

**IMPLEMENTATION OF
CRYPTO-ASSET REPORTING FRAMEWORK
AND AMENDMENTS IN RELATION TO
COMMON REPORTING STANDARD
IN HONG KONG

CONSULTATION PAPER**

Financial Services and the Treasury Bureau
Inland Revenue Department
December 2025

FOREWORD

1. This paper is jointly issued by the Financial Services and the Treasury Bureau (“**FSTB**”) and the Inland Revenue Department (“**IRD**”) for seeking views on the implementation of the Crypto-Asset Reporting Framework and amendments to the Common Reporting Standard (“**CRS**”) in Hong Kong. It also seeks views on proposed measures for strengthening the administrative framework of CRS in Hong Kong in light of the comments raised by the Organisation for Economic Co-operation and Development.

2. FSTB and IRD welcome written comments on or before 6 February 2026 through the following means –

Mail: The Treasury Branch,
Financial Services and the Treasury Bureau,
24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Email: carf@fstb.gov.hk

3. FSTB and IRD may, as appropriate, reproduce, quote, summarise and publish the written comments received, in whole or in part, in any form and use without seeking permission of the contributing parties.
4. Names of the contributing parties and their affiliations may be referred to in relevant documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish their names and / or affiliations to be disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB and IRD, as well as other government departments / agencies for purposes which are directly related to this consultation.

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LIST OF ABBREVIATIONS

AEOI	Automatic exchange of information in tax matters
Amended CRS	Amendments to Common Reporting Standard
AML/KYC procedures	Anti-money laundering / know your customer procedures
ATM	Automated teller machine
CARF	Crypto-Asset Reporting Framework
CARF MCAA	Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to CARF
CBDC	Central bank digital currency
CBI/RBI scheme	Citizenship or residence by investment scheme
CIR	Commissioner of Inland Revenue
Convention	Convention on Mutual Administrative Assistance in Tax Matters
CPG	Central People's Government
CRS	Common Reporting Standard
CRS MCAA	CRS Multilateral Competent Authority Agreement
e-Cert	Digital certificate
FATF	Financial Action Task Force
FI	Financial institution
FSTB	Financial Services and the Treasury Bureau
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance (Cap. 112)
LegCo	Legislative Council
NRFI	Non-reporting financial institution
NTP	New Tax Portals
OECD	Organisation for Economic Co-operation and Development
RCASP	Reporting crypto-asset service provider
RFI	Reporting financial institution
SEMP	Specified electronic money product
TIN	Taxpayer identification number
UK	United Kingdom
VASP	Virtual asset service provider
XML	Extensible markup language

EXECUTIVE SUMMARY

Introduction

1. As an international financial centre and a responsible tax jurisdiction of the international community, Hong Kong has all along been supportive of international efforts to enhance tax transparency and combat tax evasion in accordance with the international standards promulgated by the Organisation for Economic Co-operation and Development (“**OECD**”). The Global Forum on Transparency and Exchange of Information for Tax Purposes (“**Global Forum**”) of OECD is the leading international body working on the implementation of international tax transparency standards, including standards for automatic exchange of information in tax matters (“**AEOI**”) and the Common Reporting Standard (“**CRS**”).
2. AEOI is an international tax co-operation initiative advocated by OECD to enhance international tax transparency and combat cross-border tax evasion. CRS was developed by OECD in 2014 to underpin the implementation of AEOI. It requires the collection of financial account information from financial institutions (“**FIs**”) by tax authorities and automatic exchange of the information of persons with participating tax jurisdictions where the persons are tax residents on an annual basis. With the incorporation of CRS into the Inland Revenue Ordinance (Cap. 112) (“**IRO**”) in 2016, Hong Kong has started exchanging CRS data with partner jurisdictions¹ on a reciprocal basis since 2018.

¹ 129 reportable jurisdictions are now provided for in IRO.

Latest initiatives under AEOI

3. Financial markets have continued to evolve, giving rise to new investment and payment practices as well as the need for enhanced AEOI reporting and due diligence requirements. OECD, together with G20 countries, completed the first comprehensive review of CRS in 2023 and has developed the following two initiatives –
 - (a) Crypto-Asset Reporting Framework (“**CARF**”), a new tax transparency framework, which provides for the automatic exchange of tax information on transactions in crypto-assets in a standardised manner with the jurisdictions of residence of taxpayers; and
 - (b) amendments to CRS (“**amended CRS**”), which cover digital financial products and provide for enhanced CRS reporting and due diligence requirements.

CARF and the amended CRS now collectively represent the prevailing international standards for AEOI. The relevant documents published by OECD are set out in **Annex A**.

4. Hong Kong was identified by OECD as “immediately relevant” to CARF given its growing crypto-asset sector, and was invited to implement CARF by 2028 at the latest. As announced in the 2025 Policy Address, the Government will introduce legislative proposals into the Legislative Council (“**LegCo**”) in 2026, such that the reporting crypto-asset service providers (“**RCASPs**”) can collect the information required under CARF starting from 2027 for the Inland Revenue Department’s (“**IRD**”) exchange with partner jurisdictions from 2028.

5. All jurisdictions implementing CRS are required by OECD to adopt the amended CRS by 2030 at the latest. The Government plans to implement the amended CRS starting from 2029. Our legislative proposals on CARF and the amended CRS will ensure that Hong Kong's AEOI regime will continue to align with the prevailing international standards in a timely manner.

Strengthening the administrative framework for CRS

6. OECD has been conducting the second round of peer review on the effectiveness of Hong Kong's AEOI regime and implementation of CRS since 2024. OECD has raised comments on the identification of the population of reporting financial institutions ("RFIs"), and the penalty scale and enforcement mechanism. It is crucial for Hong Kong to address OECD's comments for obtaining a favourable rating in the peer review so as not to affect our reputation as an international financial centre.

Invitation of views

7. We invite views on the implementation of CARF and the amended CRS in Hong Kong, as well as our proposals for strengthening the administrative framework for CRS for addressing OECD's comments. In particular, this consultation seeks to –
 - (a) introduce the key components of CARF, the amended CRS and our proposed changes for strengthening the administrative framework for CRS;
 - (b) explain our position and proposed approach with respect to relevant implementation issues; and
 - (c) seek views on particular issues and proposals as set out in this paper.

8. As CARF and the amended CRS have been finalised based on international consensus and there is no room for deviation, this public consultation seeks to explain the design features of their implementation that are relevant to Hong Kong, and invites views on matters that are left for consideration by the implementing jurisdiction. Unless otherwise stated, the terms used in this consultation paper bear the same meaning as that provided under CARF, CRS and the amended CRS respectively.
9. Our legislative proposals for CARF are set out in **Chapters 1 and 2**. They are supplemented by a proposed implementation arrangement in Hong Kong in **Chapter 3**. Our legislative proposals for implementing the amended CRS are detailed in **Chapter 4**, and those for strengthening the administrative framework for CRS for addressing OECD's comments are presented in **Chapter 5**. The overall implementation plan of our proposals is summarised in **Chapter 6**.
10. We welcome comments on this consultation paper by 6 February 2026. A full list of the key questions for consultation is in **Annex B**. We will take into account the views received when formulating the legislative proposals, with a view to introducing legislative amendments into LegCo in the first half of 2026.

CHAPTER 1

KEY COMPONENTS OF CARF AND OUR LEGISLATIVE PROPOSALS

What is CARF?

- 1.1 CARF provides for the reporting and automatic exchange of tax information on crypto-assets by the source jurisdiction² to the jurisdiction of residence of the crypto-asset users³ and their controlling persons on an annual basis. The information to be exchanged is confined to that collected by RCASPs and reported to the relevant tax authorities in the source jurisdiction on a routine basis.
- 1.2 CARF consists of three distinct components –
 - (a) **CARF Rules and related commentary** which set out the operational details of the reporting framework, including (i) the scope of crypto-assets covered; (ii) the individuals and entities subject to data collection and reporting requirements; (iii) the transactions subject to reporting and information to be reported in respect of such transactions; and (iv) the due diligence procedures to identify crypto-asset users and the relevant tax jurisdictions for reporting and exchange purposes;
 - (b) a **Multilateral Competent Authority Agreement** on Automatic Exchange of Information pursuant to CARF (“**CARF MCAA**”) and related commentary, which serve as an international agreement to be signed by competent tax

² Source jurisdiction refers to the jurisdiction in which tax information on crypto-assets is collected by RCASPs.

³ A crypto-asset user means an individual or entity that is a customer of an RCASP for the purposes of carrying out transactions. The user may be resident for tax purposes in various jurisdictions under the internal laws of such jurisdictions.

authorities of participating jurisdictions⁴, and details the modalities of the exchange of CARF information between jurisdictions (e.g. the time and manner to provide such information to partner jurisdictions, confidentiality rules, etc.); and

- (c) **Technical specifications** which provide for the extensible markup language (“XML”) schema for the reporting and exchanging of CARF information.

Key provisions to be incorporated into IRO

1.3 To give legal effect to CARF in Hong Kong, we propose incorporating the relevant provisions of the CARF Rules into IRO. The proposed key provisions are as follows, which will be elaborated in this chapter –

- (a) the definitions relevant to CARF;
- (b) the reporting nexus criteria in relation to RCASPs;
- (c) the scope of information to be furnished by RCASPs for IRD’s exchange with CARF partner jurisdictions; and
- (d) the due diligence procedures to be undertaken by RCASPs to identify reportable users / persons.

We propose including items (a), (b) and (c) in the main legislation of IRO. Following the current CRS approach and providing for greater operational flexibility, we propose including item (d) in a Schedule to IRO, which may be amended by the Secretary for Financial Services and the Treasury by notice in the Gazette, subject to negative vetting by LegCo.

⁴ We will seek the Central People’s Government’s (“CPG”) authorisation to sign the CARF MCAA.

Crypto-assets covered by CARF

- 1.4 Under CARF, “**crypto-asset**” refers to a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions. It must represent a right to value, and that the ownership of, or right to, such value can be traded or transferred to other individuals or entities in a digital manner. It encompasses both fungible and non-fungible tokens.
- 1.5 All crypto-assets, except central bank digital currencies (“**CBDCs**”), specified electronic money products (“**SEMPs**”) ⁵ and crypto-assets for which RCASPs have adequately determined that they cannot be used for payment or investment purposes, fall within the scope of CARF (“**relevant crypto-assets**”). RCASPs must fulfil reporting and due diligence requirements in respect of relevant crypto-assets.

Crypto-asset service providers covered by CARF

- 1.6 An RCASP refers to any individual or entity that, as a business ⁶, provides a service executing **exchange transactions** ⁷ for or on behalf of customers, including by acting as a counterparty or as an intermediary to such exchange transactions, or by making

⁵ CBDCs and certain SEMPs held in financial accounts will be covered by the amended CRS.

⁶ Individuals or entities who carry out a service on a very infrequent basis for non-commercial reasons are excluded.

⁷ An exchange transaction refers to any exchange between relevant crypto-assets and fiat currencies as well as any exchange between one or more forms of relevant crypto-assets. An exchange also includes the movement of a relevant crypto-asset from one wallet address to another, in consideration of another relevant crypto-asset or fiat currency.

available a trading platform⁸. Activities of an investment fund investing in relevant crypto-assets are not regarded as executing exchange transactions.

1.7 According to OECD, examples of RCASPs include –

- (a) dealers acting for their own account to buy and sell relevant crypto-assets to customers;
- (b) brokers where they act on behalf of clients to complete orders to buy or sell an interest in relevant crypto-assets;
- (c) operators of crypto-asset automated teller machines (“ATMs”), permitting the exchange of relevant crypto-assets for fiat currencies or other relevant crypto-assets through such ATMs;
- (d) crypto-asset exchanges that act as a market maker and take a bid-ask spread as a transaction commission for their services; and
- (e) individuals or entities subscribing relevant crypto-assets from an issuer for reselling and distributing them to customers (if applicable).

⁸ A trading platform is one that provides the ability for customers to execute exchange transactions on such platform. An individual or entity will be considered as making available a trading platform to the extent it exercises control or sufficient influence over the platform, allowing it to comply with the reporting and due diligence obligations with respect to exchange transactions concluded on the platform (including decentralised platforms that operate on a blockchain or similar technology).

Transactions covered by CARF

1.8 Three types of transactions are reportable under CARF (“**relevant transactions**”), including –

- (a) any exchange between relevant crypto-assets and fiat currencies;
- (b) any exchange between one or more forms of relevant crypto-assets; and
- (c) transfers of relevant crypto-assets.

Criteria of RCASPs subject to reporting

1.9 CARF sets out the **nexus criteria** for determining whether an RCASP is subject to the reporting and due diligence requirements in a jurisdiction. These criteria⁹ include –

- (a) being a tax resident in the jurisdiction;
- (b) being incorporated in, or organised under the laws of the jurisdiction, and having legal personality or obligations to file tax returns to the tax authority in the jurisdiction;
- (c) being managed from the jurisdiction; or
- (d) having a regular place of business in the jurisdiction.

1.10 To avoid duplicative reporting, the criteria mentioned in paragraph 1.9 constitute a hierarchy of rules in case an RCASP has a nexus with more than one jurisdiction. An RCASP is not required to complete the reporting and due diligence requirements in a jurisdiction, if such requirements are completed in a partner

⁹ Criteria (a) and (d) only apply to individual RCASPs, whereas all criteria apply to entity RCASPs.

jurisdiction¹⁰ with a higher reporting nexus.

- 1.11 For an RCASP which has substantially similar nexus with more than one jurisdiction (e.g. being a tax resident in two jurisdictions), the RCASP is not required to complete the reporting and due diligence requirements in one jurisdiction, provided that such requirements are completed in another jurisdiction with similar reporting nexus, and, more importantly, a notification has been lodged with the first-mentioned jurisdiction confirming the same.
- 1.12 An RCASP which is an entity is also subject to the reporting and due diligence requirements in the jurisdiction with respect to relevant transactions executed through a branch based in that jurisdiction. The RCASP is, however, not required to complete these requirements with respect to relevant transactions it executes through a branch based in a partner jurisdiction, provided that the branch itself has completed such requirements for those transactions in the partner jurisdiction.
- 1.13 The jurisdiction of tax residence is the highest level of the hierarchy of reporting nexus for RCASPs (see paragraph 1.9 (a)). For the purpose of CARF, we propose providing in IRO that an RCASP is a tax resident of Hong Kong if –
 - (a) where the RCASP is an individual – the individual ordinarily resides in Hong Kong, or stays in Hong Kong for a period or a number of periods amounting to more than 180 days during a year of assessment; or for a period or a number of periods amounting to more than 300 days in two consecutive years of assessment, one of which is the relevant year of assessment;

¹⁰ A partner jurisdiction means any jurisdiction that has put in place equivalent legal requirements in relation to CARF. An RCASP in a partner jurisdiction is subject to the reporting and due diligence requirements under CARF.

- (b) where the RCASP is a company – the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or
- (c) where the RCASP is an entity other than a company – the entity is constituted under the laws of Hong Kong or, if otherwise constituted, normally managed or controlled in Hong Kong.

RCASP's reporting requirements

1.14 For each reporting period, an RCASP must report the following information to the reporting jurisdiction as determined by the reporting nexus criteria mentioned in paragraphs 1.9 to 1.13, with respect to its crypto-asset users that are **reportable users** (for individual and entity) or which have controlling persons that are **reportable persons** (for entity only)¹¹ –

- (a) **identification information of each reportable user / person:** name, address, jurisdiction(s) of residence, taxpayer identification number(s)¹² (“**TIN**”), date and place of birth (if applicable), and role(s) in the entity (for controlling person(s));
- (b) **identification information of the RCASP:** name, address and identifying number (if applicable);

¹¹ A **reportable user / person** refers to an individual or entity that is a resident in a reportable jurisdiction under the tax laws of that jurisdiction. An **excluded person** is not considered a reportable person. See footnote 21 for the definition of an excluded person.

¹² RCASPs are not required to report TIN information if a TIN is not issued by the CARF partner or the domestic law of the CARF partner does not require the collection of TIN issued by it. OECD has disseminated information on TINs for jurisdictions implementing AEOI on its website:
<https://www.oecd.org/en/networks/global-forum-tax-transparency/resources/aeoi-implementation-portal/tax-identification-numbers.html>

- (c) **transaction data** for each type of relevant crypto-asset for which the RCASP has executed relevant transactions during the reporting period:
- (i) the full name of the type of relevant crypto-asset;
 - (ii) the aggregate gross amount paid and/or received, the aggregate number of units and the number of relevant transactions in respect of acquisitions and/or disposals against fiat currency¹³;
 - (iii) the aggregate fair market value¹⁴, the aggregate number of units and the number of relevant transactions in respect of acquisitions and/or disposals against other relevant crypto-assets;
 - (iv) the aggregate fair market value¹⁴, the aggregate number of units and the number of reportable retail payment transactions (i.e. retail payment transactions exceeding US\$50,000)¹⁵;
 - (v) the aggregate fair market value¹⁴, the aggregate number of units and the number of relevant transactions, and subdivided by transfer type¹⁶ where known by the RCASP, in respect of transfers to and/or by the reportable user; and

¹³ The information must be reported in the fiat currency in which it was paid or received. In case the amounts were paid/received in multiple fiat currencies, the amounts must be reported in a single fiat currency, converted at the time of each relevant transaction in a manner that is consistently applied by the RCASP.

¹⁴ The fair market value must be determined and reported in a single fiat currency, valued at the time of each relevant transaction in a reasonable manner that is consistently applied by the RCASP.

¹⁵ Retail payment transactions that do not exceed US\$50,000 should be included in the aggregated information reported with respect to transfer as mentioned in paragraph 1.14 (c) (v).

¹⁶ Examples of transfer types include airdrop, staking income, mining income, crypto loan, transfer from another RCASP, sale of goods or services and collateral.

- (vi) the aggregate fair market value¹⁴, as well as the aggregate number of units in respect of transfers by the reportable user executed by the RCASP to wallet addresses not known by the RCASP to be associated with a virtual asset service provider¹⁷ (“VASP”) or FI.

RCASP’s due diligence procedures

1.15 An RCASP must apply the due diligence procedures for identifying reportable persons, including both individual and entity crypto-asset users. An RCASP must obtain **self-certifications** from its crypto-asset users when taking in new customers¹⁸ and confirm reasonableness of such self-certifications for identifying the users’ jurisdictions of residence based on the information obtained by the RCASP, including any documentation collected pursuant to anti-money laundering / know your customer (“AML/KYC”) procedures¹⁹. RCASPs are not expected to carry out an independent legal analysis of relevant tax laws to confirm reasonableness of the self-certification.

¹⁷ A VASP, as defined in the 2012 Financial Action Task Force (“FATF”) Recommendations, including updates in June 2019, means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- (a) exchange between virtual assets and fiat currencies;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of virtual assets;
- (d) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- (e) participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset.

¹⁸ For pre-existing crypto-asset users, self-certifications must be obtained no later than twelve months after CARF becomes effective in Hong Kong.

¹⁹ The AML/KYC procedures should be consistent with 2012 FATF Recommendations, including updates in June 2019 with respect to obligations applicable to VASPs.

- 1.16 If there is a change of circumstances with respect to an individual or entity crypto-asset user (including its controlling person(s)) that causes the RCASP to reasonably know that the original self-certification is incorrect or unreliable, the RCASP should not rely on the original self-certification and must obtain afresh a valid self-certification, or a reasonable explanation and documentation supporting the validity of the original self-certification.
- 1.17 For an **individual crypto-asset user**, an RCASP is required to determine whether the individual is a reportable user²⁰ based on the self-certification.
- 1.18 For an **entity crypto-asset user**, an RCASP is required to determine whether the entity is a reportable user²⁰ based on the self-certification. The RCASP is also required to –
- (a) determine whether the entity is an **excluded person**²¹ based on the self-certification or information in the RCASP's possession or that is publicly available. Entities regarded as excluded persons are not reportable persons and are hence **not subject to reporting** and those due diligence requirements in item (b) to (d) below in light of the limited tax compliance risks they represent;

²⁰ See footnote 11 on the definition of a reportable user / person.

²¹ An **excluded person** is defined as: (a) an entity the stock of which is regularly traded on one or more established securities markets; (b) any entity that is a related entity of the entity in (a); (c) a governmental entity; (d) an international organisation (e.g. the International Monetary Fund, the World Bank and the International Bank for Reconstruction and Development); (e) a central bank; or (f) an FI other than an investment entity described in subparagraph E(5)(b) of Section IV of the CARF Rules.

- (b) determine whether the entity is an **active entity**²² based on the self-certification;
- (c) determine the controlling person(s) of the entity (be it reportable or non-reportable), unless the entity is regarded as an active entity, based on information collected and maintained pursuant to AML/KYC procedures. If the RCASP is not legally required to apply AML/KYC procedures that are consistent with the 2012 FATF Recommendations (as updated in June 2019 pertaining to VASPs), it must apply substantially similar procedures for the purposes of determining the controlling person(s); and
- (d) determine whether the controlling person(s) identified in item (c) above are reportable person(s), based on the self-certifications from the entity crypto-asset user or the controlling person(s).

²² An **active entity** is an entity that meets one of the following criteria, showing that it is primarily engaged in active operations and non-financial activities rather than passive investment or financial activities –

- (a) less than 50% of the entity's gross income in the preceding year is passive income and less than 50% of the assets held during the preceding year are for production of passive income;
- (b) primarily holding stock of, or providing financing and services to, one or more subsidiaries that engage in non-FI trades or businesses;
- (c) not yet operating but is investing capital into assets to start a non-FI business;
- (d) not an FI in the past five years and is liquidating its assets or reorganising to start a non-FI business;
- (e) primarily engaging in financing and hedging transactions only with or for related entities (i.e. an entity under control of another entity, or two entities under common control) that are not FIs; or
- (f) operated exclusively for religious, charitable, educational, or similar purposes or as a professional organisation, chamber of commerce, labour organisation, etc. which is tax-exempt in its jurisdiction of residence and meets other specified requirements.

For the avoidance of doubt, if an entity crypto-asset user is both a reportable user and an active entity, the entity itself is still subject to reporting under CARF. If an entity crypto-asset user is an active entity, the relevant RCASP is not required to determine the controlling person(s) of the entity (see paragraph 1.18 (c)).

- 1.19 If a crypto-asset user (or a controlling person of an entity crypto-asset user) is resident for tax purposes in two or more jurisdictions under the domestic laws of such jurisdictions (i.e. tie-breaker scenarios), such person is required to declare all of its jurisdictions of residence and be treated as tax resident in all identified jurisdictions.
- 1.20 RCASPs should not rely on a self-certification or documentary evidence where they know or have reason to know that it is incorrect or unreliable under the following circumstances –
- (a) the RCASP has doubts as to the tax residency of a crypto-asset user or controlling person where such person is claiming residence in a jurisdiction offering a potentially high-risk citizenship or residence by investment ²³ (“**CBI/RBI**”) scheme and the RCASP has not taken further measures to ascertain the tax residency of such persons, including through raising further questions and receiving responses accompanied by relevant supporting documentation;
 - (b) the self-certification does not contain a TIN and the information disseminated by OECD indicates that the reportable jurisdiction of the crypto-asset user or its controlling person(s) issues TINs to all tax residents; or
 - (c) there is an amendment to the applicable AML/KYC procedures and additional information obtained under the amended AML/KYC procedures is inconsistent with the claims made by a person in a self-certification.

²³ CBI/RBI schemes allow individuals to obtain citizenship or residence rights through local investments or against a flat fee, but they may be potentially misused for hiding the individuals’ assets offshore by escaping reporting under CRS. OECD has maintained a list of potentially high-risk CBI/RBI schemes: <https://www.oecd.org/en/topics/sub-issues/international-standards-on-tax-transparency/residence-citizenship-by-investment.html>

Under such circumstances, the RCASPs should either obtain a valid self-certification or a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the self-certification before providing services executing relevant transactions to the crypto-asset user concerned.

CHAPTER 2

OTHER LEGISLATIVE ISSUES FOR IMPLEMENTATION OF CARF IN HONG KONG

- 2.1 This chapter sets out other legislative proposals for the implementation of CARF in Hong Kong.

Empowering the Commissioner of Inland Revenue (“CIR”) to publish lists of reportable jurisdictions and partner jurisdictions for CARF

- 2.2 Both the lists of reportable jurisdictions and partner jurisdictions are crucial under CARF. The former will determine whether a crypto-asset user (or the controlling person of an entity crypto-asset user) is a reportable person, while the latter will determine the jurisdictions where an RCASP is subject to the reporting and due diligence requirements under CARF. Since CARF is a new reporting framework and the lists of relevant jurisdictions need to be updated from time to time to reflect the latest position of participating jurisdictions, we propose empowering CIR to publish these lists (including the names of jurisdictions and effective years) on IRD’s official website. This will enable RCASPs’ early determination of reporting nexus and timely application of the reporting and due diligence procedures for newly added jurisdictions.

RCASPs to collect and report information of reportable persons

- 2.3 Under CARF, RCASPs are only required to identify reportable persons in relation to reportable jurisdictions and collect relevant information. However, some RCASPs may prefer identifying and collecting information of both reportable and non-reportable persons (even if the latter are not tax residents of a reportable jurisdiction) for reducing compliance costs. We propose prescribing that RCASPs must carry out due diligence procedures in respect of reportable persons and report the relevant information

to IRD (see paragraphs 1.14 to 1.20 above). We will also prescribe that RCASPs may carry out the same procedures in respect of non-reportable persons (similar to section 50B(3) of IRO as applicable under the existing CRS), even though they are not required to report the information collected to IRD. This will provide a clear legal basis for RCASPs to flexibly adopt an approach for collecting and reporting information that fits their circumstances.

- 2.4 Nonetheless, RCASPs choosing to collect information for both reportable persons and non-reportable persons will have to securely keep the information of non-reportable persons as required under the respective regulatory and privacy regimes. When the relevant jurisdictions become Hong Kong's CARF partners in future, the relevant persons will become "reportable" and RCASPs will then be required to send the information of these relevant persons to IRD.

Views sought:

1. Will you, as RCASPs, identify and collect information of both reportable and non-reportable persons?

Record keeping requirements for RCASPs

- 2.5 We propose requiring all RCASPs to keep sufficient records of (a) the steps taken and information collected for carrying out the due diligence procedures and (b) the information for ascertaining the accuracy of the CARF information which is required to be reported to IRD. Such records should be kept for a period of **not less than six years**, after the last day of the calendar year or other appropriate reporting period to which they relate or the due date of the CARF return in which the information is reported, whichever is later.

- 2.6 CARF further requires that the retention period remains unaffected, regardless of whether an RCASP has been dissolved or has terminated its business. To reduce uncertainty on who has the responsibility to keep the records in the event that an RCASP has been dissolved before the end of the six-year retention period, we propose imposing a requirement on every person who was a director (or principal officer or trustee, if there was no director) of an RCASP immediately before its dissolution to ensure that sufficient records of the RCASP are kept until the end of the retention period²⁴. These persons will also be required to inform IRD within one month of the dissolution and/or change of their contact details.
- 2.7 An RCASP that has terminated its business but has not been dissolved is still subject to the record keeping requirements. To ensure that the records of an RCASP are still accessible for inspection by IRD after its termination of business, we propose imposing a requirement that an RCASP must inform IRD within one month of its termination of business. If the RCASP has changed its contact details after termination of business, the RCASP must also inform IRD within one month of the change of contact details.

Views sought:

2. Do you have any views on the proposed record keeping requirements for RCASPs?

Mandatory registration requirement for RCASPs

- 2.8 As a jurisdiction committed to implementing CARF, Hong Kong will be required to demonstrate that all relevant RCASPs are identified and their compliance with the reporting and due

²⁴ This proposal is modelled on a similar requirement in section 758 of the Companies Ordinance (Cap. 622) with enhancement (i.e. extending the application to principal officer and trustee if there is no director for the RCASP).

diligence requirements under CARF is properly monitored. Therefore, we propose introducing a **mandatory registration requirement** in IRO requiring all RCASPs that meet any of the reporting nexus criteria (see paragraphs 1.9 to 1.13) with Hong Kong to register an account with an electronic system designated by CIR (i.e. CARF Portal²⁵). The registration requirement applies irrespective of whether the RCASP has any CARF information to report to IRD or whether the RCASP is subject to reporting and due diligence requirements in Hong Kong (given that it may have a nexus with other jurisdiction(s)). RCASPs will need to determine whether they meet any of the reporting nexus criteria with Hong Kong and seek legal advice if necessary.

- 2.9 To identify unregistered RCASPs, IRD will, for example, make reference to the lists of virtual asset trading platforms maintained by the Securities and Futures Commission of Hong Kong, and screen profits tax returns to identify whether the taxpayers are carrying out relevant businesses.

Views sought:

3. Do you have any views on the proposed mandatory registration for all RCASPs that meet any of the reporting nexus with Hong Kong?

²⁵ CARF Portal is a secure platform for RCASPs to file CARF returns electronically. RCASPs will be required to use digital certificate (“e-Cert”) for authentication and register an account in the CARF Portal for transacting with IRD on matters related to CARF. IRD is exploring whether the login mechanism of the CARF Portal can be integrated with the New Tax Portals (“NTP”), such that RCASPs can utilise the additional functionality offered by the NTP (e.g. assigning access right to perform different functions under various services and portals). More details will be provided by IRD at a later stage.

Engagement of service providers

- 2.10 We propose allowing RCASPs to engage service providers in carrying out the registration, reporting and due diligence obligations under CARF. However, engaging a service provider does not in itself constitute a reasonable excuse for failing to comply with these obligations for the RCASP.

Enforcement provisions

- 2.11 To ensure effective implementation of CARF, we propose empowering IRD to –
- (a) obtain information from RCASPs in relation to the determination of their reporting nexus and CARF information on their customers;
 - (b) have access to business premises of RCASPs or their service providers and inspect their compliance system and process, and direct the RCASPs or service providers to rectify the system or process concerned if non-compliance is found; and
 - (c) obtain a search warrant where access to and inspection of any places or any books, records, or information or data in relation to the compliance system and process is required when there is reasonable ground for suspecting the RCASPs' or their service providers' non-compliance with reporting and due diligence requirements.

Penalty provisions

- 2.12 To put in place appropriate penalty provisions for achieving effective deterrence, we propose modelling upon the sanctions under the administrative framework for CRS with certain enhancements.

2.13 We propose imposing sanctions in respect of RCASPs' offences committed **without reasonable excuse**, including –

- (a) **failure to register an account in the CARF Portal;**
- (b) **failure to file a CARF return;**
- (c) **failure to comply with the requirements for carrying out due diligence obligations;**
- (d) **making an incorrect or incomplete return or providing incorrect or incomplete information or statements;**
- (e) **failure to notify IRD of the discovery of misleading, false or inaccurate return, information or statements; and**
- (f) **failure to comply with any other obligations** (e.g. notifying IRD of change of contact details in case of dissolution ²⁶ or termination of business, providing information required by CIR and keeping sufficient records).

For offences (a) and (b), the RCASP will be liable on conviction to a fine at level 3 (\$10,000), and a further fine of \$500 will be imposed for each day of continuing offence after conviction. For offences (c), (d) and (e), the RCASP will be liable on conviction to a fine at level 3 (\$10,000) **or** \$1,000 for each crypto-asset user or controlling person involved, whichever is the higher. For (f), the

²⁶ In case of dissolution, the penalty will be imposed on the director, principal officer or trustee immediately before its dissolution.

RCASP will be liable on conviction to a fine at level 3 (\$10,000).²⁷

2.14 It is also proposed that heftier penalties will be imposed on RCASPs for the following wrongdoings in connection with provision of information –

- (a) **knowingly or recklessly providing misleading, false or inaccurate information in a material particular when furnishing returns, statements or information, or having no reasonable ground to believe that the information is true or accurate.** The RCASP will be liable on conviction to a fine at level 4 (\$25,000) **or** \$5,000 for each crypto-asset user or controlling person involved, whichever is the higher; and
- (b) **providing misleading, false or inaccurate information in a material particular when furnishing returns, statements or information with intent to defraud.** The RCASP will be liable on summary conviction to a fine at level 5 (\$50,000) **or** \$10,000 for each crypto-asset user or controlling person involved, whichever is the higher, and imprisonment for 6 months; or on indictment to a fine at level 6 (\$100,000) **or** \$20,000 for each crypto-asset user or

²⁷ The penalties of the new offences under CARF largely model upon the penalty regime of the existing CRS, where the RFIs concerned are liable to a fine at level 3 (\$10,000) for a majority of offences, including failure to file a return, failure to apply the due diligence procedures, failure to keep sufficient records, failure to notify CIR of the discovery of misleading, false or inaccurate information in a return, etc. As elaborated in paragraphs 5.9 to 5.13, in light of OECD's comments in its peer review on the effectiveness of Hong Kong's CRS administrative framework, we propose enhancing the penalty regime of CRS by introducing new offences and graduated penalties calculated based on the number of financial accounts involved or the number of days of continuing failure, which have been adopted by other comparable jurisdictions (including Canada, Singapore and the United Kingdom ("UK")). Our penalty-related proposals for CARF seek to align with those of the enhanced CRS regime.

controlling person involved, whichever is the higher, and imprisonment for 3 years²⁸.

- 2.15 A service provider who is engaged to fulfil an RCASP's reporting and due diligence obligations will be liable on conviction to a fine at level 3 (\$10,000) for committing the offences in paragraphs 2.13 (a) to (c) and (e) and 2.14 (a). For the offence in paragraph 2.14 (b), the service provider will be liable on summary conviction to a fine at level 3 (\$10,000) and imprisonment for 6 months; or on indictment to a fine at level 5 (\$50,000) and imprisonment for 3 years.
- 2.16 A person employed by an RCASP will commit an offence only if he/she, with intent to defraud, causes or allows the RCASP to provide misleading, false or inaccurate information in a material particular. The person will be liable on summary conviction to a fine at level 3 (\$10,000) and imprisonment for 6 months; or on indictment to a fine at level 5 (\$50,000) and imprisonment for 3 years. This is in line with a similar offence under the existing CRS (section 80C of IRO).
- 2.17 In line with the penalty imposed on a similar offence under the existing CRS (sections 80(2E) and (2F) of IRO), we propose imposing a fine at level 3 (\$10,000) on a convicted person who provided, knowingly or recklessly, misleading, false or incorrect information in a material particular to RCASPs in making self-certification.
- 2.18 We also propose putting in place an "administrative penalty" mechanism under CARF to provide a proportionate and cost-

²⁸ Similar to section 80E of IRO for CRS, it is proposed that where the convicted RCASP is a corporation and the offence was committed with the consent or connivance of a director or other officer in the management of the corporation, or any person purporting to act as such director or officer, such person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence. This means that such person will be liable to serve the imprisonment term.

effective alternative to prosecution²⁹, modelling upon the “additional tax” mechanism for certain cases under section 82A of IRO. Where an RCASP commits an offence as stated in paragraph 2.13 (a) to (e) above, the RCASP can be liable to an administrative penalty in lieu of prosecution in respect of the same facts where no prosecution has been initiated. The amount of the administrative penalty will not exceed the fine that would have been imposed had prosecution been instituted for such an offence. An assessment of administrative penalty for the purposes of CARF will be made by CIR or a Deputy CIR. The person concerned has the right to submit written representation to explain his or her case before an assessment of administrative penalty is made and has the right to appeal to the Board of Review on the assessment (similar to appeals against assessment to additional tax under section 82B of IRO).

Views sought:

4. Do you have any views on the proposed penalty framework for CARF (including the administrative penalty mechanism)?

Implementation timeline

- 2.19 We intend to implement the legislative proposals on CARF outlined in Chapters 1 and 2 with effect from 1 January 2027. RCASPs will be required to collect the information required under CARF starting from 2027 for IRD’s exchange with partner jurisdictions from 2028, which is the deadline set by OECD.

²⁹ Similar to the provisions of the existing CRS under section 80F(2) of IRO, we propose empowering CIR to compound an offence, and to before judgment stay or compound any proceedings instituted for the offence, under CARF. Compounding an offence is a legal process where the person concerned voluntarily settles an offence by paying a monetary sum in lieu of prosecution. Prosecution will be instituted if the person chooses not to compound the offence.

CHAPTER 3

IMPLEMENTATION ARRANGEMENT FOR CARF IN HONG KONG

Safeguards on taxpayers' rights and confidentiality of information exchanged

- 3.1 We plan to conduct automatic exchange of CARF information with the participating jurisdictions under the Convention on Mutual Administrative Assistance in Tax Matters³⁰ (“**Convention**”) that have implemented CARF and have in place appropriate laws and rules to safeguard data privacy and confidentiality. The Convention provides for safeguards to protect taxpayers’ privacy and confidentiality of information exchanged. Such safeguards at treaty level are summarised at **Annex C**.
- 3.2 The CARF MCAA provides that all information exchanged is subject to the safeguards and confidentiality rules provided for in the Convention. It also provides that a competent tax authority may suspend exchange of information by giving notice in writing to the other competent tax authority if there is or has been significant non-compliance by the other competent tax authority. Termination will take immediate effect as soon as the jurisdiction is removed from the lists of partner jurisdictions and reportable jurisdictions published by CIR on IRD’s official website.
- 3.3 When carrying out the reporting and due diligence requirements, RCASPs should comply with the existing requirements under the data protection principles in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). For example, RCASPs should inform their crypto-asset users and the controlling persons (for

³⁰ By virtue of the Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order, the Convention came into force in Hong Kong on 1 September 2018.

entity crypto-asset users) of the possible use of the information collected for CARF purposes and that all practicable steps must be taken to ensure that the personal data are accurate. Crypto-asset users and controlling persons are entitled to request access to and correction of their personal data.

Filing CARF Returns

- 3.4 All RCASPs which have a nexus with Hong Kong under CARF, regardless of whether they have any CARF information to report to IRD or whether they are subject to reporting and due diligence requirements in Hong Kong, are required to register an account in the CARF Portal in accordance with the mandatory registration requirement as mentioned in paragraph 2.8.
- 3.5 IRD will issue electronic notices to all RCASPs that have an active account in the CARF Portal in **January** annually for filing of CARF Returns. An RCASP that does not have any CARF information to report in a particular year will still be required to file a **nil return** and provide reasons³¹.
- 3.6 For RCASPs that have CARF information to be reported, they will need to perform the following additional steps before filing the CARF Returns:

Creation of data files

- (a) RCASPs may develop their own computer software for creating data files in accordance with the data specifications issued by IRD. The data files to be submitted by RCASPs

³¹ Reasons for nil reporting include: (a) the RCASP has complied with the reporting and due diligence requirements under CARF in another jurisdiction; (b) the RCASP has not yet commenced business involving relevant crypto-assets and relevant transactions; (c) all of the crypto-asset users of the RCASP are not residents of reportable jurisdictions (the total number of crypto-asset users during the information period should be provided); (d) the RCASP has no business involving relevant crypto-assets or has not executed any relevant transactions during the information period; and (e) other reasons to be specified.

should follow the same format required under CARF, i.e. the CARF Schema in XML format. To ensure that the files generated by the self-developed software conform to the data specifications, RCASPs will be required to submit test data files to IRD for validation and obtain IRD's consent before putting the self-developed software to use.

- (b) Alternatively, RCASPs may use the data preparation tool accessible in the CARF Portal for preparing data files. RCASPs can fill in the required information in the form provided and create data files in XML format in the CARF Portal.

Encryption of data files

- (c) To preserve data integrity and non-repudiation, RCASPs will be required to encrypt and sign the data files with their e-Cert before uploading the files to the CARF Portal. IRD will provide a tool, which is available for downloading from the CARF Portal, to RCASPs to perform the signing and encryption processes.

Uploading of data files

- (d) RCASPs will be able to transmit signed data files to their accounts in the CARF Portal through single uploading, or multiple uploading. The system will allow RCASPs to update data files previously submitted or delete erroneous files under prescribed conditions. The data files will have to be validated by IRD before they can be attached to the CARF Return.

- 3.7 RCASPs will have to sign the CARF Return with their e-Cert to authenticate the identity of the signatures. IRD is also exploring other authentication mechanisms and will provide details later.

- 3.8 Jurisdictions implementing CARF are expected to exchange CARF information in September annually. To allow sufficient time for IRD to extract relevant data for exchange purposes, we propose requiring RCASPs to file a CARF Return **within five months** after the calendar year to which the information relates.

Views sought:

5. Do you have any views on the proposed filing mechanism for CARF Returns?
6. Will you prefer using self-developed software or the data preparation tool provided by IRD in the CARF Portal for preparation of data files?

CHAPTER 4

LEGISLATIVE PROPOSALS FOR THE AMENDED CRS

Components of the amended CRS

- 4.1 The amended CRS consists of three distinct components –
- (a) **amendments to the CRS Rules and related commentary** which specify the amendments to the existing CRS and cover three main areas, including: (i) new digital financial products; (ii) enhanced reporting requirements; and (iii) additions of and clarifications to the definitions and due diligence obligations;
 - (b) an **Addendum to the CRS Multilateral Competent Authority Agreement**³² (“CRS MCAA”) and related commentary which provide an updated legal basis for participating jurisdictions to exchange the broadened scope of information under the amended CRS; and
 - (c) an updated XML schema which supports the exchange of information pursuant to the amended CRS.
- 4.2 We propose amending the existing provisions on CRS in IRO (i.e. Part 8A and Schedules 17C and 17D) to incorporate the key provisions of the amended CRS.

Inclusion of digital money products

- 4.3 Certain digital money products, as well as CBDCs representing a digital fiat currency issued by a central bank, can be considered functionally similar to a traditional bank account from the perspective of customers and may therefore entail tax compliance

³² We will seek CPG’s authorisation to sign the Addendum to the CRS MCAA.

concerns similar to those associated with bank accounts currently covered by CRS. To ensure a level-playing field between digital money products and traditional bank accounts and to ensure consistent reporting outcomes, the following amendments to the CRS have been made –

- (a) the terms SEMP and CBDC have been introduced into CRS to include digital money products;
- (b) the definition of “depository institution” has been amended to include those digital money providers that hold SEMPs and CBDCs for the benefit of customers;
- (c) the definition of “depository account” has been amended to include accounts representing SEMPs and CBDCs held for customers;
- (d) a new category of **excluded account**³³ is added to exempt low-risk digital money products given the limited monetary value stored, namely SEMPs whose rolling average 90-day end-of-day account balance or value does not exceed USD10,000 in any consecutive 90-day period; and
- (e) the definition of **non-reporting financial institution** (“**NRFI**”) is revised to clarify that a central bank is not considered an NRFI when holding CBDCs on behalf of non-financial entities or individuals.

³³ Under Part 3 of Schedule 17C to IRO, excluded accounts include: (a) retirement or pension accounts satisfying certain requirements; (b) non-retirement tax-favoured accounts; (c) term life insurance contracts; (d) estate accounts; (e) escrow accounts; (f) depository accounts due to non-returned overpayments; and (g) dormant accounts.

Coverage of derivatives referencing crypto-assets and investment entities investing in crypto-assets

- 4.4 Derivative contracts referencing crypto-assets are included in the definition of financial assets, thereby allowing RFIs to apply the same reporting and due diligence procedures to derivatives referencing different types of assets.
- 4.5 The definition of investment entity is expanded to include crypto-assets as a category of eligible investments.

Enhanced reporting requirements

- 4.6 Additional data are to be reported so as to improve the usability of data for tax compliance purposes under CRS. The additional reporting requirements in respect of account holders, controlling persons and their financial accounts are set out as follows –
- (a) whether a valid self-certification has been obtained for each account holder and/or controlling person who is a reportable person;
 - (b) the role of controlling persons in relation to the entity account holder and the role(s) of equity interest holders in an investment entity;
 - (c) whether the account is a pre-existing account or a new account;
 - (d) whether the account is a joint account, as well as the number of joint account holders; and
 - (e) the type of financial account (e.g. depository account, custodial account, etc.).

Additions of and clarifications to the definitions and due diligence obligations

- 4.7 CRS requires that an RFI may rely on information collected and maintained pursuant to AML/KYC procedures (in line with 2012 FATF Recommendations) to determine the controlling persons of a new entity account holder. The amended CRS further requires that if AML/KYC procedures are inconsistent with 2012 FATF Recommendations, the RFI must apply substantially similar procedures.
- 4.8 In an exceptional case where a self-certification cannot be obtained before the opening of a new account, RFIs are required to temporarily determine the residence of the account holders and/or controlling persons on the basis of the due diligence procedures for pre-existing accounts and to report on that basis. This is not a standard procedure and is not an alternative to the requirement for obtaining a valid self-certification.
- 4.9 Capital contribution accounts, the purpose of which is to block funds for a limited period of time in view of the incorporation of a new company or a pending capital increase, are now considered excluded accounts, provided that adequate safeguards are in place to avoid misuse of such accounts³⁴.
- 4.10 If an individual or entity account holder who is resident for tax purposes in two or more jurisdictions (i.e. tie-breaker scenarios), the account holder is required to self-certify all jurisdictions of tax residence and be treated as tax resident in all identified jurisdictions.
- 4.11 The circumstances under which RCASPs should not rely on a self-certification or documentary evidence as set out in paragraph 1.20 (a) to (c) are applicable to RFIs under the amended CRS.

³⁴ Such accounts will be treated as excluded accounts only where their use is prescribed by law and for a maximum period of 12 months.

Treatment of qualified non-profit entities

- 4.12 The amended CRS contains a new optional NRFI category of “qualified non-profit entity”, for any genuine non-profit entity that meets all of the specified conditions³⁵.
- 4.13 We propose allowing those entities that meet all of the specified conditions as NRFIs. Only entities that have obtained a recognition of tax exemption status under section 88 of IRO (i.e. tax-exempt charities) may be considered as qualified non-profit entities. A tax-exempt charity must demonstrate to IRD that all the specified conditions are met before the tax-exempt charity can be treated as a qualified non-profit entity and, in turn, an NRFI.

Dual reporting under the amended CRS and CARF

- 4.14 By virtue of the covering of crypto-assets in the amended CRS as mentioned in paragraph 4.5, RFIs are, by default, required to report the gross proceeds from the sale or redemption of a financial asset, including relevant crypto-assets, under CRS. If RFIs are also RCASPs, the gross proceeds from the sale or redemption of the relevant crypto-assets will also be reported under CARF.
- 4.15 To avoid duplicative reporting, the amended CRS provides that jurisdictions may adopt an optional treatment, permitting RFIs’

³⁵ The specified conditions include –

- (a) established and operated in its jurisdiction of residence exclusively for religious, charitable, educational, or similar purposes or as a professional organisation, chamber of commerce, labour organisation, etc.;
- (b) exempt from income tax in its jurisdiction of residence;
- (c) no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (d) any income or assets of the entity to be distributed to a private person or a non-charitable entity other than pursuant to the conduct of the entity’s charitable services is not permitted; and
- (e) upon liquidation or dissolution, all of the entity’s assets must be distributed to a governmental entity or other entity that meets the conditions set out in (a) to (e), or escheat to the government of the entity’s jurisdiction of residence.

non-reporting of the gross proceeds from the sale or redemption of a financial asset under CRS, to the extent that such proceeds from the sale or redemption of such financial asset are reported by the RFI under CARF.

- 4.16 Despite the disposal of certain crypto-assets in custodial accounts may simultaneously be subject to reporting under CRS and CARF, we anticipate that the optional treatment, if adopted, may not reduce the administrative burden for RFIs which are also RCASPs. Instead, adopting this optional treatment may add complexity and technical difficulties for those RFIs which set up separate IT systems managing the reporting and due diligence obligations of CRS and CARF.
- 4.17 To reduce the implementation burden for these entities, we propose adopting the default treatment regarding the requirement for RFIs to report the gross proceeds from the sale or redemption of financial assets under CRS, irrespective of whether such gross proceeds have been reported under CARF.

Views sought:

7. On reporting of gross proceeds from the sale or redemption of relevant crypto-assets, do you have any views on adopting the default treatment in requiring RFIs to report the relevant information under both CRS and CARF?

Implementation timeline

- 4.18 To allow sufficient time for RFIs to take into account the new requirements under the amended CRS, and update their processes and systems for compliance purposes, we intend to implement the amendments presented in this chapter with effect from 1 January 2028, with the first exchange of data under the amended CRS in 2029.

CHAPTER 5

STRENGTHENING THE ADMINISTRATIVE FRAMEWORK FOR CRS

- 5.1 OECD has been conducting the second round of peer review on the effectiveness of Hong Kong's existing AEOI regime (i.e. implementation of CRS) since 2024. It has raised comments on the identification of the RFI population and the lack of deterrence of the existing penalty scale and enforcement mechanism in Hong Kong. In order to address OECD's comments for obtaining a favourable rating ("Largely Compliant" or above) in the peer review, we propose strengthening the administrative framework for CRS with legislative proposals as set out in this chapter. If we cannot obtain a favourable rating, Hong Kong may be listed as an uncooperative tax jurisdiction by other jurisdictions and this may undermine our reputation as an international financial centre. FIs in Hong Kong may also be adversely affected, as their reporting and compliance burdens may be increased when doing business with other jurisdictions.

Mandatory registration requirement for RFIs

- 5.2 To ensure effective implementation of CRS by all relevant parties, jurisdictions must be able to identify all RFIs. Many jurisdictions³⁶ have addressed this by mandating RFIs to register with their tax authorities under their domestic CRS legislation. In Hong Kong, only RFIs that maintain reportable accounts are required to register an account in the AEOI Portal and notify IRD of their reporting obligations under the existing arrangement. There is no such requirement for RFIs that do not maintain any

³⁶ For example, Singapore has implemented mandatory registration for CRS reporting, requiring all relevant FIs to register with the Inland Revenue Authority of Singapore by a deadline when they become reportable entities.

reportable accounts. IRD, thus, cannot ascertain the population of RFIs in Hong Kong.

- 5.3 To address this inability and to align with the proposed mandatory registration requirement for RCASPs under CARF (see paragraph 2.8), we propose requiring all RFIs in Hong Kong to register in the AEOI Portal for CRS reporting purposes, irrespective of whether RFIs have any information to report to IRD. This registration requirement will not apply to an RFI if the relevant CRS data, including nil reporting, is reported by another RFI³⁷. Also, entities that are NRFIs will not be required to register for CRS.
- 5.4 To minimise financial burden on RFIs which will be required to comply with the CRS registration requirement despite not maintaining any reportable accounts, IRD will explore whether the current login mechanism of the AEOI Portal can be enhanced, such that RFIs or their service providers can choose to access the AEOI Portal by logging in to NTP without using e-Certs.

Views sought:

8. Do you have any views on the proposed mandatory registration for all RFIs in Hong Kong?

Record keeping requirements

- 5.5 At present, RFIs are required to keep sufficient records for a period of six years from the date on which the return is furnished. However, IRO does not specify who is responsible for maintaining these records after an RFI has been dissolved.

³⁷ For example, CRS data of a trustee-documented trust is reported by its trustee; CRS data of a sub-fund is reported by the umbrella fund; CRS data of a scheme participating in a pooling agreement or an approved pooled investment fund is reported by the pooling agreement or the approved pooled investment fund.

- 5.6 To align with the proposed record keeping requirements under CARF (see paragraph 2.5 to 2.7 above), we propose requiring all RFIs to keep sufficient records of (a) the steps taken and information collected for carrying out the due diligence procedures and (b) the information for ascertaining the accuracy of the CRS information which is required to be reported to IRD. Such records are to be kept for a period of not less than six years after the last day of the calendar year or other appropriate reporting period to which they relate or the due date of the CRS Return in which CRS data is reported, whichever is later.
- 5.7 For a dissolved RFI, the responsibility to retain records will be imposed upon every person who was a director (or principal officer or trustee, if there was no director) of the RFI immediately before its dissolution to ensure that sufficient records of the RFI are kept until the end of the six-year retention period. These persons will also be required to inform IRD within one month of the dissolution and/or change of their contact details.
- 5.8 An RFI that has terminated its business but has not been dissolved is still subject to the record keeping requirements. To ensure that records of an RFI are still accessible for inspection by IRD after its termination of business, we propose imposing a requirement that an RFI must inform IRD within one month of its termination of business. If the RFI has changed its contact details after termination of business, it must also inform IRD within one month of the change of contact details.

Views sought:

9. Do you have any views on the proposed amendments to the record keeping requirements for RFIs?

Enhanced sanctions

5.9 OECD found Hong Kong's existing penalty levels relatively mild compared to those of many other jurisdictions³⁸. We have been invited to review the penalty scale and enforcement mechanism of the existing AEOI regime for enhancing deterrence.

5.10 We propose revamping the following offences committed by RFIs **without reasonable excuse**, by introducing penalties calculated based on the number of financial accounts involved³⁹. This is to ensure the penalties are proportionate to the nature and seriousness of the offences.

- (a) **Failure to establish, maintain or apply the due diligence procedures** (i.e. section 80B(1)(a)(i)); and
- (b) **failure to notify IRD of the discovery of misleading, false or inaccurate information in a return** (i.e. section 80B(6)(b)).

For these two offences, the penalty for the convicted RFI will be raised from a fine at level 3 (\$10,000) to a fine at level 3 (\$10,000) **or** \$1,000 for each financial account involved, whichever is the higher.

³⁸ For instance, an FI which fails to comply with the due diligence obligations in Canada is liable to a fine of CAD100 (about HKD550), or CAD25 (about HKD140) for the number of days during which the failure continues (with a cap of 100 days), whichever is the higher, **for each failure**. In the UK, an FI committing the same offence is liable to a penalty not exceeding GBP100 (about HKD1,000) **for each account holder or controlling person**. For Hong Kong, an RFI is currently liable on conviction to a fine at level 3 (\$10,000) pursuant to section 80B(3) of IRO, **irrespective of the number of financial accounts involved**.

³⁹ At present, penalties are imposed on RFIs irrespective of the number of financial accounts involved.

5.11 We also propose introducing new sanctions⁴⁰ in respect of RFIs' non-compliance with relevant obligations **without reasonable excuse**, including –

- (a) **failure to register an account in the AEOI Portal.** The RFI will be liable on conviction to a fine at level 3 (\$10,000), and a further fine of \$500 will be imposed for each day of continuing offence after conviction.
- (b) **providing incorrect or incomplete information when furnishing returns, statements or information.** The RFI will be liable on conviction to a fine at level 3 (\$10,000) **or** \$1,000 for each financial account involved, whichever is the higher.
- (c) **failure to notify IRD of the discovery of misleading, false or inaccurate information when furnishing statements or information.** The RFI will be liable on conviction to a fine at level 3 (\$10,000) **or** \$1,000 for each financial account involved, whichever is the higher.
- (d) **failure to comply with any other obligations** (e.g. notifying IRD of change of contact details upon dissolution⁴¹ or termination of business, providing information required by CIR and keeping sufficient records). The RFI will be liable on conviction to a fine at level 3 (\$10,000).

5.12 Furthermore, it is proposed that the penalty levels for wrongdoings in connection with provision of misleading, false or inaccurate information will be raised, and they will no longer be confined to the context of furnishing returns to IRD, but extended to the provision of information and making of statements to IRD in

⁴⁰ The penalties for the new offences largely model upon similar offences under the existing CRS regime, where the convicted RFIs are liable to a fine at level 3 (\$10,000) for a majority of offences.

⁴¹ In case of dissolution, the penalty will be imposed on the director, principal officer or trustee immediately before its dissolution.

general.

- (a) **knowingly or recklessly providing misleading, false or inaccurate information in a material particular when furnishing returns, statements or information, or having no reasonable ground to believe that the information is true or accurate.** The RFI will be liable on conviction to a fine at level 4 (\$25,000) **or** \$5,000 for each financial account involved, whichever is the higher⁴².
- (b) **providing misleading, false or inaccurate information in a material particular when furnishing returns, statements or information with intent to defraud.** The RFI will be liable on summary conviction, to a fine at level 5 (\$50,000) **or** \$10,000 for each financial account involved, whichever is the higher, and imprisonment for 6 months; or on indictment, to a fine at level 6 (\$100,000) **or** \$20,000 for each financial account involved, whichever is the higher, and imprisonment for 3 years^{43 44}.

5.13 A service provider which is engaged to fulfil an RFI's reporting and due diligence obligations will be liable on conviction to a fine at level 3 (\$10,000) for committing the offence in paragraphs 5.11 (a), 5.11 (c) and 5.12 (a). For the offence in paragraph 5.12 (b), the service provider will be liable on summary conviction to a fine at level 3 (\$10,000) and imprisonment for 6 months; or on

⁴² The penalty level of the current offence – knowingly or recklessly providing misleading, false or inaccurate information in a tax return, or having no reasonable ground to believe that the information is true or accurate (i.e. section 80B(6)(a) and (7)) – is a fine at level 3 (\$10,000).

⁴³ The penalty level of the current offence – providing misleading, false or inaccurate information in a tax return, with intent to defraud (i.e. section 80B(8) and (9)) – is a fine at level 3 (\$10,000) and imprisonment for 6 months (for summary conviction); or a fine at level 5 (\$50,000) and imprisonment for 3 years (for indictment).

⁴⁴ According to section 80E of IRO, where the convicted RFI is a corporation and the offence was committed with the consent or connivance of a director or other officer in the management of the corporation, or any person purporting to act as such director or officer, such person, as the case requires, also commits the offence and is liable on conviction to the penalty provided for that offence. This means that such person is liable to serve the imprisonment term.

indictment to a fine at level 5 (\$50,000) and imprisonment for 3 years.

- 5.14 To improve the timeliness and cost-effectiveness of penal actions, we propose putting in place an “administrative penalty” mechanism as an alternative to prosecution, same as that for CARF (see paragraph 2.18 above). Where an RFI commits an offence in relation to carrying out of due diligence obligations, return filing, registration, providing incorrect or incomplete information, and failure to notify IRD of the discovery of misleading, false or inaccurate information **without reasonable excuse**, the RFI will be liable to an administrative penalty in lieu of prosecution in respect of the same facts where no prosecution has been initiated. The amount of the administrative penalty will not exceed the fine that would have been imposed had prosecution been instituted for such an offence. We will put in place arrangements to ensure that the person concerned has the right to explain his or her case before an assessment of administrative penalty is made and to appeal to the Board of Review on the assessment.

Views sought:

10. Do you have any views on the enhanced penalty framework for CRS?

Implementation timeline

- 5.15 We intend to implement the proposed amendments in this chapter with a commencement date of 1 January 2027.

CHAPTER 6

IMPLEMENTATION PLAN

Subject to passage of the legislative amendments by LegCo within 2026, the implementation plan in relation to CARF and CRS in Hong Kong is as below –

<u>Actions</u>	<u>Timeline</u>
<u>(1) In relation to CARF</u>	
(a) RCASPs to commence due diligence procedures for new and pre-existing crypto-asset users to identify crypto-asset users that are reportable users and/or have controlling persons that are reportable persons, and keep relevant information and documentation	January 2027
(b) RCASPs that meet any of the reporting nexus to Hong Kong to commence registration with IRD, subject to the availability of the CARF Portal	September 2027 (registration should be completed by December 2027 or January 2028 ⁴⁵)
(c) RCASPs to submit test data files of self-developed software to IRD for validation	Q4 2027
(d) IRD to issue CARF Returns to RCASPs	January 2028
(e) RCASPs to file CARF Returns to IRD	June 2028
(f) IRD to exchange information with CARF partners	September 2028

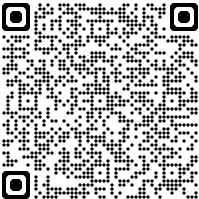
⁴⁵ It is proposed that an RCASP must register with IRD on or before –

- (a) 31 December of the calendar year in which the RCASP first meets any of the reporting nexus to Hong Kong at any time between 1 January and 30 November (both dates inclusive); or
- (b) 31 January of the calendar year following the calendar year in which the RCASP first meets any of the reporting nexus to Hong Kong at any time between 1 December and 31 December (both dates inclusive).

<u>Actions</u>	<u>Timeline</u>
<u>(2) In relation to CRS</u>	
(a) All RFIs to register with IRD	January 2027
(b) RFIs to commence additional due diligence procedures under the amended CRS	January 2028
(c) RFIs to file CRS Returns to IRD with additional information on reportable accounts under the amended CRS	June 2029
(d) IRD to exchange information with CRS partners with additional information on reportable accounts under the amended CRS	September 2029

ANNEX A

LIST OF RELEVANT DOCUMENTS PUBLISHED BY OECD

<u>Document Title (with link)</u>	<u>QR Code</u>
(1) International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 Update to the Common Reporting Standard	
(2) Crypto-Asset Reporting Framework XML Schema: User Guide for Tax Administrations	
(3) Amended Common Reporting Standard XML Schema: User Guide for Tax Administrations	
(4) Delivering Tax Transparency to Crypto-Assets: A Step-by-Step Guide to Understanding and Implementing the Crypto-Asset Reporting Framework	
(5) Crypto-Asset Reporting Framework: Frequently Asked Questions	
(6) Jurisdictions committed to implement the Crypto-Asset Reporting Framework (CARF) in time to commence exchanges in 2027, 2028 or 2029 as part of the Global Forum's CARF commitment process	

ANNEX B

SUMMARY OF KEY QUESTIONS FOR CONSULTATION

In relation to the implementation of CARF in Hong Kong

- (1) Will you, as RCASPs, identify and collect information of both reportable and non-reportable persons?
- (2) Do you have any views on the proposed record keeping requirements for RCASPs?
- (3) Do you have any views on the proposed mandatory registration for all RCASPs that meet any of the reporting nexus with Hong Kong?
- (4) Do you have any views on the proposed penalty framework for CARF (including the administrative penalty mechanism)?
- (5) Do you have any views on the proposed filing mechanism for CARF Returns?
- (6) Will you prefer using self-developed software or the data preparation tool provided by IRD in the CARF Portal for preparation of data files?

In relation to the implementation of amended CRS in Hong Kong

- (7) On reporting of gross proceeds from the sale or redemption of relevant crypto-assets, do you have any views on adopting the default treatment in requiring RFIs to report the relevant information under both CRS and CARF?

In relation to measures for strengthening the administrative framework for CRS

- (8) Do you have any views on the proposed mandatory registration for all RFIs in Hong Kong?
- (9) Do you have any views on the proposed amendments to the record keeping requirements for RFIs?
- (10) Do you have any views on the enhanced penalty framework for CRS?

ANNEX C

SUMMARY OF SAFEGUARDS AT TREATY LEVEL

- (1) Information exchanged should be foreseeably relevant, i.e. there will be no fishing expeditions.
- (2) Information received by our partners should be treated as confidential.
- (3) Information will only be disclosed to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, applicable taxes of that jurisdiction, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may disclose it in public court proceedings or in judicial decisions relating to such taxes.
- (4) Information exchanged should not be disclosed to a third jurisdiction without the prior authorisation by the supplying jurisdiction.
- (5) There is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which would be covered by legal professional privilege, etc.
- (6) The use of information exchanged for other purposes (i.e. non-tax related) should only be allowed provided that such use is allowed under the laws of both jurisdictions and the competent authority of the supplying jurisdiction authorises such use. In other words, it is a prerequisite that exchange of information must first be conducted for tax purposes in accordance with the provisions of the Convention. As envisaged by OECD, the sharing of tax

information exchanged is only meant for certain high priority matters (such as to combat money laundering, corruption and terrorism financing).

- (7) Any requests from other jurisdictions for tax examinations abroad would not be acceded (a declaration has been made in this regard under paragraph 3 of Article 9 of the Convention).