

CRS Anti-Avoidance and Mandatory Disclosure



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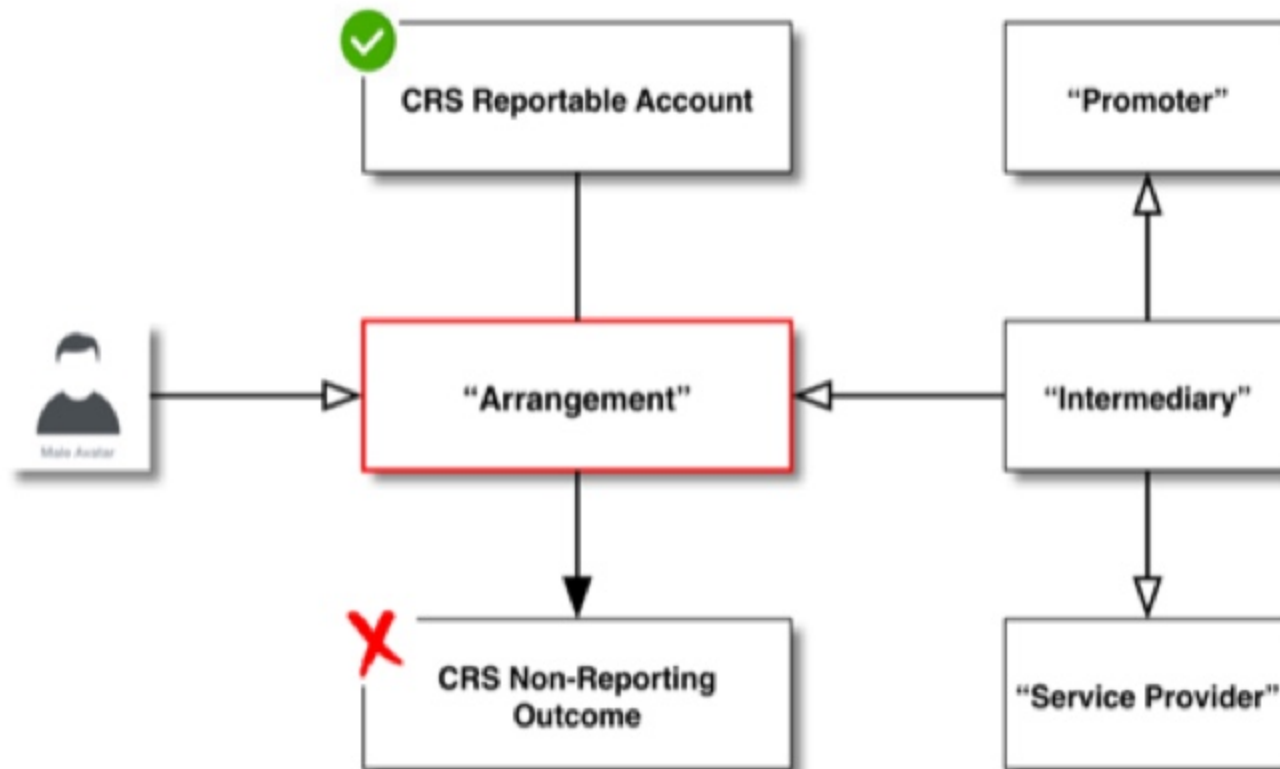


Model Mandatory
Disclosure Rules
for CRS Avoidance
Arrangements and
Opaque Offshore
Structures



CRS Avoidance Arrangement

CRS Avoidance Arrangement

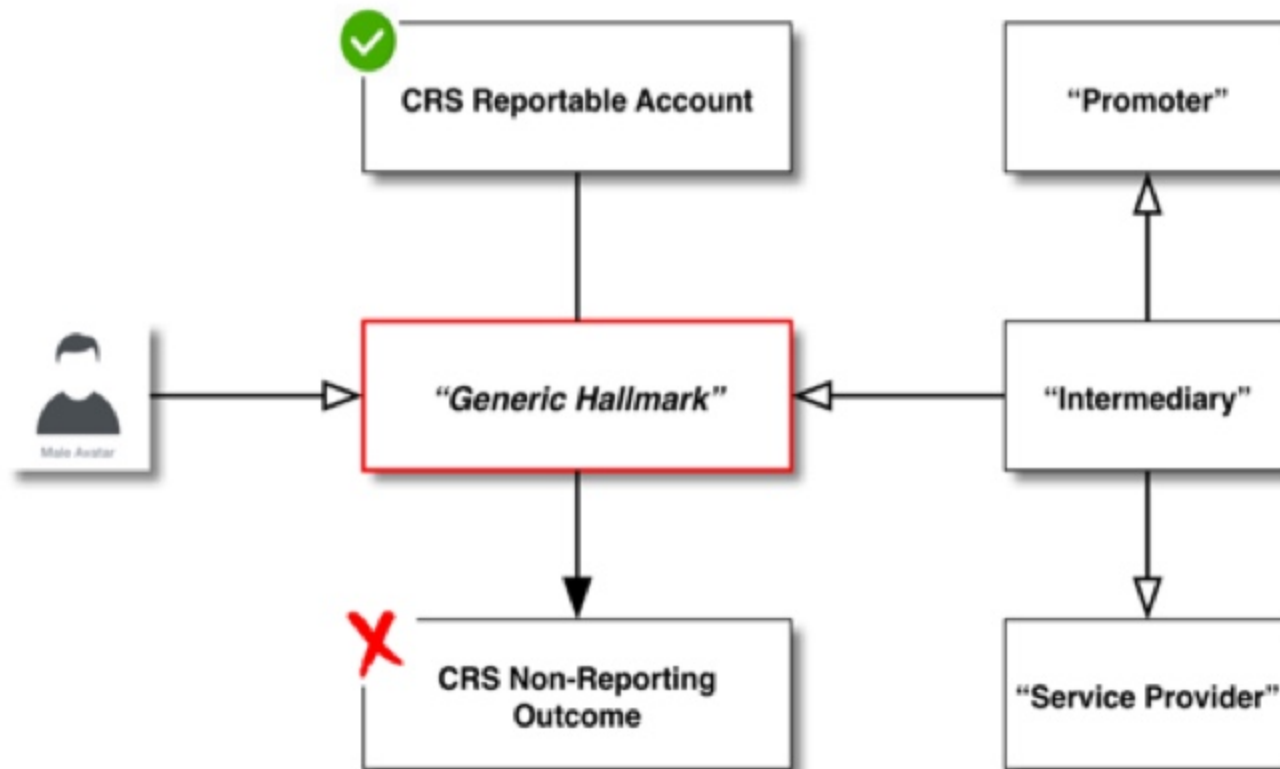


Rule 1.4: Other Definitions

The following capitalised terms shall have the meanings set out below:

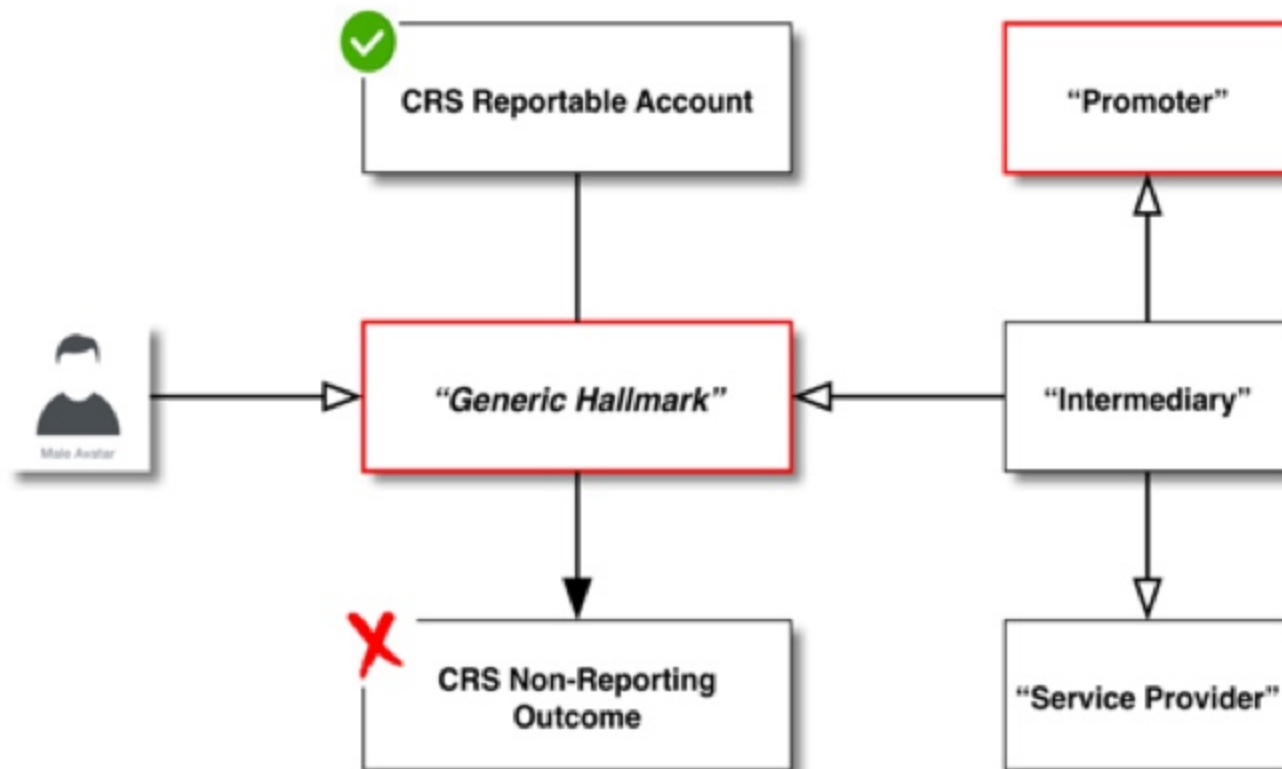
- (a) “Arrangement” includes an agreement, scheme, plan or understanding, whether or not legally enforceable, and includes all the steps and transactions that bring it into effect.

CRS Avoidance Arrangement



Rule 1.1: CRS Avoidance Arrangement

A “CRS Avoidance Arrangement” is any Arrangement for which it is reasonable to conclude that it is designed to circumvent or is marketed as, or has the effect of, circumventing CRS Legislation or exploiting an absence thereof, including through:

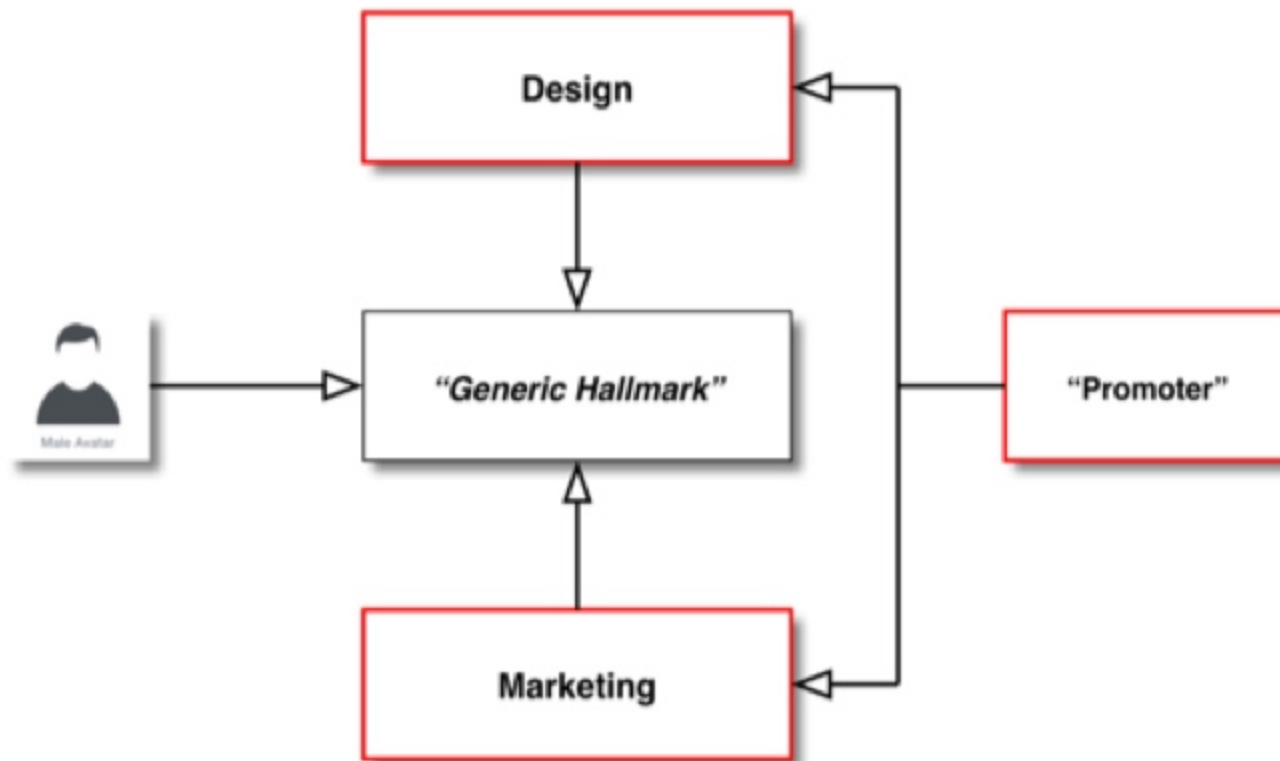


Rule 1.3: Intermediary

“Intermediary” means:

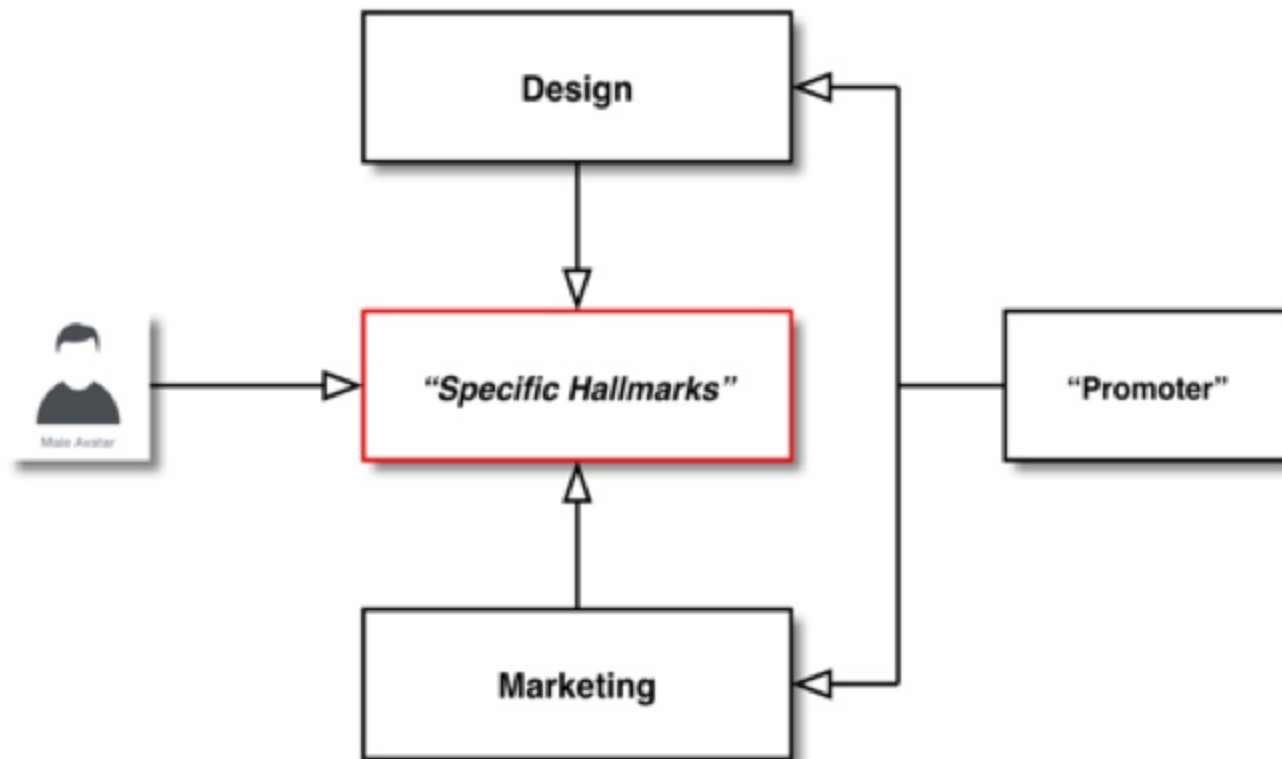
- (a) any person responsible for the design or marketing of a CRS Avoidance Arrangement or Opaque Offshore Structure (“Promoter”); and

CRS Avoidance Arrangement



...designed to, marketed as or has the effect of..

4. An Arrangement will fall within the scope of the generic hallmark if that Arrangement actually has the effect of circumventing CRS Legislation or if it is designed to have, or is marketed as having, that effect. This means that the generic hallmark covers both schemes that are or can be used to avoid or frustrate the legal requirements of the applicable CRS Legislation, as well as those based on a misinterpretation or misapplication of that legislation. An Arrangement should be treated as “designed to” circumvent CRS Legislation if it is reasonable to conclude that it has been put in place deliberately to facilitate a non-reporting outcome. An Arrangement should be treated as “marketed” as a CRS Avoidance Arrangement if the benefit of non-reporting under the CRS is used to promote or sell the Arrangement to a potential Client or customer. The term “marketed” does not include providing a legal opinion to a Client on whether an existing or proposed Arrangement is subject to CRS reporting (or on



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- (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;

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Rule 1.1(a) – Financial investments that are not Financial Accounts

9. The first specific hallmark covers the use of a financial product that provides the investor with the core functionality of a Financial Account but which includes features that take it outside the definition of a “Financial Account” for CRS purposes. This specific hallmark could cover, for instance, the use of certain types of e-money as a substitute for a Depository Account or the issuance of certain types of derivative contracts by Financial Institutions that are out of scope of CRS Legislation but replicate underlying financial assets covered by such legislation. The hallmark refers to the “use” of such a product and would therefore cover the offering of such products as well as Arrangements to transfer funds into such an investment.

- (b) the transfer of a Financial Account, or the monies and/or Financial Assets held in a Financial Account to a Financial Institution that is not a Reporting Financial Institution or to a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a Reportable Taxpayer;
- (c) the conversion or transfer of a Financial Account, or the monies and/or Financial Assets held in a Financial Account, to a Financial Account that is not a Reportable Account;
- (d) the conversion of a Financial Institution into a Financial Institution that is not a Reporting Financial Institution or into a Financial Institution that is resident in a jurisdiction that does not exchange CRS information with all jurisdictions of tax residence of a Reportable Taxpayer;

Rule 1.1(b) to (d) – Arrangements to transfer funds outside the scope of CRS reporting

10. The second to fourth specific hallmarks in the model rules cover Arrangements that shift money or Financial Assets to Financial Institutions or accounts that are not subject to CRS reporting. Unlike the first hallmark which focuses on the specific features of the product that take it outside the legal scope of the CRS Legislation, these hallmarks look to the jurisdiction where the financial product is offered and the domestic exemptions from reporting within that jurisdiction to identify Arrangements that give rise to CRS avoidance risks. These hallmarks would include moving money to a Financial Institution in a jurisdiction that has not implemented the CRS or that is not exchanging CRS information with the taxpayer's jurisdiction of residence for tax purposes; as well as certain transfers of funds to a non-reportable account of a Financial Institution in a Participating Jurisdiction or strategies such as dividing the amounts held in a Financial Account to remain under the USD 250,000 threshold for CRS reporting.

(e) undermining or exploiting weaknesses in the due diligence procedures used by Financial Institutions to correctly identify:

- (i) an Account Holder and/or Controlling Person; or
- (ii) all the jurisdictions of tax residence of an Account Holder and/or Controlling Person;

Rule 1.1(e) – Arrangements undermining the effectiveness of and exploiting weaknesses in due diligence procedures

13. The fifth specific hallmark targets Arrangements that undermine or exploit weaknesses in the due diligence procedures used by Financial Institutions to collect CRS information on an Account Holder and the Controlling Persons of a Passive NFE. Arrangements undermining the effectiveness of due diligence procedures are those that frustrate the intended outcomes of those procedures (such as the misuse of residence certificates as described in the Commentary to Rule 1.1(e)(ii) below). Arrangements exploiting weakness in due diligence procedures include those Arrangements that rely on the absence or inadequate implementation of such due diligence procedures, for example by taking advantage of weak implementation of the latest FATF Recommendations, which are currently those of February 2012. This hallmark would cover the use of Structures that do not allow the accurate determination of the identity of Account Holder and the Controlling Persons and that rely on the creation of indicia or documentary evidence to mislead a financial institution about the actual jurisdiction(s) of residence of an Account Holder in order to facilitate inaccurate or incomplete reporting under the CRS.

- (f) allowing, or purporting to allow:
- (i) an Entity to qualify as an Active NFE;
 - (ii) an investment to be made through an Entity without triggering a reporting obligation under the CRS Legislation; or
 - (iii) a person to avoid being treated as a Controlling Person; or

Rule 1.1(f) – Exploiting Active NFE status or avoiding Controlling Person Status

19. The sixth specific hallmark addresses Arrangements that take advantage of the fact that an Active NFE is not subject to disclosure or reporting obligations with respect to its Controlling Persons under the CRS and targets Arrangements involving the use of a Passive NFE that are designed to circumvent the requirement to disclose Controlling Persons. The model rules in Rule 1.1(f) focus on three areas of known risk:

- the marketing of a company that purports to qualify automatically for Active NFE status in its jurisdiction of incorporation;
- back-to-back investment Arrangements made through an NFE that are intended to prevent an investor from having to reveal their identity under the CRS; and
- investments in a passive NFE that are structured in such a way as to prevent the investor falling within the definition of a Controlling Person under the CRS.

The final element of the hallmark would also cover a plan to switch from a trust to a company as an investment vehicle in order to avoid reporting of the trust's discretionary beneficiaries as Controlling Persons.

- (g) classifying a payment made for the benefit of an Account Holder or Controlling Person as a payment that is not reportable under CRS Legislation;

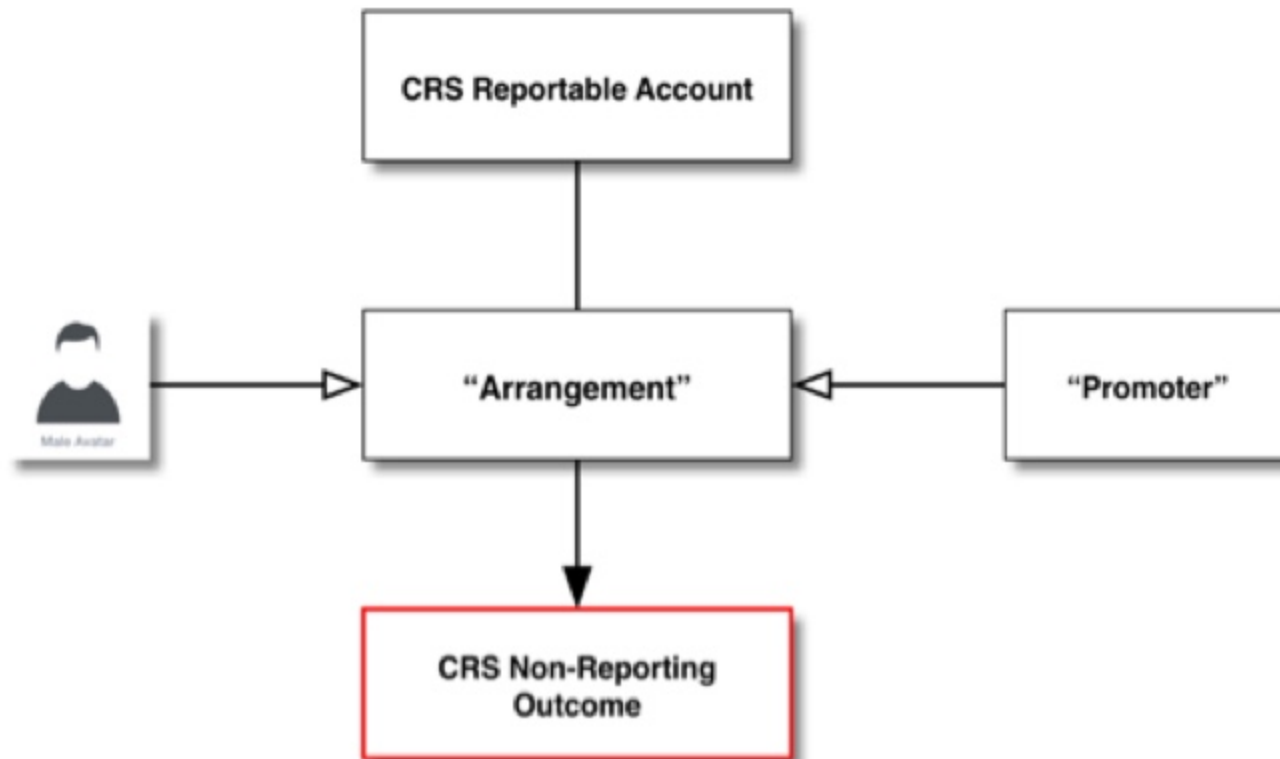
where it is reasonable to conclude that such Arrangement is designed to circumvent or is marketed as, or has the effect of, circumventing CRS Legislation or exploiting an absence thereof.

Rule 1.1(g) – Non-reportable payments to an Account Holder

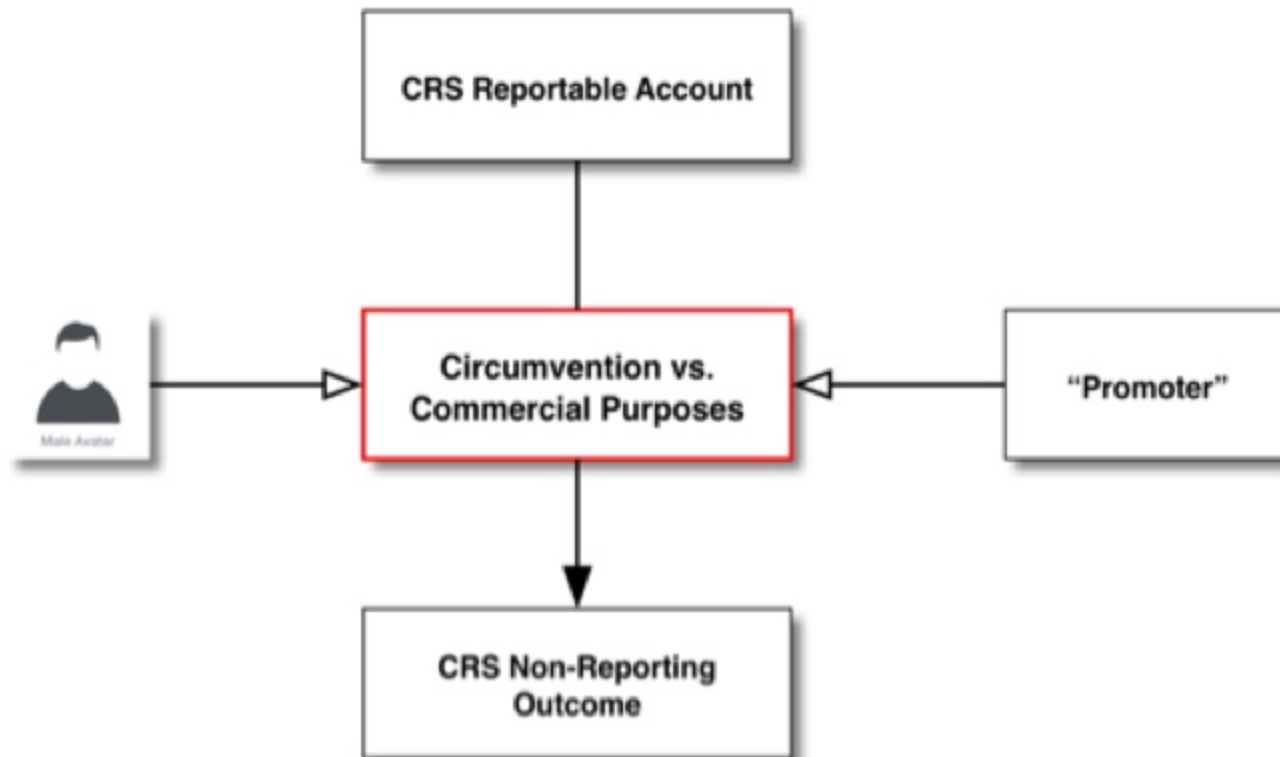
21. The final specific hallmark relates to Arrangements that classify a payment to an Account Holder or Controlling Person into one that is not reportable under the CRS. The model rules cover Arrangements that purport to “classify” a payment as non-reportable even where that Arrangement has no legal effect, and include the additional precision that the payment must be to or “for the benefit of” an Account Holder or Controlling Person. This hallmark could for instance pick up a trust that pays the bills on behalf of a beneficiary or crediting amounts to a pre-paid debit or credit card.

For the purposes of this Rule 1.1, an Arrangement is not considered to have the effect of circumventing CRS Legislation solely because it results in non-reporting under the relevant CRS Legislation, provided that it is reasonable to conclude that such non-reporting does not undermine the policy intent of such CRS Legislation.

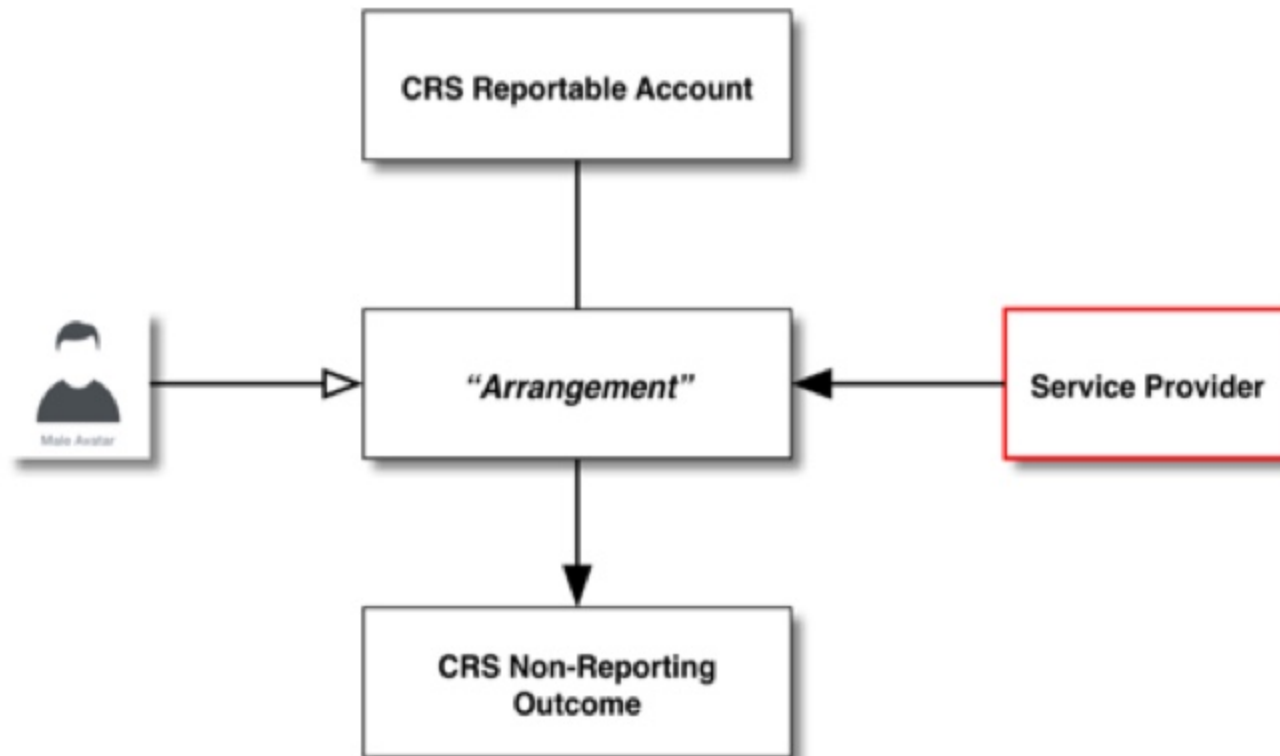
CRS Avoidance Arrangement



CRS Avoidance Arrangement



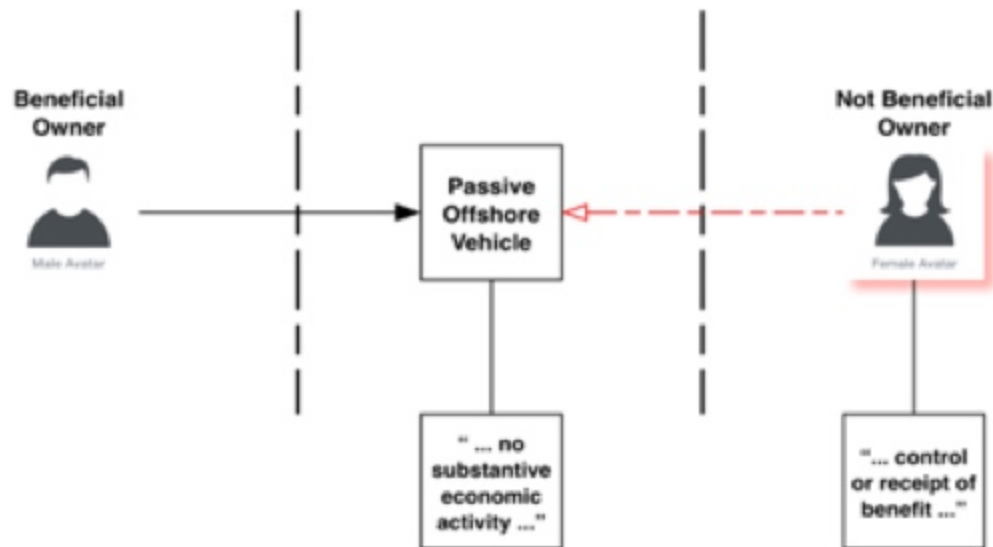
CRS Avoidance Arrangement



- (b) any person that provides Relevant Services in respect of a CRS Avoidance Arrangement or Opaque Offshore Structure in circumstances where the person providing such services could reasonably be expected to know that the Arrangement or Structure is a CRS Avoidance Arrangement or an Opaque Offshore Structure (“Service Provider”). The standard of “reasonably be expected to know” must be determined by reference to the Service Provider’s actual knowledge based on readily available information and the degree of expertise and understanding required to provide the Relevant Services.
- (k) “Relevant Services” in respect of a CRS Avoidance Arrangement or Opaque Offshore Structure, means providing assistance or advice with respect to the design, marketing, implementation or organisation of that Arrangement or Structure.

Opaque Structure

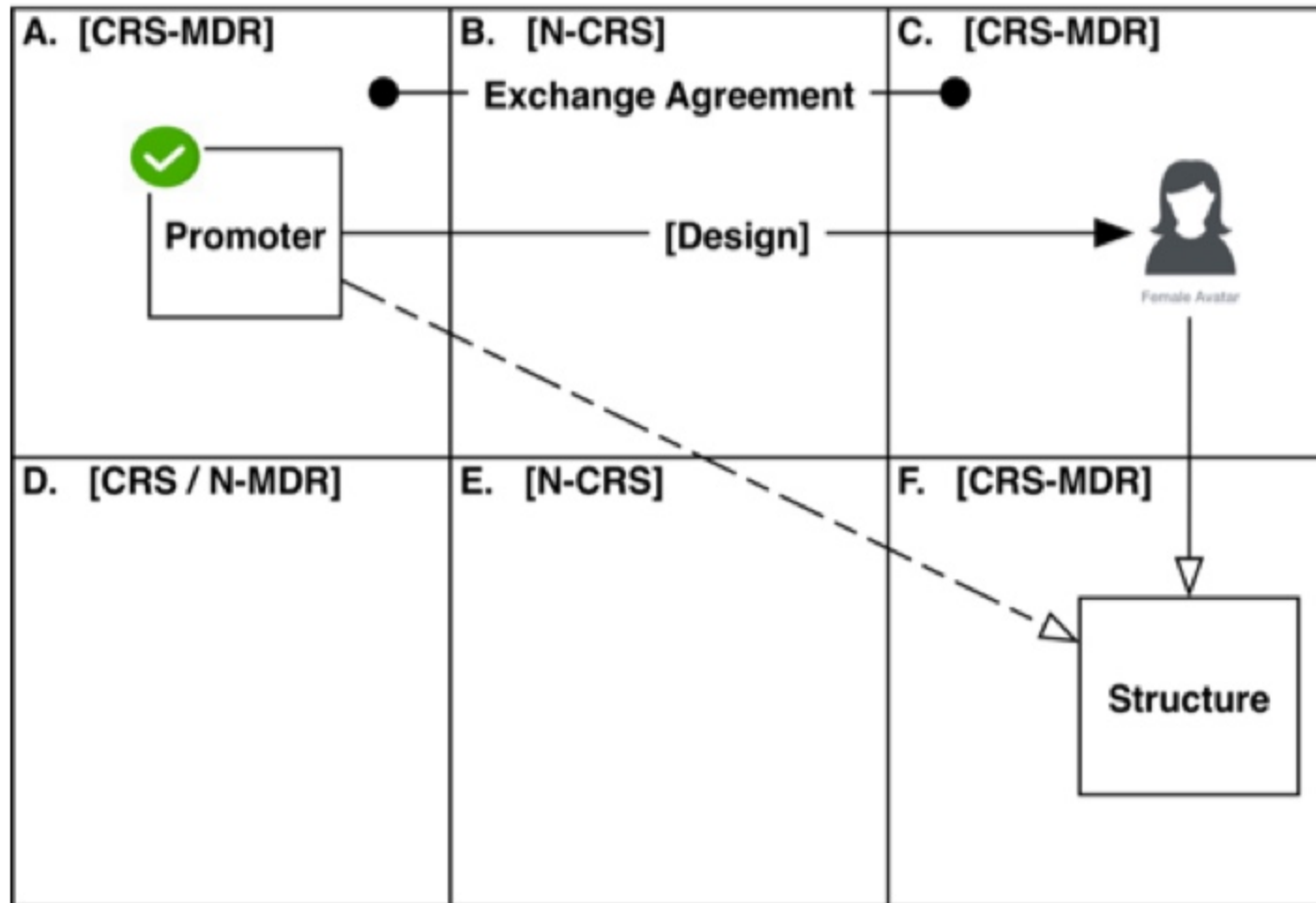
Opaque Structure



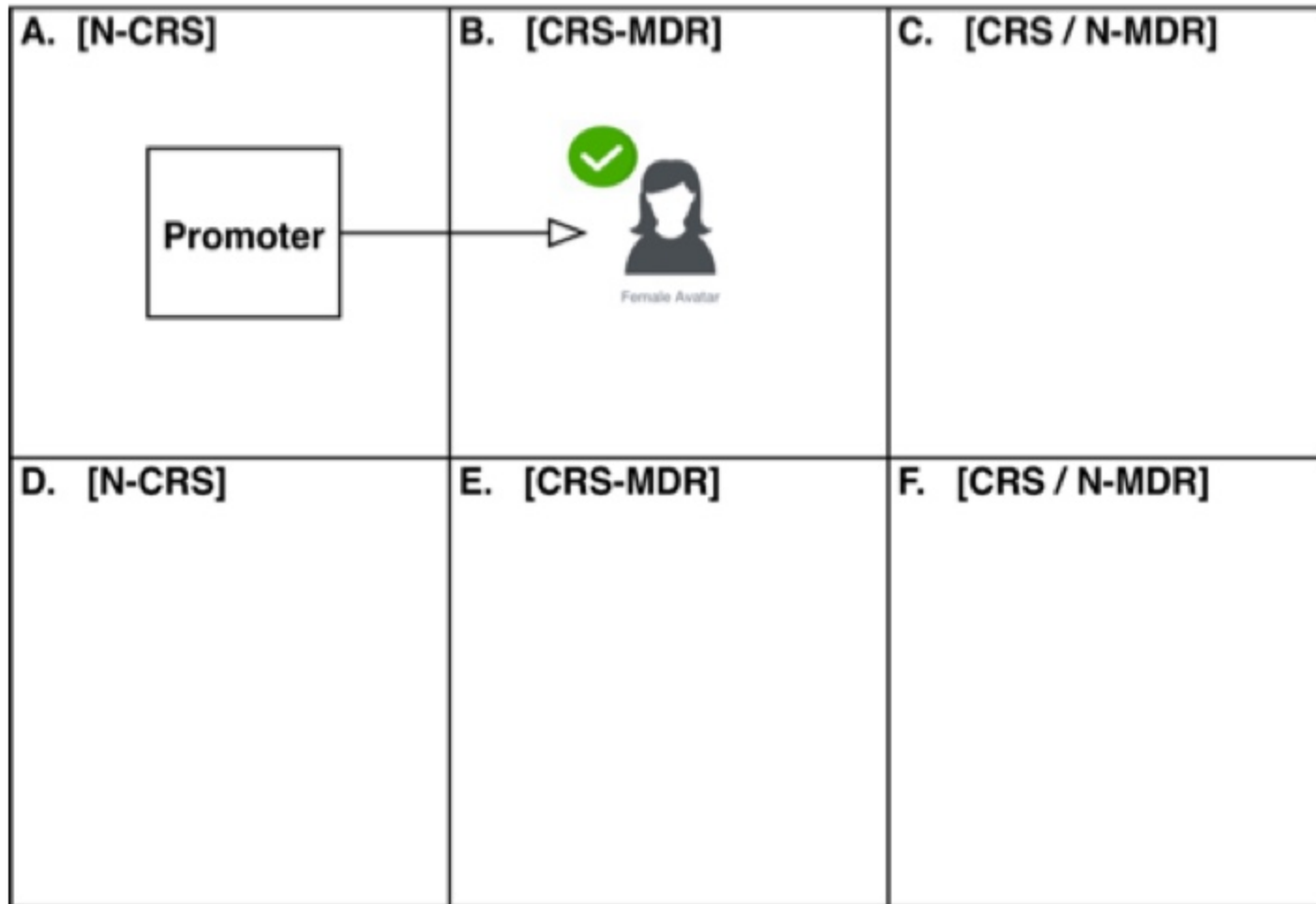
CRS Avoidance

Geographic Scope

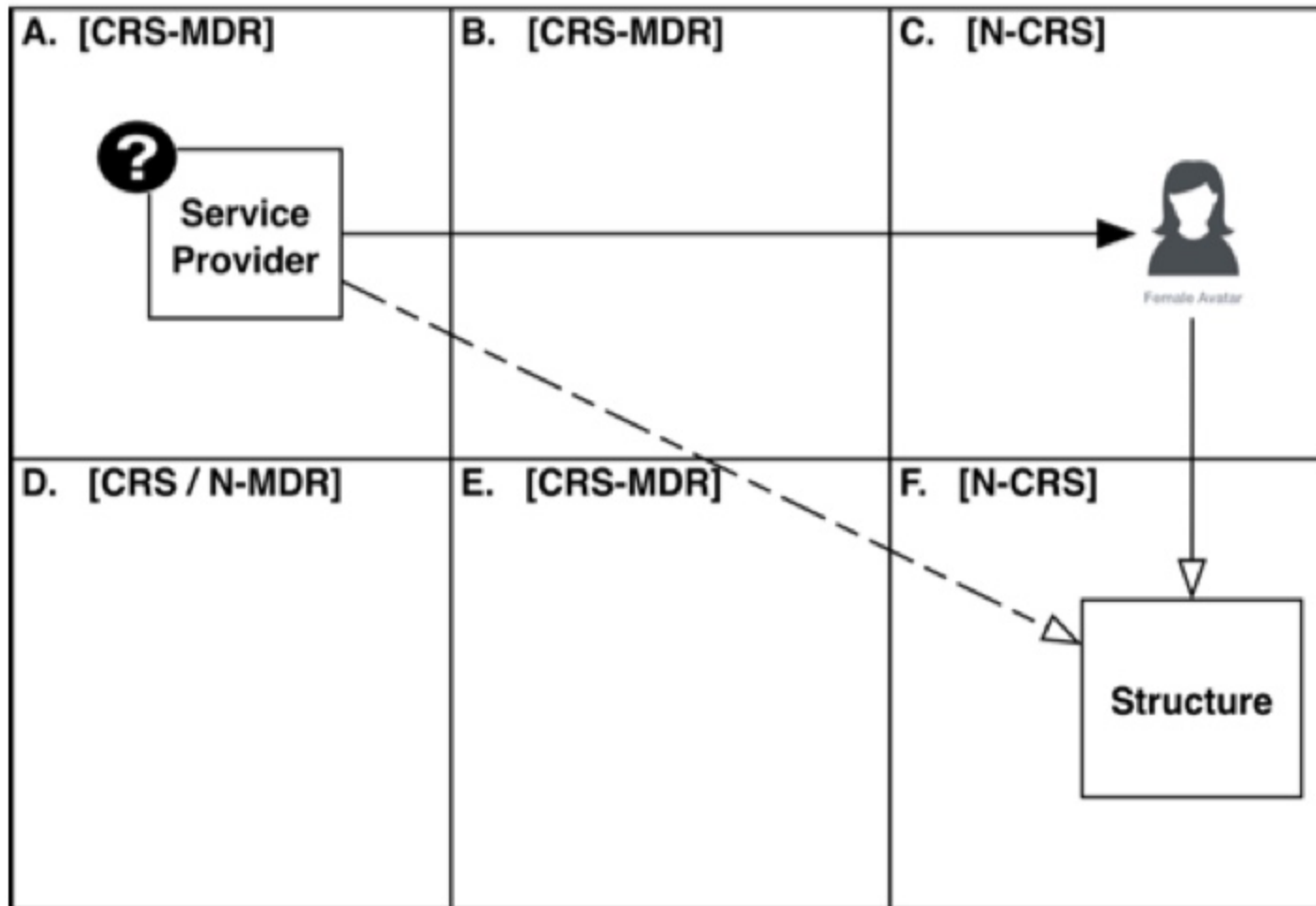
Mandatory Disclosure



Mandatory Disclosure



Mandatory Disclosure



CRS Avoidance Disclosure Report

Disclosure Report

- Details of the Reporting Intermediary
- Client(s) Details (name, address, TIN, tax residence)
- User Details
- Details of other Intermediaries
- Details of the Avoidance Scheme / Opaque Structure

Retroactive Effect

Rule 2.7: Disclosure of Arrangements entered into after 29 October 2014 and before the effective date of these rules

- (a) A Promoter shall disclose a CRS Avoidance Arrangement within 180 days of the effective date of these rules where:
 - (i) that Arrangement was implemented on or after 29 October 2014 but before the effective date of these rules; and
 - (ii) that person was a Promoter in respect of that Arrangement;irrespective of whether that person provides Relevant Services in respect of that Arrangement after the effective date.
- (b) No disclosure shall be required under paragraph (a) where the Promoter has documentation to demonstrate that the aggregate balance or value of the Financial Account subject to the CRS Avoidance Arrangement immediately prior to its implementation was less than USD 1,000,000.
- (c) Notwithstanding Rule 1.4(e), for the purpose of interpreting defined terms with respect to this Rule 2.7, CRS Legislation means the Standard for Automatic Exchange of Financial Account Information in Tax Matters as published by the OECD on 15 July 2014.

CRS Anti-Avoidance:

Anti-Avoidance

1. Hong Kong Anti-Avoidance Rules
2. Singapore Anti-Avoidance Rules
3. Australia Anti-Avoidance Rules

Anti-Avoidance Hong Kong

“61C. Avoidance arrangement of no effect

If—

- (a) a person enters into an arrangement; and
- (b) the main purpose, or one of the main purposes, of the arrangement is to avoid any obligation under section 50B(1) or (2) or 50C(1),

then those sections are to have effect as if the arrangement had not been entered into.”.

Anti-Avoidance Singapore

105MA.—(1) If —

- (a) a person enters into any arrangements or takes any action; and
- (b) in the Comptroller's view, the main purpose, or one of the main purposes of the person in entering into the arrangements or in taking the action is to avoid any obligation under, or to circumvent the application of section 105L or any regulation made under section 105P,

then the Comptroller may in writing direct a relevant person that section 105L or the regulation has effect in relation to the relevant person as if the arrangements had not been entered into or the action had not been taken, and section 105L or the regulation shall then apply accordingly.

(2) In subsection (1), “relevant person” means a person who is subject to section 105L or the regulation, and whom the Comptroller considers should receive the direction.

[Act 37 of 2014 wef 27/11/2014]

Anti-Avoidance Australia

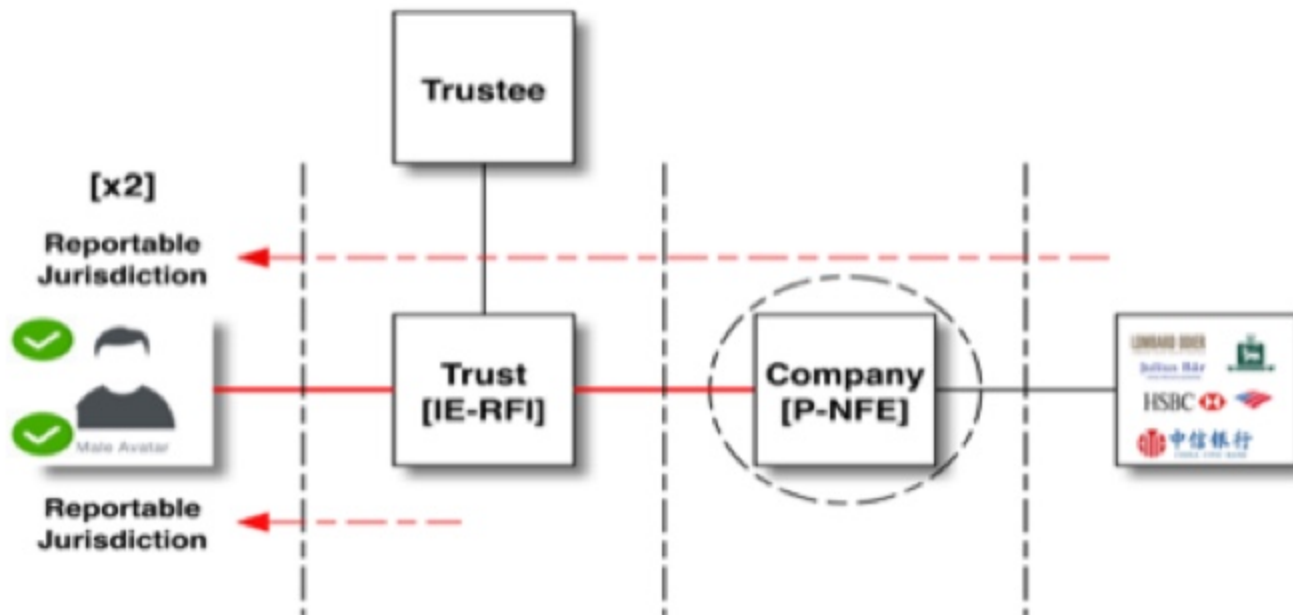
396-130 Anti-avoidance provisions

Commissioner may require an account to be treated as a Reportable Account

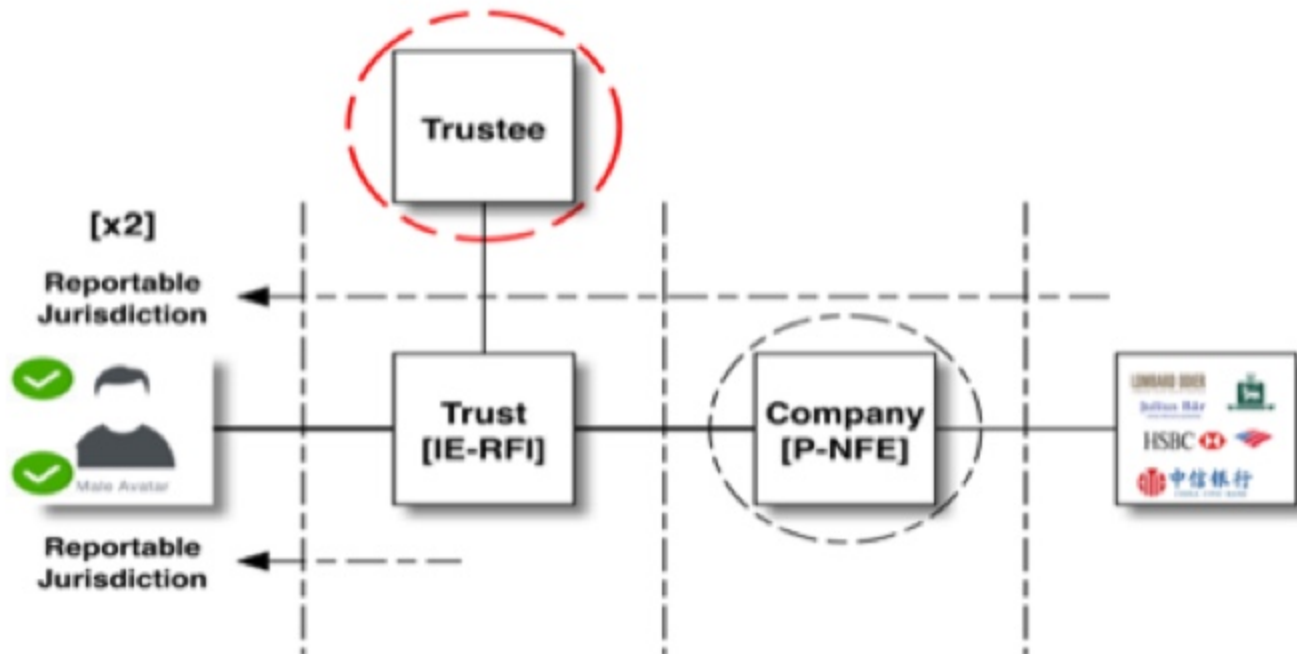
- (1) The Commissioner may require an entity that:
 - (a) is a Reporting Financial Institution (within the meaning of the *CRS); or
 - (b) is a Financial Institution that a notice under subsection (5) requires to act as a Reporting Financial Institution;
to treat an account the institution maintains or has maintained as if it is a Reportable Account (within the meaning of the CRS), if the Commissioner reasonably believes that:
 - (c) the account would not be, or would not have been, such a Reportable Account if the Commissioner had not made such a requirement; and
 - (d) the Reporting Financial Institution or the Account Holder (within the meaning of the CRS) undertook a transaction, or entered into an *arrangement:
 - (i) for the purpose of causing the account not to be such a Reportable Account; or
 - (ii) for 2 or more purposes of which that purpose is the dominant purpose.
- (2) The Commissioner must give written notice of the requirement to the Reporting Financial Institution.
- (3) The Reporting Financial Institution may object, in the manner set out in Part IVC, against the Commissioner's decision to give the notice.

Double Reporting Mitigation : “Trust Protector”

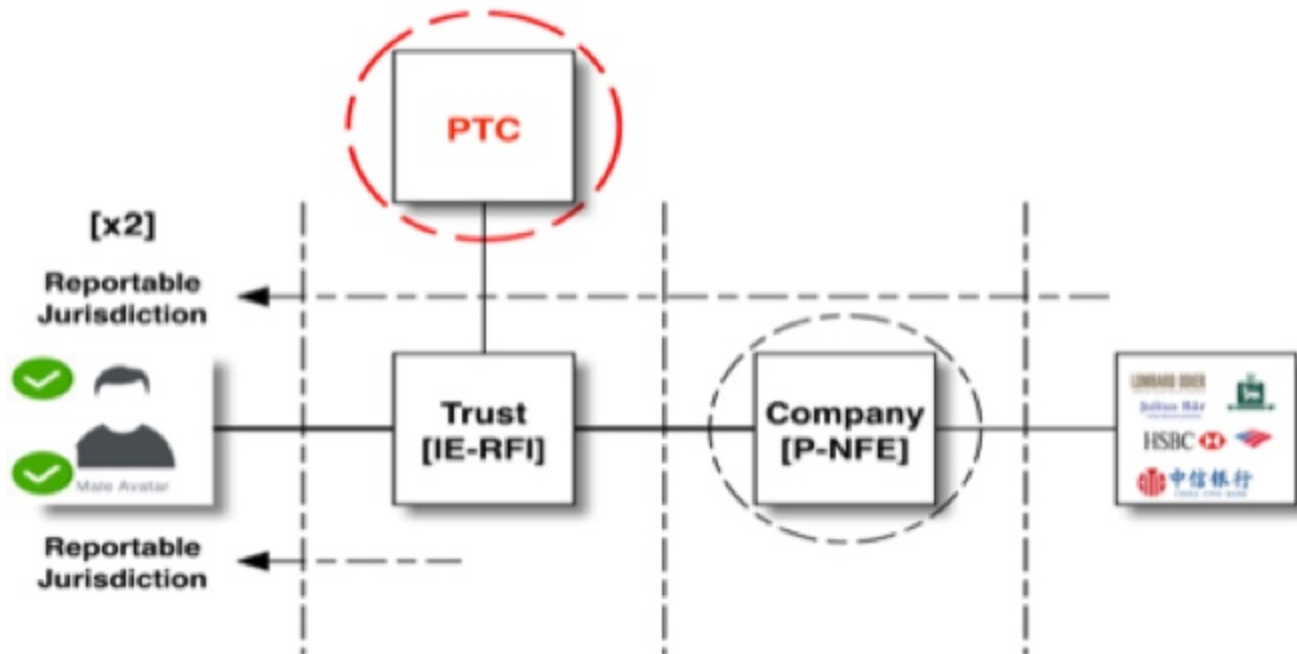
Protector Double Reporting



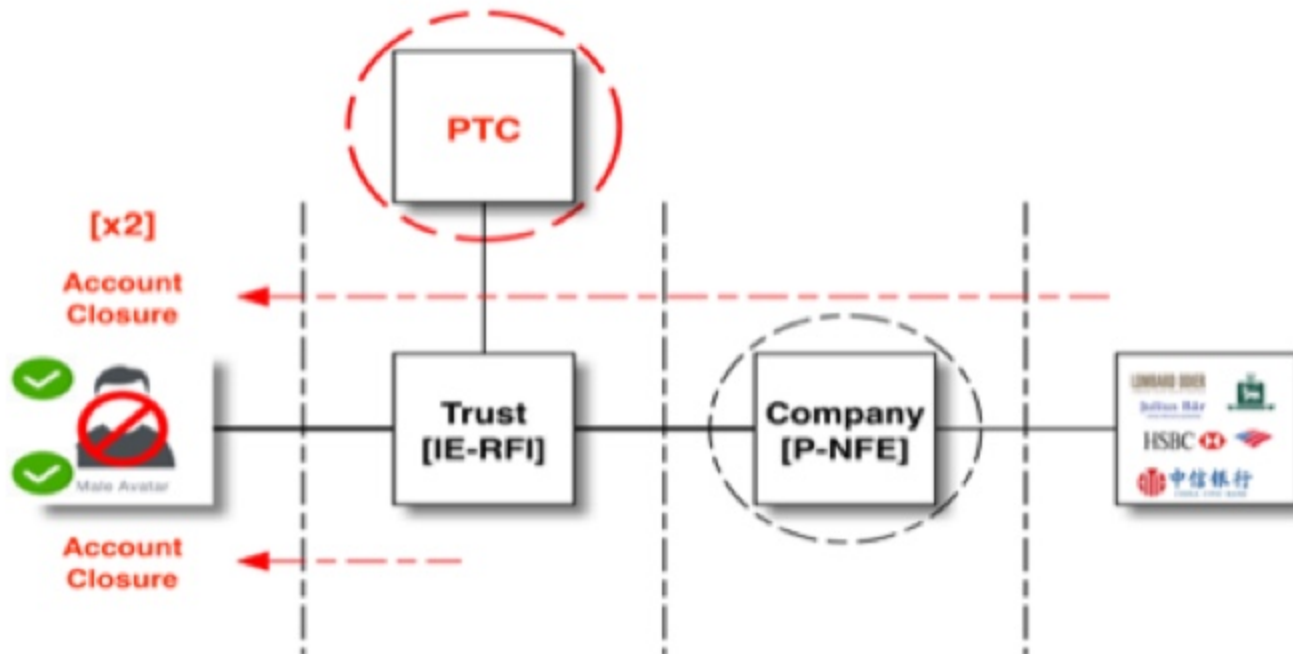
Trustee Retirement



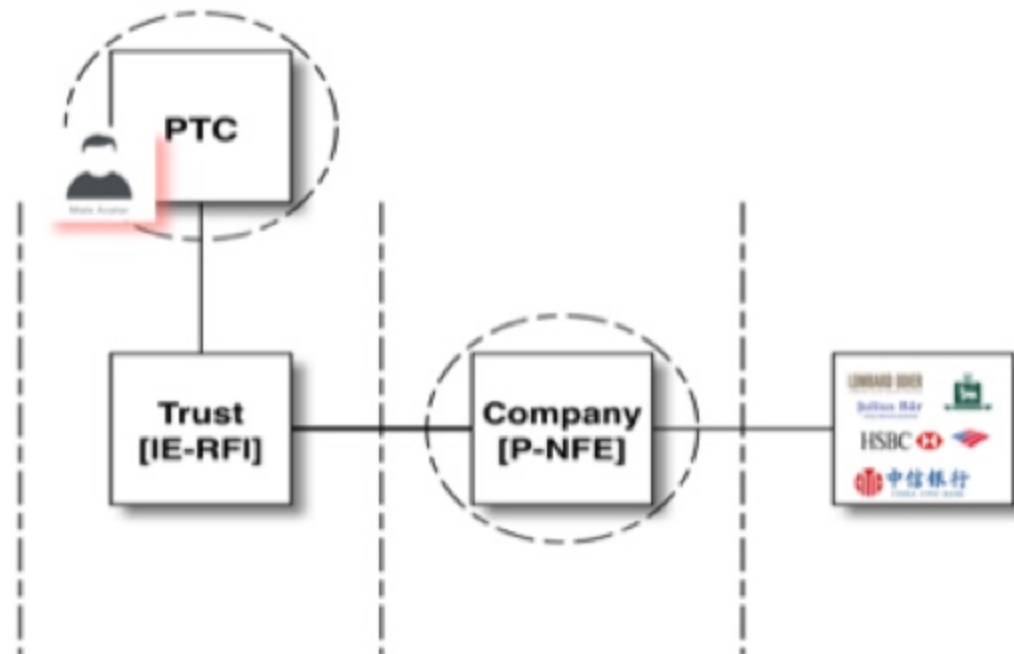
Private Trust Company Appointment



Protector Retirement

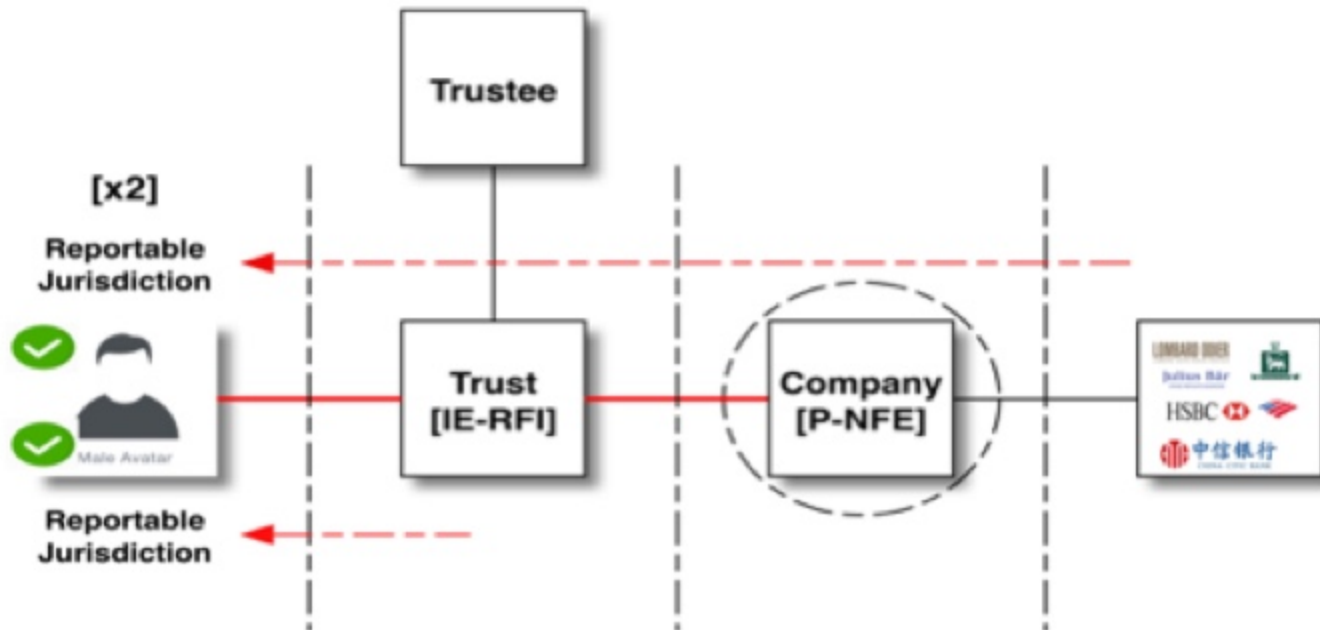


Appointed Director Private Trust Company

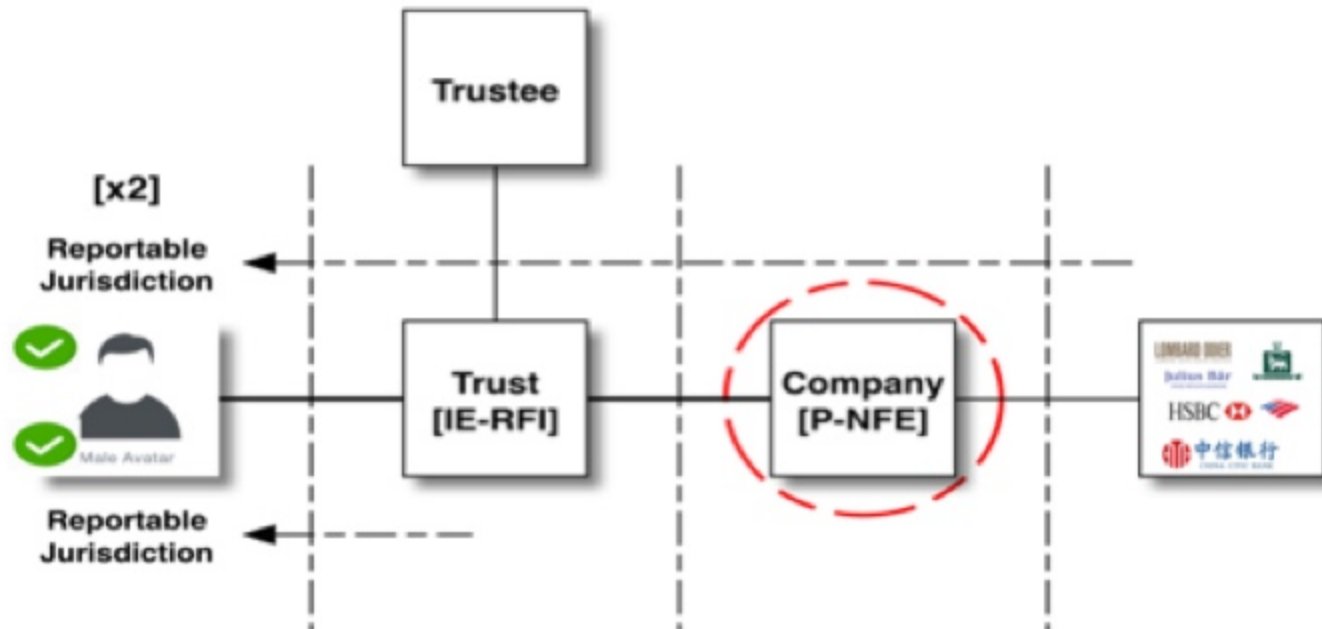


Double Reporting Mitigation: "Settlor"

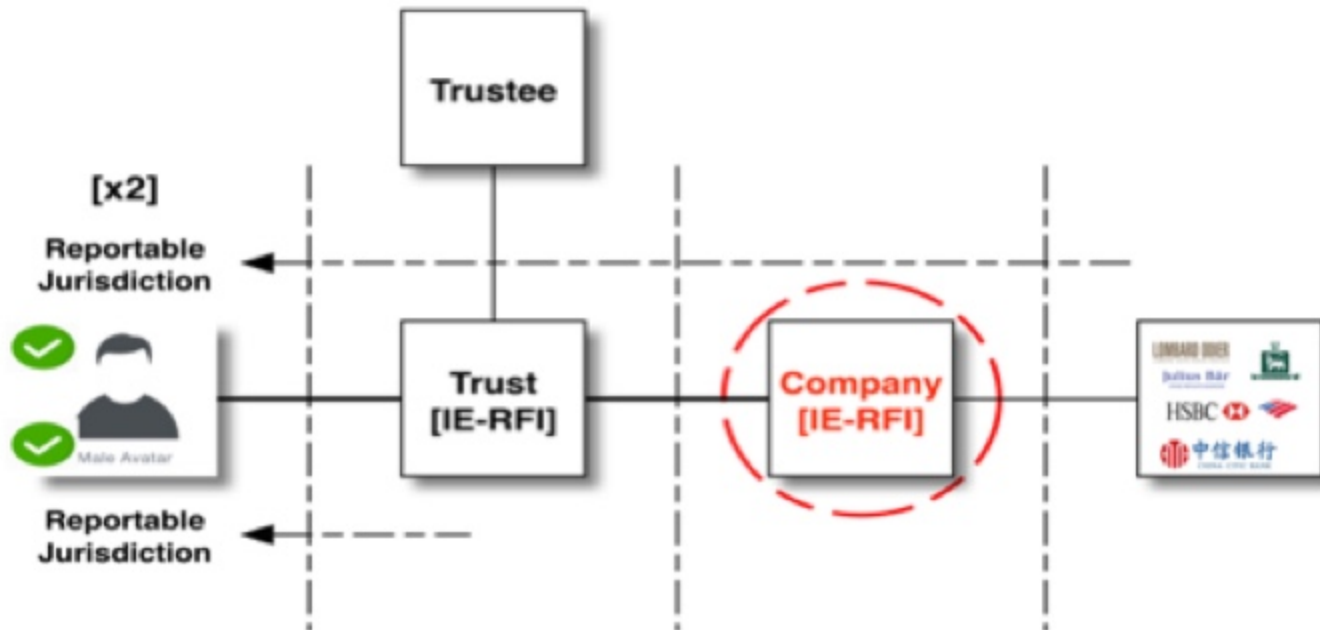
Settlor Double Reporting



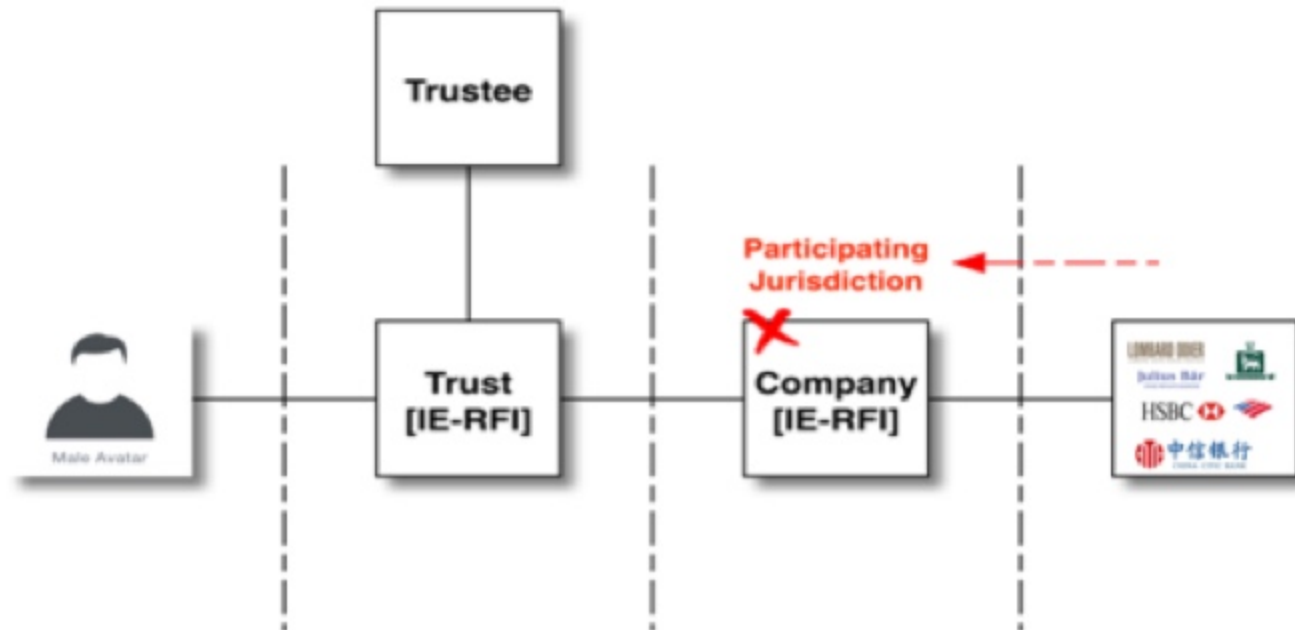
Passive NFE Underlying Company



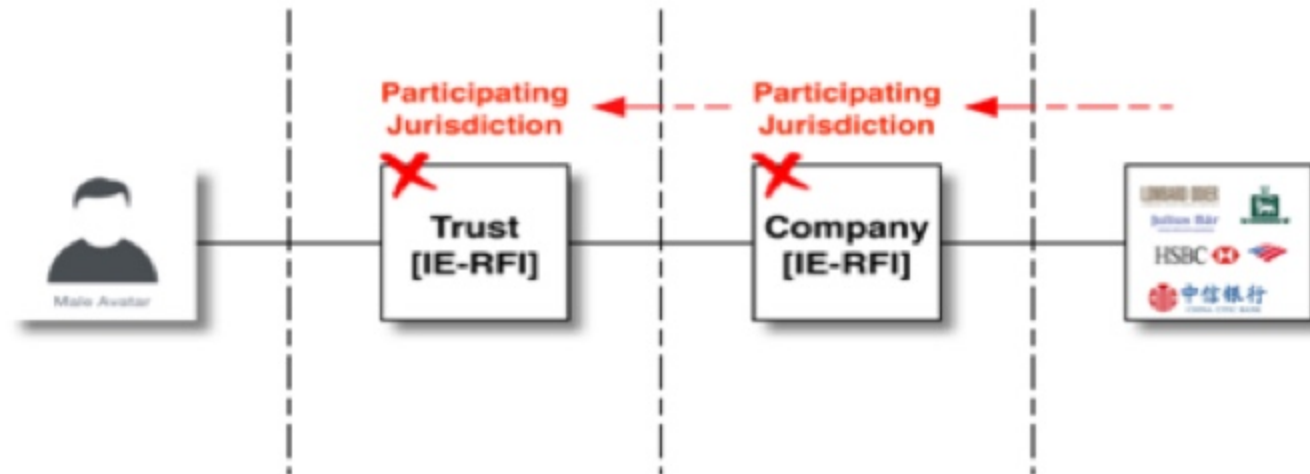
Convert to Investment Entity



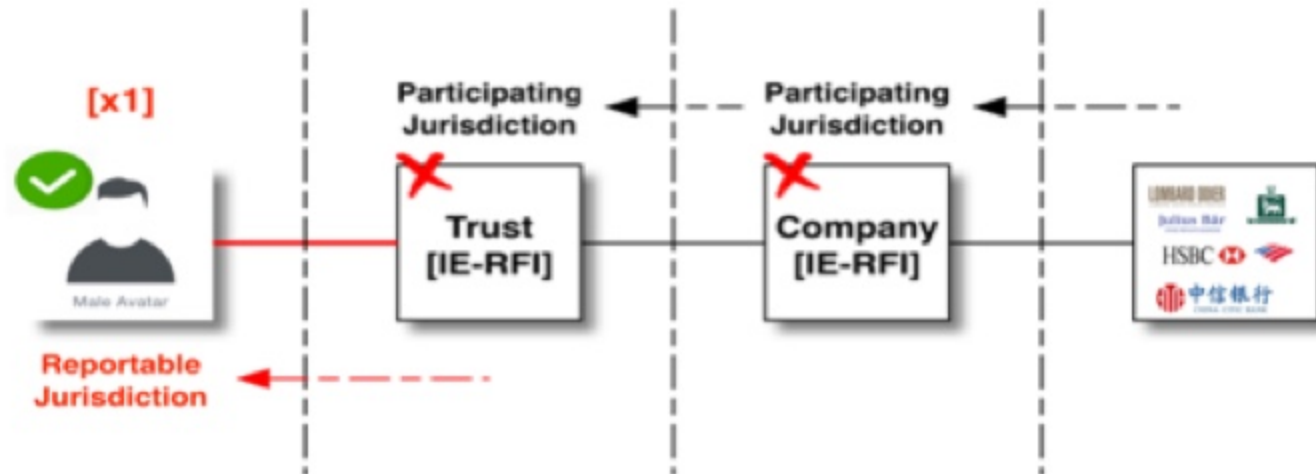
Reporting Outcome



Reporting Outcome

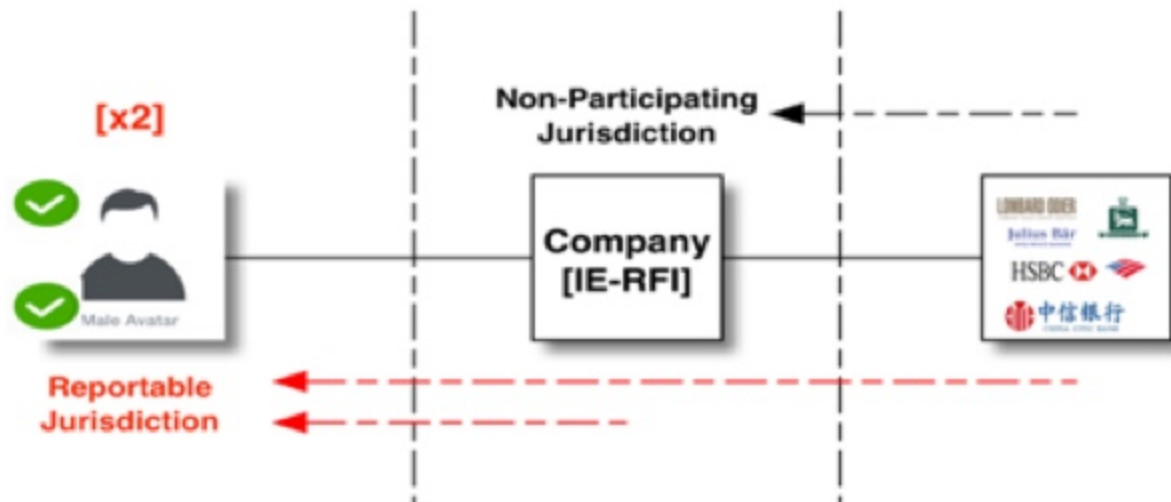


Reporting Outcome - Single Report, Trust Value

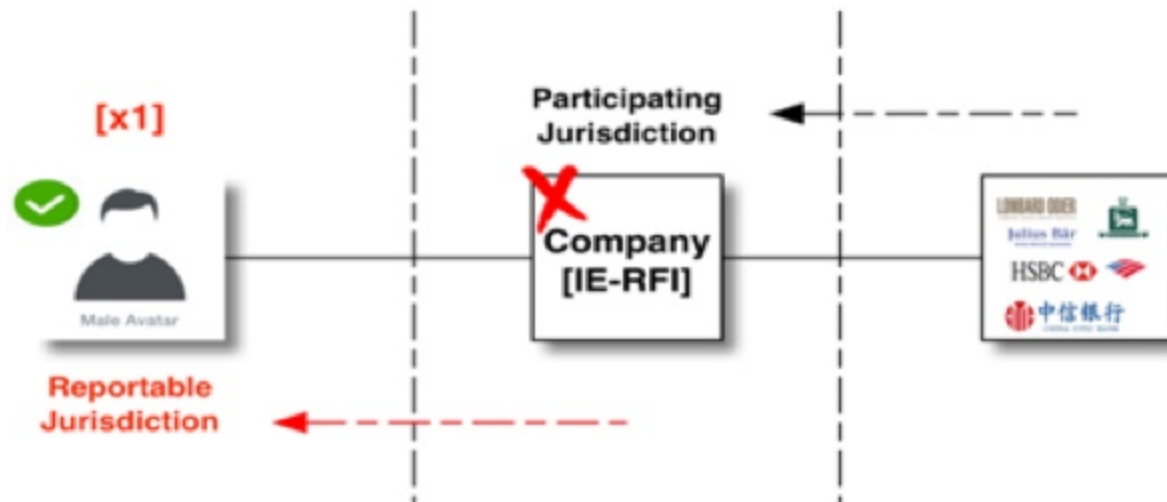


Double Reporting Mitigation: "Shareholder"

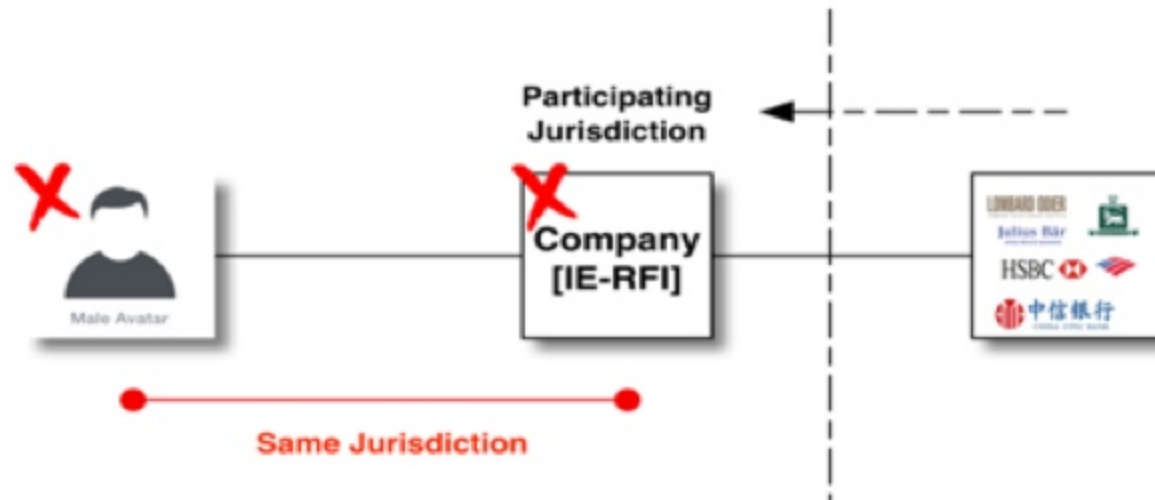
Double Reporting Shareholder



Change Residence of Investment Company

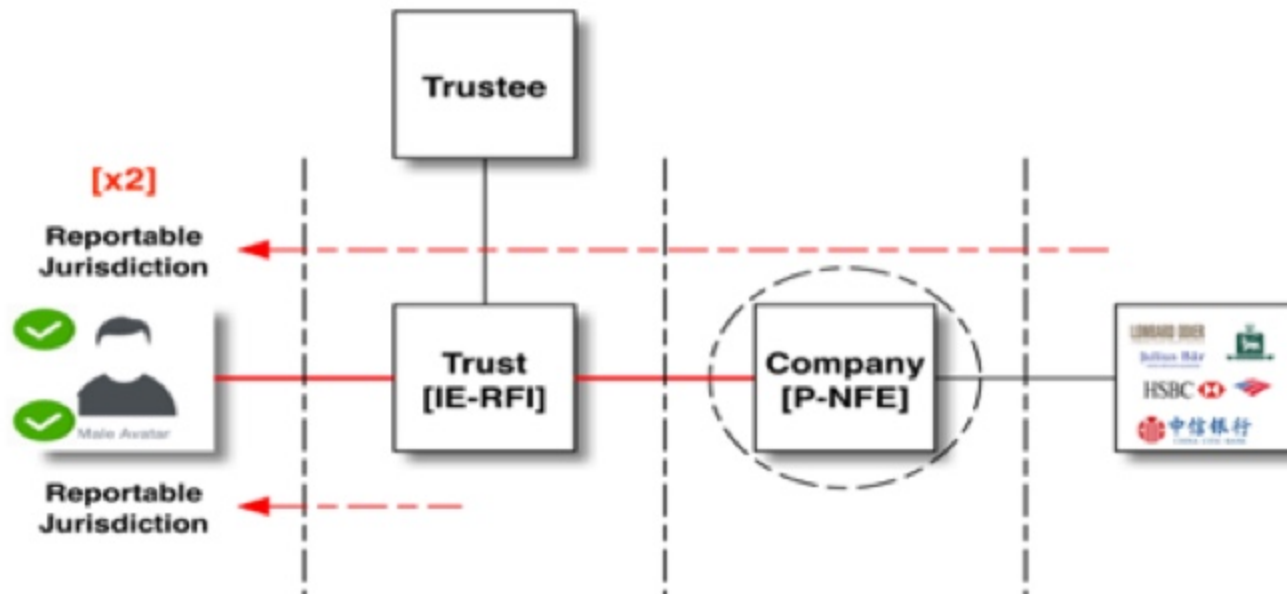


Same Jurisdiction Reporting Outcome

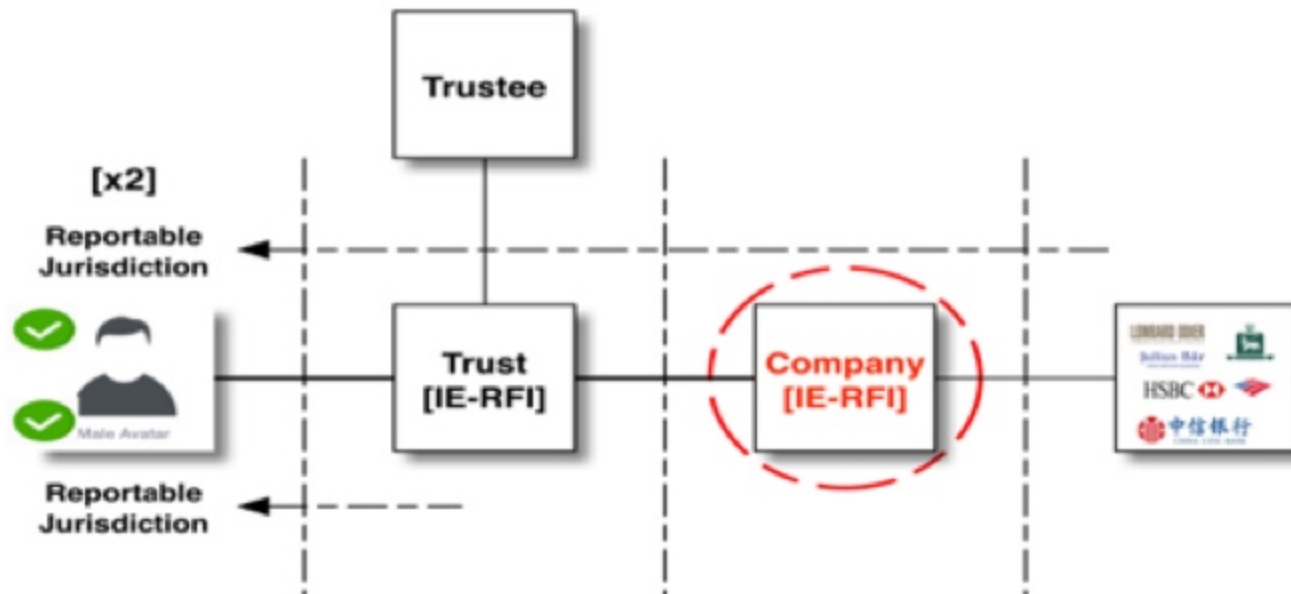


Double Reporting Mitigation: Settlor Exclusion

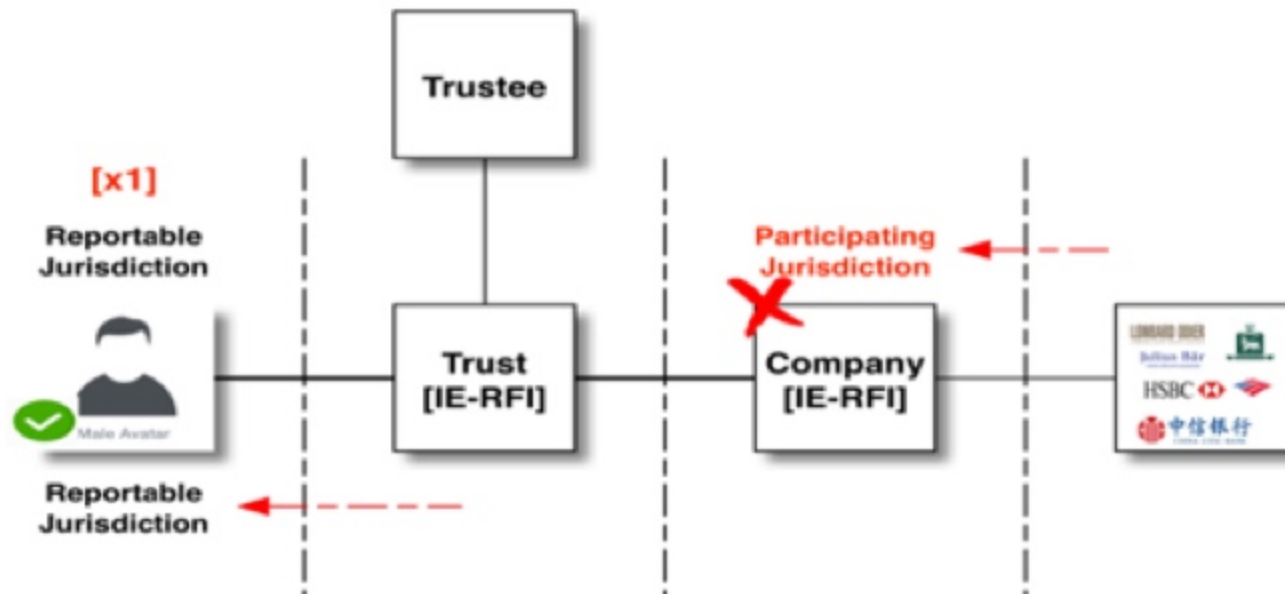
Double Reporting, Passive NFE Company



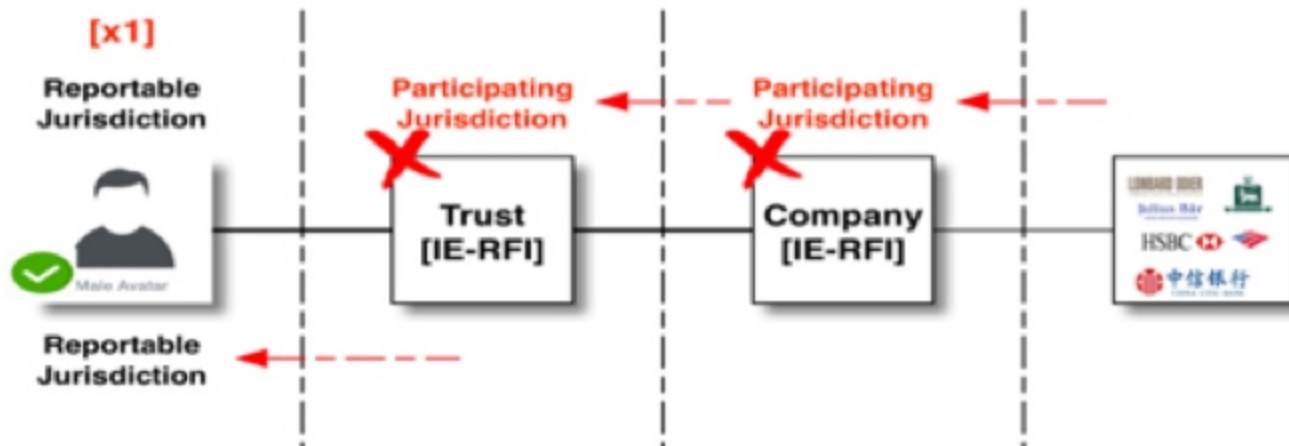
Convert to Investment Entity Status



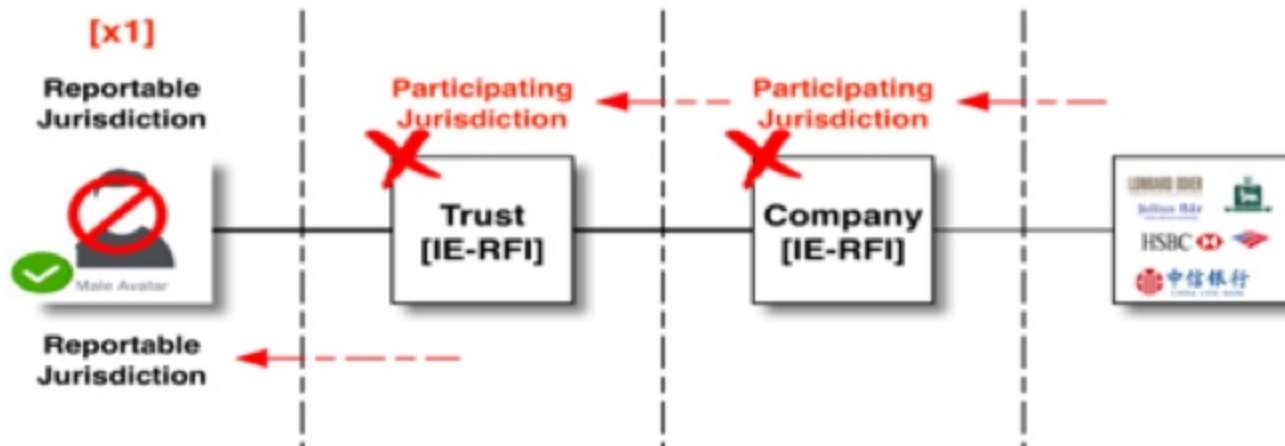
Reporting Outcome



Reporting Outcome

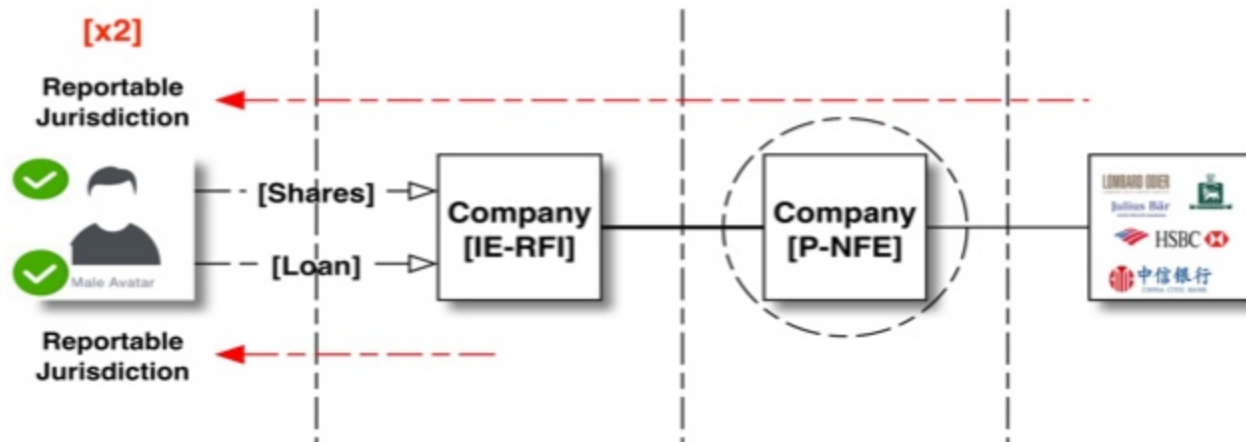


Settlor Exclusion: Nil Value Reporting

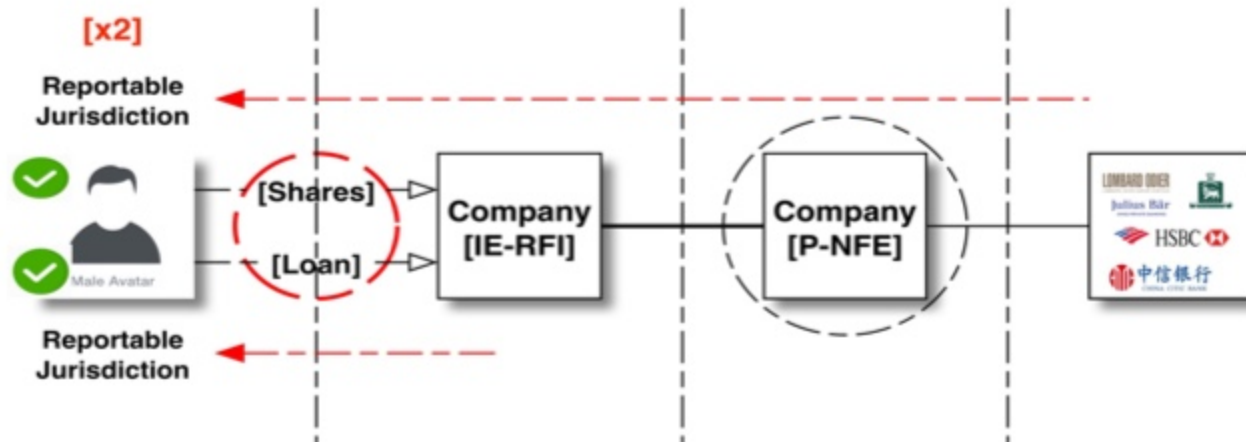


Double Reporting Mitigation: Share & Debt Holder

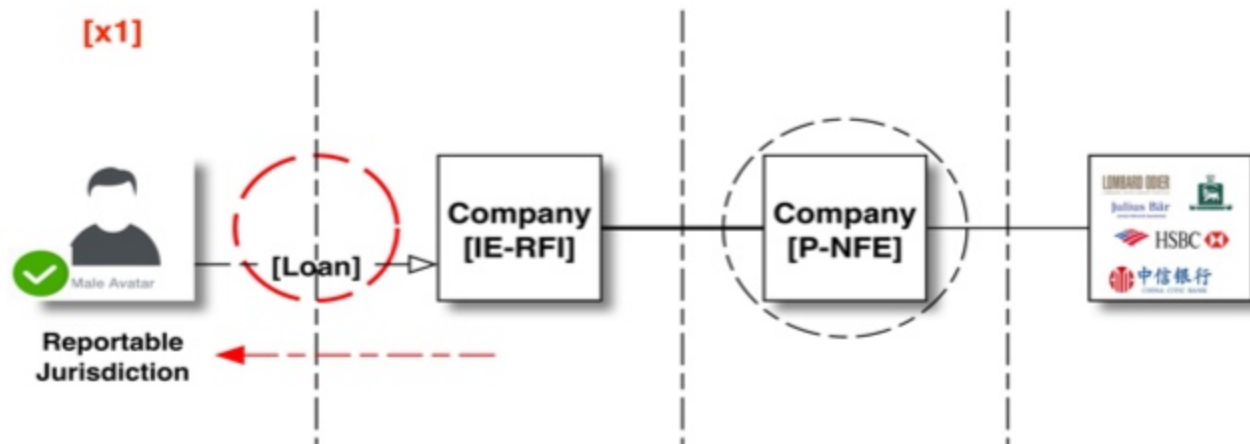
Double Reporting



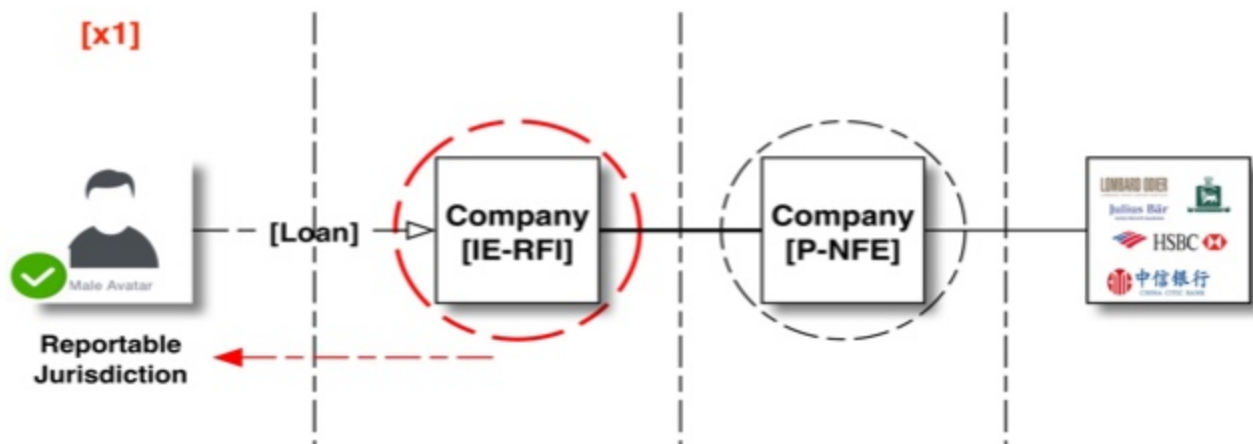
Shares and Loan Account



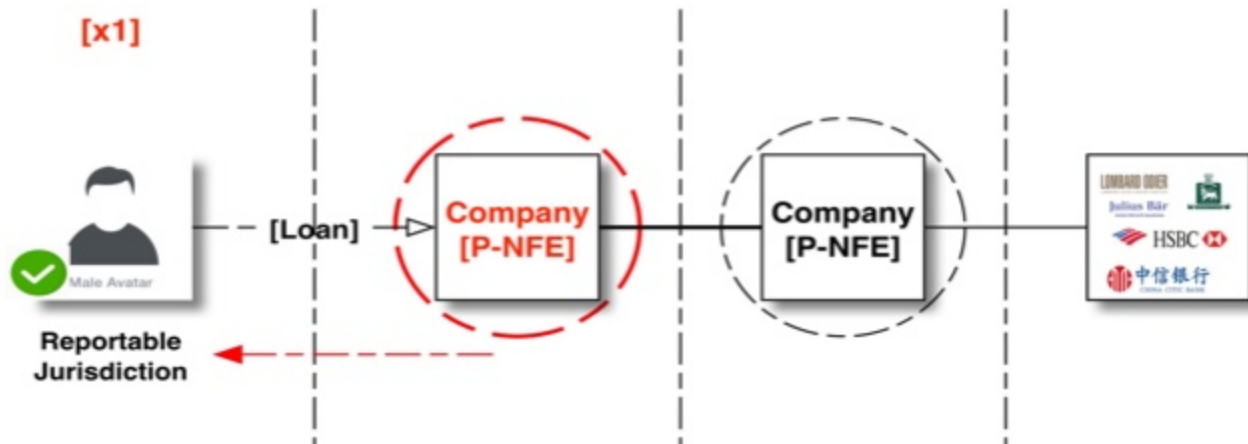
Share Disposal / Redemption



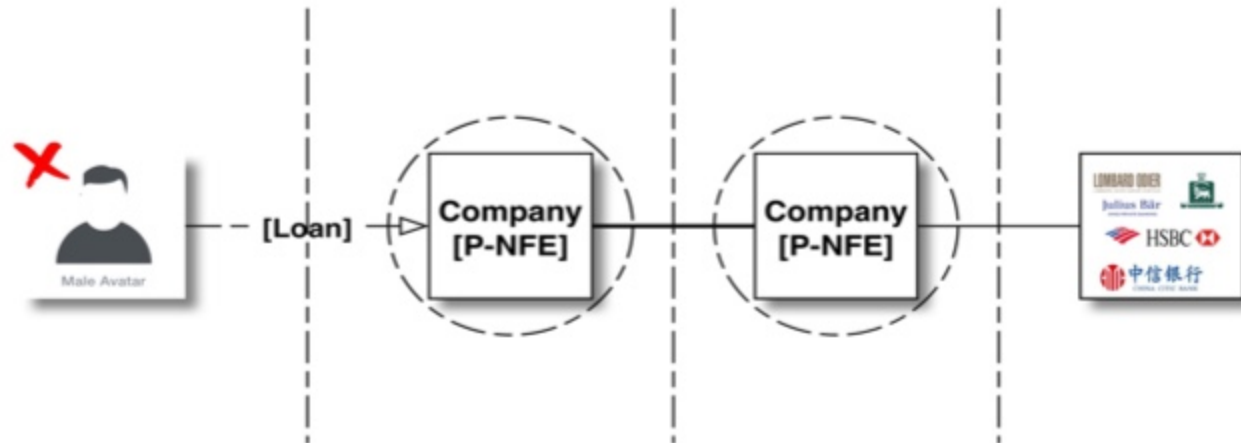
Loan Account



Convert Company to Passive NFE



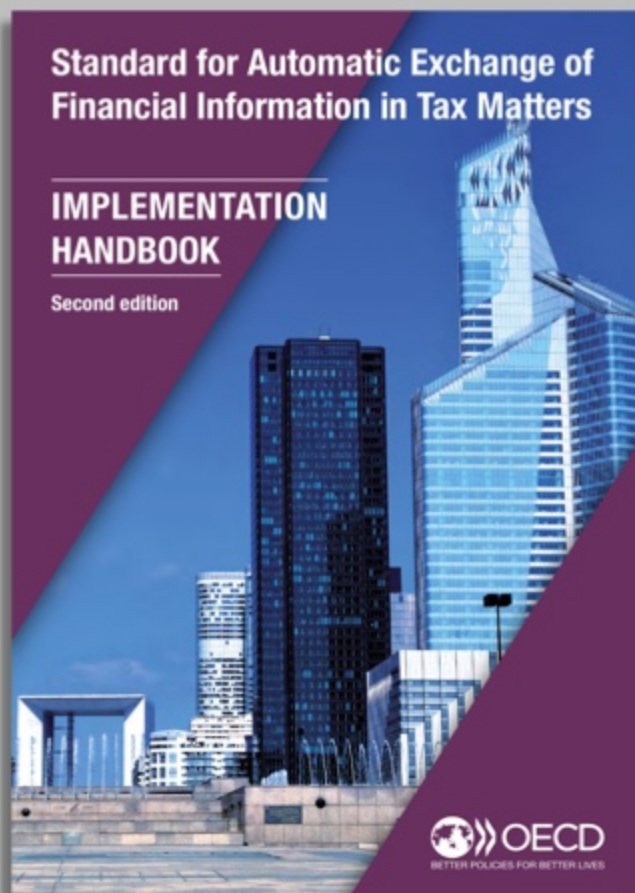
Reporting Outcome



Standard for Automatic Exchange of Financial Information in Tax Matters

IMPLEMENTATION HANDBOOK

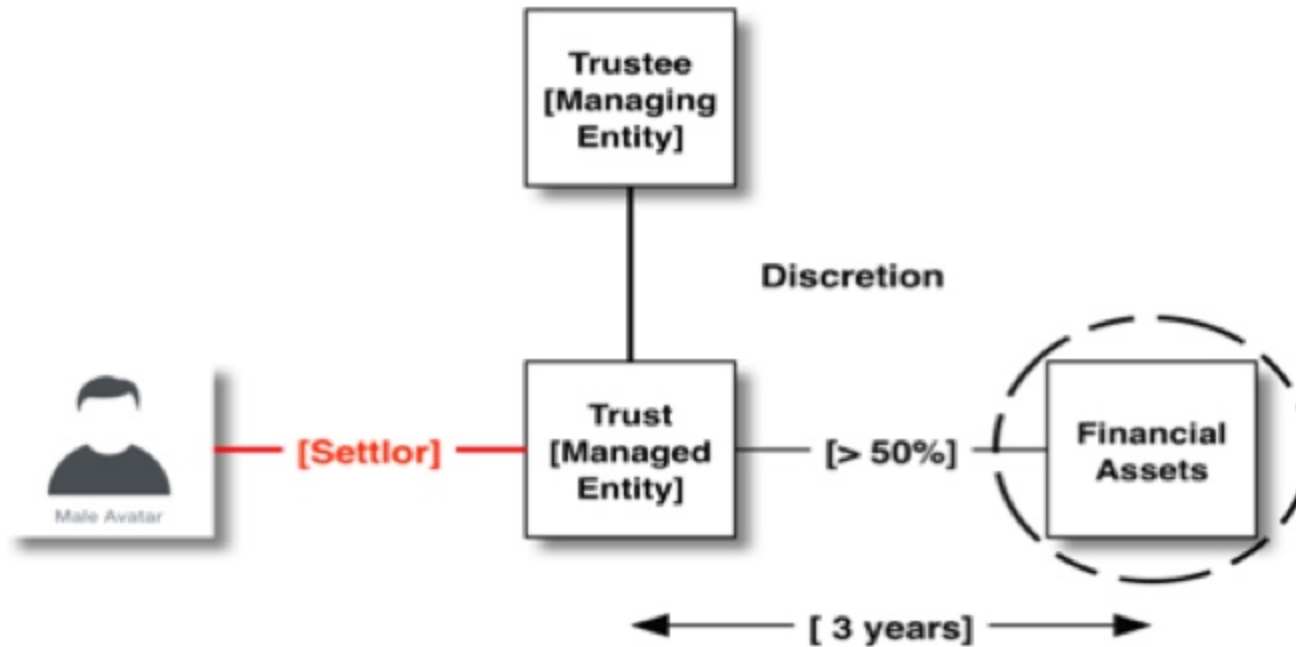
Second edition



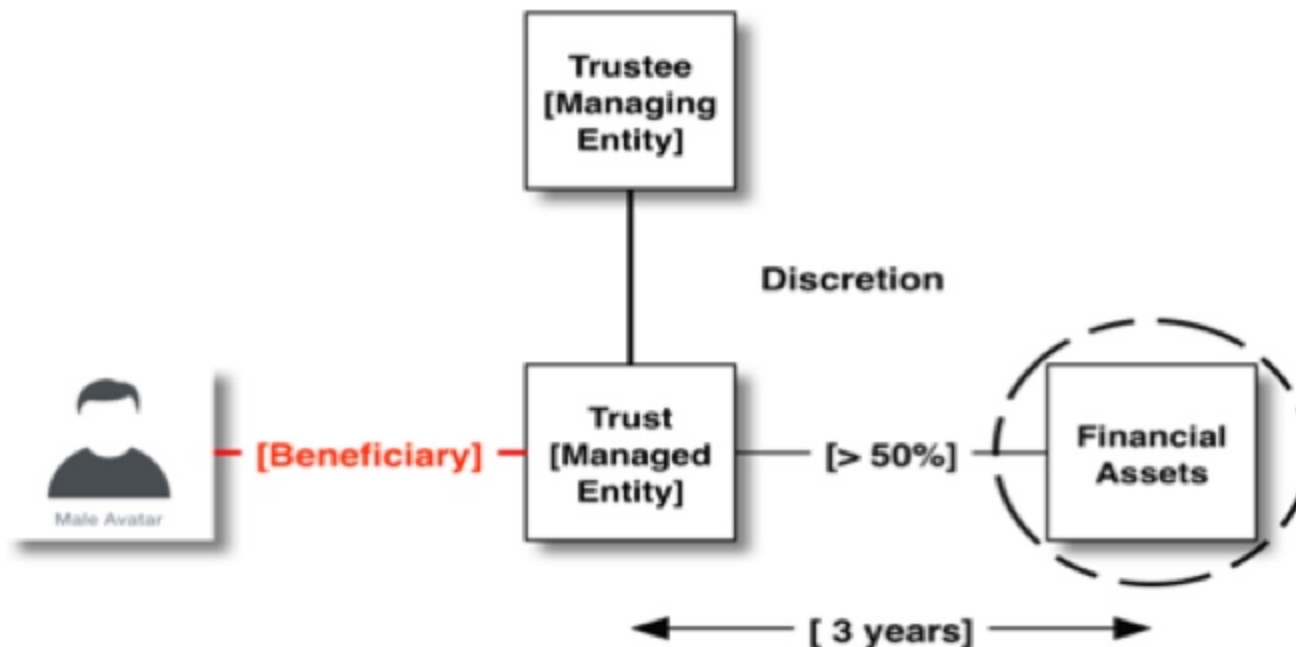
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BETTER POLICIES FOR BETTER LIVES

4. The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

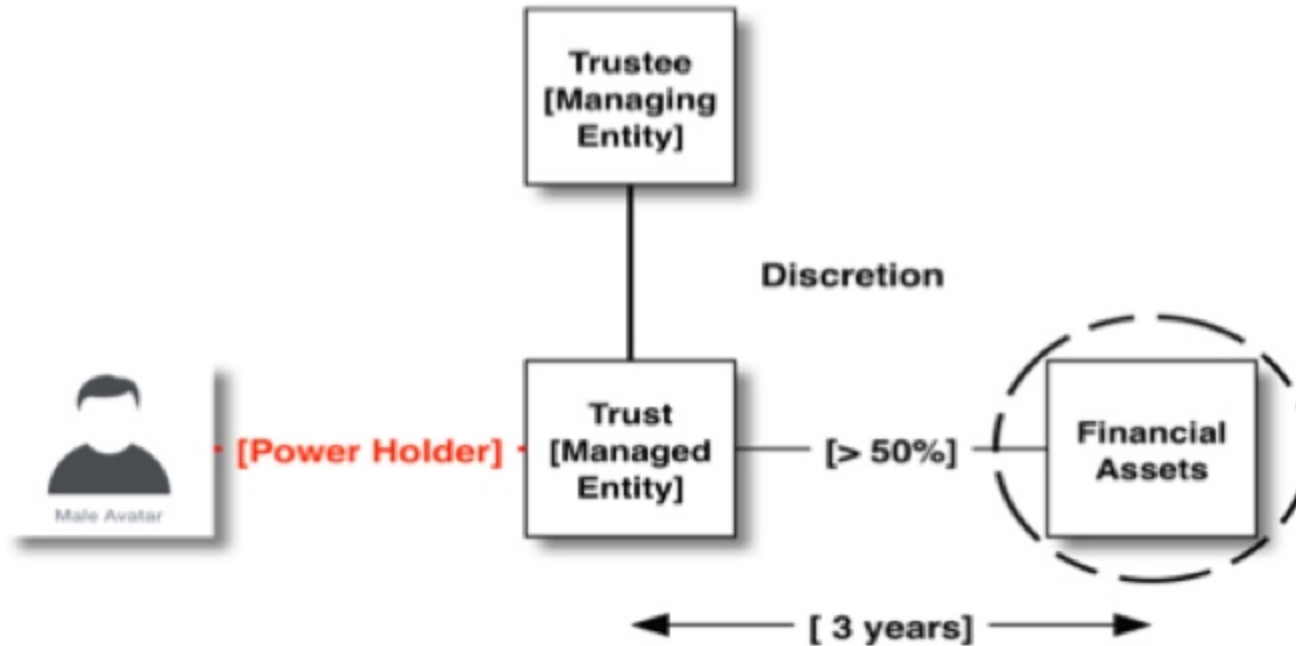
Equity Interest: Settlor



Equity Interest: Beneficiary



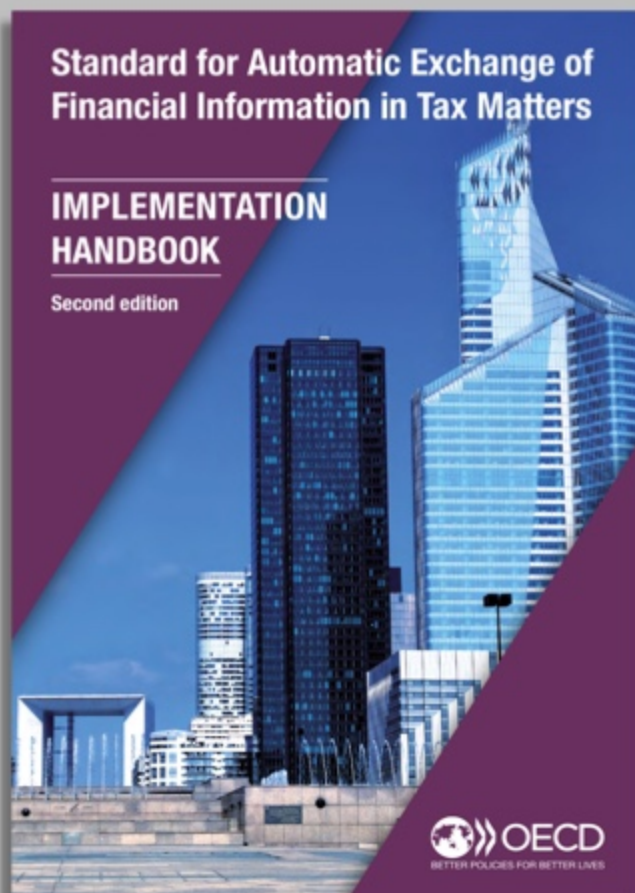
Equity Interest: Protector



Standard for Automatic Exchange of Financial Information in Tax Matters

IMPLEMENTATION HANDBOOK

Second edition

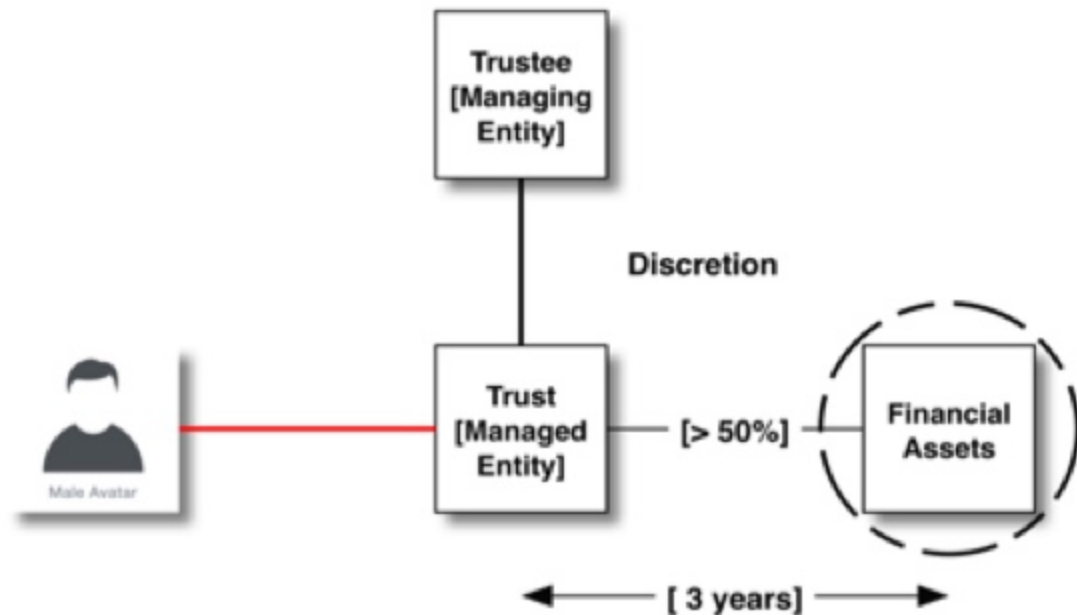


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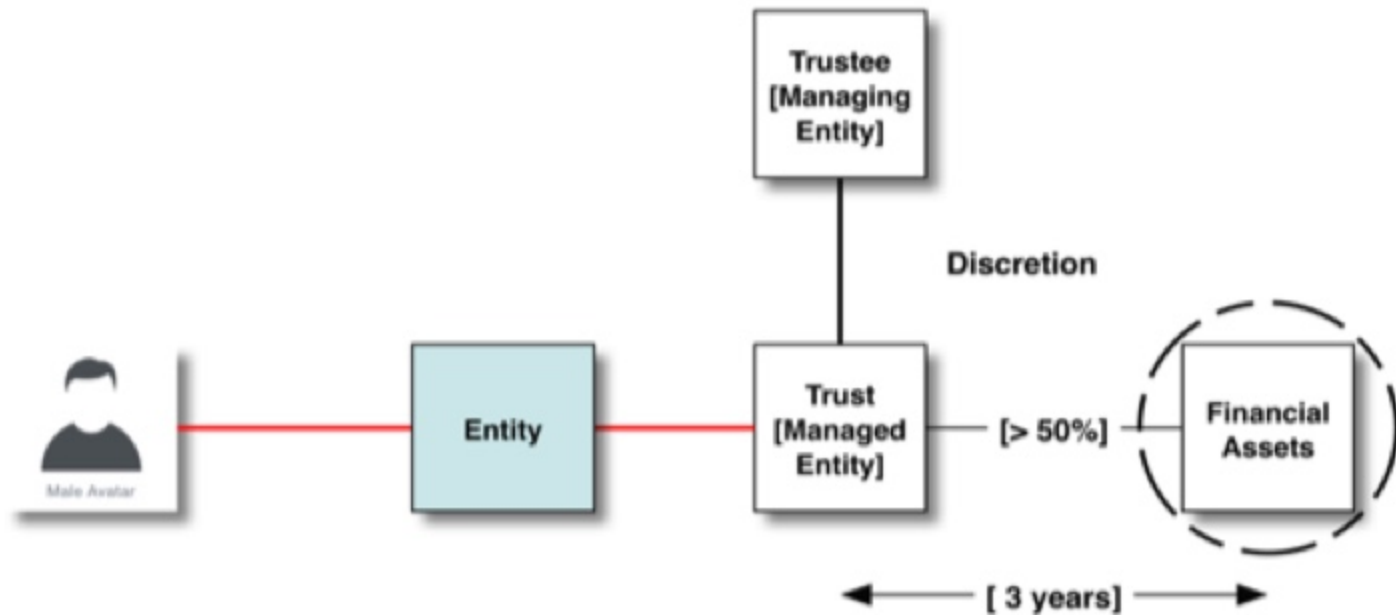
Com p. 198

253. The Equity Interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee and the protector as an Equity Interest Holder. Further, a discretionary beneficiary will only be treated as an Account Holder in the years in which it receives a distribution from the trust. If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an Entity, that Entity must be looked through (including any further intermediate Entities), and the ultimate natural controlling person(s) behind that Entity must be treated as the Equity Interest Holder. The term "Controlling Persons" as applies in the context of Passive NFEs will also apply here, which also corresponds to the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note of Recommendation 10 contained in the 2012 FATF Recommendations.

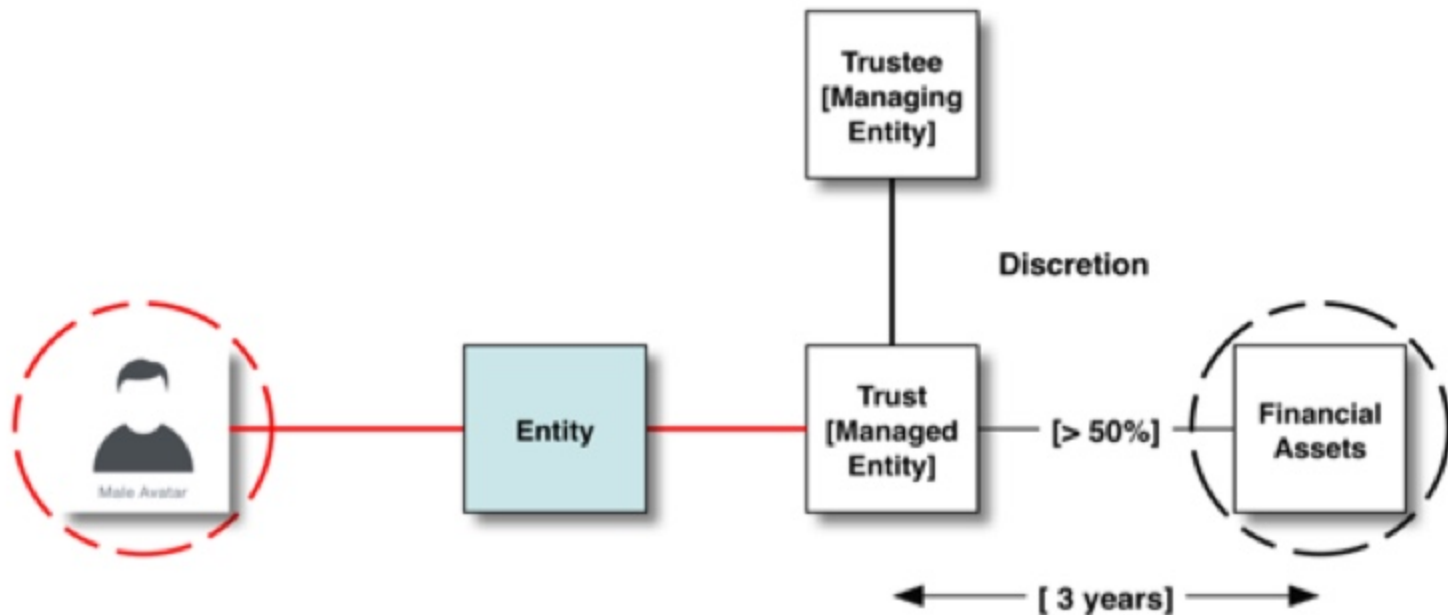
New Implementation Handbook



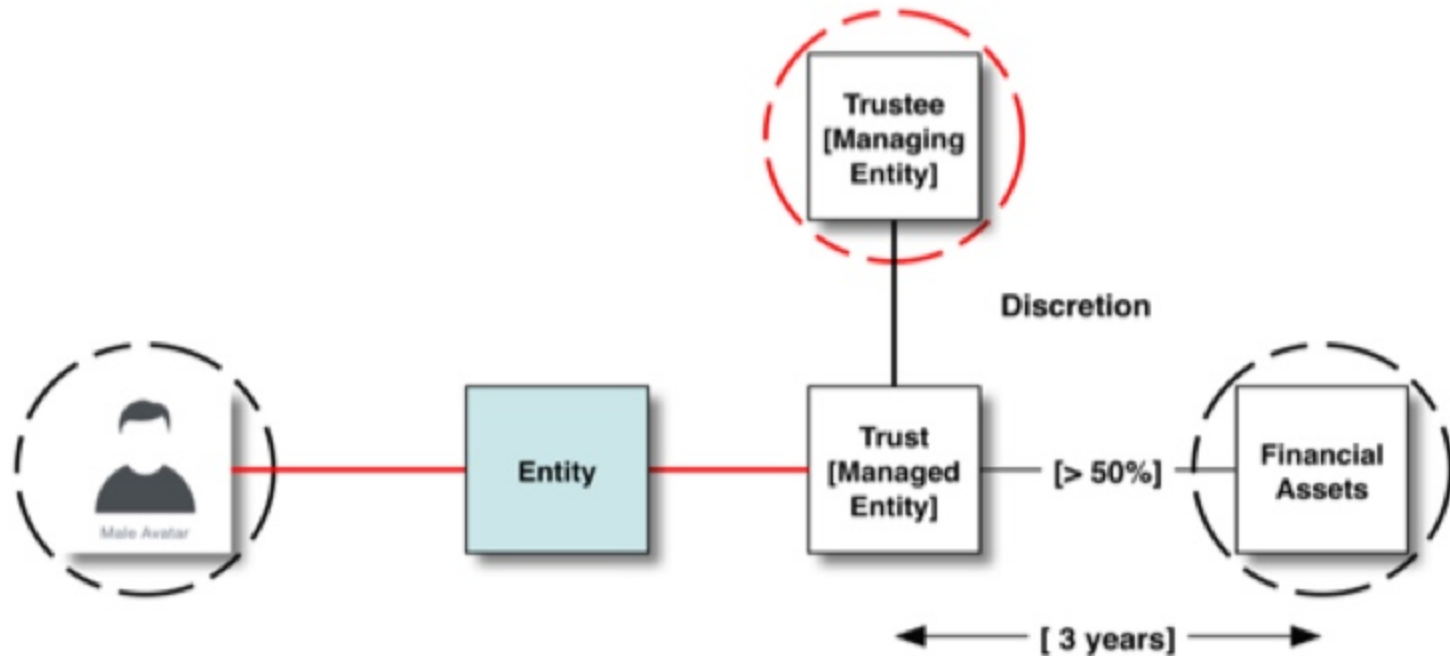
New Implementation Handbook



New Implementation Handbook



New Implementation Handbook



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