



# Tax Newsflash

## Common Reporting Standard (CRS) in Hong Kong

On October 12, 2015, the Hong Kong SAR Government (the HK Government) via the Financial Services and the Treasury Bureau (FSTB) issued its [response](#) (the FSTB Response) to the [consultation](#) exercise on Automatic Exchange of Financial Account Information in Tax Matters (AEOI) in HK conducted during April to June 2015. The consultation exercise signified the HK Government's commitment to enhance tax transparency and to implement the Common Reporting Standard (CRS) promulgated by the Organization for Economic Co-operation and Development (the OECD) which facilitate the exchange of tax information with other jurisdictions in an international and standardized manner.

While many of the AEOI/CRS<sup>1</sup> requirements are similar to the FATCA Model 1 intergovernmental agreement (IGA), HK as a Model 2 IGA jurisdiction will inevitably face more challenges in CRS implementation than its Model 1 IGA counterparts. Although the OECD has released the consolidated [Standard](#) which includes the CRS, Model Competent Authority Agreement (MCAA) and the Commentaries thereon, the HK Government is required to establish the proper legal framework for local implementation. This means translating the Standard into local law (i.e., the Inland Revenue Ordinance will need to be amended), issuing local guidance notes to provide details for implementation, signing CAAs with partner jurisdictions based on existing tax treaties or information exchange agreements as well as developing the mechanical infrastructure for information exchange.

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<sup>1</sup> The terms "AEOI" and "CRS" are used interchangeably in this document.

# Preparing for CRS in Hong Kong

This discussion is intended to assist HK financial institutions (HKFIs) in furthering their understanding of the basics of CRS as well as the requirements differences between a FATCA Model 2 IGA and the CRS in the following areas:

- 1) Legal Framework;
- 2) General Compliance, Financial Institutions Definitions and Registration;
- 3) Accounts Due Diligence Procedures;
- 4) Reporting; and
- 5) Withholding.

It is suggested that HKFIs should:

- Become familiar with the CRS and its commentary;
- Get involved in consultation through the relevant industry body;
- Set up a CRS project team that includes resources from FATCA and AML/CDD teams;
- Undertake a FATCA post-implementation review and gap analysis to assess CRS implementation; and
- Start drafting requests for changes to technology, onboarding forms and processes.

## 1. Legal Framework

**What is the legal basis and the requirements for implementing CRS in HK?**

Legislation and Agreements for CRS	Purpose	Comparison with FATCA in HK	Applicability in HK for CRS Implementation
<b>Bilateral Competent Authority Agreement (CAA) or Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information</b>	<ul style="list-style-type: none"><li>• To be entered into between Participating Jurisdictions providing for bilateral automatic exchange of financial information.</li><li>• The MCAA is largely based on the Model 1 IGA for FATCA purposes.</li></ul>	HK has signed the <a href="#">HK/US Model 2 IGA</a> with the US to implement FATCA in HK. It is a non-reciprocal, unilateral agreement requiring financial institutions (FIs) to provide financial account information to the US.	<ul style="list-style-type: none"><li>• HK will rely on a <a href="#">bilateral CAA</a> to be signed between the Inland Revenue Department (IRD) and the competent authority of the Partner Jurisdiction that has an existing Comprehensive Double Taxation Agreement (<a href="#">CDTA</a>) or Tax Information Exchange Agreement (<a href="#">TIEA</a>) with HK.</li></ul>

			<ul style="list-style-type: none"> <li>The bilateral CAA signed will only come into effect on the later of a specified date or the date of the notifications provided by each competent authorities that its jurisdictions has the necessary laws in place to implement the CAA.</li> </ul>
<p><b>Common Reporting Standard (CRS)</b></p> <p><i>Included under the OECD's Standard for the Automatic Exchange of Financial Account Information in Tax Matters (the <a href="#">consolidated Standard</a>) which includes the CRS, Model CAA and the Commentaries thereon.</i></p>	<ul style="list-style-type: none"> <li><u>CRS</u>: To provide a common standard on reporting, due diligence, and the automatic exchange of financial account information.</li> <li><u>The Commentaries</u>: To illustrate or interpret provisions of the Model CAA and CRS.</li> </ul>	<ul style="list-style-type: none"> <li>The HK/US Model 2 IGA provides requirements for HKFIs to similarly comply but on a unilateral basis with the US. Annex I of the IGA provides for the FATCA due diligence requirement.</li> <li>Commentaries by the OECD serves as 'soft law' similar to the IRS notices, FAQs, guidance and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>HK has to formulate its local CRS laws and regulations based on CRS requirements and the Commentaries (see discussion below).</li> </ul>
<p><b>Local laws and regulations on CRS</b></p>	<ul style="list-style-type: none"> <li>To translate CRS into local laws and regulations for enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>No local laws for FATCA in HK.</li> <li>HKFIs are subject to the US FATCA regulations as modified by the HK/US Model 2 IGA.</li> </ul>	<ul style="list-style-type: none"> <li>Amendment Bill to the HK Inland Revenue Ordinance (IRO) to implement CRS in HK is required by the end of 2016. <a href="#">FSTB Response para. 30</a>.</li> <li>The amended IRO shall provide primary legal basis for HK Government to enforce CRS implementation and for HKFIs to implement CRS measures.</li> </ul>
<p><b>Local guidance notes on CRS</b></p>	<ul style="list-style-type: none"> <li>To provide more detailed CRS implementation guidelines for HKFIs' reference and to deal with any specific HK issues.</li> <li>To provide secondary source of guidance on CRS by the HK Government and the IRD.</li> </ul>	<ul style="list-style-type: none"> <li>No detailed guidance notes for FATCA implementation were issued by the HK Government or IRD.</li> </ul>	<ul style="list-style-type: none"> <li>The HK Government or the IRD may need to issue HK CRS implementation guidance notes to assist HKFIs on CRS implementation.</li> </ul>

<p>The OECD's Implementation Handbook for the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the <a href="#">CRS Handbook</a>) and other useful information available on the OECD <a href="#">AEOI portal</a></p>	<ul style="list-style-type: none"> <li>To assist government officials in the implementation of the Standard by providing an overview of the steps required and the key conceptual considerations.</li> <li>To provide detailed discussion on the conceptual framework contained in the Standard, differences between the FATCA IGA and the Standard and FAQs on the application of the CRS.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>The CRS Handbook may be used as a practical guide for the implementation of CRS in Hong Kong.</li> <li>FAQs released by OECD on AEOI portal is also a useful source of reference for CRS implementation.</li> </ul>
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## 2. General Compliance, Financial Institutions Definitions and Registration

### Comparison between HK Model 2 IGA and CRS

Requirements	FATCA - HK Model 2 IGA	CRS
<p>Enforcement of Compliance</p>	<p>Local/IRS. <a href="#">Article 4</a>.</p> <ul style="list-style-type: none"> <li>The IRS may inquire the Reporting HKFI directly and notify the IRD on such. <a href="#">Article 4</a>.</li> <li>Responsible officer of the Reporting HKFI is required to certify its FATCA compliance to the IRS every 3 years. <a href="#">FFI Agreement</a>; <a href="#">US Regs</a>.</li> </ul>	<p>Local.</p> <ul style="list-style-type: none"> <li>HK has to formulate procedures to periodically verify the compliance of Reporting HKFI, which may be performed via regular tax audit or as a separate inquiry or review.</li> <li>HK must also have procedures in place to follow up with a Reporting HKFI when undocumented accounts (generally arise in relation to pre-existing accounts) are reported and a full audit may be required in case the number of such accounts increases.</li> <li>HK is required to impose penalty clauses for enforcement (see discussion below).</li> <li>HK will be subject to audit by the OECD's <a href="#">Global Forum</a>. <a href="#">CAA Section 4</a>; <a href="#">CRS Section IX</a>.</li> </ul>

Significant non-compliance or Non-participating FI (NPF) Status	<ul style="list-style-type: none"> <li>Significant non-compliance must be resolved within 12 months.</li> <li>HKFI will be treated by the IRS as NPF in case of unresolved significant non-compliance. <a href="#">Article 4(2)</a>.</li> </ul>	<ul style="list-style-type: none"> <li>To be addressed under HK laws. <a href="#">CAA Section 4; CRS Section IX(A)(5)</a>.</li> <li>There is no NPF concept under CRS.</li> </ul>
Penalty and Sanctions	<p>No penalty clause under HK law regarding FATCA non-compliance.</p> <p>However, a HKFI that is treated by the IRS as a non-participating FI (NPF) due to unresolved significant non-compliance will be subject to the 30% FATCA withholding on US withholdable payment.</p>	<p>Proposed sanctions and penalty clauses will be imposed on:</p> <ul style="list-style-type: none"> <li>FI <ul style="list-style-type: none"> <li>Failure to comply with AEOI obligations without reasonable excuse<sup>2</sup>;</li> <li>Furnishing returns to the IRD that the FI knows (or being reckless) to be materially misleading, false or inaccurate no reasonable ground to believe to be true or accurate<sup>3</sup>; or</li> <li>With intent to defraud the IRD by providing misleading, false or inaccurate information in a material particular in a return furnished.<sup>4</sup></li> </ul> </li> <li>Employees of FI <ul style="list-style-type: none"> <li>With intent to defraud the FI or IRD, causing or permitting the FI to provide misleading, false or inaccurate information in a material particular in returns furnished with IRD.<sup>4</sup></li> </ul> </li> <li>Third-party service providers <ul style="list-style-type: none"> <li>Failure to comply with the requirements for carrying out due diligence procedures and furnishing returns to IRD, without reasonable excuse.<sup>5</sup></li> </ul> </li> </ul> <p><a href="#">FSTB Response Annex D</a>.</p> <ul style="list-style-type: none"> <li>Account holders <ul style="list-style-type: none"> <li>HK is expected to include specific provision in domestic legislation imposing sanctions for signing or positively affirming false self-certifications.</li> <li>Under existing IRO, it is an offence by any person who without reasonable excuse gives any incorrect information to the IRD for purposes of exchange of tax information in relation to any matter affecting the person's own liability to any tax of a HK CDTA/TIEA partners. The HK Government will consider expanding such existing sanction in the IRO or imposing a new specific sanction to cover false self-certification from individual account holder.</li> </ul> </li> </ul> <p><a href="#">HK CRS Consultation Paper para. 2.26; CRS Commentaries to Section IX, para. 6.</a></p>
FFI Agreement	Reporting HKFIs must agree to comply with the requirements of an FFI Agreement. <a href="#">Article 2(1)(a)</a> .	N/A

<sup>2</sup> Penalty: Fine at [level 3](#) and fine not exceeding \$500 for every day or part thereof during which the offence concerning failure to furnish returns and rectify the systems continues after conviction.

<sup>3</sup> Penalty: Fine at level 3.

<sup>4</sup> Penalty: Fine at level 3 and imprisonment for 6 months (on summary conviction); or Fine at level 5 and imprisonment for 3 years (on indictment).

<sup>5</sup> Penalty: Fine at level 3.

Registration with the US IRS	Required for Reporting HKFIs and to obtain Global Intermediary Identification Number (GIIN). <a href="#">Article 2(1)(a)</a> .	N/A
HKFI	FI resident in HK and branch of FI located in HK. <a href="#">Article 1(1)(m)</a> .	Same. <a href="#">CAA Section 1(1)(d)</a> .
FI Definitions	<ul style="list-style-type: none"> <li>• Custodial Institution;</li> <li>• Depository Institution;</li> <li>• Investment Entity (IE);</li> <li>• Specified Insurance Company.</li> </ul> <a href="#">Article 1(1)(g)</a> .	<p>Substantially the same. <a href="#">CRS Section VIII(A)(3)</a>.</p> <ul style="list-style-type: none"> <li>• Proposed definition will include references to authorized/ licensed/ registered institutions defined under Banking Ordinance, Insurance Companies Ordinance and Securities and Futures Ordinance, in addition to the general definitions. <a href="#">FSTB Response Annex A</a>.</li> <li>• Specific exclusion for holding non-financial entities (NFEs), certain treasury centers, startup NFEs and NFEs that are liquidating or in bankruptcy. <a href="#">OECD Commentaries on Section VIII para. 19</a>.</li> </ul>
Non-reporting HKFI	<p>HKFI that is described in <a href="#">Annex II</a>:</p> <ul style="list-style-type: none"> <li>• deemed-compliant FI (DCFI); and</li> <li>• exempt beneficial owner (EBO).</li> </ul> <p>MPF and ORSO schemes are not explicitly included as non-reporting HKFI. <a href="#">Article 1(1)(p)</a>.</p>	<p>HKFI that is proposed below without distinction between DCFI and EBO:</p> <ul style="list-style-type: none"> <li>• government entities, international organizations, HK Monetary Authorities (HKMA);</li> <li>• pension fund of a government entity, international organization or the HKMA;</li> <li>• the Grant Schools Provident Fund and Subsidized Schools Provident Fund;</li> <li>• any FIs meeting the requirements defined as Board Participation Retirement Fund, Narrow Participation Retirement Fund, qualified credit card issuer, exempt collective investment vehicle or trustee-documented trust under CRS;</li> <li>• MPF Schemes, ORSO Schemes and the related pooling agreement with participants confined to these schemes; and</li> <li>• Credit Unions registered under the Credit Unions Ordinance. <a href="#">FSTB Response Annex B</a>.</li> </ul> <p>Certain non-reporting FI under FATCA are not included in the CRS (but HK may establish its own lists of non-reporting FI), for example:</p> <ul style="list-style-type: none"> <li>➤ Investment Advisors and Investment Managers</li> <li>➤ Trustee-documented Trust<sup>6</sup></li> <li>➤ Sponsored Investment Entities</li> <li>➤ Sponsored Closely Held Investment Vehicles</li> <li>➤ Controlled Foreign Corporations</li> <li>➤ Treaty Qualified Retirement Funds</li> <li>➤ Investment Entities wholly owned by EBOs</li> <li>➤ FI with Local Client Base</li> <li>➤ Local Banks</li> <li>➤ FI with only Low Value Accounts</li> </ul> <a href="#">CRS Section VIII(B)</a> .

<sup>6</sup> However, a trust established under the laws of a Reportable Jurisdiction to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I of the CRS with respect to all Reportable Accounts of the trust will be a Non-Reporting FI. [CRS Section VIII\(B\)\(1\)\(e\)](#).

Related Entity Definition	An Entity is a "Related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote <b>or</b> value in an Entity. <a href="#">Article 1(1)(cc)</a> .	Same. However: <ul style="list-style-type: none"> <li>The term "control" includes direct or indirect ownership of more than 50 per cent of the vote <b>and</b> value in an Entity. <a href="#">CRS Section VIII(E)(4)</a>.</li> <li>It is proposed to also cover investment entities as "Related Entity" to one another if they are under common management, and such management fulfills the due diligence obligations of such investment entities. <a href="#">FSTB Response para. 13(g)</a>.</li> </ul>
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## 3. Accounts Due Diligence Procedures

### Comparison between HK Model 2 IGA and CRS

Requirements	FATCA - HK Model 2 IGA	CRS
Due Diligence Requirements Specification	In IGA <a href="#">Annex I</a>	In <a href="#">CRS</a>
May follow due diligence rules in the regulations rather than Annex I	Yes. Binding subject to material modification rule. <a href="#">Annex I(I)(C)</a> .	N/A
Permitted to open undocumented individual accounts	No, except for de-minimis accounts. <a href="#">Annex I(III)(B)</a> .	Generally No. <a href="#">CRS Section IV (A)</a> . To confirm upon release of HK regulations/guidance.
Permitted to open undocumented entity accounts	No; however, self-certification may not be required if other information is available. <a href="#">Annex I(V)(B)</a> .	Generally No. <a href="#">CRS Section VI (A)(1)(a) &amp; (2)(a)</a> . To confirm upon release of HK regulations/guidance.
Monitor change in circumstances	Yes. <a href="#">Annex I(VI)(A)</a> . <ul style="list-style-type: none"> <li>Pre-existing Accounts. <a href="#">Annex I (II)(B)(2)&amp;(3), (C)(2), (D)(5)(a)&amp;(b), (E)(4); Annex I(IV)(E)(3)</a>.</li> <li>New Accounts. <a href="#">Annex I (III)(B)(2)</a>.</li> </ul>	Yes. <a href="#">CRS Section VII (A)</a> . <ul style="list-style-type: none"> <li>Pre-existing Accounts. <a href="#">CRS Section III(B)(3)&amp;(4), (C)(5), Section V(E)(3)</a>.</li> <li>New Accounts. <a href="#">CRS Section IV(C)</a>.</li> </ul>
Required Closing of Recalcitrant Account Holders	No. <a href="#">Article 3(2)(a)</a> Subject to <a href="#">Article 3(2)(b)</a> .	No "Recalcitrant Account" concept under CRS. However, local law may require closing of accounts if tax residency is not provided within a prescribed timeframe.
Financial Accounts	<ul style="list-style-type: none"> <li>Depository Account;</li> <li>Custodial Account;</li> <li>Equity / Debt Interest;</li> <li>Cash Value Insurance Contract and Annuity Contract.</li> </ul> <a href="#">Article 1(1)(u)</a> .	Substantially similar. <a href="#">CRS Section VIII(C)</a> . However, <ul style="list-style-type: none"> <li>an anti-avoidance rule is established in relation to equity or debt interests in a FI if the class of interests was established with a purpose of avoiding CRS reporting. <a href="#">CRS Section VIII(C)(1)(b)</a>.</li> </ul>

<p>Excluded Financial Accounts</p>	<p>As defined under <a href="#">Annex II(V)</a>:</p> <ul style="list-style-type: none"> <li>• Certain Savings Accounts (e.g. Retirement and Pension Account)</li> <li>• Certain Term Life Insurance Contracts</li> <li>• Account Held by an Estate</li> <li>• Escrow Accounts</li> <li>• Certain Employee Incentive Share Schemes</li> <li>• Partner Jurisdiction Accounts</li> </ul>	<p>As defined under the proposed HK CRS regulations:</p> <ul style="list-style-type: none"> <li>• Retirement or pension account satisfying certain requirements;</li> <li>• Term life insurance contracts;</li> <li>• Estate accounts;</li> <li>• Escrow accounts;</li> <li>• Depository accounts due to non-returned overpayments as defined under CRS; and</li> <li>• Dormant accounts.</li> </ul> <p><a href="#">FSTB Response Annex C</a>.</p> <p>Note that employee incentive share schemes that is excluded under US FATCA will not be excluded under HK CRS. Also,</p> <ul style="list-style-type: none"> <li>• Equity and debt interest in an FI that is an Investment Entity solely because it is an investment advisor or an investment manager, is not considered a Financial Account. <a href="#">CRS Section VIII(C)(1)(a)</a>.</li> <li>• CRS added an open definition for “any account that presents low risk of being used to evade tax”. <a href="#">CRS Section VIII(C)(17)(g)</a>.</li> </ul>
<p>Publicly traded equity/debt interest in an Investment Entity FI</p>	<p>Not a Financial Account <a href="#">Article 1(u), US Regs.</a></p>	<p>No exception available. However:</p> <ul style="list-style-type: none"> <li>• such equity/debt is generally held by a Custodial Institution and account held by a FI is not a Reportable Account. <a href="#">CRS Section VII(D)(1)&amp;(2)</a>.</li> </ul>
<p>Reportable Accounts</p>	<ul style="list-style-type: none"> <li>• US Accounts <ul style="list-style-type: none"> <li>➢ Specified US person</li> <li>➢ Non-consenting US Accounts</li> <li>➢ Passive NFFE with one or more Controlling Persons that are considered Specified US Persons</li> </ul> </li> <li>• Non-participating FFIs (NPFFI). <a href="#">Article 2</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• Reportable Jurisdiction Persons <ul style="list-style-type: none"> <li>➢ Individual or entity that is resident in a Reportable Jurisdiction (<i>for instance, an active non-financial entity (NFE) could be reportable if it is a resident in a Reportable Jurisdiction</i>)</li> <li>➢ Unlike FATCA, US individual/entity is not reportable unless it is a resident in a Reportable Jurisdiction (but see below)</li> <li>➢ Entities without tax residency (e.g. being fiscally transparent) – look at place of effective management</li> </ul> </li> <li>• Passive NFE with one or more Controlling Persons that is a Reportable Person <ul style="list-style-type: none"> <li>➢ Note that Passive NFE includes Type 2 Investment Entity FI in a Non-participating Jurisdiction (e.g. a US Type 2 Investment Entity FI).</li> </ul> </li> <li>• No NPFFI concept under CRS. <a href="#">CAA Section 1(1)(g)&amp;(h); CRS Section VIII(D)(1),(2)&amp;(3)</a></li> </ul>
<p>Approach to identify Reportable Accounts</p>	<p>Use of self-certification (including IRS Forms W-8 and W-9), publicly available information, and/or existing KYC/AML documents</p>	<ul style="list-style-type: none"> <li>• Similar use of self-certification (the IRD will consider promulgating guidelines and sample self-certification for reference) <a href="#">FSTB Response para. 15</a>.</li> <li>• Flexible approach is proposed by FSTB: <ul style="list-style-type: none"> <li>➢ Targeted Approach: FI <u>must</u> collect and retain residency information for non-residents in jurisdictions with which the IRD has concluded a CAA</li> <li>➢ Wider Approach: FI <u>may</u> also collect and retain residency information for all non-residents in other jurisdictions</li> <li>➢ FI is only required to send information of the reportable accounts to the IRD. <a href="#">FSTB Response para. 18</a>.</li> </ul> </li> </ul>

Use of Self-certification	<ul style="list-style-type: none"> <li>• Use of IRS Form W-8 (for non-US persons) and W-9 (for US person)</li> <li>• Contains certification as US or non-US persons or other relevant FATCA statuses</li> <li>• Controlling Persons information for Passive NFFEs can be included in the entity's self-certification</li> <li>• Self-certification is not required to document Model 1/2 FIs or Active NFFE on the basis of GIIN/publicly available info or info in possession.</li> </ul>	<ul style="list-style-type: none"> <li>• IRS Forms W-8/W-9 are generally not acceptable</li> <li>• Self-certification must be signed (or otherwise positively affirmed), dated and contain: <ul style="list-style-type: none"> <li>➢ name, residence address, jurisdiction(s) of tax residence and TIN with respect to each Reportable Jurisdictions, date of birth<sup>7</sup></li> </ul> </li> <li>• Controlling Persons of Passive NFEs must signed the self-certification <a href="#">CRS Section VI(A)(2)(c)</a>.</li> <li>• Must obtain self-certification to determine tax residence(s) and determine reasonableness, unless it has information in its possession or that is publicly available to determine that the Account Holder is a Financial Institution (other than a Type 2 Investment Entity in a non-participating Jurisdiction) or Active NFE. <a href="#">CRS Section VI(A)(2)(a)</a>.</li> </ul>
Pre-existing accounts – Indicia Search  Residence Address Test	<ul style="list-style-type: none"> <li>• US POB and Nationality are US indicia</li> <li>• Electronic Record Search for US indicia for low value pre-existing individual accounts <a href="#">Annex I (II)(B)(1)</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• Similar indicia list but a place of birth or nationality are not indicia for CRS purposes</li> <li>• Electronic record search is not required for pre-existing low value individual accounts if the FI has in its records a <u>current residence address</u> which can be used to determine residency</li> <li>• Self-certification from controlling persons must be obtained in case of a pre-existing high value passive NFE accounts <a href="#">CRS Section III(B), V(D)</a></li> </ul>
De-minimis thresholds for account due diligence	<ul style="list-style-type: none"> <li>• Preexisting individual accounts: <ul style="list-style-type: none"> <li>➢ 50,000 USD for Individual Accounts and Depository Accounts</li> <li>➢ 250,000 USD for Insurance Contracts and Annuity Contracts</li> </ul> </li> <li>• New individual accounts <ul style="list-style-type: none"> <li>➢ 50,000 USD for Depository Accounts</li> <li>➢ 50,000 USD for Insurance Contracts</li> </ul> </li> <li>• Preexisting Entity Accounts <ul style="list-style-type: none"> <li>➢ 250,000 USD for Entity accounts</li> <li>➢ Required to be reviewed if the balance or value exceeds 1,000,000 USD</li> </ul> </li> <li>• New Entity Accounts <ul style="list-style-type: none"> <li>➢ 50,000 USD credit card accounts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Preexisting individual accounts: <ul style="list-style-type: none"> <li>➢ No threshold applicable</li> <li>➢ However, Insurance Contracts or Annuity Contracts are not required to be reviewed if the Reporting FI is effectively prevented by law from selling such Contracts to residents of a Reportable Jurisdiction</li> </ul> </li> <li>• New individual accounts <ul style="list-style-type: none"> <li>➢ No threshold applicable</li> </ul> </li> <li>• Preexisting Entity Accounts <ul style="list-style-type: none"> <li>➢ 250,000 USD for Entity accounts</li> <li>➢ Required to be reviewed if the balance or value exceeds 250,000 USD</li> </ul> </li> <li>• New Entity Accounts <ul style="list-style-type: none"> <li>➢ No thresholds applicable</li> <li>➢ Credit card accounts are excluded from Financial Accounts definition if they do not exceed 50,000 USD (therefore, it is applicable to all accounts) if certain conditions are met</li> </ul> </li> </ul> <p><a href="#">FSTB Response para. 12(a)</a>.</p>
Threshold for determining controlling persons of entities	<p>Based on:</p> <ul style="list-style-type: none"> <li>• Financial Action Task Force ("FATF") Recommendations (e.g., 25% by value/vote). <a href="#">Article 1(1)(ee)</a>.</li> <li>• Local AML procedures (e.g., 10% by value/vote). <a href="#">Annex I(IV)(D)(4)(c)</a>; <a href="#">Annex I(V)(B)(3)(b)</a>.</li> </ul>	<p>Based on:</p> <ul style="list-style-type: none"> <li>• Financial Action Task Force ("FATF") Recommendations (e.g., 25% by value/vote). <a href="#">FSTB Response para. 12(c)</a>.</li> <li>• 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. <a href="#">OECD Commentaries on Section VIII para. 132</a>.</li> <li>• Note that a Reporting FI is required to indicate the "type" of controlling person for reporting purposes (e.g. as a senior managing official, by ownership, as a beneficiary, etc.). <a href="#">OECD Commentaries Annex 3, IV(f)</a>.</li> </ul>

<sup>7</sup> Exception and/or transition rule may be applicable to obtain TIN, date of birth and date of birth. See "Reportable Information" later.

Reasonableness Test	Yes – FI should confirm the reasonableness of self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. <a href="#">Annex I.</a>	Yes - FIs need to verify the information of the self-certification with reference to the AML/KYC documents collected <a href="#">FSTB Response para. 15.</a>
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## 4. Reporting

### Comparison between HK Model 2 IGA and CRS

Requirements	FATCA - HK Model 2 IGA	CRS
Resolution of Conflicts of Law to Permit Reporting	Yes – with 'consent to report' by customers. <a href="#">Article 2 (1)(b) &amp;(d).</a>	Yes under local CRS laws (to be released)
Reporting of Information to IRD or IRS	IRS, <a href="#">Article 2.</a>	IRD, <a href="#">CAA Section 3.</a>
Registration with authority's portal for reporting	Yes, with IRS's <a href="#">IDES</a> portal with a digital certificate issued by <a href="#">IRS-approved certificate authorities.</a>	Yes, with IRD portal (to be released) with a digital certificate (proposed to be the e-Cert (Organizational Role) certificate issued by the HK Post Certification Authority). <a href="#">HK AEOI Consultation Paper para. 3.6 &amp; 3.11.</a>
Issuance of Returns for Filing	No paper or electronic return will be issued directly to the HKFIs for filing	Yes – IRD would issue electronic notices through the IRD's AEOI Portal to all registered FIs in January annually for filing. <a href="#">HK AEOI Consultation Paper para. 3.7.</a>
Nil Return Requirements	No - NIL return is not mandatory	Yes – NIL return is mandatory for Reporting FIs with no reportable accounts <a href="#">FSTB Response para. 25.</a>
Use of third party service providers	Allowable	Allowable <a href="#">FSTB Response para. 13(c).</a>
Filing Deadline	<ul style="list-style-type: none"> <li>March 31<sup>st</sup></li> <li>Can apply for extension by filing a <a href="#">(draft) Form 8809-1</a></li> </ul>	May 31 <sup>st</sup> <a href="#">HK AEOI Consultation Paper para. 3.11; FSTB Response para. 25.</a>
Reporting Format / Returns Format	In Extensible Markup Language (XML format) under the <a href="#">FATCA Reporting XML Schema.</a>	Same – in XML Format under the CRS Schema <a href="#">CAA Section 3(5); OECD Commentaries Annex 3.</a>
Reporting Software	<ul style="list-style-type: none"> <li>The IRS does not develop software for FIs to download for preparing the XML data file for submission to the IDDES portal</li> <li>HKFIs either self-develop software to create XML file or engage third party service providers for reporting</li> </ul>	<ul style="list-style-type: none"> <li>The IRD will develop software for preparing XML data files for reporting for download from the AEOI portal</li> <li>HKFIs can also use self-developed software or hire third party service providers <a href="#">FSTB Response para. 24.</a></li> </ul>

Reportable Information	<ul style="list-style-type: none"> <li>Reportable information includes: <ol style="list-style-type: none"> <li>Name</li> <li>Address</li> <li>Account number</li> <li>Account balance or value</li> <li>Gross amount paid or credited to the Account Holder</li> <li>U.S. TIN</li> </ol> </li> </ul> <p><a href="#">FFI agreement; Article 2.</a></p>	<ul style="list-style-type: none"> <li>Same reportable Information as in FATCA under items 1 – 5 plus the following: <ul style="list-style-type: none"> <li>TIN(s) assigned to the Account Holder by its jurisdiction(s) of residence, if any (<i>not required for pre-existing accounts if it is not in the FI's records and not otherwise required by HK law to collect so, subject to reasonable effort to obtain so by the end of the second calendar year</i>)</li> <li>Jurisdiction(s) of Residence for tax purposes</li> <li>Date of Birth (<i>not required for pre-existing accounts if it is not in the FI's records and not otherwise required by HK law to collect so, subject to reasonable effort to obtain so by the end of the second calendar year</i>)</li> <li>Place of birth for Individual account holders and Controlling Persons (<i>not required if it is not available in electronically searchable data or if it is not otherwise required by HK law to collect and report so</i>)</li> <li>Type of Controlling Persons (e.g. senior managing official, by ownership, beneficiary, etc.)</li> </ul> </li> <li>It is recognized that under certain circumstances one account could be reported to multiple jurisdictions</li> <li>It is proposed that FI can elect to exclude gross proceeds reporting for custodial account in the first reporting year</li> </ul> <p><a href="#">CAA Section 2; CRS Section I; OECD Commentaries Annex 3, IV(f); FSTB Response para.11 and 13(b).</a></p>
Closure of Reportable Account	Report account balance prior to closure <a href="#">US Regs.</a>	Only report the closure of the account (not the balance) <a href="#">CRS Section I(A)(4); Handbook Chapter 4.5 para. 189; OECD Commentaries on Section I para. 10 &amp; para. 14.</a>
Reporting of U.S. Accounts	"Consent to Report" required from each US Account. <a href="#">Article 2(1)(b) &amp; (d).</a>	N/A
Reporting of Recalcitrant Account holders	<ul style="list-style-type: none"> <li>Treat as a "Non-Consenting U.S. Accounts", aggregate number and value to be reported. <a href="#">Article 2(1)(b)(ii).</a></li> <li>Subject to group request by the US to the IRD. <a href="#">Article 2(2).</a></li> </ul>	It is expected that identification of undocumented accounts as well as whether the financial institution has collected a self-certification for a particular account may be required.
Account Balance Reporting	Report calendar year end balance	Report calendar year end balance or reporting period end balance <a href="#">FSTB Response para. 13(a).</a>
U.S. Reciprocity	No	TBD

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# 5. Withholding

## Comparison between HK Model 2 IGA and CRS

Requirements	FATCA - HK Model 2 IGA	CRS
Withholding on HK FIs	No, except in cases of unresolved significant non-compliance. <a href="#">Article 3(1) &amp; 4(2)</a> .	N/A – no withholding scheme established under CRS.
Withholding on non-participating FFIs (NPFFIs)	Yes, for US withholdable payment made to a NPFFI that the upstream payor has not withheld the required FATCA withholding amount in full. <a href="#">Article 2(1)(a) and FFI Agreement</a> .	N/A – no withholding scheme established under CRS and no NPFFI concept under CRS
Withholding on Recalcitrant Account Holders (RAH)	Generally not required under <a href="#">Article 3(2)(a)</a> , but if IRD fail to exchange with the IRS information on the non-consenting US account (NCA) within 6 months upon request, the NCA will be treated as RAH and thus withholding would apply. <a href="#">Article 3(2)(b)</a> .	N/A – no withholding scheme established under CRS.

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# CRS Timeline

HK CRS Compliance Action Items (Assuming passage of CRS bill by LegCo by mid-2016)		2015	2016	2017	2018	2019
General Compliance	Consultation Period on AEOI in HK by the HK Government	◆ APR - JUN				
	Expected release of finalized HK CRS legislations and guidance by the HK SAR Government		◆	◆		
	Signing of bilateral Competent Authority Agreements with various participating jurisdictions		----->			
Account Due Diligence (DD) Procedures	FIs begin <u>new</u> accounts onboarding DD procedures		◆ JAN 1st			
	FIs complete <u>pre-existing High Value Accounts</u> DD procedures			◆ DEC 31st		
	FIs complete <u>other pre-existing accounts</u> DD procedures				◆ DEC 31st	
Reporting	FIs begin registration with the IRD*			◆ SEP		
	FIs submit test data files of self-developed software to IRD for validation (if applicable)*			◆ Q4		
	IRD issues AEOI returns to FIs*			◆ JAN		
	Begin account reporting** (New and Pre-existing High Value Accounts)			◆ MAY 31st	◆ SEP 30th	
	Begin account reporting (All Accounts)					◆ MAY 31st

◆ Reporting HK FIs

◆ OECD or HK Government or HK IRD

\* Per Consultation Paper on AEOI in HK (para. 3.11).

\*\* High proceeds for custodial account is not reportable in 2018 (per FSTB Response para. 13(b) & 25).

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