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REGULATORY UPDATE - IMPLEMENTATION OF THE OECD COMMON REPORTING STANDARD (“CRS”) IN THE MACAU SAR

1. Background

The Macau SAR government has in 2014 committed to the implementation of the new Common Reporting Standard (“CRS”) promoted by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The goal of CRS is to enhance tax transparency and combat cross-jurisdiction tax evasion, and will allow for the automatic exchange of financial account information among participating jurisdictions, of which more than 80 have joined to date.

2. Regulatory Status

As a participating member of the CRS scheme, the Macau SAR government has committed to roll out the implementation of the new CRS between 2017 and 2018, and has said that it would soon initiate the necessary legislative procedures to ensure amendment of relevant local law and ensure timely compliance with the new CRS. As of today, no formal legislative procedures have yet been initiated or any relevant laws or regulations passed regarding the implementation of the CRS.

In August of this year, the Macau Financial Services Bureau (“DSF”) released a “Guidelines on the Common Reporting and Due Diligence Standards for Financial Account Information” (the “Guidelines”) which were notified to financial sector institutions in Macau by the Macau Monetary Authority (“AMCM”). Through the Guidelines, certain financial institutions have been instructed to carry out financial account due diligence to be completed by December 31, 2017, with the goal of achieving the first automatic exchange of financial account information to other participating jurisdictions by 2018.

3. Scope of Application

The due diligence duties in the Guidelines apply to a wide range of financial institutions, including custodial institutions (institutions that hold assets on behalf of third parties), depository institutions (such as banks), investment entities and specified insurance companies (insurers that issue payments related to an insurance policy) (the “Reporting Financial Institutions”).

With certain exceptions, entities that are exempt from such due diligence duties include any financial entity that may be qualified as a government entity, international organization, central bank, open or closed pension fund, government pension fund or in general any entity which presents a low risk of being used for tax evasion.

Following the requirements established by the CRS, The guidelines list out detailed due diligence measures which the Reporting Financial Institutions must take with regards to reportable accounts.

Reportable accounts generally include accounts held by individuals or corporations who are tax residents of other participating jurisdictions, whose share capital is not regularly traded on the stock market, and who are not either government entities, international organizations or other financial institutions. Reportable accounts include any accounts held by non-financial entities controlled by the abovementioned persons.

As for the type of financial information to be collected and shared, it includes information regarding all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of incomes), account number, balances and sales proceeds from financial assets as the end of the relevant calendar year or other reporting period, together with the name, address, jurisdiction of residency, TIN (tax payer identification number) and date of birth of each reportable person that is an account holder.

There are different thresholds of due diligence duties based on whether the reportable accounts are pre-existing accounts or newly created accounts, with a higher level of reporting standard required for the latter.

4. Future Implementation Measures

The guidelines refer to effective government administrative procedures which must be put in place to ensure the effective implementation and supervision of the due diligence measures required of financial institutions, these include rules related to prevention of non-compliance with reporting duties, obligatory record-keeping, investigation and follow-up powers, procedures to ensure excluded accounts remain low-risk for tax evasion purposes, and penalties for non-compliance.

Until today, none of the further implementation measures have yet been regulated or entered into force.

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