

CAYMAN ISLANDS



Supplement No. 10 published with Gazette No. 26
dated 19th December, 2016.

**THE TAX INFORMATION AUTHORITY LAW
(2016 REVISION)**

**THE TAX INFORMATION AUTHORITY (INTERNATIONAL TAX
COMPLIANCE) (COMMON REPORTING STANDARD) (AMENDMENT)
REGULATIONS, 2016**

THE TAX INFORMATION AUTHORITY (INTERNATIONAL TAX COMPLIANCE) (COMMON REPORTING STANDARD) (AMENDMENT) REGULATIONS, 2016

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COMPLIANCE) (COMMON REPORTING STANDARD) (AMENDMENT)
REGULATIONS, 2016**

The Cabinet, in exercise of the powers conferred by section 25 of the Tax Information Authority Law (2016 Revision), makes the following Regulations -

1. These Regulations may be cited as the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016.

Citation

2. The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2 as follows -

Amendment of regulation 2 of Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 - definitions

- (a) in paragraph (1) by -
 - (i) in the definition “Organisation for Economic Co-Operation and Development”, by deleting “; and” and substituting “;”;
 - (ii) in the definition “relevant scheduled Agreement”, by deleting the full stop and substituting “;”;
 - (iii) inserting in the appropriate alphabetical sequence the following definitions -
 - “ “appeal” means an appeal under regulation 32 and any further appeals relating to the decision on such an appeal;
 - “breach notice” means the notice mentioned in regulation 28(1)(a);
 - “Cayman Financial Institution” means -
 - (a) a Financial Institution resident in the Islands other than any of the institution’s branches outside the Islands; and

- (b) a branch in the Islands of a Financial Institution not resident in the Islands;
- “Cayman Reporting Financial Institution” means a Cayman Financial Institution other than a Non-Reporting Financial Institution;
- “commentary” means the commentary mentioned in regulation 5(1);
- 2016 Revision
“company” means a company as defined under section 2 of the Companies Law (2016 Revision), a foreign company registered under that Law or an LLC;
- “continuing penalty” means the notice mentioned in regulation 24(2);
- “contravention”, for a provision about an offence or a penalty, means the contravention that constituted the offence or the act or omission to which the penalty relates;
- “designated person” means a person designated mentioned in the definition of “Authority”;
- “electronic address” includes an email address and the address of a digital mailbox;
- “electronic portal” means the Authority’s electronic portal for the automatic exchange of information;
- Law 5 of 2014
“exempted limited partnership” means an exempted limited partnership as defined under section 2 of the Exempted Limited Partnership Law, 2014 (Law 5 of 2014);
- “give”, for a notice or information, includes to deliver, provide, send, transmit or make the notice or information;
- “inaccurate” means incomplete, incorrect or unreliable;
- “interest”, for a provision about a penalty, means interest accrued or accruing on the penalty under regulation 35;
- 2013
Revision
“limited partnership” means a limited partnership registered under section 49 of the Partnership Law (2013 Revision);
- Law 2 of 2016
“LLC” means a limited liability company as defined under section 2 of the Limited Liability Companies Law, 2016 (Law 2 of 2016);
- “notice” means written information given, or to be given, electronically or by another mode of communication;
- “official website” means -

- (a) the website of the Department for International Tax Cooperation;
- (b) any website of the Authority; or
- (c) another Government website about international tax cooperation;

“party”, for a provision about a penalty or proposed penalty, means the person on whom the penalty has been imposed or is being considered to be imposed;

“penalty” means a penalty imposed under regulation 24, reconsidered under regulation 34(2)(b) or deemed under regulation 34(3);

“penalty notice” means the notice mentioned in regulation 28(1)(c);

“primary penalty” means the notice mentioned in regulation 24(1);

“principal point of contact”, for a Cayman Financial Institution, means the individual most recently notified under regulation 8 as its principal point of contact;

“resident in the Islands”, for a Financial Institution, means -

- (a) being incorporated or established in the Islands;
- (b) having in the Islands a place of effective management as defined under paragraph 109 of the commentary; or
- (c) being subject to financial supervision in the Islands;

“return” (other than in Schedule 1) means a return required under regulation 9(1); and

“stayed”, for a penalty or interest, means that they cannot be enforced because of the operation of regulation 30(1).”; and

- (b) by repealing paragraph (2) and substituting the following paragraph -

“(2) Subject to regulation 6A, definitions under the Common Reporting Standard apply for these Regulations for terms not defined under paragraph (1).”.

The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016

Repeal of regulation 3 - non-reportable accounts Schedule 2 and regulation 4 - general rules for accounts

3. The principal Regulations are amended by repealing regulations 3 and 4.

Amendment of regulation 5 - common reporting standard commentary

4. The principal Regulations are amended by repealing regulation 5(2).

Insertion of regulation 5A - guidelines

5. The principal Regulations are amended by inserting after regulation 5 the following regulation -

“Guidelines 5A. The Authority may issue guidelines for complying with Part 2, for using the electronic portal, or both.”.

Insertion of regulation 6A - rules for applying the standard

6. The principal Regulations are amended by inserting after regulation 6 the following regulation -

“Rules for applying the standard 6A. (1) This regulation states rules for how a Cayman Financial Institution shall, under this Part, apply the Common Reporting Standard.

(2) A reference in the standard to a term as follows is to be read as a reference to the following conversion -

<i>Term</i>	<i>Conversion</i>
A Financial Institution	A Cayman Financial Institution
A Reporting Financial Institution	A Cayman Reporting Financial Institution
A reporting period or a calendar year or other appropriate reporting period	A calendar year.

(3) Sections IID. and 1X of the standard do not apply.

(4) For paragraph 17(g) of the definition “Excluded Account” in Section VIIC. of the standard, a Depository Account is defined as an Excluded Account if the account -

- (a) is a dormant account under section 4(1) of the Dormant Accounts Law (2011 Revision); and
- (b) has a balance of \$1,000 or less.

2011 Revision

(5) An account balance with a negative value shall be treated as having a nil value.

(6) If a balance or value of an account is denominated in a currency other than US dollars, a relevant US dollar threshold amount shall be translated into the other currency by reference to the spot rate of exchange on the date of the threshold amount.”.

7. The principal Regulations are amended in regulation 7 as follows -

Amendment of regulation 7 - arrangements to be established by reporting financial institutions

(a) by deleting the marginal note and substituting the following marginal note: “Required policies and procedures for Cayman Reporting Financial Institutions”;

(b) by repealing paragraph (1) and substituting the following paragraph -

“(1) Each Cayman Reporting Financial Institution shall -

(a) establish and maintain written policies and procedures to comply with this Part; and

(b) implement and comply with the policies and procedures.”;

(c) in paragraph (2), by deleting the words “The policies and procedures established under paragraph (1)” and substituting the words “Without limiting paragraph (1), the policies and procedures”;

(d) in subparagraph (2)(c), by deleting the words “these Regulations” wherever they appear and substituting the words “this Part”; and

(e) by inserting after paragraph (2) the following paragraph -

“(3) A Cayman Reporting Financial Institution is deemed to have contravened the policies and procedures relating to a self-certification or documentary evidence (the “instrument”) if the institution -

(a) knows, or has reason to believe, the instrument is inaccurate in a material way for the policies and procedures; and

(b) it makes a return that relies on the instrument’s accuracy.”.

Repeal and substitution
of regulation 8 -
obligation to notify

8. The principal Regulations are amended by repealing regulation 8 and substituting the following regulation -

“Obligation of
Cayman
Financial
Institutions to
notify certain
information

8. (1) Each Cayman Financial Institution, other than an exempted body, shall give the Authority -

- (a) a notice (an “information notice”) stating the required information about the institution on or before -
 - (i) 30th April 2017; or
 - (ii) if an entity becomes a Cayman Financial Institution after that date, the next 30th April after the entity became a Cayman Financial Institution; and
- (b) if any of the required information so notified changes, a notice stating details of the change (a “change notice”).

(2) An information notice or change notice shall be given electronically in the way and in the form -

- (a) posted on an official website, for the information of Cayman Financial Institutions generally; or
- (b) stated in a notice given to any particular Cayman Financial Institution in question.

(3) Also, a change notice for a Cayman Financial Institution’s principal point of contact can only be given by the individual the institution has authorised for that purpose as most recently notified under an information notice or change notice.

(4) In this regulation -

“exempted body” means -

- (a) the Cayman Islands Monetary Authority under section 5(1) of the Monetary Authority Law (2016 Revision) (“CIMA”);
- (b) a Governmental Entity; or
- (c) a Pension Fund of CIMA or a Governmental Entity; and

“required information”, for a Cayman Financial Institution,

2016 Revision

means -

- (a) the institution's name and any number given to it by the Authority as a Financial Institution;
- (b) whether the institution is a Cayman Reporting Financial Institution or a Non-Reporting Financial Institution; and
- (c) if the institution is a Cayman Reporting Financial Institution, its type or types under paragraph B of Section VIII of the standard;
- (d) if the institution is a Non-Reporting Financial Institution, its classification under paragraph A of Section VIII of the standard; and
- (e) the full name, address, business entity, position and contact details (including an electronic address) of -
 - (i) an individual the institution has authorised to be its principal point of contact for compliance with this Part; and
 - (ii) an individual the institution has authorised to give change notices for its principal point of contact.”.

9. The principal Regulations are amended in regulation 9 as follows -

Amendment of regulation 9 - obligation to make a return

- (a) by repealing paragraphs (1), (2) and (3) and substituting the following paragraph -

“(1) Each Cayman Reporting Financial Institution shall, for each calendar year from and including 2016, make a return to the Authority -

- (a) for each Reportable Account the institution maintained during the year setting out the information required to be reported under the Common Reporting Standard; or
 - (b) if the institution did not maintain any Reportable Account in any Reportable Jurisdiction during the year, a nil return.”; and
- (b) in paragraph (4), by deleting the words “Reporting Financial Institution” and substituting the words “Cayman Reporting Financial Institution”.

Repeal and substitution of regulation 10 - form of return

10. The principal Regulations are amended by repealing regulation 10 and substituting the following regulation -

“Requirements for making returns

“10 (1) Returns can only be made in the form and manner specified through use of the electronic portal.

(2) The Authority shall notify Cayman Reporting Financial Institutions of the electronic portal and its usage by -

- (a) a post on an official website, for their information generally; or
- (b) a notice given to any particular Cayman Reporting Financial Institution in question.

(3) Unless the contrary is proved, the Authority shall assume a return accepted by using the electronic portal -

- (a) has been made as required under paragraph (1); or
- (b) was made -
 - (i) when the return was accepted by the portal;
 - (ii) by whoever made the return by using the portal; and
 - (iii) with the authority of the Cayman Reporting Financial Institution on whose behalf the return purports to have been made.”.

Amendment of regulation 11 - appointment of third parties

11. The principal Regulations are amended in regulation 11 as follows -

- (a) by deleting the word “Reporting” wherever it appears and substituting the word “Cayman”; and
- (b) by deleting the words “these Regulations” wherever they appear and substituting the words “this Part”.

Deletion of heading to Part 3 - compliance

12. The principal Regulations are amended by deleting the heading to Part 3.

Amendment of regulation 12 - compliance measures

13. The principal Regulations are amended in regulation 12 as follows -

- (a) by deleting the marginal note and substituting the following marginal note: “Authority’s monitoring function”;
- (b) in paragraph (1) by -
 - (i) deleting the words “require a Reporting Financial Institution” and substituting the words “, by notice given to

- a Cayman Reporting Financial Institution, require the institution”; and
- (ii) deleting the words from “that is” to “complete.” and substituting the words “that is in the institution’s possession or under its control that the Authority reasonably requires to decide whether or not information the institution gave the Authority was accurate.”;
- (c) in paragraph (2), by deleting the words “Reporting Financial Institution” wherever they appear and substituting the word “institution”; and
 - (d) in paragraph (3) by -
 - (i) deleting the words “Reporting Financial Institution” and substituting the words “Cayman Reporting Financial Institution”; and
 - (ii) deleting the words “these Regulations” and substituting the words “this Part”.
14. The principal Regulations are amended in regulation 13 by -
- (a) deleting the words “these Regulations,” and substituting the words “this Part.”; and
 - (b) deleting the words “these Regulations are” and substituting the words “this Part is”.
15. The principal Regulations are amended by inserting after regulation 13 the following Parts -

Amendment of regulation 13 - anti-avoidance

Insertion of Part 3-offences, Part 4 - compliance - and Part 5 - miscellaneous

“PART 3 - OFFENCES

General offences and defence

Offence about false self-certifications

14. (1) A person commits an offence if -
- (a) the person makes a self-certification that is false in a material particular for the Common Reporting Standard; and
 - (b) a Cayman Financial Institution is given the self-certification for any purpose for which the self-certification was made or purports to have been made.
- (2) For paragraph (1), it does not matter that -
- (a) the self-certification was made outside the Islands;
 - (b) the person did not know, or had no reason to

- know, that the self-certification was false; or
- (c) the self-certification was given to the institution by someone else.

(3) In this regulation -

“makes” means to sign or otherwise positively affirm; and

“self-certification” means information, whatever called, that performs or purports to perform a purpose of a self-certification under the Common Reporting Standard.

Offence to
contravene
Part 2

15. A Cayman Financial Institution commits an offence if it contravenes any regulation in Part 2.

Inaccurate
information
offence

16. A Cayman Financial Institution commits an offence if -

- (a) in purported compliance with Part 2, the institution gives the Authority information that is materially inaccurate (the “act”); and
- (b) the institution -
 - (i) knew of the inaccuracy when the act was done;
 - (ii) in doing the act, behaved fraudulently, intentionally, negligently or recklessly;
 - (iii) in doing the act, contravened its policies or procedures under regulation 7; or
 - (iv) discovered the inaccuracy after doing the act, but did not tell the Authority about the inaccuracy as soon as practicable after making the discovery.

Offence about
access to
confidential
information

17. A person commits an offence if -

- (a) in purported compliance with Part 2, the person gives the Authority information that is materially inaccurate (“the act”); and
- (b) the act was done intentionally to cause, or the person knew the act was likely to cause, a contravention of section 20A of the Law.

Tampering
offence

18. A person commits an offence if the person -

- (a) alters, destroys, mutilates, defaces, hides or removes information in a way that causes the

- person or anyone else to contravene Part 2 in relation to the information; or
- (b) authorises, advises or counsels someone else to contravene paragraph (a).
- Hindering offence 19. A person commits an offence if the person hinders the Authority in performing a function under these Regulations or under section 5 of the Law concerning the Common Reporting Standard.
- Reasonable excuse defence 20. (1) It is a defence to a proceeding for an offence against this Part (other than against regulation 21) for the defendant to prove the defendant had a reasonable excuse.
- (2) However, neither insufficiency of funds nor reliance on an agent appointed under regulation 11 (or anyone else) is a reasonable excuse.
- (3) If a defendant had a reasonable excuse for a contravention but the excuse has ceased, the defendant is to be treated as having continued to have the excuse if the contravention is remedied without unreasonable delay after the excuse ceased.
- Criminal liability of directors etc. of Cayman Financial Institutions*
- Imputed offence 21. (1) If a Cayman Financial Institution commits an offence against this Part all of the following of or relating to the institution are also guilty of that offence -
- (a) if the institution is a body corporate, its directors, managers secretaries and other similar officers to any such office, whatever called, and -
- (i) if the institution is an LLC, its members; and
- (ii) if the institution is another type of company being managed by its members, its members; and
- (b) if the institution is a limited partnership or exempted limited partnership, its general partners and any of its limited partners who

- are participating in its management;
- (c) if the institution is any other type of partnership, its partners;
- (d) if the institution is a trust, its trustees; and
- (e) anyone else who, when the offence was committed was -
 - (i) purporting to act in a capacity or position mentioned in subparagraphs (a) to (d); or
 - (ii) otherwise a *de facto* decision maker for the institution.

(2) However, it is a defence for the defendant to prove that the defendant exercised reasonable diligence to prevent the contravention.

Punishment

Punishment and criteria

22. (1) A person who commits an offence against this Part is liable to a fine of -

- (a) for the following, \$50,000 -
 - (i) for an offence by a body corporate; or
 - (ii) for an offence by an individual who forms, or forms part of, an unincorporated Cayman Financial Institution; or
- (b) otherwise, \$20,000.

(2) In deciding the amount of the fine -

- (a) regulation 25 applies as if a reference to a penalty were to the fine and a reference to the Authority were to the court; and
- (b) the court shall have regard to any penalty imposed for the contravention.

Provisions about Criminal Procedure Code (2014 Revision)

23. (1) Regulation 22 applies despite sections 6(2) and 8 of the Criminal Procedure Code (2014 Revision).

(2) Despite section 78 of that Code, regulation 26 applies for prosecutions for offences against this Part as if a reference in that paragraph to imposing a penalty were a reference to a prosecution.

PART 4 - COMPLIANCE

Administrative penalties and safeguards for them

Power to penalise

24. (1) Subject to complying with regulations 28 to 31, the Authority may impose a penalty of the following amount (a “primary penalty”) for offences against Part 3 -

- (a) for the following, \$50,000 -
 - (i) for an offence by a body corporate; or
 - (ii) for an offence by an individual who forms, or forms part of, an unincorporated Cayman Financial Institution; or
- (b) otherwise, \$20,000.

(2) Also, if -

- (a) a primary penalty has been imposed, which penalty has not been stayed;
- (b) the contravention has not been remedied; and
- (c) the party is capable of remedying the contravention,

the Authority may impose further penalties on the party of \$100 for each day the contravention continues (each a “continuing penalty”).

(3) For paragraph (2)(c), insufficiency of funds or reliance on an agent appointed under regulation 11(or anyone else) does not, of itself, make the party incapable of remedying the contravention.

(4) A penalty becomes a debt owing by the party to the Crown thirty days after the penalty is imposed.

Criteria for deciding penalty

25. (1) In deciding whether to impose a penalty or its amount, the Authority shall consider the following criteria in the following order of importance -

- (a) the need to ensure strict compliance with, and to penalise and deter contravention of, these Regulations;
- (b) the nature, seriousness and consequences of the contravention;

- (c) the apparent degree of the party's inadvertence, intent or negligence in committing the contravention;
- (d) the party's conduct after becoming aware of the contravention, including, for example -
 - (i) whether and how quickly the party brought the contravention to the Authority's attention; and
 - (ii) the party's efforts to remedy the contravention or prevent its reoccurrence; and
- (e) the party's history of compliance with the Common Reporting Standard, in the Islands or elsewhere, of which the Authority is aware.

(2) The Authority may also consider other matters it reasonably considers is relevant.

(3) The criteria and matters prevail over any issue concerning the party's resources or ability to pay.

Limitation
period

26. (1) The Authority cannot impose a primary penalty for an offence against regulation 15 more than one year after becoming aware of the contravention.

(2) The Authority cannot impose a primary penalty for another offence against this Part after the earlier of the following -

- (a) one year after becoming aware of the contravention; or
- (b) six years after the contravention happened.

(3) There is no limitation period for imposing a continuing penalty while all the conditions under regulation 24(2)(a),(b) and (c) continue to apply.

Protection
against double
jeopardy

27. A prosecution against a person for an offence (whether or not a conviction resulted) precludes the imposition of a penalty against that person for the same offence, but not *vice versa*.

Procedure for imposing penalty

The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016

- Steps required to impose penalty
28. (1) The Authority can only impose a primary penalty by -
- (a) giving the party a notice that complies with regulation 29 (a “breach notice”);
 - (b) if regulation 30 applies, complying with that regulation; and
 - (c) giving the party a notice that complies with regulation 31 (a “penalty notice”).
- (2) The Authority can only impose a continuing penalty by giving the party a penalty notice.
- (3) The same penalty notice may be given for two or more continuing penalties for the same primary penalty.
- Breach notice for primary penalty
29. (1) A breach notice shall be dated and state -
- (a) the party’s name;
 - (b) that the Authority proposes to impose a penalty on the party (the “proposed action”) for the offence it believes the party committed;
 - (c) the facts and circumstances that the Authority believes constituted the offence;
 - (d) the amount of the penalty the Authority proposes (the “proposed amount”); and
 - (e) that the party may, within a period stated in the notice after receiving the notice, make written representations to the Authority about the proposed action, the proposed amount, or both.
- (2) The stated period cannot end less than sixty days after the giving of the notice.
- Considering representations and deciding primary penalty
30. (1) This regulation applies only if a breach notice has been given for a penalty, the period stated in the notice has ended and the party has made representations as stated in the notice.
- (2) The Authority shall consider all matters raised in the representations concerning the proposed action and the proposed amount mentioned in regulation 29(1) and

reconsider the proposed action and, if relevant, the proposed amount.

(3) The reconsideration need only be on the balance of probabilities.

(4) The amount of a penalty imposed may be any amount not exceeding the proposed amount.

Penalty notice
for all penalties

31. (1) A penalty notice shall be dated and state -

- (a) the party's name;
- (b) that that the Authority has imposed a penalty of a stated amount on the party;
- (c) if the penalty is a primary penalty, reasons for the decision to impose the penalty and for its amount;
- (d) if the penalty is a continuing penalty, the date of the penalty notice for each relevant primary penalty;
- (e) that the penalty will become a debt owing by the party to the Crown thirty days after the notice has been given; and
- (f) the substance of the party's appeal right.

(2) The Authority may share information about a penalty (other than any reasons for decision stated in the relevant penalty notice) with other Government authorities and regulators, both domestically and overseas.

Appeals

Appeal right

32. (1) A party who has been given a penalty notice may appeal to a court against the decision to impose the penalty, its amount, or both.

(2) However, the appeal may be made only within sixty days after the party received the notice, or any later period the court allows.

Automatic stay
on appeal

33. (1) The Authority cannot, without the court's leave, enforce the penalty the subject of an appeal or interest until the outcome of the appeal.

(2) To avoid doubt, paragraph (1) does not limit or otherwise affect any obligation of the party under Part 2.

Appeal hearing
and outcome

34. (1) An appeal is by way of a rehearing *de novo*.

(2) After hearing an appeal, the court may -

- (a) affirm, set aside or vary the decision appealed against (the “original decision”); or
- (b) set aside the original decision and remit the matter to the Authority for it to reconsider with directions the court considers fit.

(3) The following apply if the court’s decision is to affirm the original decision or to vary it in a way that a penalty is still imposed -

- (a) the court’s decision is (other than for regulations 28 and 32) deemed to have always been the original decision;
- (b) the court may, at the Authority’s request, issue a judgment against the party for all or any part of the penalty that continues to be unpaid and for interest; and
- (c) the request may be made during the appeal; when the court’s decision is handed down or at any later time on production of a certificate under regulation 38(3)(j).

(4) If the court’s decision is to set aside and not to remit, both the penalty and interest are deemed to have never been owing.

Interest

Interest

35. (1) Interest accrues on a penalty while all or any part of the penalty continues to be unpaid, starting on the day immediately after the penalty became owing under regulation 24(4) and ending on the day the penalty is paid in full, both days inclusive.

(2) The interest accrues at daily rests and as compound interest.

(3) The rate of the interest is the higher of the following -

- (a) five percent; or
- (b) the average percentage of the annual consumer price index and inflation rates for the most recent three calendar years published by -
 - (i) the Islands' Economics and Statistics Office (or any other similar body) under the Statistics Law (2016 Revision); or
 - (ii) if those rates cease to be published, the index that most closely performs the functions of publishing the rates.

2016 Revision

(4) Payments relating to the penalty are to be applied to the interest first.

(5) The interest is also a debt owing to the Crown.

(6) The accruing of interest applies even if the penalty has been stayed, but is subject to regulation 34(3) and (4).

PART 5 - MISCELLANEOUS

Conduct and
mens rea of
representatives

36. (1) This regulation applies for a decision by a body as follows if it is relevant to consider whether or not a person (the "principal") engaged in conduct or had a state of mind about conduct, or both -

- (a) the Authority deciding whether or not to impose a penalty or the amount of a penalty; and
- (b) a court hearing a civil or criminal proceeding (including an appeal) relating to Part 3 or 4.

(2) The principal is deemed to have engaged in the conduct if the Authority is satisfied the conduct was vicarious, unless the principal proves -

- (a) the principal was not in a position to prevent the conduct; or
- (b) if the principal was in such a position, the principal took reasonable steps to prevent the

conduct.

(3) The principal is deemed to have had the state of mind if the Authority is satisfied the conduct was vicarious and the representative had the state of mind.

(4) Satisfaction under paragraph (2) or (3) need only be on the balance of probabilities.

(5) In this regulation -

“engaging”, in conduct, includes failing to engage in conduct;

“representative”, of the principal, means any of the following of or relating to the principal -

- (a) a director, manager or other officer, whatever called, or an employee or other agent;
- (b) if the principal is an LLC, its members;
- (c) if the principal is another type of company being managed by its members, its members;
- (d) if the principal is a limited partnership or exempted limited partnership, its general partners and any of its limited partners who, when the conduct took place, were participating in its management;
- (e) if the principal is any other type of partnership, its partners;
- (f) if the principal is a trust, its trustees; or
- (g) anyone else who, when the conduct took place, was -
 - (i) purporting to act in a capacity or position mentioned in paragraphs (a) to (f); or
 - (ii) otherwise a *de facto* decision maker for the principal; and

“state of mind”, of the principal or a representative, includes their -

- (a) belief, intention, knowledge, opinion or purpose; and
- (b) reasons for the belief, intention, opinion or purpose; and

“vicarious”, for conduct, means that it was engaged in by a representative of the principal within the scope of the representative’s actual or apparent authority from the principal.

Giving of notices by Authority

37. (1) The Authority may give a person (the “person concerned”) a notice for any purpose of these Regulations to a particular electronic address if anyone as follows has, from that address, electronically communicated with the Authority for an official purpose -

- (a) the person concerned;
- (b) another person who had, or had apparently, been, authorised by the person concerned to communicate with the Authority for an official purpose;
- (c) the electronic agent, as defined under section 2 of the Electronic Transactions Law (2003 Revision), of the person concerned; and
- (d) if the person concerned is a Cayman Financial Institution, its principal point of contact.

2003 Revision

(2) However, if there has been more than one such electronic address for a person mentioned in paragraph (1)(a) to (d), the notice from the Authority can only be given to the address that the person most recently used to communicate with the Authority for an official purpose.

(3) Without limiting paragraph (1), if the person concerned is an individual, the Authority may give the person a notice for any purpose of these Regulations in any way that, under section 18(4) of the Criminal Procedure Code (2014 Revision), a summons may be served.

2014 Revision

(4) In this regulation -

“official purpose” means a purpose related to the Authority’s functions under the Law, these Regulations or other Regulations under the Law.

Evidentiary provisions

38. (1) This regulation applies for a civil or criminal proceeding (including an appeal) relating to these Regulations or to enforce a penalty or interest.

(2) A signature purporting to be the signature of a designated person is evidence of the signature it purports to be.

(3) A certificate signed, or purporting to be signed, by a designated person stating any of the following is evidence of that matter -

- (a) that a stated document is a copy of a post on an official website under regulation 8 or 10 that appeared on the website on a stated day or during a stated period;
- (b) that a stated Cayman Financial Institution has not given a notice required under regulation 8;
- (c) that a stated individual was a stated Cayman Financial Institution's principal point of contact at a stated time or during a stated period;
- (d) when a stated Cayman Reporting Financial Institution made a return that was accepted by use of the electronic portal (an "accepted return");
- (e) that a stated document is a copy of an accepted return;
- (f) that a stated Cayman Reporting Financial Institution has not made an accepted return for a stated calendar year;
- (g) that a stated document is a copy of a notice given under these Regulations to a stated person (the "party");
- (h) that an electronic address stated in a copy mentioned in paragraph (g) was, when the party was given the notice, an electronic address for the giving of notices to the party under regulation 37;
- (i) that on a stated day the party was given the notice in a stated way; or
- (j) that a penalty or interest of a stated amount is owing to the Crown by a stated person.

The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016

(4) A certificate under paragraph (3) is evidence of the matters it states.

2003 Revision

(5) For section 17 of the Electronic Transactions Law (2003 Revision), a certificate under paragraph (3)(i) is evidence that the notice was electronically given to the recipient at the stated time.”.

Amendment of Schedule 1 - common standard on reporting and due diligence for financial account information

16. The principal Regulations are amended in Section VIA 2.(a) of Schedule 1 by deleting the words “Financial Reporting Financial Institution” and substituting the words “Reporting Financial Institution”.

Repeal of Schedule 2 - excluded accounts

17. The principal Regulations are amended by repealing Schedule 2.

Made in Cabinet the 13th day of December, 2016.

Kim Bullings
Clerk of the Cabinet.