Accounts are identified as Reportable Accounts in a calendar year, they are reportable already for that calendar year. Under the A.EU/CRS, Financial Institutions have until 31 December 2017 to carry out due diligence on Lower Value Accounts in existence as of 31 December 2015, therefore all such accounts shall be reported no later than 2018, but if any Reportable Accounts are identified on or before 31 December 2016, they shall be reported already in 2017.

It is expected that a higher number of jurisdictions will become Reportable Jurisdictions over time. Under the "*wider approach*", Financial Institutions will have identified the territory of tax residence of all Pre-existing Account Holders as of 31 December 2015 and will be capturing information for all new accounts opened from 1 January 2016. Any changes of tax residence as a result of a change in circumstances thereafter will be captured when the change is recognised by the Financial Institution. Where new Reportable Jurisdictions are added to the list, Financial Institutions will already have identified tax residents of those jurisdictions. Financial Institutions will therefore be able to contact relevant Account Holders to acquire any further information they may need for reporting purposes.

For the purposes of FATCA, a distinction must be made between Lower Value Accounts, i.e. accounts with a balance or value that exceeds USD 50,000 as of 30 June 2014 (USD 250,000 for Cash Value Insurance Contracts or Annuity Contracts) but that does not exceed USD 1,000,000, and High Value Accounts, i.e. accounts with a balance or value that exceeds USD 1,000,000 as of 30 June 2014 (or as of 31 December 2015 or 31 December of a subsequent year). Accounts with a balance or value that does not exceed USD 50,000 (or USD 250,000 in the case of Cash Value Insurance Contracts or Annuity Contracts) are not required to be reviewed, identified or reported.

12.10. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: BALANCE AGGREGATION RULES

Aggregation rules are common to all regimes.

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

In applying the account balance aggregation rules, an account balance that has a negative value is treated as having a nil value.

12.11. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for A.EU/CRS purposes, Financial Institutions may apply either:

1) a residence address test; or

2) an electronic record search.

In the event that the Financial Institution 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.

Financial Institutions may apply the residence address test to all Lower Value Accounts or, separately, to any clearly identified group of such accounts.

Financial Institutions may also opt to go straight to an electronic record search for indicia of tax residence without first applying the residence address test.

For the purposes of FATCA, only the electronic record search is permitted and not the residence address test.

12.12. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS

The due diligence procedures for tax purposes are aimed at identifying whether or not an Account Holder is a Reportable Person. If an Account Holder is identified as a Reportable Person, the Financial Institution will then have to collate reportable information for the purpose of reporting to the Competent Authority.

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for A.EU/CRS purposes, Financial Institutions may apply the residence address test.

Where the Financial Institution has policies and procedures in place to verify the residence address of an Account Holder based on Documentary Evidence, a person will be regarded as resident for tax purposes in the jurisdiction in which an address is located if:

- the Financial Institution has in its records a residence address for the Account Holder;

- the residence address held is recent; and

- the residence address is based on Documentary Evidence.

If the Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person. For the purposes of this paragraph, the records of the Financial Institution include the customer master file and electronically searchable information.

If there is a change in circumstances that causes the Financial Institution to know or have reason to know that the Documentary Evidence is incorrect or unreliable, the Financial Institution must, by the later of the last day of the relevant calendar year, or 90 calendar days following the notice or discovery of the change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence for tax purposes of the Account Holder. If the Financial Institution cannot obtain these documents by such date, it must apply the electronic record search procedure.

A change in circumstances includes any change of information in relation to an Account Holder's status and includes details of any addition, substitution or other change of an Account Holder, as well as information in respect of any accounts associated with the Account Holder, also based on account aggregation rules.

A change in circumstances is only relevant if the new information affects the status of the Account Holder for the purposes of the exchange of information agreements, whether that is based on the due diligence procedures for tax purposes or from a self-certification. For example, a person who has been identified as reportable to the United Kingdom provides the Financial Institution with details of a change of residential address to a property in France. That is evidence that there has been a change in circumstances affecting the reportable status of the Account Holder. If, however, the new address had also been in the United Kingdom, the reportable status established earlier would not be affected and no further action would be required on the part of the Financial Institution.

Information subject to monitoring that may lead to a change in circumstances:

- residence: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- telephone number: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- standing instructions to transfer funds to a foreign account: from a Reportable State to a Non-Reportable State and vice versa; activation/blocking of standing instructions to transfer funds to an account held in a Reportable Jurisdiction;

- power of attorney or signatory authority: power of attorney or signatory authority granted to a person residing or with an address in a Reportable Jurisdiction; - revocation of power of attorney or signatory authority granted to a person residing or with an address in a Reportable Jurisdiction;

- domicile indicated ("in-care-of" address or post office box) as the only address for a specific customer: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- registered office: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- mailing address: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- Passive NFE: change in the data of beneficial owners/controlling persons (any indicia of tax residence concerning these parties); change (adding/deletion, if relevant) in beneficial owners/controlling persons;

- Active NFE: change in any indicia indicating a possible tax residence of the Entity in a relevant jurisdiction for the purposes of the A.EU/CRS;

- Investment Entity: change in the status of a jurisdiction (from participating to non-participating for the purposes of the CRS and vice versa).

The following examples illustrate the procedures to be followed in the event of a change in circumstances:

Example 1: I, a bank that is a Reporting Financial Institution, has relied on the residence address test to treat an individual Account Holder, P, as a resident of Reportable Jurisdiction X. Five years later, P communicates to I that he has moved to Jurisdiction Y, which is also a Reportable Jurisdiction, and provides his new address. I obtains from P a self-certification and new Documentary Evidence confirming that he is resident for tax purposes in Jurisdiction Y. I shall treat P as a resident of Reportable Jurisdiction Y.

Example 2: The facts are the same as in Example 1, except that I does not obtain a self-certification from P. I shall apply the electronic record search procedure described in sub-paragraphs B(2) to (6) of the CRS and, as a result, treat P as a resident of, at least, Jurisdiction Y (based on the new address provided by the Account Holder).

12.13. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS DEFINITION

The residence address held by the Financial Institution must be sufficiently detailed to identify where the Account Holder resides and will generally be in a form that identifies the street and the city where the individual lives in sufficient detail for the Financial Institution to determine the jurisdiction in which the residence is located.

In general, an "in-care-of" address or a post office box is not a residence address. However, a post office box can be part of a residence address where the address also contains a street, an apartment or suite number, or a rural route and thus clearly identifies the actual residence of the Account Holder.

An "in-care-of" address is unlikely to provide sufficient detail to identify the residence of the Account Holder as the address is that of the person receiving mail on behalf of the Account Holder. Exceptionally, an "in-care-of" address may be relied on where it is clear that the Account Holder is military personnel and the "in-care-of" address is a standard address of the type used for natural persons residing on military bases. Additionally, an "in-care-of" address may be relied on where the address relates to a care or residential home.

12.14. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: CURRENT RESIDENCE ADDRESS

The residence address held by a Financial Institution must be current. A residence address is considered to be current where it is the most recent address that the Financial Institution has recorded for the Account Holder. An address cannot be considered as current if it has been used to send mail and correspondence is returned to the sender undelivered and not due to an error.

If mail has been returned and the account (other than an Annuity Contract) is dormant then the residence address may continue to be regarded as current in certain circumstances.

12.15. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: DORMANT ACCOUNTS

A residence address associated with an account may be considered current even though mail has been returned undeliverable-as-addressed and the account is regarded as dormant.

An account (other than an Annuity Contract) may be considered to be dormant if:

1) the Account Holder has not initiated a transaction in the past three years on that account or any other account he/she holds with the Financial Institution; and

2) the Account Holder has not communicated in the past six years with the Financial Institution that maintains the account regarding that account or any other account he/she holds with the Financial Institution; or

3) the account is considered to be dormant under the normal operating procedures of the Financial Institution that are applied for all accounts, provided these procedures are substantially similar to the requirements in 1) and 2) above.

There is an additional requirement for Cash Value Insurance Contracts to be regarded as dormant: as well as the tests above, the Financial Institution has not communicated with the Account Holder in the past six years regarding the account or any other account he/she holds with the Financial Institution.

An account ceases to be dormant on the earliest of any of the following events occurring:

1) the Account Holder initiates a transaction on the dormant account or any other account he/she holds with the Financial Institution;

2) the Account Holder communicates with the Financial Institution about the dormant account or any other account he/she holds with it; or

3) the account ceases to be a dormant account under the normal operating procedures of the Financial Institution.

12.16. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS BASED ON DOCUMENTARY EVIDENCE

The third requirement is that the current residence address is based on Documentary Evidence.

This requirement is satisfied if the Reporting Financial Institution's policies and procedures ensure that the current residence address in its records is the same address, or in the same jurisdiction, as that on the Documentary Evidence (e.g. identity card, driving license, passport or certificate of residence).

The third requirement is also met if the Reporting Financial Institution's policies and procedures ensure that, where it has government-issued Documentary Evidence but such Documentary Evidence does not contain a recent residence address or does not contain an address at all (e.g. certain passports), the current residence address in the Reporting Financial Institution's records is the same address, or in the same jurisdiction, as that on recent documentation issued by an authorised government body or a utility company, or on a declaration of the individual Account Holder under penalty of perjury. Acceptable documentation issued by an authorised government body includes, for example, formal notifications or assessments by a tax administration. Acceptable documentation issued by utility companies relates to supplies linked to a particular property and includes a bill for water, electricity, telephone (landline only) or gas. A declaration of the individual Account Holder under penalty of perjury is acceptable only if (i) the Reporting Financial Institution has been required to collect it under domestic law for a number of years; (ii) it contains the Account Holder's residence address; and (iii) it is dated and signed by the individual Account Holder under penalty of perjury. In such circumstances, the standards of knowledge applicable to Documentary Evidence would also apply to the documentation relied upon by the Reporting Financial Institution (see paragraphs 2-3 of the Commentary on Section VII). Alternatively, a Reporting Financial Institution can meet the third requirement if its policies and procedures ensure that the jurisdiction in the residence address corresponds to the jurisdiction of issuance of government-issued Documentary Evidence.

There may also be accounts opened at a time when there were no AML/KYC requirements and the Reporting Financial Institution therefore did not review any Documentary Evidence in the initial on-boarding process. The FATF Recommendations, which set out the international standards on combating money laundering and include the requirement to verify the identity of the customers on the basis of reliable independent sources, were first issued in 1990 and subsequently revised in 1996, 2003 and 2012.

Even for accounts opened before the introduction of such requirements and grandfathered under the rules, there is a requirement to apply customer due diligence measures to existing customers on the basis of materiality and risk. In addition, with respect to Reportable Accounts that are Pre-existing Accounts, Reporting Financial Institutions are already required to use reasonable efforts and contact their customers to obtain their TIN and date of birth (subject to the application of paragraphs C and D of Section I of the CRS). It would be expected that such a contact would also be used to request Documentary Evidence. As a result, such instances of accounts without Documentary Evidence should be exceptional, relate to low-risk accounts, and affect accounts opened prior to 2004.

In such instances, the third requirement contained in sub-paragraph B(1) may also be satisfied if the Reporting Financial Institution's policies and procedures ensure that current residence address in its records is in the same jurisdiction (i) as that of the address on the most recent documentation collected by such Reporting Financial Institution (e.g. a utility bill, real property lease, or declaration by the individual Account

Holder under penalty of perjury); and (ii) as that reported by the Reporting Financial Institution with respect to the individual Account Holder under any other applicable tax reporting requirements (if any).

Alternatively, to meet the third requirement in the above-mentioned circumstances, in the case of a Cash Value Insurance Contract, a Reporting Financial Institution may rely on the current residence address in its records until (i) there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that such residence address is incorrect or unreliable, or (ii) the time of pay-out (full or partial) or maturity of the Cash Value Insurance Contract. The pay-out or maturity of such contract will constitute a change in circumstances and will trigger the relevant procedures.

The following examples illustrate the application of Reporting Financial Institutions' policies and procedures with respect to sub-paragraph B(1):

Example 1 (Identity card): M, a bank that is a Reporting Financial Institution, has policies and procedures in place, pursuant to which it has collected a copy of the identity card of all its Pre-existing Individual Accounts and pursuant to which it ensures that the current residence address in its records for those accounts is in the same jurisdiction as the address on their identity card. M may treat such Account Holders as being resident for tax purposes of the jurisdiction in which such address is located.

Example 2 (Passport and utility bill): M has account opening procedures in place pursuant to which it relies on the Account Holder's passport to confirm the identity of the Account Holder and on recent utility bills to verify their residence address, as recorded in M's systems. M may treat its Pre-existing Individual Account Holders as being resident for tax purposes of the jurisdiction recorded in its systems.

Example 3 (Utility bill with reporting obligations): H, a bank that is a Reporting Financial Institution, has a number of accounts opened prior to 1990 that has been grandfathered from the application of AML/KYC Procedures and the related rules on materiality and risk have not required re-documenting the accounts. H has in its records a current residence address for these accounts that is supported by utility bills collected upon account opening. Such address is also the same address as that periodically reported by H with respect to those accounts under its non-CRS tax reporting obligations. Because H's records do not contain any Documentary Evidence associated with these accounts and H is not required to collect it under AML/KYC Procedures, and the current residence address in H's records is the same as that on the most recent documentation collected by H and as that reported by H under its non-CRS tax reporting obligations, H may treat its Account Holders as being resident for tax purposes of the jurisdiction in which such address is situated.

In the event that a Financial Institution has been notified of a change of address by the Account Holder, supported by documentation from the Account Holder, and this does not result in any further AML/KYC processes, the Financial Institution may still rely on the address that has been the subject of AML/KYC provided the new address is in the same jurisdiction.

12.17. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

Where a Financial Institution, based on Documentary Evidence, fails to establish the current residence of a natural person with a Lower Value Account, it must review its electronically searchable data for indicia of the individual's residence (or citizenship for U.S. reporting under FATCA). For FATCA reporting, an electronic search may not be necessary if the Financial Institution has already established an Account Holder's status in order to meet its obligations as a qualified intermediary.

According to this procedure, the Reporting Financial Institution must verify electronically searchable data for each of the following indicia; the Account Holder will be regarded as a resident of a Reportable Jurisdiction if any if the indicia below apply:

Indicia to be verified are the following:

a) the Account Holder is identified as resident of a Reportable Jurisdiction or as a U.S. citizen;

b) for FATCA only, there is an unambiguous indication of a U.S. place of birth;

c) the current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction;

d) there are one or more current telephone numbers in a Reportable Jurisdiction (and, for the A.EU/CRS, no telephone number in San Marino);

e) standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the A.EU/CRS);

f) a current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction;

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

If none of the above indicia are discovered through an electronic search, no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

Once a Financial Institution determines that a Lower Value Account is an undocumented account, the Financial Institution is not required to re-apply to this account the procedure set forth in sub-paragraph B(5) of the CRS (a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts and no other address and none of the other indicia are identified for the Account Holder) in any subsequent year until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account. However, the Financial Institution must report the Lower Value Account as an undocumented account until such account ceases to be undocumented.

Where a number of the above indicia are present but provide contradictory evidence, the Financial Institution may take steps to cure the indicia. For example, if the indicia, with the exception of a current telephone number in France, all point to the individual being resident in San Marino, the Financial Institution can seek information from the individual to confirm where he/she is resident for tax purposes before treating the account as belonging to a French Reportable Person.

A Financial Institution will not be treated as having reason to know that an Account Holder's status is incorrect because it retains information or documentation that may conflict with its review of the Account Holder's status if it was not necessary to review them under the procedures for the electronic record search.

12.18. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: RESIDENT OF A REPORTABLE JURISDICTION

Where the indicia found during the electronic search indicate that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, or for FATCA purposes is a U.S. citizen or resident, the account will be a Reportable Account.

12.19. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: UNAMBIGUOUS UNITED STATES PLACE OF BIRTH

For FATCA purposes, where the indicia found during the electronic search unambiguously indicate a U.S. place of birth, the account will be a Reportable Account, unless the Account Holder has lost his/her nationality (this must be demonstrated through appropriate documents); the request submitted is not sufficient by itself to demonstrate the loss of nationality. The only cases in which the indicia indicating a U.S. place of birth could not be associated with the U.S. nationality refer to the children of diplomats born in the United States.

12.20. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: MAILING OR RESIDENCE ADDRESS

Where the indicia found during the electronic search indicate a current mailing or residence address (including a post office box) in a Reportable Jurisdiction, the account will be a Reportable Account.

A mailing or residence address is considered to be current for this purpose where it is the most recent address recorded by the Financial Institution with respect to the Account Holder. Where the account is a dormant account, the mailing or residence address attached to the account can be considered as “current” during the period of dormancy.

Where the Financial Institution has recorded two or more mailing or residence addresses in different Reportable Jurisdictions, the Account Holder and details of the account are potentially reportable to multiple jurisdictions. However, where one or more of those addresses is for a service provider of the Account Holder, for example, an asset manager, investment advisor or lawyer, the Financial Institution is not required to treat the service provider’s address as an indication of residence of the Account Holder.

12.21. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: CURING INDICIA (Section III, sub-paragraph B(6) of the CRS/A.EU and Section II, sub-paragraph B(4) of FATCA)

Despite the detection of indicia as explained above, a Financial Institution is not required to treat an Account Holder as resident in a Reportable Jurisdiction. Indeed, there may be occasions when the electronic record search gives indications of residence in a Reportable Jurisdiction that the Financial Institution considers may be incorrect. In such circumstances, the Financial Institution may take steps to cure the information before treating the Account Holder as a Reportable Person.

Where the Financial Institution holds information about the Account Holder that includes any of:

a) a current residence or mailing address in a Reportable Jurisdiction;

b) one or more telephone numbers in said Reportable Jurisdiction;

c) standing instructions to transfer funds to an account, other than a Depository Account, maintained in said Reportable Jurisdiction;

d) a currently effective power of attorney or signatory authority granted to a person with an address in said Reportable Jurisdiction, then

the Financial Institution must obtain a self-certification from the Account Holder to establish the jurisdiction of residence. The Financial Institution can rely on self-certifications it has previously reviewed and maintained a record of, but in either case the self-certification must be supported by Documentary Evidence. If the self-certification supported by Documentary Evidence establishes that the Account Holder is not a Reportable Person, then the Financial Institution is not required to treat the Account Holder as resident in a Reportable Jurisdiction (despite the indicia found).

The self-certification obtained as part of the curing procedure does not need to contain an express confirmation that an Account Holder is not resident in a particular jurisdiction. Provided the self-certification positively identifies the jurisdiction where the Account Holder is resident, it can be taken that the Account Holder is not resident in any other jurisdiction.

12.22. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS

High Value Pre-existing Accounts are accounts with an aggregated balance or value that exceeds USD 1,000,000 as of 31 December 2015.

The balance is established by applying the aggregation rules mentioned above.

When an account is identified as a High Value Account, the residence address test may not be used to establish the residence jurisdiction of the Account Holder.

The Financial Institution must start with the electronic record search and then continue, where appropriate, with a paper record search and, if any, a relationship manager inquiry.

The Financial Institution may choose to apply the New Account procedures and seek self-certifications from Account Holders rather than carry out the due diligence for Pre-existing High Value Accounts.

12.23. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

For High Value Accounts, a Financial Institution must review its electronically searchable data for indicia of the individual's residence (and, in addition, citizenship for U.S. reporting under FATCA).

The Account Holder will be regarded as a resident of a Reportable Jurisdiction if one or more indicia already indicated in case of an electronic record search for Lower Value Pre-existing Accounts apply.

If the Financial Institution's electronically searchable databases include fields for all essential information (Account Holder's residence, mailing and residence address, any telephone numbers, any standing instructions to transfer funds (for accounts other than Depository Accounts), any "hold mail" instruction or "in-care-of" address, any power of attorney or signatory authority) a paper record search will not be required; otherwise the Financial Institution is required to review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years:

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

b) the most recent account opening contract or documentation;

c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures;

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

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

A Financial Institution may rely on the review of High Value Accounts by third party service providers.

12.24. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: RELATIONSHIP MANAGER INQUIRY

If the Financial Institution has appointed a Relationship Manager, the relationship manager enquiry is required in addition to the electronic search and the paper record search. The Financial Institution must

consider whether the relationship manager has actual knowledge that would identify the Account Holder as a Reportable Person.

A Relationship Manager is an officer or other employee of the Financial Institution who is assigned responsibility for specific Account Holders on an on-going basis A Relationship Manager will provide advice to Account Holders regarding their accounts as well as recommending and arranging for the provision of financial products, services and other related assistance. The Relationship Manager must be more than ancillary or incidental to a person's job role. Thus a person with some contact with Account Holders, but whose functions are administrative or clerical nature, is not considered to be a Relationship Manager.

The Relationship Manager also has an important role in identifying any change in circumstances in relation to a High Value Individual Account. A Financial Institution must ensure that it has procedures in place to capture changes that are made known to the Relationship Manager in respect of the account.

In case a Financial Institution has appointed a Relationship Manager, reference is made, for details, to the Commentary on the CRS, Section III, sub-paragraph C(4).

12.25. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: CHANGE IN CIRCUMSTANCES

Once the due diligence procedures for tax purposes have been completed, the Account Holder will be identified as either a Non-Reportable or Reportable Person to one or more jurisdictions with which San Marino has agreements to exchange information. That status will not change until such time as a change in circumstances is identified by the Financial Institution.

A change in circumstances includes any change of information in relation to an Account Holder's status and includes details of any addition, substitution or other change of an Account Holder, as well as information in respect of any accounts associated with the Account Holder, also based on account aggregation rules.

A change in circumstances is only relevant if the new information affects the status of the Account Holder for the purposes of the exchange of information agreements, whether that is based on the due diligence procedures for tax purposes or from a self-certification. For example, a person who has been identified as reportable to the United Kingdom provides the Financial Institution with details of a change of residential address to a property in France. That is evidence that there has been a change in circumstances affecting the reportable status of the Account Holder. If, however, the new address had also been in the United Kingdom, the reportable status established earlier would not be affected and no further action would be required on the part of the Financial Institution.

Once a change in circumstances has been identified by the Financial Institution, the latter, by the later of the last day of the relevant calendar year, or 90 calendar days following the notice or discovery of the change in circumstances, if this date is after 31 December, must request a self-certification and new Documentary Evidence from the Account Holder to establish whether the customer is a Reportable Person and, if so, to which jurisdiction the reportable information should be sent. If the Financial Institution cannot obtain these documents by such date, it must apply the electronic record search procedure. If the record search procedure is unsuccessful, the Financial Institution should treat the Account Holder as reportable to each jurisdiction for which it holds indicia, unless it can apply the "curing" procedure described in DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: CURING INDICIA (see also Section III, sub-paragraph B(6) of the CRS/A.EU and Section II, sub-paragraph B(4) of FATCA).

<u>Information subject to monitoring that may lead to a change in circumstances</u>:

- residence: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- telephone number: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- standing instructions to transfer funds to a foreign account: from a Reportable State to a Non-Reportable State and vice versa; activation/blocking of standing instructions to transfer funds to an account held in a Reportable Jurisdiction;

- power of attorney or signatory authority: power of attorney or signatory authority granted to a person residing or with an address in a Reportable Jurisdiction; - revocation of power of attorney or signatory authority granted to a person residing or with an address in a Reportable Jurisdiction;

- domicile indicated ("in-care-of" address or post office box) as the only address for a specific customer: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- registered office: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- mailing address: from a Reportable Jurisdiction to a Non-Reportable Jurisdiction and vice versa;

- Passive NFE: change in the data of beneficial owners/controlling persons (any indicia of tax residence concerning these parties); change (adding/deletion, if relevant) in beneficial owners/controlling persons;

- Active NFE: change in any indicia indicating a possible tax residence of the Entity in a relevant jurisdiction for the purposes of the A.EU/CRS;

- Investment Entity: change in the status of a jurisdiction (from participating to non-participating for the purposes of the CRS and vice versa).

12.26. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: HOLD MAIL OR IN-CARE-OF ADDRESS ONLY

If a hold mail instruction or in-care-of address is discovered in the enhanced review of High Value Accounts, and no other address or indicia of residence are identified for the Account Holder, the Financial Institution must request a self-certification or other Documentary Evidence from the Account Holder to establish the jurisdiction of tax residence of the Account Holder.

If the Financial Institution cannot obtain a self-certification or Documentary Evidence from the Account Holder, the Financial Institution is required to treat the Account Holder - or the account- as:

1) a U.S. Specified Person for FATCA;

2) an undocumented account for the A.EU/CRS.

12.27. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: LOWER VALUE ACCOUNT BECOMES HIGH VALUE

If a Pre-existing Individual Account at the point that the various automatic exchange agreements "switch-on" (31 December 2015 for the CRS/A.EU – 30 June 2014 for FATCA) is a Lower Value Account, it will need to be monitored at the end of each subsequent reporting period to see if it has become a High Value Account.

If the balance or value of the account on the last day of the appropriate reporting period, after taking account of any aggregation, exceeds an amount equivalent to USD 1,000,000, the Financial Institution must complete the enhanced review for High Value Accounts within the calendar year following the year that the account becomes a High Value Account. This applies to all three reporting regimes, FATCA, A.EU, CRS (see Section II, sub-paragraph E(2) of FATCA; Section III, sub-paragraph C(6) of the A.EU/CRS).

If, as a result of the enhanced review, the account is identified as a Reportable Account, following this review it is reportable with respect to the year in which it is so identified and remains reportable in all subsequent years unless and until the Account Holder ceases to be a Reportable Person.

12.28. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: EFFECT OF FINDING INDICIA

Where the enhanced due diligence procedures for High Value Accounts have been carried out and any of the above indicators (see paragraph DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH) are found, the account must be treated as a Reportable Account for each Reportable Jurisdiction identified from the due diligence procedure.

Where the information arising from the due diligence procedures contains potentially conflicting information, for example, the electronic search identifies a residential address in Italy but the Relationship Manager has knowledge of an address in France, the Financial Institution may attempt to "cure" the information by seeking a self-certification from the Account Holder.

If no indicators of residence in a Reportable Jurisdiction are found in any of the enhanced due diligence procedures, then no further action is required unless and until there is a change in circumstances.

12.29. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: UNDOCUMENTED ACCOUNTS

If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts, and no other indicia are identified for the Account Holder, then the Financial Institution must try to obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence for tax purposes of the Account Holder. If the Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the Competent Authority as an undocumented account until such account ceases to be undocumented.

<u>Where the Financial Institution has identified an account as an undocumented account, it must repeat the enhanced review for High Value Accounts annually until the account ceases to be undocumented</u> (therefore: 1) electronic record search, 2) paper record search, 3) relationship manager inquiry – if any).

12.30. DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: TIMING OF DUE DILIGENCE PROCEDURES

A.EU/CRS

<u>Review of Pre-existing Lower Value Individual Accounts must be completed by 31 December 2017.</u>

<u>Enhanced review of Pre-existing High Value Individual Accounts must be completed by 31 December 2016.</u>

FATCA

<u>Review of Pre-existing Lower Value Individual Accounts must be completed by 30 June 2016.</u>

<u>Enhanced review of Pre-existing High Value Individual Accounts had to be completed by 30 June 2015.</u>

12.31. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS

New Accounts are those opened on or after the date that the various automatic exchange of information regimes "switch on" under the timelines for due diligence and reporting purposes.

For FATCA purposes, New Accounts are those opened on or after <u>1 July 2014</u>.

For the purposes of the A.EU/CRS, New Accounts are those opened on or after <u>1 January 2016</u>.

The due diligence procedures for New Individual Accounts require that a self-certification is obtained from the Account Holder by the Financial Institution to establish his/her residence(s) for tax purposes.

If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction or is a U.S. Person (for FATCA purposes), then the Financial Institution must treat the account as a Reportable Account.

The "Wider Approach" requires Financial Institutions to identify the country in which a person is resident for tax purposes, irrespective of whether or not that country is a Reportable Jurisdiction; this applies to New Accounts as well as Pre-existing Accounts. The self-certification process can be used for this purpose. This information must be maintained by the Financial Institutions for a specified period from the moment in which the jurisdiction is identified (Art. 34 of Law no. 174/2015 - Financial Institutions shall keep documents and evidence used in order to fulfil due diligence requirements and requirements to obtain data on financial accounts for the purposes of automatic exchange of information referred to in Title III, Chapter III until 31 December of the fifth year following that in which the due diligence requirement is fulfilled. In case of non-reporting, this deadline shall be extended until the subsequent tenth year).

The procedures applying for the purposes of identifying Reportable Accounts among New Individual Accounts are described in the following paragraphs.

12.32. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION

Upon account opening, Financial Institutions must obtain a self-certification from the Account Holder attesting his/her residence for tax purposes.

It is expected that Financial Institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening. There may be circumstances where, exceptionally, it is not possible or practical to obtain a self-certification on "day one" of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days. If the Account Holder does not comply with the request within the 90-day period, Financial Institutions shall immediately close the account or freeze it until a valid self-certification is obtained.

There is no prescribed format for a self-certification but it may, for example, form part of the account opening documentation. Whatever form it takes, it must allow the Financial Institution to determine the Account Holder's residence(s) for tax purposes and whether he/she is a U.S. Person, and confirm the reasonableness of such self-certification based on the information obtained by the Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

A self-certification must be signed by the Account Holder (except in the case of persons authorised to act in the name and on behalf of the Account Holder on the basis of specific authorisation or power of attorney. A simple authorisation to operate an account is not sufficient to sign the self-certification).

Self-certifications may take a two stage process so that, if it is established that an Account Holder is a San Marino tax resident and not tax resident elsewhere or a U.S. Person, then it will not be necessary to gather further information beyond the first three bullet points below. Otherwise, self-certifications must include all of the following information for the Account Holder:

1) name;

2) residence address;

3) jurisdiction of residence for tax purposes;

4) TIN with respect to each Reportable Jurisdiction (see below);

5) date of birth (see below).

The self-certification does not need to include the place of birth of the Account Holder even where the Financial Institution is otherwise required to obtain such information under domestic law. This is because if that information is already required to be reported it will be held by the Financial Institution.

The self-certification may be pre-populated by the Financial Institution to include the Account Holder's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records.

The self-certification may be provided in any manner and in any form, for example it can be in paper or electronic format. If the self-certification is provided electronically, the Financial Institution must have systems in place to ensure that the information provided is that of the Account Holder and it must be able to provide a hard copy of all such self-certifications to the Competent Authority on request.

A self-certification may be signed by any person authorised to sign on behalf of the Account Holder under domestic law. A person authorised to sign a self-certification may be, for example, an executor of a deceased's will or of an estate.

A self-certification remains valid until there is a change in circumstances that causes the Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable.

Whatever the reason, if the Reporting Financial Institution cannot rely on the original self-certification, it must obtain either: i) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder; or (ii) a reasonable explanation and documentation supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

A Financial Institution may have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect, or it may have information in its possession that suggests different facts pertaining to the Account Holder than those on the self-certification. This will include the knowledge of the relevant Relationship Managers. Indeed, if a reasonably prudent person in the position of the Financial Institution would question the information provided, then that is reason to know that the information may be unreliable. A Financial Institution also has reason to know that a self-certification is unreliable if there is information in the documentation or in the Financial Institution's account files that conflicts with the person's claim regarding its status.

A Financial Institution has reason to know that the self-certification and Documentary Evidence provided by a person is unreliable or incorrect if:

1) the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person;

2) the self-certification contains any information that is inconsistent with the person's claim; or

3) the Reporting Financial Institution has other account information that is inconsistent with the person's claim.

A Financial Institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

A Financial Institution may not rely on Documentary Evidence provided by a person if the Documentary Evidence does not reasonably establish the identity of the person presenting it.

In the same way, a Financial Institution may not rely on Documentary Evidence if it contains information that is inconsistent with the person's claim as to its status, the Financial Institution has other account information

that is inconsistent with the person's status, or the Documentary Evidence lacks information necessary to establish the person's status.

A Financial Institution may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A Financial Institution may rely on a self-certification without having to inquire into possible changes in circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the Financial Institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the Financial Institution must treat the Account Holder as resident of the jurisdiction in which the Account Holder claimed to be resident in the original self-certification and the jurisdiction in which he/she may be resident as a result of the change in circumstances.

The Commentary on the CRS provides some examples of self-certifications that can be considered valid, and on the OECD's website at the address www.oecd.org/tax/automatic-exchange/ it is possible to find self-certification models for natural persons, Entities and Controlling Persons. For the sake of simplicity, a copy of this documentation is attached to this Guidance.

12.33. DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION: CHANGE IN CIRCUMSTANCES

A self-certification can become invalid as a result of a change in the Account Holder's circumstances. Financial Institutions need to have procedures to ensure that any change that constitutes a change in circumstances is identified. A Financial Institution is expected to notify any person providing a self-certification of the person's obligation to notify the Financial Institution of a change in circumstances, also because a change in circumstances affecting the self-certification provided to the Financial Institution will invalidate the self-certification with respect to the information that is no longer reliable until it is updated.

A Financial Institution may treat the status of the Account Holder as unchanged until the earlier of:

1) 90 calendar days from the date that the self-certification became invalid due to the change in circumstances;

2) the date that the validity of the self-certification is confirmed; or

3) the date that a new self-certification is obtained.

As already indicated in the preceding paragraph, if the Financial Institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the Financial Institution must continue to treat the Account Holder as resident in the jurisdiction identified in the original self-certification and must also treat the Account Holder as resident in the jurisdiction indicated by the change in circumstances.

12.34. DUE DILIGENCE: ENTITY ACCOUNTS

An entity for the purposes of the various exchange of information regimes is a legal person or legal arrangement, such as a company with share capital, partnership, trust or foundation.

For reporting purposes, an entity will either be a Financial Institution or a Non-Financial Entity (NFE).

12.35. DUE DILIGENCE: ENTITY ACCOUNTS: INVESTMENT ENTITY WITH REGULARLY TRADED SECURITIES

A difference between the A.EU/CRS and FATCA concerns Investment Entities that operate in their own name and are managed by another Financial Institution. For FATCA purposes, these are Financial Institutions and

therefore it is necessary to verify only the Financial Institution's registration as a deemed-compliant FFI and the Financial Institution's Global Intermediary Identification Number (or GIIN). For the A.EU/CRS, if the entity resides in a Non-Participating Jurisdiction, it is considered a Passive NFE and as such it is necessary to look through the entity to identify its Controlling Persons.

12.36. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS

Pre-existing Accounts are those in existence at the point that the various automatic exchange of information regimes "switch on" under the timelines for reporting.

For FATCA purposes, Pre-existing Accounts are those opened on or before 30 June 2014.

For the purposes of the A.EU/CRS, Pre-existing Accounts are those opened on or before 31 December 2015.

12.37. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: THRESHOLD EXEMPTION

For all three regimes there is an optional threshold exemption that can be applied to Pre-existing Entity Accounts where the account balance or value does not exceed an amount equivalent to USD 250,000. San Marino has elected to apply this option for the CRS (see option 9). The effect of the election is that the Financial Institution is not required to review any of its Pre-existing Entity Accounts or a clearly identifiable group of such accounts within the de minimis threshold.

A Financial Institution wishing to apply the election will need to inform the Competent Authority thereof by 30 June 2016, even if there are no accounts to report.

If a Financial Institution chooses not to make an election to apply the threshold exemption, it will need to review all Pre-existing Entity Accounts in order to identify Reportable Accounts.

<u>Where an election has been made to apply the de minimis threshold to an account, the Financial Institution must review the account balance or value as of 31 December each year to determine if the balance or value has exceeded the threshold of USD 250,000 and, in this case, it shall review the account.</u> Where the account is identified as a Reportable Account, it is reportable from the year in which it was so identified.

12.38. DUE DILIGENCE: PRE-EXISTING ENTITY ACCOUNTS: AGGREGATION RULES

Aggregation rules are common to all three regimes.

<u>Aggregation of Entity Accounts.</u> For purposes of determining the aggregate balance or value of Financial Accounts held by an entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each joint holder of a Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph.

12.39. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REPORTABLE ACCOUNTS

A Pre-existing Entity Account is a Reportable Account where the review procedures identify the account as held by one or more entities that are Reportable Persons or which are Passive NFEs with one or more Controlling Persons (beneficial owners) that are Reportable Persons.

For example, the X Partnership is a Passive NFE resident in San Marino. It has three natural persons who are identified as beneficial owners of the partnership. Two of these are resident for tax purposes in San Marino but the third is tax resident in Italy, which is a Reportable Jurisdiction. As a result any accounts held by the partnership with a San Marino Financial Institution will be Reportable Accounts by virtue of the entity having a beneficial owner that is a Reportable Person.

12.40. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR REPORTABLE ENTITY ACCOUNTS AND ACCOUNT HOLDERS

Financial Institutions are required to determine whether a Pre-existing Account is held by one or more entities that are Reportable Persons or which are Passive NFEs with one or more beneficial owners that are Reportable Persons. Such Entity Accounts will be Reportable Accounts.

The Financial Institution must review information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) to determine where the entity is tax resident, unless residence can be reasonably determined through the use of publicly available information. The entity will be reportable if the information indicates that the entity is tax resident in a Reportable Jurisdiction. Such information may include, but is not limited to:

1) a place of incorporation or organisation in a Reportable Jurisdiction;

2) an address in a Reportable Jurisdiction; or

3) where the entity is a trust, an address of one or more of the trustees in a Reportable Jurisdiction.

An entity such as a partnership, limited liability company or similar legal arrangement that is treated as Reportable Person is an entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction; to this end, an entity that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

Indeed, the address of the entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the entity maintains an account, a post office box or an address used solely for mailing purposes is not the address of the entity's principal office, unless such address is the only address used by the entity and appears as the entity's registered address in the entity's organisational documents. A “hold mail” address is not the address of the entity's principal office.

In the case of trusts and partnerships, the address of the entity should be interpreted more widely to include the registered office, principal office or the place of effective management.

The existence of a permanent establishment in a Reportable Jurisdiction is not, in isolation, an indication of residence for this purpose.

Although there is no exemption from a paper record search for Pre-existing Entity Accounts, such a search is not required in areas where all the information is electronically searchable (for example, information held for AML/KYC purposes).

If the information indicates that the Account Holder is tax resident in a Reportable Jurisdiction, then the account is a Reportable Account unless the Financial Institution obtains a self-certification from the Account Holder, or determines, based on information in its possession or which is publicly available, that the Account Holder is not a Reportable Person.

12.41. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: AVAILABLE INFORMATION

To determine whether the entity is a Reportable Person, the Financial Institution must review information maintained for regulatory or customer relationship purposes to establish whether this information indicates that the Account Holder is resident in a Reportable Jurisdiction. In this case, the account shall be treated as Reportable Account, unless the Financial Institution obtains from the Account Holder a self-certification or may reasonably determine, based on the information in its possession or publicly available, that the Account Holder is not a Reportable Person.

Such information will include the following:

- official information published by an authorised government body (for example, the State, one of its agencies or a local administration);

- information in a publicly accessible register maintained or authorised by an authorised government body;

- information disclosed on an established securities market;

- information previously recorded in the files of the Financial Institution;

- a publicly accessible classification based on a standardised industry coding system. This will include any coding system employed by the Financial Institution which is based on such a standardised industry coding system, i.e. a coding system used to classify establishments by business type for purposes other than tax purposes, but used, for example, for AML/KYC procedures.

Where the Financial Institution relies on such information, it must retain a notation of the type of information reviewed and the date the review was carried out.

12.42. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION

To determine whether the entity is a Reportable Person, the Financial Institution must review information maintained for regulatory or customer relationship purposes to establish whether this information indicates that the Account Holder is resident in a Reportable Jurisdiction. In this case, the account shall be treated as Reportable Account, unless the Financial Institution obtains from the Account Holder a self-certification, based on which it may reasonably determine that the Account Holder is not a Reportable Person.

A self-certification for an entity shall be signed by the person with authority to sign on behalf of the entity. This may include:

- the legal representative of the company;

- a partner of the partnership;

- a trustee of a trust;

- any person holding an equivalent title to any of the above;

- any other person with written authorisation from the entity to sign documentation on behalf of the entity.

The self-certification shall be dated at the latest at the date of receipt by the Financial Institution and shall contain the following information in respect of the entity:

- the name;

- the address;

- the jurisdiction of residence for tax purposes;

- the TIN with respect to each Reportable Jurisdiction.

The Financial Institution may also request the Account Holder entity to include its status in the self-certification as either a Financial Institution or an NFE. When requesting this information from an Account Holder, the Financial Institution is expected to provide the Account Holder with sufficient information to enable it to determine its status. Financial Institutions may produce their own guidance for this purpose or they may reference the OECD Commentary on the CRS or the various exchange of information agreements.

The requirements for the validity of such a self-certification are the same as for those for self-certification of New Individual Accounts (DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION). For self-certification models, please refer to paragraph 12.32.

12.43. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A FINANCIAL INSTITUTION

As already indicated, the Financial Institution may request the Account Holder entity to include its status in the self-certification as either a Financial Institution or an NFE.

If the Account Holder entity falls within the definition of Financial Institution, wherever resident for A.EU/CRS or FATCA reporting or a San Marino Financial Institution, no further review, identification or reporting will be required.

The exception to this under the FATCA regime is where there is significant non-compliance by the Financial Institution which has not been rectified. In such circumstances the Entity will be classified as a Non-Participating Financial Institution. Where the Financial Institution is a Non-Participating Financial Institution for FATCA, then reports on certain payments made to such entities will be required.

The exception to this under the A.EU/CRS regime is where the Financial Institution is a professionally managed Investment Entity resident in a jurisdiction that is not a Participating Jurisdiction. In that case the entity is deemed to be a Passive NFE for reporting purposes.

When seeking a self-certification from an entity, the categories that may be recorded for a Financial Institution for A.EU/CRS purposes are:

1. an Investment Entity as described in sub-paragraph A(6)(b) of Section VIII of the A.EU/CRS;

2. a Financial Institution other than in 1. above.

For FATCA purposes they are:

1. a Participating Financial Institution;

2. a Non-Participating Financial Institution.

12.44. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A NFE (NON-FINANCIAL ENTITY)

As already indicated, the Financial Institution may request the Account Holder entity to include its status in the self-certification as either a Financial Institution or an NFE.

If the Account Holder entity falls within the definition of a NFE, then the information to be reported will depend on whether the entity is an Active NFE or a Passive NFE.

12.45. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: REVIEW PROCEDURE FOR CONTROLLING PERSONS

When a Financial Institution has determined that an Account Holder is a NFE, it must carry out review procedures to determine:

a) whether the Account Holder is a Passive NFE;

b) if so, the Controlling Persons of that Passive NFE; and

c) whether any of the Controlling Persons is a Reportable Person.

Is the Account Holder a Passive NFE?

The Financial Institution must obtain a self-certification from the Account Holder unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an Active NFE or a Financial Institution (other than a professionally managed Investment Entity resident in a Non-Participating Jurisdiction). If the Financial Institution cannot determine the status of the Account Holder as an Active NFE or a Financial Institution, then the Financial Institution must presume the Account Holder to be a Passive NFE.

Identifying Controlling Persons

To identify the Controlling Persons, the Financial Institution may rely on information collected pursuant to AML/KYC Procedures, since the term “Controlling Persons” shall be interpreted in accordance with FATF Recommendations 10 and 25 adopted in February 2012.

Are any of the Controlling Persons a Reportable Person?

If the account balance or value (Pre-existing Entity Account) does not exceed an amount equivalent to USD 1,000,000, the Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures to determine whether the Controlling Person is a Reportable Person or it may choose to obtain a self-certification from the Account Holder or the Controlling Person.

If the account balance or value exceeds an amount equivalent to USD 1,000,000, the Financial Institution must obtain a self-certification from either the Account Holder or the Controlling Person. This may be provided in the same self-certification as the one provided by the Account Holder to determine its own status. The self-certification requirements are the same as for New Individual Accounts (DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION). For self-certification models, please refer to paragraph 12.32.

If a self-certification is required but is not obtained, the Financial Institution must rely on the electronic record search for Pre-existing Individual Accounts to determine if there are indicia present that can be used to determine the reportable status of the Controlling Person. If none is present in its records, the Financial Institution needs take no further action unless and until there is a change in circumstances with respect to the Controlling Person.

12.46. DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: CHANGE IN CIRCUMSTANCES

If there is a change in circumstances (see definition in paragraphs 12.12 and 12.25) that causes the Financial Institution to know or have reason to know that the self-certification or other documentation associated with the account is incorrect or unreliable, the Reporting Financial Institution must redetermine the status of the account in accordance with the procedures set forth in Section V, paragraph D.

The standards of knowledge applicable to Documentary Evidence also apply to any other documentation used in conformity with paragraph D (see paragraph 14 of the Commentary on Section IV and paragraphs 2 and 3 of the Commentary on Section VII). In this case, a Reporting Financial Institution must, by the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, apply the following procedures:

- To determine whether the Account Holder is a Reportable Person: the Reporting Financial Institution must obtain either i) a self-certification, or ii) a reasonable explanation and documentation (if any) supporting the validity of the original self-certification or documentation (and retain a copy or a notation of such explanation and documentation). If the Reporting Financial Institution cannot obtain the self-certification or confirm the validity of the original self-certification or documentation, it must treat the Account Holder as reportable to each jurisdiction;

- To determine whether the Account Holder is a Financial Institution, an Active NFE or a Passive NFE: the Reporting Financial Institution must obtain additional documentation or a self-certification (if any) to establish the Account Holder's status as Active NFE or Financial Institution. If the Reporting Financial Institution fails to do so, it must treat the Account Holder as Passive NFE;

- To determine whether a Controlling Person of a Passive NFE is a Reportable Person: a Reporting Financial Institution must obtain either i) a self-certification, or ii) a reasonable explanation and documentation (if any) supporting the validity of the original self-certification and documentation previously obtained (and retain a copy or a notation of such explanation and documentation). If the Financial Institution fails to obtain the self-certification or to confirm the validity of the self-certification or documentation previously obtained, it must rely on the indicia, described in Section III, sub-paragraph B(2), which are in its records with respect to such Controlling Person, in order to determine whether it is a Reportable Person.

12.47. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS

New Accounts are, for the purposes of FATCA, those opened on or after **1 July 2014** and, for the purposes of the CRS and A.EU, those opened on or after **1 January 2016.**

The IRS has granted an exemption with respect to New Entity Accounts (Notice 2014-33), also included in Section VI, letter H of Annex I to IGA SM, providing for alternative procedures for New Entity Accounts opened on or after 1 July 2014 and before 1 January 2015. In this case, Financial Institutions may treat such accounts (all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts) as Pre-existing Entity Accounts and apply the due diligence procedures related to Pre-existing Entity Accounts without being able to apply the threshold of USD 250,000 to exempt accounts from review, identification and reporting.

The due diligence procedures for New Entity Accounts are broadly the same as those for Pre-existing Entity Accounts, except that there is no de minimis threshold.

Reporting Financial Institutions shall determine:

1. whether a New Entity Account is held by one or more entities that are Reportable Persons;

2. whether a New Entity Account is held by one or more entities that are Passive NFEs with one or more Controlling Persons that are Reportable Persons.

The following review procedures must be applied in order to determine this.

12.48. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON

Where a New Entity Account is held by one or more entities that are Reportable Persons, then the account must be treated as a Reportable Account.

Self-certification

To determine this, Financial Institutions 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. In practice, this means the Financial Institution must not know or have reason to know that the self-certification is incorrect or unreliable. If the self-certification fails the reasonableness test, a new valid self-certification must be obtained. Financial Institutions are not, however, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification. Paragraph 14 of the Commentary on Section VI of the A.EU/CRS contains examples illustrating the application of the "reasonableness" test.

The self-certification must allow determining the Account Holder's residence for tax purposes.

With respect to New Entity Accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for Pre-existing Entity Accounts. For self-certification models, please refer to paragraph 12.32.

If there is a change in circumstances with respect to a New Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Financial Institution must re-determine the status of the account in accordance with the procedures set forth in sub-paragraph E(3) (see also paragraph 21 of the Commentary on Section VI and paragraph 27 of the Commentary on Section V).

Timing of self-certification

It is expected that Financial Institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening. There may be circumstances, however, where it is not possible or practical to obtain a self-certification on "day one" of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

Except in special cases, t is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate. Financial Institutions must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis. If an Account Holder fails to respond, then there is no need to close the account but it should be reported as undocumented. In the context of its control activities, the Competent Authority may make enquiries if particular Financial Institutions appear to have a disproportionate number of undocumented accounts.

Information in the Financial Institution's possession or that is publicly available

The due diligence procedures provide an exception to the requirement to obtain a self-certification where the Financial Institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person. For example, such information may show that the Entity is a *de facto* "publicly traded" company or a Government Entity.

Where a self-certification is obtained and it indicates that the Account Holder is resident in a Reportable Jurisdiction, the Financial Institution must treat the account as a Reportable Account. An exception applies where the Financial Institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Financial Institutions are not obliged to rely on these exceptions and they may insist on self-certifications being provided.

Reference is made to Figure 17 in the Handbook on page 66 (The CRS Implementation Handbook - OECD).

12.49. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON JURISDICTION OF RESIDENCE

The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as resident for tax purposes.

Generally, an entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or any other criterion of a similar nature. Generally an entity will only be resident for tax purposes in one jurisdiction, although that may not

always be the case. Dual resident entities may rely on the tiebreaker rules contained in tax conventions to solve cases of double residence for determining their residence for tax purposes.

Where an entity such as a partnership, limited liability company or similar legal arrangement has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction in which the trustee is resident.

Examples illustrating how to determine an entity's residence for tax purposes may be found in sub-paragraph A(8) of the Commentary on Section VI of the A.EU/CRS concerning due diligence for New Entity Accounts.

12.50. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: ACCOUNT HELD BY PASSIVE NFE(S) WITH ONE OR MORE CONTROLLING PERSONS WHO ARE REPORTABLE PERSONS

Financial Institutions must determine whether a New Entity Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If so, then the account must be treated as a Reportable Account. In making this determination the Financial Institution must follow the guidance below but may do so in the order most appropriate under the circumstances.

Determining whether the Account Holder is a Passive NFE

A Financial Institution may obtain a self-certification from the Account Holder to establish its status, or instead may use:

- information in its possession (such as information collected pursuant to AML/KYC procedures); or

- information that is publicly available (such as information published by an authorised government body or standardised industry coding system) based upon which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution.

It should be noted that an Investment Entity operating in its own name, managed by another Financial Institution and resident in a non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a Financial Institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for Controlling Persons to avoid reporting by setting up such entities in Non-Participating Jurisdictions). This means that it is necessary to fulfil the "look through" requirement to identify the beneficial owner. For FATCA purposes, this entity is treated as a Financial Institution and it is only necessary to verify that this entity has registered on the IRS website and has obtained the GIIN. This is one of the main differences between the CRS and FATCA and the main aspect is that, for the CRS, this affects account balance aggregation.

Determining Controlling Persons

For the purposes of determining the Controlling Persons, a Financial Institution may rely on information collected pursuant to AML/KYC Procedures, provided that the information complies with FATF Recommendations 10 and 25 adopted in February 2012.

Determining whether a Controlling Person is a Reportable Person

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

12.51. DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: CHANGE IN CIRCUMSTANCES

If there is a change in circumstances (see definition in paragraphs 12.12 and 12.25) that causes the Financial Institution to know or have reason to know that the self-certification or other documentation associated with

the account is incorrect or unreliable, the Reporting Financial Institution must redetermine the status of the account in accordance with the procedures set forth in the Commentary on Section V, paragraph 27.

The standards of knowledge applicable to Documentary Evidence also apply to any other documentation used in conformity with paragraph D (see paragraph 14 of the Commentary on Section IV and paragraphs 2 and 3 of the Commentary on Section VII). In this case, a Reporting Financial Institution must, by the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances:

- To determine whether the Account Holder is a Reportable Person: the Reporting Financial Institution must obtain either i) a self-certification, or ii) a reasonable explanation and documentation (if any) supporting the validity of the original self-certification or documentation (and retain a copy or a notation of such explanation and documentation). If the Financial Institution cannot obtain the self-certification or confirm the validity of the original self-certification or documentation, it must continue to treat the Account Holder as reportable to each jurisdiction;

- To determine whether the Account Holder is a Financial Institution, an Active NFE or a Passive NFE: the Reporting Financial Institution must obtain additional documentation or a self-certification (if any) to establish the Account Holder's status as Active NFE or Financial Institution. If the Reporting Financial Institution fails to do so, it must treat the Account Holder as Passive NFE;

- To determine whether a Controlling Person of a Passive NFE is a Reportable Person: a Reporting Financial Institution must obtain either i) a self-certification, or ii) a reasonable explanation and documentation (if any) supporting the validity of the original self-certification and documentation previously obtained (and retain a copy or a notation of such explanation and documentation). If the Financial Institution fails to obtain the self-certification or to confirm the validity of the self-certification or documentation previously obtained, it must rely on the indicia, described in Section III, sub-paragraph B(2), which it has in its records with respect to such Controlling Person, in order to determine whether it is a Reportable Person.

In this case, the Financial Institution must apply these procedures by the later of the last day of the relevant calendar year or 90 calendar days following the discovery of the change in circumstances.

12.52. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATION AND DOCUMENTARY EVIDENCE

Some additional rules apply in implementing the due diligence procedures described above.

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

Reliance upon an audited financial statement

Financial Institutions may rely upon an audited financial statement to establish that an Account Holder meets a certain income or asset threshold, but are not obliged to where the entity's status can be established from other information or documentation that they hold.

If a Financial Institution does rely upon an audited financial statement, it has reason to know that the status claimed is unreliable or incorrect only if the audited financial statement or the notes or footnotes to the financial statement conflicts with the self-certification provided to it.

If a Financial Institution does rely upon other documentation to establish the Account Holder's status, there is no need to review any audited financial statements that may have been provided to it as part of the account opening.

12.53. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATION AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW

Pre-existing Entity Accounts

For the purposes of determining whether a Financial Institution that maintains a Pre-existing Entity Account has reason to know that the status applied to the Entity is unreliable or incorrect, the Financial Institution is only required to review information that may contradict the status claimed if such information is contained in:

- the most recent self-certification or Documentary Evidence;

- the current customer master file;

- the most recent account opening contract;

- the most recent documentation obtained for AML/KYC procedures or for other purposes.

Change of address within same jurisdiction

A change of address in the same jurisdiction as that of the previous address is not a reason to know that the self-certification or Documentary Evidence provided is inaccurate.

Conflicting indicia

A Financial Institution does not know or have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect solely because it discovers any of the following indicia and such indicia conflict with the self-certification or Documentary Evidence:

- one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Financial Institution; or

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

currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

12.54. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATION AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW: EXAMPLES

The following examples illustrate the application of the limits on the “reason to know” standards:

Example 1: Bank A maintains a Depository Account for Individual Account Holder P

A maintains a Pre-existing Depository Account for P. A has relied on the address in its records for P, as supported by his passport and a utility bill collected upon opening of the account, to determine that P is resident for tax purposes in Jurisdiction X (application of the residence address test).

Five years later, P provides a power of attorney to his sister, who lives in Jurisdiction Y, to operate his account. The fact that P has provided such power of attorney is not sufficient by itself to give A reason to know that the Documentary Evidence relied upon to treat P as a resident of Jurisdiction X is unreliable or incorrect.

Example 2: Insurance Company B has entered into a Cash Value Insurance Contract with Individual Account Holder D

The contract is a New Individual Account. B has obtained a self-certification from D and confirmed its reasonableness on the basis of the AML/KYC documentation collected from D. The self-certification confirms that D is resident for tax purposes in Jurisdiction V.

Two years later, B enters into a contract with D, D provides a telephone number in Jurisdiction T to B. Although B did not previously have any telephone number in its records for D, the sole receipt of a telephone number in Jurisdiction T does not in itself constitute a reason to know that the original self-certification is unreliable or incorrect.

12.55. DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: ALTERNATIVE PROCEDURES FOR CASH VALUE INSURANCE AND ANNUITY CONTRACTS

Individual beneficiary of a Cash Value Insurance Contract or an Annuity Contract

A Financial Institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract or an Annuity Contract as a Non-Reportable Person unless the Financial Institution has knowledge or reason to know that the beneficiary is in fact a Reportable Person. A Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected and associated with the beneficiary contains indicia as described in paragraph B of Section III of the A.EU/CRS.

Group Cash Value Insurance Contracts or Group Annuity Contracts

A Financial Institution may treat an account that is a Group Cash Value Insurance Contract or a Group Annuity Contract, and that meets the requirements set out below, as a Non-Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary (for FATCA, this is subject to a requirement that the Financial Institution obtains a certification from the employer that no employee/certificate holder (Account Holder) is a U.S. Person).

A Financial Institution is not required to review all the account information collected by the employer to determine if an Account Holder's status is unreliable or incorrect.

The requirements for considering this account (which is a quota of the entire contract) as a Non-Reportable Account are the following:

- the contract is issued to an employer and covers twenty-five or more employee/certificate holders; and

- 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

- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount equivalent to USD 1,000,000.

13. IN-DEPTH ANALYSIS OF THE MAIN DEFINITIONS PROVIDED FOR BY THE CRS (COMMENTARY ON SECTION VIII OF THE CRS)

Reporting Financial Institution

For a Financial Institution to be a Reporting Financial Institution, it needs, first, to be a Participating Jurisdiction Financial Institution.

To this end, the term "Participating Jurisdiction Financial Institution" shall include:

- any Financial Institution that is resident in a Participating Jurisdiction, but excluding any branch of that Financial Institution that is located outside such Participating Jurisdiction; and

- any branch located in a Participating Jurisdiction of a Financial Institution that itself is not resident in such Participating Jurisdiction.

For this purpose, a Financial Institution is “resident” in a Participating Jurisdiction if it is subject to the jurisdiction of such country. In general, where a Financial Institution is resident for tax purposes in a

Participating Jurisdiction, it is subject to the jurisdiction of such country and it is, thus, a Participating Jurisdiction Financial Institution.

In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such Participating Jurisdiction 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 in which the trust is resident for tax purposes.

Where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g. because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Participating Jurisdiction if:

a) it is subject to the laws of the Participating Jurisdiction;

b) it has its place of effective management in the Participating Jurisdiction; or

a) it is subject to financial supervision in the Participating Jurisdiction.

In this context, the term “Participating Jurisdiction” refers to a jurisdiction that has implemented the CRS.

Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Accounts.

Under national legislation, the term "branch", referring to the parties covered by the Law on Companies and Banking, Financial and Insurance Services (LISF), means the place of business activities constituting a part thereof, without legal personality, and which exercises all or some of the reserved activities for which the party has been authorised. For the purposes of the CRS, the term "branch" includes a unit, business or office of a Financial Institution located in a jurisdiction in which the Financial Institution is resident, and a unit, business or office of a Financial Institution located in the jurisdiction in which the Financial Institution is created and organised. All units, businesses or offices of a Reporting Financial Institution in a single jurisdiction shall be treated as a single branch.

Custodial Institution

A Custodial Institution is an entity that holds, as a substantial portion of its business, Financial Assets for the account of others.

In this context, an entity holds Financial Assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the entity’s gross income during the shorter of: i) its last three accounting periods, or ii) the period during which the entity has been in existence.

Income attributable to holding Financial Assets and providing related financial services includes custody, account maintenance and transfer fees, commissions earned from transactions with respect to Financial Assets held in custody, income earned from extending credit to customers, income earned on the bid-ask spread of Financial Assets (gross profit margin), fees for providing financial advice and fees for providing clearance and settlement services.

Entities that safe keep Financial Assets for the account of others, such as custodian banks, brokers and central securities depositories, would generally be considered Custodial Institutions. Entities that do not hold Financial Assets for the account of others, such as insurance brokers, will not be Custodial Institutions.

Depository Institution

Any entity that accepts deposits in the ordinary course of a banking or similar business. An entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:
a) makes personal, mortgage, industrial or other loans or provides other extensions of credit;

b) purchases, sells, discounts or negotiates accounts receivable, instalment obligations, notes, drafts, checks, bills of exchange, acceptances or other evidences of indebtedness;

c) issues letters of credit and negotiates drafts drawn thereunder;

d) provides trust or fiduciary services;

e) finances foreign exchange transactions; or

f) enters into, purchases or disposes of finance leases or leased assets.

Entities that solely provide asset based finance services, such as a factoring or invoice discounting business, or that accept deposits from persons solely as collateral or security pursuant to a sale or lease of property, a loan secured by property or a similar financing arrangement, between such entity and the person making the deposit, will not be Depository Institutions.

Investment Entity

The definition of "Investment Entity" shall be interpreted in a manner consistent with the definition of "Financial Institution" in the Financial Action Task Force (FATF) Recommendations.

The term "Investment Entity" includes two types of Entities:

i) Entities that primarily conduct as a business investment activities or operations on behalf of other persons (sub-paragraph A(6)(a));
ii) Entities that are managed by the Entities indicated in sub-paragraph i) or by other Financial Institutions (sub-paragraph A(6)(b)).

The following operations are covered by the first type of Investment Entity:

a) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.);

b) individual and collective portfolio management; or

c) otherwise investing, administering or managing Financial Assets or money on behalf of other persons.

Sub-paragraph A(6)(b) defines the second type of Investment Entity as an Entity the gross income of which is primarily attributable to investing, reinvesting or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity referred to in sub-paragraph A(6)(a).

An Entity is managed by another Entity if the managing Entity performs, either directly or through another service provider on behalf of the Entity managed, any of the activities or operations described in sub-paragraph A(6)(a). An Entity only manages another Entity if it has discretionary authority to manage the other Entity's assets (either in whole or in part). Where an Entity is managed by a mix of Financial Institutions, NFEs or natural persons, 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 referred to in sub-paragraph A(6)(a), if any of the managing Entities is such another Entity.

An Entity's gross income is primarily attributable to the activities indicated if such gross income attributable to such activities equals or exceeds 50% of the Entity's gross income during the shorter of: i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or ii) the period during which the Entity has been in existence.

A trust may be the second type of Investment Entity if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets and is managed by a Financial Institution. Verification procedures must be carried out annually and cover the total gross income earned in the preceding three calendar years. This type of income prevails, for instance, when the trust invests directly in assets and securities or when the trust assets consist of company shareholdings. An exception is where at least 80% of the trust assets are controlling ownership interests in companies carrying out economic and commercial activities (but only if these interests are not acquired for purely investment purposes); in this case the trust is not considered an Investment Entity.

Another condition is that the assets (all or even part of them) are discretionarily managed by another Financial Institution (therefore also by an Investment Entity).

If the trust is not managed by a Financial Institution and does not meet any of the other definitions of Financial Institution, it will be a Non-Financial Entity (NFE). For example, where the trustees of a trust are natural persons (and therefore not Financial Institutions) or the trust holds only a Depository Account or other investments with a Financial Institution, and that Financial Institution does not have discretion to manage the account or the assets in the account, then the trust will not be an Investment Entity.

A trust is usually considered to be managed by a Financial Institution where either one or more of the trustees is a Financial Institution or the trustees have appointed a Financial Institution to manage the trust's assets or the trust itself. This goes beyond managing the investment of the trust's assets and includes other management functions that the trustees have to perform but which are contracted to the Financial Institution.

Professional trust companies and group holding companies may fall into the category of Investment Entities. See the corresponding paragraphs 15 and 16.

Worth reiterating is that a trustee who is a natural person, even if he is a professional trustee, never falls within the definition of Investment Entity.

The Commentary on Section VIII in paragraph 22 contains some examples that illustrate the application of what explained above.

Specified Insurance Company

A Specified Insurance Company is 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.

An "insurance company" is an entity i) that is regulated under the laws, regulations, or practices of any jurisdiction in which the entity does business; ii) the gross income of which, arising from insurance, reinsurance and Annuity Contracts for the immediately preceding calendar year exceeds 50% of total gross income for such year; or iii) the aggregate value of the assets of which associated with insurance, reinsurance and Annuity Contracts at any time during the immediately preceding calendar year exceeds 50% of total assets at any time during such year.

Passive and Active NFE

The term "NFE" is an acronym for Non-Financial Entity and it means any entity that is not a Financial Institution. An NFE can be either a Passive NFE or an Active NFE. In principle, a "Passive NFE" means an NFE that is not an Active NFE and the term also includes an Investment Entity that is not a Participating Jurisdiction Financial Institution. In this case, Reporting Financial Institutions shall identify the Controlling Persons of such entities.

For example: Jurisdiction A has a reciprocal agreement on the automatic exchange of financial account information in place with Jurisdiction B, but has no agreement in place with Jurisdiction C. W, a Jurisdiction A Reporting Financial Institution, maintains Financial Accounts for entities X and Y, both of which are Investment Entities. Entity X is resident in Jurisdiction B and entity Y is resident in Jurisdiction C. From the perspective of W, entity X is a Participating Jurisdiction Financial Institution and entity Y is not a Participating Jurisdiction Financial Institution. As a result, W must treat entity Y as a Passive NFE.

To qualify an NFE as an Active NFE, reference can be made to its income and assets as follows: less than 50% of the NFE's gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income.

In determining what is meant by "passive income", reference can be made to each jurisdiction's particular rules. However, income deriving from the following is generally considered: a) dividends; b) interest; c) income equivalent to interest; d) rents and royalties; e) annuities; f) the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income described previously; g) the excess of gains over losses from transactions (including futures, forwards, options and similar transactions) in any Financial Assets; h) the excess of foreign currency gains over foreign currency losses; i) net income from swaps; or j) amounts received under Cash Value Insurance Contracts.

14. SUMMARY OF GENERAL RULES

Reporting period

The information to be reported must be that as of the end of the relevant calendar year or other appropriate reporting period.

Joint accounts

Each holder of a jointly held account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account. The same is applicable with respect to:

iii) an account held by a Passive NFE with more than one Controlling Person that has been identified as a Reportable Person;

iv) an account held by an Account Holder that is a Reportable Person (or an NFE with a Controlling Reportable Person) and is identified as having more than one jurisdiction of residence; and

v) an account held by a Passive NFE that is a Reportable Person with a Controlling Person that is a Reportable Person.

Currency

The information must be reported in the currency in which the account is denominated and the currency must be identified in the information reported. Any currency conversions, such as in relation to thresholds, must be calculated by applying a spot rate as of the last day of the reporting period.

15. TREATMENT OF TRUSTS IN THE A.EU/CRS

The CRS generally applies to trusts in two circumstances: when a trust is a (Reporting or Non-Reporting) Financial Institution, or when a trust is an NFE that maintains a Financial Account with a Reporting Financial Institution. In any event, the trust is always considered an Entity.

Therefore, a trust may alternatively be:

- a Financial Institution of a Participating Jurisdiction and therefore required to perform due diligence and reporting procedures;

- a Passive Non-Financial Entity and therefore required to provide (to Financial Institutions resident in the Participating Jurisdiction where accounts are held) data on its Controlling Persons (Passive NFE);

- an Active Non-Financial Entity and therefore not required to provide data on its Controlling Persons (Active NFE).

Basic features of a trust

In general terms, a trust is a fiduciary relationship, rather than an Entity with its own separate legal personality. The trust arrangement commences when a person (the settlor, also called the grantor) transfers specific property to the trustee, with the intention that it be applied for the benefit of others (the beneficiaries). The settlor may place any kind of transferable property into a trust.

Determining whether a trust falls within the definition of Reporting Financial Institution or NFE

A trust may be considered a Financial Institution when it falls within the definition of Investment Entity under Section VIII, sub-paragraph (A)(6)(b) of the CRS.

This is the case when a trust has gross income primarily attributable to investing, reinvesting or trading in financial assets (the so-called "gross income test") and is discretionarily managed by another Entity that may be considered a Financial Institution (the so-called "managed by" test).

The term "primarily" means that the gross income attributable to the activities mentioned is equal to or greater than 50% of the Entity's gross income with reference to the shorter of:

- the three-year period ending on 31 December of the year preceding that in which the determination is made; or

- the period during which the Entity has been in existence.

If the trust cannot be considered a Financial Institution - because the requirements of gross income and trust management are not jointly met - it is considered an Active or Passive Non-Financial Entity.

In the CRS, a Non-Financial Entity "that is not an Active Non-Financial Entity" is defined as a Passive NFE.

To qualify an NFE as an Active NFE, reference can be made to its income and assets as follows: less than 50% of the NFE's gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income. The term "passive income" generally refers to income from dividends, interest, income equivalent to interest, rents and royalties, annuities, etc.

It is possible, although perhaps less common in practice, that a trust could qualify as an Active NFE; this is the case of a trust that is a regulated charity or a trust that engages in a productive or commercial activity such that it can generate active income.

If the trust is not an Active NFE (and obviously if it is not an Investment Entity) then it is a Passive NFE.

Worth noting is that, if a trust that is not resident in San Marino, or in a Participating Jurisdiction, holds a financial account with a Reporting Financial Institution, such Reporting Financial Institution must treat the trust as a Passive NFE even if it would qualify as an Investment Entity described in Section VIII, sub-paragraph A(6)(b).

Indeed, a difference between the A.EU/CRS and FATCA concerns Investment Entities that operate in their own name and are managed by another Financial Institution. For FATCA purposes, these are Financial Institutions and therefore it is necessary to verify only the Financial Institution's registration as a deemed-compliant FFI and the Financial Institution's Global Intermediary Identification Number (or GIIN), whereas, for the A.EU/CRS, if the Entity resides in a Non-Participating Jurisdiction, it is considered a Passive NFE.

15.1. TREATMENT OF A TRUST THAT IS A FINANCIAL INSTITUTION

Also in the case of a trust, there are five fundamental steps to apply for the purposes of the A.EU/CRS:

1- determining whether the Entity is a Reporting Financial Institution;
2- reviewing its financial accounts;
3- identifying from among the financial accounts those which are reportable;
4- applying the due diligence rules for tax purposes;
5- reporting the relevant information.

Determining whether the Entity is a Reporting Financial Institution

A trust that is a Financial Institution will be a Reporting Financial Institution if it is resident in a Participating Jurisdiction and does not fall within the definition of Non-Reporting Financial Institution (e.g. if the trust is a broad participation retirement fund or a narrow participation retirement fund).
A trust could also be a Non-Reporting Financial Institution where its trustee is a Reporting Financial Institution, and that trustee undertakes all information reporting in respect of all Reportable Accounts by replacing the trust (Trustee Documented Trust - TDT). In this case, the reporting and due diligence obligations are transferred from the trust to its trustee. Unlike a third-party service provider, the TDT is directly responsible for the obligations to be fulfilled.

If a trustee is a natural person, he/she can never be considered an Entity and therefore never falls within the definition of Financial Institution.

For the purposes of applying the CRS, the trust is considered to be resident where its trustee is resident. If there is more than one trustee, the trust will be resident in each jurisdiction in which each trustee is resident and information will have to be transmitted to all jurisdictions. In other words, if the trustees are each resident in different jurisdictions, the trust would be a Reporting Financial Institution in each of those Participating Jurisdictions and each trustee would be required to separately report the relevant information, i.e. the Reportable Accounts. However, where the trust is considered to be resident for tax purposes in a particular jurisdiction and all information is reported to that jurisdiction, it will not be necessary to collect data in all the different jurisdictions of residence of the various trustees, provided that it can be demonstrated that all reporting obligations have been fulfilled in at least one jurisdiction.

Identifying the Financial Accounts of a trust that is a Reporting Financial Institution

Where a trust is considered a Financial Institution, it must identify its financial accounts, which, in the case of a trust, are the debt and equity interests of the trust. Although "debt interest" is not defined in the CRS, "persons holding debt interest" means all creditors, in various capacities, of the trust.

An equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. Therefore, the

reference to "any other natural person exercising control over the trust" includes the trustee (if there is another trustee in addition to the trustee that is an Investment Entity) and the protector (if any).

A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. In the latter case, the discretionary beneficiary of a trust is deemed to be a Reportable Person in the calendar year (or other appropriate reporting period) in which the distribution is made or can be made (see also paragraph 10.6).

If the settlor, beneficiary(ies), trustee(s) and protector(s) are not natural persons but Entities, it will be necessary to determine the beneficial owner (the Controlling Person) of the Entity in order to identify the Reportable Person. The "look through" procedure is the same as the one followed to identify Reportable Persons of Passive NFEs, i.e. in accordance with the 2012 FATF Recommendations.

For San Marino, the terms provided for by the anti-money laundering legislation with reference to the beneficial owners of a trust, according to the latest FATF Recommendations, are contained in Article 1 bis, paragraph 6 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments and integrations.

The CLO verifies that the data received are correct by consulting the Register of Beneficial Owners of Trusts maintained by the Central Bank, to which it may access directly.

Please note that, regarding the settlors and protectors of trusts: the settlor must always be reported (if resident in a Reportable Jurisdiction) regardless of whether the trust is revocable or not; similarly, the protector, if any, is always considered reportable, since the protector falls within the definition of "any other natural person exercising effective control over the trust".

If there is only one trustee and the trustee is a Financial Institution as a type 1 Investment Entity (Section VIII, sub-paragraph (A)(6)(a) of the CRS), the trustee will not be reported, since it falls within the category of "Non-Reportable Persons" (CRS, Section VIII, sub-paragraph D (2)).

Identifying Reportable Accounts of a trust that is a Reporting Financial Institution

The financial accounts to be reported are the debt and equity interests of the trust held by Reportable Persons, i.e. natural persons resident in a Reportable Jurisdiction.

Applying due diligence rules for tax purposes

The trust will apply due diligence rules in order to determine the identity and residence of its Account Holders.

Where the Controlling Person of the trust is not a natural person but an Entity, it will be necessary to identify the beneficial owner under the AML legislation and FATF Recommendations.

Reporting the relevant information

A trust that is a Financial Institution will report financial information relating to each Reportable Person.

The information includes the identifying information of the person (name, surname, date of birth, address, tax residence, TIN) and the identifying information of the trust (name and identifying number). It is possible that a trust may not have an account number for each Reportable Person; in this case, the trust should use a unique identifying number that will enable the trust to identify the subject of the report in the event of further investigations. To this end, it is advisable to use the codes assigned by the CRS for each position (CRS804 to CRS808 - see Annex 3 - Common Reporting Standard User Guide).

The data to be reported also include the balance or value of the financial account, as well as the payments made during the year to each person. If the trust has not recalculated the balance, the latter is in principle the same as the aggregate value of the assets and rights transferred to the trust and must be reported in its entirety for each Reportable Person (the only exception being discretionary beneficiaries for whom the balance must be reported only in the year in which they receive distributions).

In the case of closed accounts, the general reporting rules are followed; an account relating to the equity interest is considered to be closed where, for example, a beneficiary is definitely removed or one of the persons is deceased in the reporting year.

Summary table: data to be reported where the trust is a Financial Institution

Account holder	Account balance or value	Payments
Settlor	Total value of all trust property (aggregate value of trust assets)	Total amount paid to the settlor during the year
Beneficiary: mandatory	Total value of all trust property (aggregate value of trust assets)	Total amount paid to the beneficiary during the year
Beneficiary: discretionary (reported only in the year in which the discretionary beneficiary receives a distribution)	Not to be compiled	Total amount paid to the discretionary beneficiary during the year
Any other person exercising ultimate control over the trust (including trustee and protector)	Total value of all trust property (aggregate value of trust assets)	Total amount paid to such Account Holders during the year and only in the year in which the distribution is made
Debt interest holder	Principal amount of the debt	Total amount paid or credited to the debt interest holder
Any of the above, if account was closed	The fact of closure	Total gross amount paid or credited to the account until the date of account closure to any of the above mentioned Account Holder(s)

In the case of a trust, distributions paid to beneficiaries, total or partial repayments to the settlor, distributions paid to other natural persons exercising effective control over the trust, interest payments to lenders, and repayment of principal may be considered “payments”.

Payments of invoices and repayment of prepaid expenses should not be reported.

15.2. TREATMENT OF A TRUST THAT IS AN ACTIVE NFE

A trust qualifies as an Active NFE if less than 50% of the previous year's gross income is derived from passive income or if less than 50% of the assets is used to generate passive income.

A trust also qualifies as an Active NFE if at least 80% of its assets, at the end of the previous year, consists of controlling ownership interests in companies carrying out an economic or commercial activity other than that of a Financial Institution. This condition also applies where the trust holds controlling ownership interests in holding companies of commercial and industrial groups.

A trust can be an Active NFE, for example, if it is a regulated charity or if it carries out a productive or commercial activity such that it can generate active income.

Where the trust is an Active NFE, the information to be reported will relate only to the trust (provided that it is not resident in the same jurisdiction as the Reporting Financial Institution and is resident in a Reportable Jurisdiction). The trust will be considered a Reportable Person if it is resident for tax purposes in a Reportable Jurisdiction.

Therefore, the details of the trust, its TIN, the balance or value of the account held with the Reporting Financial Institution and the payments received by the trust will be reported. Like the other entities that fall within the definition of Active NFE, it will not be required to identify the Controlling Persons of the trust.

15.3. TREATMENT OF A TRUST THAT IS A PASSIVE NFE

A trust qualifies as a Passive NFE where it is not an Active NFE, but also where it qualifies as an Investment Entity managed by another Financial Institution (therefore, in this case, the trust is considered a Financial Institution) but is resident in a Non-Participating Jurisdiction.

In the case of a trust identified as a Passive NFE, the verification and reporting fall under the responsibility of the Financial Institutions with which the financial accounts of the trust are held.

If an NFE holds financial accounts with a Reporting Financial Institution, the Reporting Financial Institution is indeed obliged to analyse the trust for CRS purposes and determine whether the accounts are reportable under the due diligence procedures.

Once again, the following five steps must be applied:

1- identifying the Reporting Financial Institution;
2- reviewing its financial accounts;
3- identifying from among the financial accounts those which are to be reported;
4- applying the due diligence rules for tax purposes;
5- reporting the relevant information.

After clarifying whether the trust has financial accounts with a Reporting Financial Institution, it must then be determined whether the trust is a Reportable Person (this can be inferred from the correct application of the due diligence rules by the Reporting Financial Institution) and which accounts must be reported.

Identifying whether accounts held by a trust are Reportable Accounts

Financial accounts held by a trust are Reportable Accounts if:

a) the trust is a Reportable Person, i.e. if it is resident for tax purposes in a Reportable Jurisdiction; or

b) the trust is a Passive NFE with one or more Controlling Persons (beneficial owners) that are Reportable Persons, i.e. are resident for tax purposes in a Reportable Jurisdiction.

PLEASE NOTE: In the case of a trust that is a Passive NFE, financial accounts are not capital or debt interests but are the financial accounts held with Financial Institutions.

Where the beneficiaries are not individually named but are identified as a “class”, the CRS does not require that all possible members of the class be treated as Reportable Persons. Rather, when a member of a class of beneficiaries receives a distribution from the trust or intends to exercise vested rights in the trust property, this will be a change in circumstances, prompting due diligence and reporting as necessary.

Controlling Persons must be identified in accordance with the AML legislation and the 2012 FATF Recommendations. Therefore, in the case of a trust, the settlor, the trustee, the beneficiaries, the protector and any other natural person exercise ultimate effective control over the trust.

Also in the case where the trust is an NFE, the settlor is reported regardless of whether the trust is revocable or irrevocable, whereas, unlike the case of a trust that is a Financial Institution, the discretionary beneficiary is reported even in the year in which it receives no distribution.

A Controlling Person of a trust need not be reported if it is resident in the same jurisdiction as the Reporting Financial Institution or does not reside in a Reportable Jurisdiction.

Each Controlling Person is attributed the entire balance of the account and the entire amount of payments made on the account.

Identifying Controlling Persons of a trust in the chain of ownership

Where a trust identified as a Passive NFE maintains Reportable Accounts with a Reporting Financial Institution, that Reporting Financial Institution is required to "look through" the chain of ownership and control to identify the beneficial owners of the Entity and verify whether they are Reportable Persons. Examples of different scenarios can be found in the Implementation Handbook to identify Controlling Persons in each of the structures examined.

Applying due diligence rules for tax purposes

The Reporting Financial Institution must apply due diligence rules to determine if the account held by the trust is a Reportable Account. Financial Institutions may rely on information collected pursuant to AML/KYC Procedures to identify the Controlling Persons, provided that due diligence procedures are in accordance with the 2012 FATF Recommendations.

Reporting the relevant information

Where a trust is a Reportable Person, the Reporting Financial Institution will report information on financial accounts held by the trust. The information to be reported includes the identifying information of the trust, such as name, address, TIN and account number, and the identifying information of the Reporting Financial Institution (business name and identifying number).

In addition to the information mentioned above, the Financial Institution will report information on the Controlling Persons of the trust that are Reportable Persons. Where the Reporting Financial Institution has information available that identifies the type of each Controlling Person (i.e. whether it is the settlor, trustee, protector or beneficiary), this information is also expected to be reported (with the codes from CRS804 to CRS808); this will significantly increase the usefulness of the data to the receiving jurisdiction. With respect to New Entity Accounts, this information should be available to Financial Institutions that have carried out a thorough verification.

In the case of a trust where the Controlling Persons are resident in different jurisdictions, the Financial Institution with which the accounts are held will send the information to the CLO so that it can transmit information flows to the various jurisdictions of residence.

The financial information to be reported will be the account balance or value of the account held by the trust and payments made or credited to such account. Where the financial account held by the trust is closed during the year, the fact of closure is reported, as well as the payments made until the date of account closure (see table).

Summary table: data to be reported where the trust is a Passive NFE

Account holder	Account balance or value	Payments
Settlor	Total account balance/value	Gross payments made or credited to the account (see Section I.A of the CRS)
Trustee	Total account balance/value	Gross payments made or credited to the account (see Section I.A of the CRS)
Beneficiary: mandatory	Total account balance/value	Gross payments made or credited to the account (see Section I.A of the CRS)
Beneficiary: discretionary	Total account balance/value	Gross payments made or credited to the account (see Section I.A of the CRS)
Protector (if any)	Total account balance/value	Gross payments made or credited to the account (see Section I.A of the CRS)
Any of the above, if account was closed	The fact of closure	Gross payments made or credited to the account until the date of account closure (see Section I.A of the CRS)

The key difference in information reporting between a trust that is a Financial Institution and a trust that is a Passive NFE is that in the former case discretionary beneficiaries are not always reported, whereas in the latter case they are reported regardless of whether they have received a distribution from the trust in a given year. All the other positions involved (settlor, trustee, protector and mandatory beneficiary) are treated in the same manner, but the content of the information reported changes, since the Reporting Financial Institution will only be aware of the Financial Account held with it.

15.4. PROFESSIONAL TRUST COMPANIES

Professional trust companies - usually trustees established as a company - may fall within the category of Investment Entities, since this type of company may manage the trust assets directly, or through third parties, in a discretionary manner; obviously, in order to fall within the category of Investment Entities (Type 1 - see Section VIII, sub-paragraph A(6)(a)), the condition relating to their income, at least 50% of which must derive from the management of financial accounts on behalf of others, must be met.

Not all trusts administered by a Trust Company fall under the Investment Entity classification, or they may be considered a Financial Institution one year but not the next, depending on whether or not the conditions set out above are met.

As an Investment Entity, and therefore a Financial Institution, a Professional Trust Company can replace a trust in the performance of due diligence and reporting procedures (TDT).

It will be the responsibility of the Professional Trust Company to inform the Financial Institutions, with which financial accounts are opened on behalf of the trust, that information reporting under the CRS will be made by it, in order to avoid any overlapping. Obviously, the reporting should be made every year precisely because the trust may not fall under the Investment Entity classification in subsequent years.

15.4.1 TECHNICAL INSTRUCTIONS FOR THE TRANSMISSION OF INFORMATION FLOWS

Let's analyse how a trustee, which is a Financial Institution and manages more than one trust classified as a Financial Entity with Controlling Persons that are Reportable Persons, should behave, i.e. whether the

persons holding debt or equity interests, i.e. the settlor, the beneficiary(ies), the trustee, the protector (if any) and any creditors of the trust (holding debt interest), are resident in a Reportable Jurisdiction.

Please note that, if there is only one trustee that is a Financial Institution, then the trustee is a “Non-Reportable Person” (CRS-Section VIII, sub-paragraph D(2)) and will not be reported.

When a trustee needs to report the information of several trusts, such trustee must prepare and transmit as many (encrypted) XML files as there are TDTs, and not a single file containing the data of all trusts.

The name of each trust must be entered in the string "*Name*" in the "*ReportingFI*" field, while the reference to the trustee must be entered in the initial message part (*MessageSpec*) by entering the trustee's TIN in the "*SendingCompanyIN*" field and the name in the "*Contact*" field.

Each Reportable Person must be treated as an Account Holder.

The information includes the identifying information of the person (name, surname, date of birth, address, tax residence, TIN) and the identifying information of the trust (name and identifying number). Since it is possible that a trust may not have an account number for each Reportable Person, the trust may use a unique identifying number for each holder, so that the trust will be able to identify the subject of the report in the event of further investigations. To this end, it is advisable to use the codes assigned by the CRS for each position, even if referring to a trust that is a Passive NFE (CRS804 to CRS808 - see Annex 3 - Common Reporting Standard User Guide).

The financial accounts to be reported in the case of a trust that is an Investment Entity are equity or debt interests.

Payments may therefore fall into the following categories:

Event	Payment category
Distributions paid to beneficiaries	Other income (other – CRS504)
Amount fully or partially credited to the settlor	Other income (other – CRS504)
Distributions paid to other Controlling Persons of the trust	Other income (other – CRS504)
Interest paid to lenders	Interest (CRS502)
Repayment of third-party capital	Other income (CRS504) and possibly interest (CRS502) (to be reported separately)

The following is a sample XML information flow (valid at the time this Guidance was issued)[1] to be used in the reporting by the trustee on behalf of the trust. References in bold must be replaced by the actual data:

```
<?xml version="1.0" encoding="UTF-8"?>
<crs:CRS_OECD version="2.0"
        xmlns:crs="urn:oecd:ties:crs:v2"
        xmlns:xsd="http://www.w3.org/2001/XMLSchema"
        xmlns:ftc="urn:oecd:ties:fatca:v1"
        xmlns:cfc="urn:oecd:ties:commontypesfatcacrs:v2"
```

[1] The CLO will transmit any updates concerning XML schemes to the parties concerned

```xml
xmlns:stf="urn:oecd:ties:crsstf:v5"
xmlns:iso="urn:oecd:ties:isocrstypes:v1"
xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
xsi:schemaLocation="urn:oecd:ties:crs:v2 CrsXML_v2.0.xsd">
<crs:MessageSpec>
    <crs:SendingCompanyIN>SM99999 (TIN OF THE TRUSTEE)</crs:SendingCompanyIN>
    <crs:TransmittingCountry>SM</crs:TransmittingCountry>
    <crs:ReceivingCountry>SM</crs:ReceivingCountry>
    <crs:MessageType>CRS</crs:MessageType>
    <crs:Contact>NAME OF THE TRUSTEE</crs:Contact>
    <crs:MessageRefId>SM_2022_20220318113258_SM12345</crs:MessageRefId>
    <crs:MessageTypeIndic>CRS701</crs:MessageTypeIndic>
    <crs:ReportingPeriod>2021-12-31</crs:ReportingPeriod>
    <crs:Timestamp>2022-03-31T00:00:00Z</crs:Timestamp>
</crs:MessageSpec>
<crs:CrsBody>
    <crs:ReportingFI>
        <crs:ResCountryCode>SM</crs:ResCountryCode>
        <crs:IN INType="TIN" issuedBy="SM">12345 (TIN OF THE TRUST)</crs:IN>

        <crs:Name>NAME OF THE TRUST</crs:Name>
<crs:Address>
                <cfc:CountryCode>SM</cfc:CountryCode>


            <cfc:AddressFix>
            <cfc:Street>VIA ROSSI, 1</cfc:Street>
            <cfc:PostCode>47890</cfc:PostCode>
            <cfc:City>SAN MARINO</cfc:City>
            </cfc:AddressFix>
        </crs:Address>
        <crs:DocSpec>
            <stf:DocTypeIndic>OECD1</stf:DocTypeIndic>
            <stf:DocRefId>SM_2021_SM12345_FI_1_SM</stf:DocRefId>
```

</crs:DocSpec>

</crs:ReportingFI>

<crs:ReportingGroup>

<crs:AccountReport>

<crs:DocSpec>

<stf:DocTypeIndic>**OECD1**</stf:DocTypeIndic>

<stf:DocRefId>**SM_2021_SM12345_AR_1_SM**</stf:DocRefId>

</crs:DocSpec>

<crs:AccountNumber AcctNumberType="**OECD605">ACCOUNT NUMBER ATTRIBUTED TO THE TRUST_CRS804**</crs:AccountNumber>

<crs:AccountHolder>

<crs:Individual>

<crs:ResCountryCode>**IT**</crs:ResCountryCode>

<crs:TIN issuedBy="**IT">ABCDEF12A34G567H**</crs:TIN>

<crs:Name>

<crs:FirstName>**Giuseppe**</crs:FirstName>

<crs:LastName>**Verdi**</crs:LastName>

</crs:Name>

<crs:Address>
<cfc:CountryCode>IT</cfc:CountryCode>

<cfc:AddressFix>

<cfc:Street>**VIA ROMA 1**</cfc:Street>

<cfc:PostCode>**12345**</cfc:PostCode>

<cfc:City>**ROME**</cfc:City>

</cfc:AddressFix>

</crs:Address>

<crs:BirthInfo>

<crs:BirthDate>**1950-01-01**</crs:BirthDate>

<crs:City>**Rome**</crs:City>

<crs:CountryInfo>

<crs:CountryCode>**IT**</crs:CountryCode>

</crs:CountryInfo>

</crs:BirthInfo>

```
                    </crs:Individual>
            </crs:AccountHolder>
                <crs:AccountBalance currCode="EUR">100000.00</crs:AccountBalance>
                <crs:Payment>
                    <crs:Type>CRS502</crs:Type>
                    <crs:PaymentAmnt currCode="EUR">1000.00</crs:PaymentAmnt>
                </crs:Payment>
            </crs:AccountReport>
        </crs:ReportingGroup>
    </crs:CrsBody>
</crs:CRS_OECD>
```


16. HOLDING COMPANIES AND OTHER INVESTMENT ENTITIES

Even in the event that the so-called "gross proceeds" test is successfully passed, we may still have an Active NFE, provided that the Entity complies with the requirements set out in Section VIII, sub-paragraph D(9), letter d) to g).

Holding companies and treasury centres of commercial and industrial groups may be included in this category if their assets are primarily represented by controlling ownership interests in companies carrying out activities other than those performed by Financial Institutions, and which therefore generate “active” income (see Section VIII, sub-paragraph D(9)(d)).

The condition is that the interests are not acquired for pure investment purposes (as is the case with private equity operations).

The term “primarily” refers to at least 80% of the Entity's gross income. The 80% threshold may be reached through the holding activity, through financing or the provision of services for Related Entities or through a combination of both activities. The concept of a Related Entity includes any company with share capital whose outstanding shares are, directly or indirectly, wholly or partly held by the Entity.

Other Active NFEs that fall under paragraph D are newly established companies (sub-paragraph 9(e)) and companies subject to liquidation procedures that have not been Financial Institutions in the preceding 5 years or that are reorganising or changing their corporate purpose in order to carry out activities other than those of a Financial Institution (sub-paragraph 9(f)).

Some hints can be found in the FAQ section of the CRS Implementation Handbook (https://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm):

1. Entities and Cash Pooling Activities

Question: What is the CRS status of an Entity that regularly manages working capital by pooling the cash balances, including both positive and deficit cash balances (i.e. cash pooling) of one or more Related Entities that are primarily engaged in a business other than that of a Financial Institution and does not provide such cash pooling services to any Entity that is not a Related Entity?

Answer: First of all, it is necessary to consider whether the Entity is a Financial Institution, or more specifically a Depository Institution or an Investment Entity, or an NFE.

If the Entity is not a Depository Institution, the Entity may still be a Financial Institution if it meets the definition of an Investment Entity as set forth in Section VIII, sub-paragraph (A)(6).

An Active NFE described in Section VIII, sub-paragraph (D)(9)(g) includes an NFE that 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. See Section VIII, sub-paragraph (D)(9)(g).

If these conditions are met, since cash pooling is typically performed to reduce external debt and increase the available liquidity on behalf of Related Entities, cash pooling will be considered a financing transaction and the Entity will have the CRS status of Active NFE.

2. Holding Companies and Treasury Centres of a Financial Group

Question: In what circumstances will a holding company or treasury centre of a financial group have the status of Financial Institution under the CRS?

Answer: A holding company or treasury centre of a financial group will have the status of Financial Institution if it meets the definition of Financial Institution provided in Section VIII, paragraph A. Therefore, whether a holding company or treasury centre has the status of Financial Institution depends on the facts and circumstances, and in particular on whether it engages in the specified activities or operations of a Financial Institution even if those activities or operations are engaged in solely on behalf of Related Entities or its shareholders.

An Entity that, for example, enters into foreign exchange hedges on behalf of the Entity's Related Entity financial group to eliminate the foreign exchange risk of such group, will meet the definition of Financial Institution, provided that the other requirements of Investment Entity definition are met.

A holding company will also meet the definition of Financial Institution (no longer an Active NFE), more specifically of Investment Entity, if it functions as an investment fund, private equity fund, venture capital fund, and similar investment vehicles and investors participate (either through debt or equity) in investment schemes through the holding company (see Commentary on Section VIII, paragraph 20).

In order to verify whether a company has primarily shareholdings in entities that are not Financial Institutions, one can check whether, based on the data from the latest approved balance sheet, the total amount of interests in companies that do not engage in financial activities exceeds 50% of the assets. Both interests in financial fixed assets and interests in current assets must be taken into account, considering for both the book values at which they are entered in the balance sheet. On the contrary, assets arising from commercial relationships (e.g. royalties for the use of trademarks and patents or receivables from real estate rentals) should not be included. Commitments to disburse funds and collaterals issued must be included; the relevant amounts must then be added to the total value of the balance sheet in order to verify the "prevalence" relevant to the acquisition of the status of Non-Financial Holding Company.

In the case of a holding company classifiable as a Financial Institution (and thus obliged to perform due diligence and reporting procedures), the accounts to be reported may relate to:

- interests;
- shareholders' loans and thus loans received by the holding company and those granted by the holding company to its participated companies;

- bonds, both issued by the holding company and subscribed by third parties, and issued by the participated companies or by third parties and subscribed by the holding company;
- cash pooling (only the parent company must meet reporting obligations);
- the issuance of collaterals to third parties in favour of participated companies and the issuance of collaterals by third parties in the interest of the holding company in favour of the intermediary with which the financing relationship is entered into, with the exception of collaterals already included in the financing contract;
- the issuance of commitments to disburse funds.

As indicated above, it is not necessary for an Entity to be regulated to fall within the definition of Investment Entity.

Hereunder is another example of a non-regulated Investment Entity:

A. is a natural person who is resident for tax purposes in Jurisdiction **B.**, with substantial economic resources, and seeks to protect and increase his assets.

A. is the sole shareholder and sole director of the company **G.**, which has:

1. a share capital of EUR 100 million and is resident for tax purposes in Jurisdiction **W.**;

2. directly holds a number of shares in listed companies (which are not held through a bank or custodial institution).

G. has a contract with **D.**, a fund management company - which meets the definition of an Investment Entity under Section VIII, sub-paragraph A(6)(a) - to manage its financial assets. The contract gives the investment manager (**D.**) discretionary power to trade **G.**'s financial assets (the shares of listed companies) on its behalf, while **A.** retains full control over the rest of his company's business.

At the end of the first accounting year, company **D.**'s income is equal to EUR 15 million, all from the investment and reinvestment of shares. Therefore, company **G.** meets the definition of a Financial Institution under Section VIII, sub-paragraph A(6)(b) since more than 50% of its income derives from investing, reinvesting or trading of financial assets, and these activities are carried out under the discretionary management of another Financial Institution (**D.**)

Considerations on compliance with the CRS:

As a Financial Institution, company **G.** is responsible for reporting information on **A.**, the holder of the Financial Account, to the tax authority in Jurisdiction **W.**, which will exchange the information with Jurisdiction **B.** (where **A.** is resident for tax purposes).

It should be noted that the financial assets are not held by any Financial Institution other than Entity **G.** (which qualifies as an Investment Entity) and any bank accounts of the company **G.** maintained with other Financial Institutions may not be reported, as company **G.** is a Financial Institution and therefore not subject to reporting under the CRS.

Please note: Since the situations illustrated in the previous example involve Entities that are not regulated or well defined and therefore it is difficult for the Custodial or Depository Institution to know the CRS status of the company holding the account, it is advisable either to obtain a waiver specifying who is subject to the due diligence and reporting obligations or to report in any case the financial accounts held.

If the shareholdings had been held through a Depository Institution, the latter, and not the Investment Entity, would have been responsible for reporting.