# TAXATION (INTERNATIONAL TAX COMPLIANCE) (CROWN DEPENDENCY [CD]) REGULATIONS 2014

# GUIDANCE NOTES

# RELEASE DATE: 28 July 2014

DRAFT

**Note : These draft Guidance Notes dated July 2014 have been revised to reflect the following –**

- **Changes announced by the US IRS**
- **Changes agreed with HMRC**
- **Inclusion of a pension appendix**
- **Comments made during the consultation process**
    - **It should be noted that the Guidance Notes are not a legal document and cannot cover every scenario. They also do not replace the need to take independent professional advice if you are at all unsure.**

**These draft Guidance Notes have been drafted by Guernsey, the Isle of Man and Jersey jointly and any differences in the drafts are jurisdiction specific.**

## CONTENTS

**1. BACKGROUND**
- 1.1. General
- 1.2. Purpose of these guidance notes
- 1.3. Scope of the Agreements
- 1.4. Interaction with US Regulations and other IGAs
- 1.5. The role of the [CD] Competent Authority
- 1.6. Specified Persons

**2. THE AGREEMENTS**
- 2.1. When does the US Agreement come into force?
- 2.2. When does the UK Agreement come into force?
- 2.3. The Tax Information Exchange Agreements

**3. FINANCIAL INSTITUTIONS**
- 3.1. General
- 3.2. [CD] Financial Institution
- 3.3. Reporting [CD] Financial Institutions
- 3.4. Non Reporting [CD] Financial Institutions
- 3.5. Withholding tax – US Agreement only
- 3.6. Closing recalcitrant accounts – US Agreement only
- 3.7. Custodial Institution
- 3.8. Depository Institution
- 3.9. Investment Entity
- 3.10. Specified Insurance Company
- 3.11. Captive Insurance Companies
- 3.12. Nominee Companies
- 3.13. Subsidiaries and branches
- 3.14. Related Entities
- 3.15. Non-Participating Financial Institution – US Agreement only

**4. DEEMED COMPLIANT FINANCIAL INSTITUTIONS – US AGREEMENT ONLY**
- 4.1. General
- 4.2. Registered Deemed Compliant Financial Institutions
  - 4.2.1. Sponsored Investment Entities and Controlled Foreign Corporations
  - 4.2.2. Financial Institution with a Local Client Base
  - 4.2.3. Non-reporting members of Participating Financial Institution Groups
  - 4.2.4. Qualified Collective Investment Vehicles
  - 4.2.5. Restricted Funds
  - 4.2.6. Qualified Credit Card Issuers
- 4.3. Certified Deemed Compliant Financial Institutions
  - 4.3.1. Trustee documented trusts
  - 4.3.2. Non-registering local bank
  - 4.3.3. Financial Institution with only low value accounts
  - 4.3.4. Sponsored closely held Investment Vehicles
  - 4.3.5. Investment advisers and Investment Managers

4.3.6. Limited Life Debt Investment Vehicles
4.4. Owner Documented Financial Institutions

**5. NON-REPORTING FINANCIAL INSTITUTIONS – UK AGREEMENT ONLY**
5.1. General
5.2. Small or Limited Scope Financial Institutions that Qualify as Non-Reporting [CD] Financial Institutions
5.2.1. Local Credit Unions
5.2.2. Financial Institutions with Only Low-Value Accounts
5.2.3. Qualified Credit Card Issuer
5.3. Investment Entities that Qualify as Non-Reporting [CD] Financial Institutions and Other Special Rules
5.3.1. Trustee-Documented Trust
5.3.2. Sponsored Investment Entity
5.3.3. Sponsored, Closely Held Investment Vehicle
5.3.4. Investment Advisors and Investment Managers
5.3.5. Collective Investment Vehicle
5.3.6. Special Rules for reporting interests of Investment entities in Collective Investment Vehicles

**6. EXEMPTIONS**
6.1. General
6.2. Governmental Entities
6.3. Retirement/pension funds
6.4. Financial Institutions with a Local Client Base
6.5. Limited Capacity Exempt Beneficial Owners

**7. TRUSTS**
7.1. How do the Agreements apply to [CD] trusts?
7.2. What is a [CD] resident trust?
7.3. Multi-jurisdictional trusts
7.4. How are trusts categorised for the purposes of the Agreements??
7.4.1. Trusts as Investment Entities
7.4.1.1. Trustee Documented Trust
7.4.1.2. Sponsored Investment Entity
7.4.1.3. Owner Documented Financial Institution
7.4.2. Trusts as NFFEs
7.5. Registration – US Agreement only
7.6. Reporting obligations
7.7. Information to be reported – trusts as Investment Entities
7.8. Equity Interest (balance or value)
7.9. Amounts paid or credited to the Specified Person
7.10. Nil returns
7.11. Treatment of [CD] Underlying Trust Companies
7.12. Real Estate Trusts
7.13. Employee Benefit Trusts (EBTs)
7.14. Trusts set up to pay school fees
7.15. Non professional/family trusts/family offices
7.16. Charitable trusts

7.17. Unit trusts
7.18. UK Resident Non-Domiciled Specified UK Person – UK Agreement only

**8. FOUNDATIONS**

**9. COLLECTIVE INVESTMENT VEHICLES**
9.1. Definition of a Collective Investment Vehicle
9.2. How the Agreements apply to fund entities
9.3. Residency of Collective Investment Vehicles
9.4. Reporting obligations
9.4.1. Information to be reported
9.5. Related Entities
9.6. Platforms and other distributors of funds
9.6.1. Fund nominees – Distributors in the chain of legal ownership
9.6.2. Advisory only distributors
9.7. Qualified Collective Investment Vehicles
9.8. Restricted Funds
9.9. Sponsored Investment Entities
9.10. Registration
9.10.1. Equity & Debt Interest in an Investment Entity
9.10.2. Debt or Equity interest regularly traded on an established securities market
9.11. Aggregation of Accounts

**10. OTHER SPECIFIED VEHICLES**
10.1. Partnerships
10.2. Securitisation Vehicles
10.3. Non-trust companies (standalone companies) administered by TCSP
10.4. Personal Investment Companies
10.5. Protected Cell Companies, Incorporated Cell Companies and umbrella funds
10.6. Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs [US Agreement only]

**11. NON FINANCIAL FOREIGN ENTITIES (NFFEs)**
11.1. General
11.2. Passive NFFE
11.3. Active NFFE
11.4. Passive Income
11.5. Value of assets
11.6. Controlling Person
11.7. Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs
11.8. Examples

**12. FINANCIAL ACCOUNTS**
12.1. General
12.1.1. Accounts ‘maintained’ by Financial Institutions
12.1.2. Reportable Accounts
12.2. Account Holders

12.2.1. Trusts and Estates
12.2.2. Partnerships
12.2.3. Accounts held by persons other than a Financial Institution
12.2.4. Joint Accounts
12.2.5. Cash Value Insurance Contracts and Annuity Contracts
12.2.6. Joint life second death Cash Value Insurance Contracts
12.3. Depository Account
12.4. Custodial Account
12.4.1. Collateral
12.5. Insurance Contract
12.6. Cash Value Insurance Contract
12.7. Annuity Contract
12.8. Equity or Debt Interest in an Investment Entity
12.9. Equity or Debt Interests regularly traded on an established securities market – UK Agreement
12.10. Equity or Debt Interests regularly traded on an established securities market – US Agreement
12.11. Central Securities Depository (CSD)
12.12. Products Exempt from being Financial Accounts
12.13. Retirement Accounts and Products
12.14. Certain other Tax Favoured Accounts or Products
12.15. Accounts of deceased persons
12.16. Intermediary/Escrow Accounts
12.17. Undesignated accounts
12.18. Designated accounts
12.19. Segregated accounts
12.20. Dormant accounts
12.21. Rollovers
12.22. Syndicated Loans
12.23. Electronic money issuers (E-Money)

**13. REGISTRATION**

13.1. General requirements
13.2. Who needs to register?
13.3. Which Financial Institutions do not need to register?
13.4. Timetable for registration

**14. DUE DILIGENCE REQUIREMENTS**

14.1. General
14.2. Acceptable documentary evidence
14.3. IRS withholding certificates (US Agreement)
14.4. Non official forms for individuals
14.5. Validity of documentation
14.6. Retention of Documentary Evidence
14.7. Document Sharing
14.7.1. Single branch system
14.7.2. Universal account systems
14.7.3. Shared account systems

14.8. Self-certification
14.9. Confirming the Reasonableness of Self-certification
14.10. Self-certification for New Individual Accounts
14.10.1. Obtaining a self-certification
14.10.2. Wording of self-certification
14.10.3. Format of self-certification
14.11. Self-certification for Pre-existing Individual Accounts
14.12. Self-certification for New Entity Accounts
14.13. Self-certification for Pre-existing Entity Accounts
14.14. Aggregation
14.14.1. When do the aggregation rules apply?
14.14.2. Relationship Manager
14.14.3. Exempt products
14.14.4. Related Entities
14.14.5. Aggregation of Pre-Existing Individual Accounts - Examples
14.14.6. Reporting
14.14.7. Aggregation of Pre-existing Entity Accounts
14.15. Aggregation of Sponsored Funds
14.16. Currency Conversion
14.17. Change of circumstances
14.18. Assignment or Sale of Cash Value Insurance Contract
14.19. Introducers
14.20. Mergers or Bulk Acquisitions of Accounts
14.20.1. Merger of Investment Entities
14.20.2. Mergers and Acquisitions in relation to Pre-existing Cash Value Insurance Contracts
14.21. Discretionary trusts

**15. PRE-EXISTING INDIVIDUAL ACCOUNTS**
15.1. General
15.2. Reportable Accounts
15.3. Threshold Exemptions that apply to Pre-existing Individual Accounts
15.4. Pre-existing Cash Value Insurance Contracts or Annuity Contracts unable to be sold to US residents – US Agreement only
15.4.1. Assignment of Pre-existing Insurance Contracts
15.5. Lower Value Accounts
15.6. Electronic Record Searches and Lower Value Accounts
15.6.1. Identifying Indicia – US Agreement
15.6.2. Curing Indicia – US Agreement
15.6.3. Identifying Indicia – UK Agreement
15.6.4. Curing Indicia – UK Agreement
15.7. High Value Accounts
15.8. Electronic Record Searches and High Value Accounts
15.9. Paper Record Searches and High Value Accounts
15.9.1. Exceptions
15.10. Qualified Intermediaries
15.11. Relationship Manager
15.12. Effects of Finding US/UK Indicia

15.13. Timing of reviews
15.13.1. Lower Value Accounts
15.13.2. High Value Accounts

**16. NEW INDIVIDUAL ACCOUNTS**
16.1. General
16.2. Reportable Accounts
16.3. Threshold Exemptions that apply to New Individual Accounts
16.4. New Accounts for holders of Pre-existing Accounts
16.5. Identification of New Individual Accounts
16.6. Group Cash Value Insurance Accounts or group Annuity Contracts
16.7. Accounts held by beneficiaries of a Cash Value Insurance Contract that is a Life Insurance contract
16.8. Reliance on Self-certification and Documentary evidence

**17. PRE-EXISTING ENTITY ACCOUNTS**
17.1. General
17.2. Reportable Accounts
17.3. Threshold Exemptions that apply to Pre-existing Entity Accounts
17.4. Standardised Industry Codes and Indicia for Pre-existing Entities
17.5. Identification of an entity as a Specified Person
17.6. Identification of an entity as a Financial Institution
17.7. Identification of an entity as a Non-Participating Financial Institution (NPFI)
17.8. Identification of an entity as a Non-Financial Foreign Entity (NFFE)
17.9. Electronic searches
17.10. Timing of reviews

**18. NEW ENTITY ACCOUNTS**
18.1. General
18.2. Reportable Accounts
18.3. Exemptions that apply to New Entity Accounts
18.4. New Accounts of Pre-existing Entity account holders
18.5. Identification of an entity as a Financial Institution
18.6. Identification of an entity as a Non-Participating Financial Institution (NPFI)
18.7. Identification of an entity account holder as a Specified Person
18.8. Identification of an entity as a Non-Financial Foreign Entity (NFFE)

**19. REPORTING OBLIGATIONS**
19.1. Information to be reported
19.1.1. Specified Persons and Controlling Persons of certain Entity Accounts
19.1.2. Custodial Accounts
19.1.3. Depository Accounts
19.1.4. Cash Value Insurance Contracts
19.1.5. Purchased Life Annuities (PLAs)

19.1.6. Deferred Annuities
19.1.7. Other Accounts
19.1.8. Account closures and transfers
19.2. Explanation of information required
19.2.1. Address
19.2.2. Taxpayer Identification Number (TINs) – US Agreement
19.2.3. Date of birth and National Insurance Numbers – UK Agreement
19.2.4. Account number
19.2.5. Account balance or value
19.2.6. Jointly held Financial Assets
19.2.7. Account Closures
19.3. Nil returns
19.4. Multiple Financial Institutions – duplicate reporting
19.5. Timetable for reporting
19.6. Reporting on Non-Participating Financial Institutions – US Agreement only
19.6.1. Exceptions
19.6.2. Reporting
19.7. Payments of Dividends made by a Financial Institution
19.8. Withholding on US Source Withholdable Payments paid to Non-Participating Financial Institutions – US Agreement only
19.9. Reporting payments of US Source Withholdable Payments to Non-Participating Financial Institutions Currency – US Agreement only
19.10. Third party service providers
19.11. Format of reporting
19.12. Transmission to the [CD] Competent Authority
19.13. Penalties

**20. COMPLIANCE**
20.1. Minor errors
20.2. Significant non compliance

**21. DATA PROTECTION**

**22. PREVENTION OF AVOIDANCE**

**APPENDICES**

**1. AGREEMENTS IN FORCE**
**2. RELEVANT DOCUMENTS**
**3. DEFINITIONS**
**4. UK AGREEMENT – SPECIFIC ELEMENTS**
**1. Annex IV – Alternative Reporting Regime for UK Resident Non-Domiciled Individuals**
**2. Other differences to the US Agreement**

# 1. BACKGROUND

## 1.1. General

The Foreign Account Tax Compliance Act (FATCA) was introduced by the United States in 2010 as part of the HIRE Act with the purpose of reducing tax evasion by their citizens. FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service (IRS). The information to be reported by foreign financial institutions is equivalent in substance to that required to be reported by US citizens in their US tax returns.

If financial institutions do not comply with the US Regulations, a 30% withholding tax is imposed on US source income and gross proceeds paid to that financial institution, both on its own US investments and those held on behalf of its customers.. Financial institutions are also required to close accounts where their US customers do not provide information to be collected by the financial institution.

The US recognised that in some jurisdictions there are legal barriers to implementing FATCA as well as some practical difficulties for financial institutions in complying with FATCA. Two model intergovernmental agreements (Model I and Model II IGAs) were developed to overcome the legal issues and to reduce some of the burden on the financial institutions.

Developments in the area of automatic exchange of information have progressed quickly and in March 2013 [CD] agreed to enter into a similar agreement with the UK.

On 13 December 2013 [CD] and the US signed an Agreement to Improve International Tax Compliance and to Implement FATCA (the US Agreement) based on the Model I IGA. As a result, the withholding tax and account closure requirements will not apply apart from in circumstances of unresolved significant non-compliance by the financial institution.

On [10/22] October 2013 [CD] and the UK signed an Agreement to Improve International Tax Compliance (the UK Agreement) based on the US Agreement.

Under the terms of the US Agreement and UK Agreement (together the Agreements), [CD] Financial Institutions will provide the [CD] [Comptroller of Taxes/Assessor of Income Tax/ Director of Income Tax] with the required information. The [Comptroller/Assessor/Director/Director] will forward that information to the Competent Authority in the relevant jurisdiction.

[CD] legislation dealing with the implementation of the Agreements is the [Taxation (International Tax Compliance) ([CD]) Regulations 201-] (the [CD] Regulations) and can be accessed at [add link to website].

## 1.2. Purpose of these guidance notes

These guidance notes are intended to provide practical assistance to both business and the [States of CD/Income Tax Division] staff who deal with entities affected by the Agreements and other bilateral automatic exchange of information agreements based on FATCA (Intergovernmental Agreements 'IGAs'). This document is not a legal document and does not replace the need to take professional advice.

The Agreements have the same objective in terms of delivering automatic exchange of similar information in respect of the same time periods. In addition, a Common Reporting Standard is being developed based on the same principles. The guidance notes and the [CD] Regulations have been prepared to deliver these overarching principles, abiding by the spirit of the Agreements and developing international standards. As such in delivering the reporting obligations, the guidance also recognises the burden of reporting for affected businesses.

A Financial Institution must apply the [CD] Regulations in force at the time with reference to the published guidance.

In line with Article 4 paragraph 7 of the US IGA and Article 1 paragraph 3 of the UK IGA, the [CD] permits Financial Institutions to use a definition in the relevant US Regulations in lieu of a corresponding definition in the IGA, provided that such application would not frustrate the purposes of the Agreement. As a result, both the IGA definition and the definition detailed in the Regulations, for certain elements, have been included in this Guidance. Financial Institutions are not required to seek approval from the Assessor/Comptroller/Director to apply this approach.

The guidance notes apply to:

- Financial Institutions (as defined in Section 3)
- Entities that will need to certify their "classification" for the purposes of the Agreements; and
- Entities that undertake obligations under the Agreements on behalf of Financial Institutions

The Agreements in force are listed in Appendix 1. The persons in respect of which reporting will be made, Specified Persons, are defined in Section 1.6.

Since the Agreements are based on the same model, many of the provisions are the same and are covered by these guidance notes. Where applicable, it is noted where aspects differ between the Agreements. In addition, Appendix 4 sets out key provisions which are different in the UK Agreement. Any party affected by the UK Agreement is recommended to review the main guidance notes and Appendix 4.

## 1.3. Scope of the Agreements

The Agreements and the [CD] Regulations implementing the Agreements apply to all [CD] Financial Institutions, regardless of whether they hold any Financial Accounts for Specified Persons.

Some action will be required of all Financial Institutions that maintain Financial Accounts. The extent of that action will depend on a number of factors including whether account holders are Specified Persons and the value and nature of the Financial Account.

In addition to reporting information on Reportable Accounts, [CD] Financial Institutions may need to report payments made to a Non-Participating Financial Institution (NPFI) under the US Agreement only.

Any entity that is not a Financial Institution will be a Non-Financial Foreign Entity (NFFE). A NFFE has no obligations itself under the Agreements but may have to confirm its status and provide details of controlling persons to another Financial Institution if requested to do so by the Financial Institution. A Financial Institution may have reporting obligations in respect of Financial Accounts it maintains for a Passive NFFE.

These guidance notes will assist entities in answering the following:

- Am I a Financial Institution?
- Do I maintain Financial Accounts?
- Do I need to register with the IRS and, if so, by when and how?
- Do I need to report any information and, if so, what information, when and how?
- I maintain a Financial Account for a NFFE. What are my obligations?

### 1.4. Interaction with US Regulations and other IGAs

The [CD] Regulations and these Guidance Notes seek to clarify any areas of uncertainty within the Agreements. To the extent that issues are not covered by the Agreements, the [CD] Regulations or the Guidance Notes, reference should be made to the US Regulations. While the US Regulations are US legislation, there is some cross over into the UK Agreement as set out in that Agreement.

In policy terms, a [CD] Financial Institution should not be at a disadvantage from applying the [CD] Regulations implementing the Agreements, as compared to the position that they would have been in if applying the US Regulations. In certain circumstances, provisions in other Intergovernmental Agreements may also result in a change to the application of the Agreements.

However a Financial Institution must apply the [CD] Regulations in force at the time with reference to the published [CD] Guidance Notes.

If the US authorities subsequently amend the underlying US Regulations to introduce additional or broader exemptions, the [[CD] authorities] will incorporate these changes into the [CD] Regulations or Guidance Notes subject to the agreement of the IRS. Any updates will be published on the dedicated [Exchange of Information webpage]

The definitions set out in the Agreements apply in place of those in the US Regulations and differ in some cases to those in the US Regulations. The Agreements state that [CD] may permit [CD] Financial Institutions to apply definitions

in the US Regulations in place of those in the Agreement provided that doing so would not frustrate the purpose of the Agreement. Permitted variances are set out in Appendix 5 (to be updated in due course).

### 1.5. The role of the [CD] Competent Authority

The [CD] Competent Authority is the Comptroller of Taxes/Assessor of Income Tax/Director of Income Tax or his delegate. The [CD] Competent Authority will collect the information required to be disclosed and pass that information to the IRS in respect of the US Agreement and HMRC in respect of the UK Agreement.

The [CD] Competent Authority will not audit the information provided by the Financial Institutions. It is the responsibility of each Financial Institution to provide the correct information in the correct format to the [CD] Competent Authority.

As necessary the Competent Authority will enforce the [CD] Regulations in cases of significant non-compliance notified to it by the US or UK Competent Authority.

### 1.6. Specified Persons

Reference to Specified Person in these Guidance Notes relates to either a Specified US Person or Specified UK Person as the context requires. Where a different treatment applies, these Guidance Notes will state Specified US Person or Specified UK Person as necessary.

The term “Specified US Person” is defined in the US Agreement as:

A U.S. Person, other than:

(i) a corporation the stock of which is regularly traded on one or more established securities markets;

(ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i);

(iii) the United States or any wholly owned agency or instrumentality thereof;

(iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;

(vi) any bank as defined in section 581 of the U.S. Internal Revenue Code;

(vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;

(viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);

(ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;

(x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
(xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;
(xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or
(xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

The term “Specified UK Person” is defined in the UK Agreement as:

A person or Entity who is resident in the United Kingdom for tax purposes, and includes a person or Entity who is resident in both the United Kingdom and Guernsey under the respective domestic law of each Party, other than:

(i) a corporation the stock of which is regularly traded on one or more established securities markets;
(ii) a corporation that is a member of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in (i) above;
(iii) a Depository Institution;
(iv) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle contracts, futures, forwards, and options) that is registered as such under the laws of the United Kingdom; or
(v) an exempt beneficial owner as defined in Annex II.

## 2. THE AGREEMENTS

## NOTE [SECTION TO BE MADE CD SPECIFIC]

### 2.1. When does the US Agreement come into force?

The US Agreement comes into force when it is ratified by [the States of [CD]/Tynwald]. The US does not need to ratify the Agreement. The Agreement will be lodged shortly after it has been signed and will be debated by the States approximately six weeks after it has been lodged. [To be updated once the Agreement has been signed.]

### 2.2. When does the UK Agreement come into force?

The UK Agreement comes into force on the date of the later written notification by the Parties confirming that their internal procedures have been completed. The Agreement will be lodged shortly after it has been signed and will be debated by the States approximately six weeks after it has been lodged. [To be updated once the Agreement has come into force.]

### 2.3. The Tax Information Exchange Agreements [DTA for IoM]

The Tax Information Exchange Agreements (TIEAs) are the mechanism through which the information reported under the Agreements will be exchanged. The provisions in the TIEAs relating to confidentiality apply in respect of information exchanged under the Agreements.

In respect of the US TIEA this is the agreement that entered into force on 23 May 2006, as amended by the Protocol dated [ ].

In respect of the UK TIEA this is the agreement that entered into force on 27 November 2009, as amended by the Protocol dated [10/22] October 2013.

# 3. FINANCIAL INSTITUTIONS

## 3.1. General

FATCA introduced the concept of a Foreign Financial Institution (FFI). Under the US Agreement this term applies to non-US entities which fall within any, or more than one, of the following categories.

- Custodial Institution (Section 3.7)
- Depository Institution (Section 3.8)
- Investment Entity (Section 3.9)
- Specified Insurance Company (Section 3.10)

Under the UK Agreement the term applies to non-UK entities in the same categories.

The extended definition of Financial Institution (which includes the concept of "relevant holding companies" and treasury centres of financial groups") included in the US Treasury Regulations published in January 2013 does not apply to [CD] entities as the definition in the Agreements take priority over those in the US Treasury Regulations unless doing so puts [CD] Financial Institutions in a less advantageous position. That is not considered to be the case here. However, a FI may choose to use the definition in the US Treasury Regulations should they wish.

Certain Financial Institutions will be considered to be:

- Deemed-Compliant Financial Institutions, and hence Non-Reporting Financial Institutions, under the US Agreement (Section 4); or
- Non-Reporting Financial Institutions under the UK Agreement (Section 5)

which will reduce or remove the registration or reporting obligations of the entity. Some exemptions may also apply in respect of certain products and entities (Section 6).

The first step to be undertaken by an entity or its representative is to establish whether, for the purposes of the Agreements, the entity is a [CD] Financial Institution. This, together with establishing the type of Financial Institution, will determine the extent of the obligations that need to be undertaken.

## 3.2. [CD] Financial Institution

A [CD] Financial Institution is any Financial Institution resident in [CD] as well as any non-resident Financial Institution which has a permanent establishment located in [CD] through which it conducts a business of a Financial Institution.

A Financial Institution will be resident in [CD] if it is tax resident in [CD]. A dual resident entity that is tax resident in [CD] and resident for these purposes in another jurisdiction will have to apply the [CD] Regulations in respect of any Reportable Accounts maintained in [CD] unless it has actual knowledge that it is undertaking the appropriate reporting in the other jurisdiction (see 7.3 and 19.4). Although tax residence in [CD] determines whether an entity falls within the scope of these Agreements, other influences may determine whether an entity is also within the

scope of IGAs in other jurisdictions. For example an entity could fall within the scope of an IGA in another jurisdiction in which it is established.

For these purposes resident for tax purposes in [CD] means the following:

- For a company, if the company is incorporated in [CD] or is managed and controlled in [CD].
- For a company not resident in [CD], where it carries on a business of a Financial Institution through a permanent establishment in [CD].
- For trusts, if any of the trustees are resident in [CD], even if there are no [CD] resident settlors, beneficiaries or protectors.
- For partnerships, if the partnership is managed and controlled in [CD].

A [CD] Financial Institution will be classified as a Non-Reporting [CD] Financial Institution or a Reporting [CD] Financial Institution.

A Reporting [CD] Financial Institution is required to:

- Undertake due diligence procedures to identify Reportable Accounts (see Sections 14-18) and report these annually to the [Comptroller/Assessor/Director] the required information in the prescribed time and manner (see Section 19)
- Report annually to the [Comptroller/Assessor/Director] payments made to Non-Participating Financial Institutions (see Section 19.6)
- Comply with registration requirements (see Section 13)

### 3.3. Reporting [CD] Financial Institutions

A Reporting [CD] Financial Institution is any [CD] Financial Institution that is not a Non-Reporting [CD] Financial Institution as defined in Section 3.4. A Reporting [CD] Financial Institution will be responsible for ensuring that the due diligence requirements are met and for reporting to the [CD] Comptroller/Assessor/Director under the terms of the [CD] Regulations.

In certain circumstances the due diligence and reporting obligations can be undertaken by a third party service provider although the responsibility remains with the [CD] Financial Institution. (See Section 19.9.)

### 3.4. Non-Reporting [CD] Financial Institutions

#### *3.4.1. US Agreement*

A Non-Reporting [CD] Financial Institution is any [CD] Financial Institution that falls within the exemptions set out in Annex II to the US Agreement, is specifically identified in [part …] of the [CD] Regulations or one which otherwise qualifies as:

- a Deemed Compliant Financial Institution (Section 4),
- an Owner Documented Financial Institution (Section 4.4), or
- an Exempt Beneficial Owner (Section 6).

Most Non-Reporting [CD] Financial Institutions will not need to obtain a Global Intermediary Identification Number (GIIN), and so will not need to register, or carry out the due diligence and reporting requirements under the Agreement. They will need to provide certain documentation to withholding agents to certify their status.

The following Non-Reporting [CD] Financial Institutions will have some registration and/or reporting obligations under the US Agreement. These are Registered Deemed Compliant Financial Institutions. (See Section 4.2. for more information on each of these categories)

- Sponsored Investment Entities and Controlled Foreign Entities
- Financial Institutions with a Local Client Base which has US Reportable Accounts
- Non-reporting members of Participating Financial Institution Groups.
- Qualified Collective Investment Vehicles
- Restricted Funds
- Qualified credit card issuers

#### *3.4.2. UK Agreement*

A Non-Reporting [CD] Financial Institution is any [CD] Financial Institution that falls within the exemptions set out in Annex III to the UK Agreement or is specifically identified in [part …] of the [CD] Regulations. See Section 5 for further information.

### 3.5. Withholding Tax – US Agreement only

[CD] Financial Institutions will not be subject to the withholding tax imposed on US source receipts by s1471 of the US Internal Revenue Code, provided they comply with the [CD] Regulations.

US withholding tax that applies on US source income under other parts of the US Internal Revenue Code will continue to apply.

### 3.6. Closing Recalcitrant Accounts – US Agreement only

[CD] Financial Institutions will not be required to close recalcitrant accounts, provided they comply with the [CD] Regulations.

### 3.7. Custodial Institution

A Custodial Institution is any entity that earns a substantial portion (at least 20 percent) of its gross income from the holding of financial assets for the accounts of others and from related financial services. This test applies to the last three accounting periods or the period since commencement, if shorter.

Related financial services include any service which is directly related to the holding of assets by the institution on behalf of others and includes:

- custody, account maintenance and transfer fees;
- execution and pricing commission and fees from securities transactions;

- income earned from extending credit to customers;
- income earned from CFDs and on the bid-ask spread of financial assets; and
- fees for providing financial advice, clearance and settlement services.

Such institutions could include brokers, custodial banks, nominee companies (see 3.12) and clearing organisations. Insurance brokers do not hold assets on behalf of clients and so should not fall within the scope of this provision.

### 3.8. Depository Institution

A Depository Institution is broadly any entity that is engaged in a banking or similar business. The Agreements refer only to the need to accept deposits but the US Regulations have been amended to require additional banking activity to be carried out. This amended definition will apply to the Agreements.

A Depository Institution is one that accepts deposits in the ordinary course of banking or similar business and regularly engages in one or more of the following activities:

- Provision of credit through personal, mortgage, industrial or other loans or other extensions of credit;
- Purchases, sells, discounts or negotiates of accounts receivable, instalment obligations, notes, drafts, cheques, bills of exchange, acceptances, or other evidence of indebtedness;
- Issues letters of credit and negotiates drafts drawn thereunder;
- Provides trust or fiduciary services;
- Finances foreign exchange transactions; or
- Enters into, purchases, or disposes of finance leases or leased assets.

This will include all entities registered under the Banking Business ([CD]) Law 1991 provided they also undertake one of the other activities listed above.

Deposit takers which are specifically exempted from registering under the [Banking Business ([Jersey]) Law 1991] may be exempted from the definition of Financial Institution and if so will be listed in Section [4].

The following would not be expected to fall within this definition:

- Insurance brokers.
- Solicitors/Advocates.
- Factoring or invoice discounting businesses.
- Entities that complete money transfers by instructing agents to transmit funds.
- Entities that solely provide asset based finance services or that accept deposits solely from persons as collateral or security pursuant to; a sale or lease of property; a loan secured by property; or similar financing arrangements, between that entity and the person making the deposit.

## 3.9. Investment Entity

Although Investment Entity is clearly defined in the IGA, the definitions in the US Treasury Regulations and the draft Common Reporting Standard (CRS) are different. Since the CRS is likely to become the global standard, and is substantially similar to the US Treasury Regulations definition, this has also been included in the [CD] Regulations. Entities have a choice of which definition to apply.

### *3.9.1 IGA Definition*

The IGA definition of Investment Entity states that:

> An Investment Entity is an entity that conducts as a business, or is managed by an entity that conducts as a business, one or more of the following activities, for or on behalf of a customer:
>
> - trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc.);
> - foreign exchange;
> - exchange, interest rate and index instruments;
> - transferable securities and commodity futures trading;
> - individual and collective portfolio management;
> - otherwise investing, administering or managing funds or money on behalf of other persons.
>
> This definition should be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.
>
> In practice, when applying the IGA definition, an entity that is professionally managed will generally be an Investment Entity, by virtue of the managing entity being an Investment Entity. This is referred to in these Guidance Notes as the "managed by" test.
>
> For the purposes of the "managed by" test, a distinction should be made between one entity 'managing' another and one entity 'administering' another. For instance the following services provided by an entity to another will not constitute the latter entity being "managed by" the former:
>
> - Provision of co-secretary and/or company secretarial services
> - Provision of registered office
> - Preparation of final financial statements (from company books and records)
> - Preparation of Tax and/or VAT returns
> - Provision of bookkeeping services including budgeting and cash-flow forecasts.
>
> Where a [CD] company's directors are employees of a [CD] TCSP which itself is a Financial Institution and the [CD] company is administered by that [CD]

TCSP Financial Institution, the [CD] company may be treated as being managed by a Financial Institution and so be an Investment Entity itself.

### *3.9.2 Common Reporting Standard Definition*

Alternatively, the definition of an Investment Entity as included in the draft Common Reporting Standard may be used when classifying an entity.

An Investment Entity is any entity:

a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

   i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc); foreign exchange; exchange, interest and index instruments; transferable securities; or commodity futures trading;
   ii. individual and collective portfolio management; or
   iii. otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or

b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity described in a) above.

An entity is treated as primarily conducting as a business one of the activities described in a) above, or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purpose of b) above, if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income. This test applies to three years ended 31 December of the year preceding the year in which the determination is made or the period since commencement, if shorter.

Therefore an entity whose gross income is primarily attributable to non-financial assets such as real property, even if managed by a Financial Institution, would not be an Investment Entity.

Where an entity is managed by an individual who performs the activities prescribed above, the managed entity will not necessarily be an Investment Entity as an individual is not a Financial Institution. In this case it is necessary to look at the activities of the entity itself.

An Investment Entity does not include any entity that is an Active NFFE because it meets any of the criteria in section 11.3 subparagraphs d) through to g).

Although trusts, sponsored entities, investment advisers, investment managers and collective investment vehicles might fall within this definition, in

certain circumstances they will be Non-Reporting Financial Institutions and, for the purpose of the US Agreement, are also treated as deemed-compliant FFIs. Some trusts may also not be Investment Entities, particularly where the trust holds only non-financial assets or is managed by an individual. Please refer to the Sections dealing with these types of entity for further information.

### *3.9.3 US Regulations Definition*

As permitted under the Agreements, the definition of Investment Entity included in the US Regulations may also be used.

An Investment Entity is any entity that is described in a), b) or c):

a) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—(*1*) Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures; (*2*) Individual or collective portfolio management; or (*3*) Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons. or

b) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets and the entity is managed by another entity [that is a Financial Institution]. For purposes of this paragraph an entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities described in paragraph a) of this section on behalf of the managed entity.

c) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

### *3.9.4 Financial Assets*

The term "Financial Assets" includes, but is not restricted to:

- a security (for example a share of stock in a corporation; partnership, or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness);
- partnership interest;
- commodity;
- swap (for example interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity interest swaps and similar arrangements);
- Insurance Contract or Annuity Contract; or

- any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract or Annuity Contract.

The following examples would not be considered to be financial assets:

- Cash
- Real property
- A non-debt, direct interest in real property.

Direct interest in this case means direct line of ownership i.e. this can include real property that is indirectly held through companies.

Please note that for the avoidance of doubt, although cash will not be viewed as a Financial Asset for the purposes of classifying an entity using the CRS or US Treasury Regulations definition of an Investment Entity, it may be a Financial Account and thus be subject to the normal due diligence procedure by the Financial Institution that maintains that account.

***Examples – using CRS or Regulations Definitions (excluding Collective Investment Vehicles)***

i. A non-financial trading company, for example a real estate company, managed by a TCSP would not be an Investment Entity as although it is managed by an Investment Entity, the TSCP, its gross income is not primarily attributable to investing, reinvesting or trading in financial assets.

ii. The holding company of a group of non-financial trading companies is not an Investment Entity whether or not managed by another Financial Institution, unless it is a collective investment vehicle, as it does not conduct as a business any of the activities in a) above.

iii. Non-financial groups administered or managed by TCSP are not treated as Investment Entities, provided the gross income of the group is primarily attributable to non-financial assets.

### 3.10. Specified Insurance Company

An insurance company is a Specified Insurance Company when the products written are classified as Cash Value Insurance or Annuity Contracts or if payments are made with respect to such contracts.

Insurance companies that only provide General Insurance or term Life Insurance should not be Financial Institutions under this definition and neither will reinsurance companies that only provide indemnity reinsurance contracts. A Specified Insurance Company can include both an insurance company and its holding company. However, the holding company itself will only be a Specified Insurance Company if it issues or obligated to make payments with respect to Cash Value Insurance Contracts or Annuity Contracts.

As only certain persons are permitted to provide Insurance Contracts or Annuity Contracts, it is unlikely that an insurance holding company will in itself issue, or will be obligated to make payments with respect to Cash Value Insurance or Annuity Contracts.

Insurance brokers are part of the payment chain and should not be classified as a Specified Insurance Company because they are not obligated to make payments under the terms of the Insurance or Annuity Contract.

### 3.11. Captive Insurance Companies

A Captive Insurance Company is unlikely to issue cash value insurance contracts or annuity contracts. It will therefore not be a specified insurance company. The Captive Insurance Company will neither be a Depository Institution nor a Custodian Institution.

Captive Insurance Companies are required to hold investments in order to meet potential claims. Holding and managing those investments on behalf of a captive insurance company is rarely a major part of the activities performed by the captive insurance manager. Accordingly, it is not expected that any manager's profits arising from administering the investments will be equal to or exceed 50% of the manager's gross profits.

Equally, whilst some of the services provided by captive insurance managers to insurance companies may be considered "otherwise...administering or managing funds or money", these services are typically ancillary to the role of managing the insurance business which is much more concerned with the management of claims and premiums.

Therefore, when applying the Regulation definition of an Investment Entity, Captive Insurance Managers are unlikely to be categorised as Financial Institutions.

If a Captive Insurance Company is not categorised as a Financial Institution, it will be an NFFE. It is likely that only investment income arising from capital in excess of the amount of capital required to be maintained by the company for regulatory purposes will be viewed as passive income. The premiums received by the company will be viewed as trading income. Therefore, the likelihood is that less than 50% of the company's gross income will be viewed as passive income and less than 50% of the assets held by the company will be viewed as assets that produce or are held for the production of the passive income. As such, the company would be categorised as an active NFFE.

There may however be circumstances where the income arising from the excess capital will exceed 50% of the company's gross profits in which case the company might be categorised as a passive NFFE.

### 3.12. Nominee Companies

Subsidiary companies of licensed corporate and trust service providers, which are dormant and only act as nominee shareholders of companies administered by the corporate and trust service providers, can be disregarded. This treatment is optional

and such companies can be treated as Financial Institutions if preferred. (See section 9.6.1 for Fund nominees)

### 3.13. Subsidiaries and branches

A subsidiary or branch of a non [CD] entity (including a US entity) carrying on a business, as a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company in [CD], will be a Reporting [CD] Financial Institution.

Subsidiaries and branches of [CD] Financial Institutions that are not located in [CD] are outside the scope of the Agreement and will not be treated as [CD] Financial Institutions.

Those entities will be covered by the relevant rules in the jurisdiction in which they are located. Those rules will either be the US Regulations or the legislation introduced to implement an Intergovernmental Agreement between the US and that jurisdiction.

However, where such subsidiaries and branches act as introducers with regard to a Financial Account, the relevant account is held and maintained in the [CD] by a [CD] Financial Institution and is subject to [CD] regulatory requirements, the account will be within the scope of the [CD] Agreements. The [CD] Financial Institution will be required to undertake the appropriate due diligence processes and report the appropriate details to the [CD].

Where a [CD] Specified Insurance Company has an overseas branch it may not be immediately apparent whether the policies in respect of the branch are reportable under the Agreements or not, due to the fact that assets backing all policies form part of the Long Term Business Fund of the [CD] Specified Insurance Company. Whether they are reportable will be dependent on factors such as:

- Whether the branch issues the policy or merely acts as an introducing agent or marketing entity
- Where the risk is accepted
- The governing law of the policy
- Whether the insurer has registered the overseas branch as a Financial Institution

Where the policies are issued by the overseas branch and where the branch is registered as a Financial Institution, those policies would not form part of the Agreements, but would be subject to the reporting requirements (if any) of the jurisdiction in which the branch is situated.

Where the branch acts as an introducer to policies that issued in the [CD], then those policies will be governed by the Agreements.

***Example 1***

*Astra Bank Limited, located in [CD], has within its group the following entities:*

- *Its parent (P), located in the UK*
- *A foreign subsidiary (B) located in Model 1 Partner Jurisdiction*

- *A foreign branch (C) located in Model 2 Partner Jurisdiction*
- *A foreign subsidiary (X) located in a non IGA jurisdiction*
- *A foreign branch (Y) located in the US*

*Under the terms of the US Agreement*

- *P will report on Specified US Persons for whom it holds Financial Accounts to HMRC.*
- *Astra Bank will report on Specified US Persons for whom it holds Financial Accounts to the Comptroller*
- *B will report to its respective jurisdiction's competent authority*
- *C will report directly to the IRS*
- *X will be a Limited FFI and will have to identify itself as a Non-Participating Foreign Financial Institution for withholding and reporting purposes* ***if*** *it has not entered into an FFI agreement directly with the IRS. However X must undertake the obligations required under the US Regulations as far as it is legally able.*
- *Y will report on [CD] persons who hold accounts to the IRS.*

*Under the terms of the UK Agreement*

- *P will report on Specified [CD] Persons for whom it holds Financial Accounts to HMRC.*
- *Astra Bank will report on Specified UK Persons for whom it holds Financial Accounts to the Comptroller.*
- *On the basis that none of the subsidiaries or branches are in jurisdictions that have entered into an IGA with the UK or [CD], there are no reporting obligations for those entities in respect of accounts held by Specified UK or [CD] Persons.*

A [CD] branch of a non-[CD] Financial Institution is a [CD] Financial Institution and must report in accordance with the Agreements.

***Example 2***

*Australia Bank has a branch J, which is a permanent establishment for tax purposes, located in [CD].*

*Under the terms of the US Agreement*

- *As J is a permanent establishment for [CD] tax purposes, it is a [CD] Financial Institution and will need to comply with the [CD] Regulations and report information on any reportable US Financial Account to the Comptroller.*

*Under the terms of the UK Agreement*

- *As J is a permanent establishment for [CD] tax purposes, it is a [CD] Financial Institution and will need to comply with the [CD] Regulations and report information on any reportable UK Financial Account to the Comptroller.*

Please refer to Section [14.19] in respect of subsidiaries and branches acting as introducers with regard to a Financial Account.

### 3.14. Related Entities

For the purposes of the Agreements, when a [CD] Financial Institution is considering its own group, the definition for Related Entity is as set out in the Agreements. An entity is regarded as being related to another entity if one entity controls the other or the two entities are under common control. For this purpose, control means the direct or indirect ownership of more than 50% of the vote or value in an entity.

Notwithstanding the foregoing, it is possible to treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the US Regulations.

The relevance of this term differs between the Agreements.

In respect of both Agreements, it is relevant in definitions in Annex II.

Investment Entities which have been provided with seed capital by a member of a group to which the Investment Entity belongs will not be considered to be a Related Entity for these purposes.

Seed capital investment is the original capital contribution made to an Investment Entity that is intended to be a temporary investment. This would generally be for the purpose of establishing a performance record before selling interests in the entity to unrelated investors or for purposes otherwise deemed appropriate by the manager.

Specifically, an Investment Entity will not be considered to be a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest in excess of 50% of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; and
- in the case of an equity interest that has been held for over three years, its value is less than 50% of the total value of the stock of the Investment Entity.

In respect of the US Agreement only, the concept of Related Entity is relevant in the context of the reporting obligations of the [CD] Financial Institutions in respect of any Related Entities that are Non-Participating Financial Institutions (NPFIs). See Section 3.14 for information on when a Financial Institution is treated as a NPFI.

When a [CD] Financial Institution has any Related Entity that, as a result of the jurisdiction in which they operate, is unable to comply with FATCA, then in order to maintain compliance the [CD] Financial Institution must fulfil the obligations set out in the US Agreement. Further information is set out in Section 19.6.

### 3.15. Non-Participating Financial Institution – US Agreement only

A Non-Participating Financial Institution (NPFI) is a Financial Institution that is not compliant with FATCA by virtue of either:

- the Financial Institution is located in a jurisdiction that does not have an Intergovernmental Agreement with the US and the Financial Institution has not entered into a FATCA Agreement with the IRS, or,
- the Financial Institution is classified by the IRS as being a NPFI following the conclusion of the procedures for significant non-compliance being undertaken as set out in Article 5(2)(b) of the US Agreement.

Payments made by a [CD] Financial Institution to a NPFI, whether resident in [CD] or otherwise, must be reported by the [CD] Financial Institution. See Sections 17.7 and 18.6 for details on how to identify a NPFI and Sections 19.6, 19.8 and 19.9 for details on reporting and withholding requirements.

# 4. DEEMED COMPLIANT FINANCIAL INSTITUTIONS – US AGREEMENT ONLY

## 4.1. General

The concept of Deemed-Compliant Financial Institutions relates only to the US Agreement.

Deemed Compliant Financial Institutions are Financial Institutions identified as deemed compliant under Annex II or otherwise qualify under the US Regulations as:

- Registered Deemed Compliant (Section 4.2)
- Certified Deemed Compliant (Section 4.3)
- Owner Documented Deemed Compliant (Section 4.4)

Only Registered Deemed Compliant Financial Institutions are required to register with the IRS and obtain a GIIN.

Deemed Compliant Financial Institutions have no reporting obligations in respect of Financial Accounts that they maintain and are a category of Non-Reporting Financial Institutions under the US Agreement. There is one exception to this, being Financial Institutions with a Local Client Base in certain circumstances, see Section 4.2.2.

## 4.2. Registered Deemed Compliant Financial Institutions – US Agreement only

A [CD] Financial Institution that qualifies as one of the Registered Deemed Compliant categories below will need to register to obtain a GIIN or be registered by another entity. Such a Financial Institution will not need to report but details of Financial Accounts maintained by the Financial Institution may be reported by another entity.

A Registered Deemed Compliant Financial Institution has six months to rectify any defaults before it loses its status.

### *4.2.1. Sponsored Investment Entities and Controlled Foreign Corporations (US Regs 1471-5(f)(1)(i)(F))*

This category consolidates the due diligence, reporting and withholding for a group of Financial Institutions into, for example, trustee, fund manager, fund administrator, general partner, corporate director, transfer agent, company service provider or US financial institution (with regard to its controlled foreign corporations), being the Sponsoring Entity. A sponsored investment entity is an entity that has a contractual arrangement for its due diligence and reporting responsibilities to be carried out by a sponsoring entity. A Sponsoring Entity does not need to be a Financial Institution.

A Sponsored Investment Entity is an Investment Entity, which is not a US Qualified Intermediary, Withholding Foreign Partnership or Withholding Foreign Trust, that has authorised another entity, the Sponsoring Entity, to act on its behalf.

The Sponsoring Entity must register with the IRS and must register each of the Sponsored Investment Entities that it manages, to the extent that the Sponsored Investment Entities hold Reportable Accounts.

The Sponsoring Entity must undertake all of the FATCA compliance, such as account identification and documentation, on behalf of the Sponsored Investment Entities for which it acts, or where appropriate it can use a third party to undertake the obligations on its behalf. The Sponsoring Entity will need to ensure that new investors in the Sponsored Investment Entities that it manages are appropriately documented for FATCA purposes.

Where a Sponsoring Entity acts on behalf of a range of Sponsored Investment Entities, the classification of an account as a New Account or a Pre-Existing Account can be done by reference to whether the account is new to the Sponsoring Entity (e.g. the fund manager) and not the Sponsored Investment Entity (e.g. the fund). This will avoid the need for a Sponsoring Entity to have to obtain documentation from the same account holder repeatedly, where that account holder is invested in more than one of the Sponsored Investment Entities managed by that Sponsoring Entity.

Where a Sponsoring Entity is able to link accounts held by the same account holder, the accounts will need to be aggregated for the purposes of determining whether the account is a low or high value account. See 14.14 for more information on aggregation of accounts.

A [CD] Sponsoring Entity will report on all Reportable Accounts held by the Sponsored Investment Entities that it sponsors.

See Section 9 for more information on how this relates to funds including the reporting of offshore funds and multiple service providers.

### *4.2.2. Financial Institution with a Local Client Base (US Regs 1471-5(f)(1)(i)(A))*

There are 10 criteria that must **all** be met before a Financial Institution can be treated as a Local Client Base Financial Institution. A Financial Institution should self assess whether it meets these criteria and maintain appropriate records to support its assessment. The criteria are listed below:

a) The Financial Institution must be licensed and regulated under the laws of [CD]. For example this would include [CD specific entities].

b) The Financial Institution must have no fixed place of business outside [CD] other than where the location outside of [CD] houses solely administrative functions and is not publically advertised to customers. This applies even if the fixed place of business is within a jurisdiction that has entered into an Agreement with the US with regard to FATCA.

c) The Financial Institution must not solicit potential Financial Account holders outside [CD]. For this purpose, a Financial Institution shall not be considered to have solicited such customers outside of [CD] merely

because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to non-[CD] residents or otherwise target or solicit US customers.

A Financial Institution will also not be considered to have solicited potential Financial Account holders outside of [CD] if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside of [CD], as long as the advertisement does not specifically indicate that the Financial Institution provides services to non-residents. Also a Financial Institution issuing a prospectus will not, in itself, amount to soliciting Financial Account holders, even when it is available to US Persons in [CD]. Likewise, publishing information such as Reports and Accounts to comply with the Listing Rules, Disclosure Rules and Transparency or AIM rules to support a public listing or quotation of shares will not amount to soliciting customers outside [CD].

d) The Financial Institution is:
- required under the tax laws of [CD] to perform information reporting, or the withholding of tax with respect to accounts held by residents of [CD], **or**
- is required to identify whether account holders are resident in [CD] as part of the AML/KYC procedures.

For insurance products the following reporting or taxing regimes will apply to this section:
- Chargeable events reporting regime.
- Income minus Expense Regime (I-E).
- Basic rate tax deducted from the interest portion of a Purchased Life Annuity.

e) At least 98 per cent of the Accounts **by value**, provided by the Financial Institution must be held by people who reside in Jersey, the Isle of Man or Guernsey or a Member State of the European Union.

The 98 per cent threshold can include the Accounts of US Persons if they are resident in [CD]. It applies to both Individual and Entity Accounts. A Financial Institution will need to assess whether it meets this criteria annually. The measurement can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year.

f) Subject to subparagraph g) below, beginning on 1 July 2014, the Financial Institution does not provide Financial Accounts to:

- any Specified US Person who is not a resident of [CD] (including a US Person that was a resident of [CD] when the account was opened, but subsequently ceases to be a resident of [CD]);

- a Non-Participating Financial Institution; or
- any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not resident in [CD].

Where a Local Client Base Financial Institution provides Financial Accounts to US citizens who are resident in the UK, these Financial Accounts do not need to be reported to [the Comptroller] unless the account holder subsequently ceases to be a resident of [CD].

g) On or before 1 July 2014, the Financial Institution must implement policies and procedures to establish and monitor whether it provides (meaning opens and maintains) Financial Accounts to the persons described in subparagraph (f) above. If any such Financial Account is discovered, the Financial Institution must either report that account as though the Financial Institution were a Reporting [CD] Financial Institution, or close the account, or transfer the account to a Participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution.

This means that even if Financial Accounts have been provided to Specified US Persons, a Non-Participating Financial Institution or any Passive NFFE with Controlling Persons who are US citizens or residents prior to the 1 July 2014, the Financial Institution can still be a Financial Institution with a Local Client Base provided that the appropriate reporting is carried out.

h) With respect to each Financial Account that is held by an individual who is not a resident of [CD] or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph (g) above, the Financial Institution must review those accounts in accordance with the procedures applicable to Pre-existing Accounts, described in Annex I of the Agreement, to identify any US Reportable Account or Financial Account held by a Non-Participating Financial Institution. Where such accounts are identified, they must be closed, or transferred to a Participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution or the Financial Institution must report those accounts as if it were a Reporting [CD] Financial Institution. This allows a Financial Institution with a Local Client Base to maintain its status whilst reporting on relevant Financial Accounts that were opened prior to the adoption of the requirements set out in this section. This means that where a Local Client Base Financial Institution has a Reportable Account then it is required to register and report (or close) the account.

i) Each Related Entity of the Financial Institution, where the Related Entity is itself a Financial Institution must be incorporated or organised in [CD] and must also meets the requirements for a Local Client Base Financial Institution with the exception of a retirement plan classified as an Exempt Beneficial Owner.

j) The Financial Institution must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are residents of [CD].

### *4.2.3. Non-reporting members of Participating Financial Institution Groups (US Regs 1471-5(f)(1)(i)(B))*

This category applies to a non-reporting Financial Institution that is a member of a group of entities which includes at least one Participating Financial Institution. It allows that non-reporting Financial Institution to be Registered Deemed-Compliant, and so not have any reporting obligations, if certain criteria are met. This might apply for example where a member of a group of Financial Institutions has no Reportable Accounts but subsequently opens a Reportable Account. Essentially the non-reporting member must review accounts and where such accounts are identified as Reportable Accounts or Accounts held by NPFIs, they are required to either close the account, transfer the account to a Reporting Financial Institution or become a Participating, and hence Reporting, Financial Institution in its own right.

Such a Financial Institution that meets the following requirements can be treated as Registered Deemed Compliant:

- By the later of 30 June 2014 or the date it obtains a GIIN, the Financial Institution implements policies and procedures to allow for the identification and reporting of:
  - Pre-existing Reportable Accounts
  - Reportable Accounts opened on or after 1 July 2014
  - Accounts that become Reportable Accounts as a result of a change in circumstances
  - Accounts held by NPFIs

- After the Financial Institution has carried out the required review of accounts opened prior to implementing the appropriate policies and procedures, the Financial Institution
  - identifies the account as a US Reportable Account, or
  - becomes aware of a change in circumstance of the account holder's status such that the account becomes a US Reportable Account,

  then within six months of either of the above events, the Financial Institution closes the account or transfers it to a Model 1 Financial Institution, Participating Financial Institution or US Financial Institution or reports the account to the Assessor/Comptroller /Director.

### *4.2.4. Qualified Collective Investment Vehicles (US Regs 1471-5(f)(1)(i)(C))*

The Qualified Collective Investment Vehicle category is intended to provide relief for Investment Entities that are owned solely through Participating Foreign Financial Institutions or directly by large institutional investors not

typically subject to FATCA withholding or reporting obligations, such as retirement funds and non-profit organisations.

A Qualified Collective Investment Vehicle must satisfy the following criteria:

- It is an Investment Entity and is regulated as an [investment fund] in [CD] and every other country in which it operates. An investment fund is considered to be regulated if its manager is regulated with respect to the investment fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

- All of the investors are limited to:
  - equity investors
  - direct debt investors with an interest greater than $50,000, and
  - any other Financial account holder

  all of which are either:
  - participating Foreign Financial Institutions
  - registered Deemed Compliant Foreign Financial Institutions
  - retirement plans classified as Exempt Beneficial Owners under Annex II (see [ ])
  - persons who are not Specified Persons
  - non-Reporting IGA Foreign Financial Institutions, or
  - other Exempt Beneficial Owners under Annex II.

  Those with other types of investors may still be registered deemed compliant if they qualify as a restricted fund (see 4.2.5).

- If it is part of a group of Related Entities, all Foreign Financial Institutions in that group must be:
  - a participating Foreign Financial Institutions
  - a registered Deemed Compliant Foreign Financial Institutions
  - a sponsored Foreign Financial Institution
  - non-Reporting IGA Foreign Financial Institutions, or
  - an Exempt Beneficial Owners under Annex II.

### *4.2.5. Restricted Funds (US Regs 1471-5(f)(1)(i)(D))*

Restricted fund status can apply to Investment Entities that impose prohibitions on the sale of units to Persons, Non-Participating Financial Institutions and Passive NFFEs with Controlling Persons that meet the following requirements:

- It is an Investment Entity and is regulated as an investment fund in [CD] and every other country in which it operates. An investment fund is considered to be regulated if its manager is regulated with respect to the investment fund in all of the countries in which the investment fund is

registered and in all of the countries in which the investment fund operates.

- Interests issued directly by the investment fund are redeemed or transferred by the investment fund and not sold by investors on a secondary market.

- Interests that are not issued directly by the investment fund are sold only through distributors that are:
    - participating Foreign Financial Institutions
    - registered Deemed Compliant Foreign Financial Institutions
    - non-registering local banks or
    - restricted distributors (see US Reg 1471-5(f)(4)).

  A distributor includes an underwriter, broker, dealer or other person who participates, pursuant to a contractual arrangement with the Financial Institution, in the distribution of securities and holds interests in the Financial Institution as a nominee.

- By the later of 30 June 2014 or six months after the date it registers as a Deemed Compliant Financial Institution, the Financial Institution:
    - ensures that each agreement that governs the distribution of its debt or equity interests, all prospectuses and marketing materials prohibit the sale or transfer to Specified Persons, Non-Participating Financial Institutions or Passive NFFEs with one or more substantial US owner, other than those that are distributed by and held through a Participating Financial Institution;
    - ensures that each agreement that governs the distribution of its debt or equity interests requires the distributor to notify the Financial Institution of a change in the distributor's Chapter 4 status;

- The Financial Institution must certify to the Comptroller/Assessor/Director with respect to any distributor that ceases to qualify as a distributor (as defined above) that the Financial Institution will terminate its agreement with the distributor, or will cause the distribution agreement to be terminated, within 90 days of notification of the distributor's change in status. In addition, within six months of the distributor's change in status, with respect to all debt and equity interests of the Financial Institution issued through that distributor, the Financial Institution will redeem those interests, convert the interests into direct holdings in the fund, or cause those interests to be transferred to another compliant distributor.

- With respect to any of the Financial Institution's pre-existing direct accounts that are held by the beneficial owner of the interest in the Financial Institution, the Financial Institution must review those accounts in accordance with the procedures and time frames applicable to preexisting accounts to identify any Reportable Account or account held

by a Non-Participating Financial Institution. Notwithstanding the previous sentence, the Financial Institution will not be required to review the account of any individual investor that purchased its interest at a time when all of the Financial Institution's distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to US entities and US resident individuals.

- By the later of 30 June 2014 or six months after the date it registers as a Deemed Compliant Financial Institution, the Financial Institution is required to notify the Comptroller/Assessor/Director that either it did not identify any Reportable account or account held by a Non-Participating Financial Institution as a result of its review or, if any such accounts were identified, that the Financial Institution will either redeem such accounts, transfer such accounts to an affiliate or other Financial Institution that is a participating Financial Institution, a reporting Model 1 Financial Institution, or U.S. Financial Institution.

- By the later of 30 June 2014, or the date that it registers as a Deemed Compliant Financial Institution, the Financial Institution implements policies and procedures to ensure that it either:

    a) does not open or maintain an account for, or make a withholdable payment to, any specified person, Non-Participating Financial Institution, or Passive NFFE with one or more substantial US owners and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the Financial Institution had reason to know the account holder became such a person; or
    b) reports on any account held by, or any withholdable payment made to, any specified US person, Non-Participating Financial Institution, or Passive NFFE with one or more substantial US owners to the extent and in the manner that would be required if the Financial Institution were a participating Financial Institution.

- If the Financial Institution is part of a group of Related Entities, all Foreign Financial Institutions in that group must be:
    - a participating Foreign Financial Institutions
    - a registered Deemed Compliant Foreign Financial Institutions
    - a sponsored Foreign Financial Institution
    - non-Reporting IGA Foreign Financial Institutions, or
    - an Exempt Beneficial Owners under Annex II.

### *4.2.6. Qualified credit card issuers (US Regs 1471-5(f)(1)(i)(E))*

A qualified credit card issuer is an entity that:

- is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

- by the later of 30 June 2014, or the date it registers as a Deemed Compliant Financial Institution, implements policies and procedures to either prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days.

- The terms applying to qualified credit card issuers also apply to other card and Electronic Money Issuers.

### 4.3. Certified Deemed Compliant Financial Institutions – US Agreement only

Under the Agreement Non Reporting [CD] Financial Institutions include categories of Deemed Compliant Financial Institutions, excepted Financial Institutions and exempt beneficial owners as set out under the U.S. Regulations.

A [CD] Financial Institution that qualifies as one of the Certified Deemed Compliant categories below will not need to register to obtain a GIIN. It will need to certify its status by providing documentation regarding its owners to withholding agents, where relevant.

#### *4.3.1.* Trustee-Documented Trust.

A trust resident in [CD] to the extent that the trustee of the trust is a Reporting [CD] Financial Institution and reports all information required to be reported pursuant to the Agreement with respect to all US Reportable Accounts of the trust.

#### *4.3.2. Non-registering local bank (US Regs 1471-5(f)(2)(i))*

Non-registering local banks are generally small regulated local banks, credit unions and similar entities that are primarily Depository Institutions. They may, but are not required to, operate without a profit. They have no FATCA reporting obligations.

They must not have a fixed place of business outside of [CD]. A fixed place of business outside [CD] does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions.

Non-registering local banks must have policies and procedures prohibiting the solicitation of customers outside [CD].

Total assets held by the Financial Institution cannot exceed $175 million for a single entity and $500 million for a group of Related Entities. Any Related Entities of the non-registering local bank must also satisfy these requirements. In that case, reference to fixed place of business relates to the jurisdiction in which the Related Entity operates otherwise than by way of administrative support functions.

The following fall within this category.

- [CD] Community Bank
- [any credit unions]

### *4.3.3. Financial Institution with only low value accounts (US Regs 1471-5(f)(2)(ii))*

To fall within this category, the Financial Institution must **not**:

- be an Investment Entity
- maintain any Financial Accounts exceeding $50,000
- have more than $50 million in assets on its balance sheet at the end of its most recent accounting period; and
- have more than $50 million in assets on its consolidated or combined balance sheet where it is in a group with Related Entities.

The Financial Institution has no FATCA reporting obligations.

### *4.3.4. Sponsored closely held Investment Vehicles (US Regs 1471-5(f)(2)(iii))*

This category is very similar to the Sponsored Investment Entity category of Registered Deemed Compliant Financial Institution. The Sponsoring Entity must register with the IRS but does **not** need to register the Sponsored Investment Vehicles that it sponsors.

The Financial Institution must be an Investment Entity, which is not a US Qualified Intermediary, Withholding Foreign Partnership or Withholding Foreign Trust. A sponsored entity is required to have a contractual arrangement for its due diligence and reporting responsibilities to be carried out by a sponsoring entity.

The Sponsoring Entity must be a Participating Financial Institution, a Reporting Model 1 Financial Institution or a US Financial Institution.

The Sponsoring Entity must undertake all due diligence, withholding and reporting responsibilities that the Sponsored Investment Vehicle would have if it were a reporting Financial Institution. Therefore although the Sponsored Investment Vehicle does not report on its own behalf, the Reportable Accounts maintained by the Sponsored Investment Vehicle are reported by the Sponsoring Entity. The Sponsoring Entity must also retain all documentation for a period of six years even after it has ceased to be a Sponsoring Entity for the Financial Institution.

The Sponsored Investment Vehicle must satisfy the following criteria:

- it does not hold itself out as an investment vehicle for unrelated parties; and
- it has 20 or fewer individuals that own directly or indirectly its debt and equity interests, disregarding debt interests owned by Participating Financial Institutions, Registered and Certified Deemed Compliant Financial Institutions and the equity interest owned by an entity that owns 100% of the equity and itself is a Sponsored closely held Investment Vehicle.

### *4.3.5. Investment advisers and Investment Managers*

An Investment Entity established in [CD] that is a Financial Institution solely because it:

- renders investment advice to, and acts on behalf of; or
- manages portfolios for, and acts on behalf of

a customer for the purposes of investing, managing or administering funds deposited in the name of the customer with a Financial Institution other than a Non-participating Financial Institution will be treated as a Certified Deemed Compliant Financial Institution.

An entity that also conducts other businesses that are auxiliary to rendering investment advice or manages portfolios (for example, acts as a general partner to a Limited Partnership) will not jeopardise its status as a Certified Deemed Compliant Financial Institution.

### *4.3.6. Limited Life Debt Investment Vehicles (US Regs 1471-5(f)(2)(iv))*

These are transitional rules that apply to certain limited life debt investment entities. A Financial Institution that meets the requirements of this Section will be treated as deemed-compliant until, and including, 31 December 2016. From 1 January 2017, the usual rules that relate to Financial Institutions will apply.

This Section applies where the Financial Institution is the beneficial owner of the payment, or of payments made with respect to the account, and the Financial Institution meets the following requirements:

a) It is an Investment Entity that issued one or more classes of debt or equity interests to investors pursuant to a trust indenture or similar agreement and all of such interests were issued on or before 17 January, 2013.
b) Financial Institution was in existence as of 17January 2013, and has entered into a trust indenture or similar agreement that requires the Financial Institution to pay to investors holding substantially all of the interests in the Financial Institution, no later than a set date or period following the maturity of the last asset held by the Financial Institution, all amounts that such investors are entitled to receive from the Financial Institution.
c) The Financial Institution was formed and operated for the purpose of purchasing or acquiring specific types of debt instruments or interests therein and holding those assets subject to reinvestment only under prescribed circumstances to maturity.
d) Substantially all of the assets of the Financial Institution consist of debt instruments or interests therein.
e) All payments made to the investors of the Financial Institution (other than holders of a de minimis interest) are either cleared through a clearing organization or custodial institution that is a participating Financial Institution, reporting Model 1 Financial Institution, or U.S. financial institution or made through a transfer agent that is a participating Financial Institution, reporting Model 1 Financial Institution, or U.S Financial Institution.

f) The trustee or fiduciary is only authorised to engage in activities specifically designated in the trust deed or fiduciary arrangement.

See section 10.2 for general comments on securitisations.

### 4.4. Owner Documented Financial Institutions *(US Regs 1471-5(f)(3))*

This category is intended to reduce the burden of meeting the obligations under the Agreements for closely held passive investment vehicles that fall within the definition of Investment Entity. It is not however restricted to those cases.

In order to qualify under this category the Investment Entity must satisfy the following:

- It must not maintain a Financial Account for any Non-Participating Financial Institution;
- It must not be owned by, nor be a member of, a group of Related Entities with any member that is a Depository Institution, Custodial Institution or Specified Insurance Company (i.e. it can only be affiliated to other Investment Entities); and
- It must provide the required documentation regarding its owners and agree to notify any changes in its circumstances to the Financial Institution that is undertaking the reporting obligations on its behalf.

The Financial Institution that has agreed to undertake the reporting obligations on behalf of the Investment Entity must agree to report the information relating to Specified Persons but will not report in respect of any indirect owner that holds its interest through a Participating Financial Institution, Model 1 Financial Institution, Deemed Compliant Financial Institution (other than another Owner Documented Financial Institution), an entity that is a [US/UK] Person, an Exempt Beneficial Owner or an Excepted NFFE.

## 5. NON-REPORTING FINANCIAL INSTITUTIONS – UK AGREEMENT ONLY

### 5.1. General

The concept of Non-Reporting Financial Institutions applies to both Agreements (see Section 3.4). This section deals with those entities that are treated as Non-Reporting Financial Institutions by virtue of Annex III of the UK Agreement.

### 5.2. Small or Limited Scope Financial Institutions that Qualify as Non-Reporting [CD] Financial Institutions.

The following Financial Institutions are Non-Reporting [CD] Financial Institutions

#### *5.2.1.* Local Credit Unions.

A Financial Institution satisfying all of the following requirements:

1. The Financial Institution carries on business solely as a Credit Union;

2. It is licensed and regulated under the laws of [CD];

3. It has no fixed place of business outside of [CD]; ***and***

4. All accounts maintained by the Financial Institution are held by residents of [CD].

#### *5.2.2.* Financial Institution with Only Low-Value Accounts.

A [CD] Financial Institution satisfying the following requirements:

1. The Financial Institution is not an Investment Entity;

2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of $50,000, applying the rules set forth in paragraph C of section VI Annex I for account aggregation and currency translation; and

3. The Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

#### *5.2.3.* Qualified Credit Card Issuer.

A [CD] Financial Institution satisfying the following criteria:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

2. Beginning on or before 1 July 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess

of $50,000, or to ensure that any customer deposit in excess of $50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

**5.3. Investment Entities that Qualify as Non-Reporting CD Financial Institutions and Other Special Rules.**

The Financial Institutions described in paragraphs 5.3.1 through 5.3.5 of this section are Non-Reporting [CD] Financial Institutions. In addition, paragraph 5.3.6 of this section provides special rules applicable to an Investment Entity.

***5.3.1.*** **Trustee-Documented Trust.**

A trust resident in [CD] to the extent that the trustee of the trust is a Reporting [CD] Financial Institution and reports all information required to be reported pursuant to the Agreement with respect to all UK Reportable Accounts of the trust.

***5.3.2.*** **Sponsored Investment Entity**.

A Financial Institution described in point 1 below having a sponsoring entity that complies with the requirements of point 2.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in [CD]; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution;

2. The sponsoring entity is authorised to act on behalf of the Financial Institution (such as fund manager, trustee, corporate director, or managing partner) and complies with the following requirements:

    a) The sponsoring entity is a [CD] Financial Institution**;**

    b) The sponsoring entity performs, on behalf of the Financial Institution in regard to its responsibilities under the Agreements and the Regulations, all due diligence, reporting and other requirements that the Financial Institution would have been required to perform if it were a Reporting [CD] Financial Institution;

    c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; ***and***

    d) The sponsoring entity has notified the [CD] Competent Authority of its status as a sponsor in respect of the Financial Institution and has not had its status as a sponsor revoked by the [CD] Competent Authority.

***5.3.3.*** **Sponsored, Closely Held Investment Vehicle**.

A [CD] Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity;

2. The sponsoring entity is a Reporting [CD] Financial Institution, is authorised to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, reporting and other requirements that the Financial Institution would have been required to perform if it were a Reporting [CD] Financial Institution;

3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;

4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Financial Institutions and Equity Interests owned by an Entity if that Entity owns 100 per cent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph; and

5. The sponsoring entity complies with the following requirements:

    a) The sponsoring entity is a [CD] Financial Institution**;**

    b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, reporting and other requirements that the Financial Institution would have been required to perform if it were a Reporting [CD] Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;

    c) The sponsoring entity identifies the Financial Institution in accordance with the applicable registration requirements of the [CD] Competent Authority in all reporting completed on the Financial Institution's behalf; ***and***

    d) The sponsoring entity has notified the [CD] Competent Authority of its status as a sponsor in respect of the Financial Institution and has not had its status as a sponsor revoked by the [CD] Competent Authority.

***5.3.4.*** **Investment Advisors and Investment Managers.**

An Investment Entity established in the [CD], the sole activity of which is (1) to render investment advice to, and act on behalf of, or (2) to manage portfolios for, and act on behalf of, a customer for the purposes of investing, managing,

or administering funds deposited in the name of the customer with a Financial Institution will be a non-reporting FI.

An entity that also conducts other businesses that are auxiliary to rendering investment advice or manages portfolios (for example, acts as a general partner to a Limited Partnership) will not jeopardise its status as a non-reporting FI.

***5.3.5.*** **Collective Investment Vehicle.**

An Investment Entity established in [CD] that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of $50,000) are held by or through one or more exempt beneficial owners or Active NFFEs described in subparagraph B.6. of section VI of Annex I.

***5.3.6.*** **Special Rules for reporting interests of Investment entities in Collective Investment Vehicles.**

The following rules apply to an Investment Entity:

1. Where an Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) has an interest in a collective investment vehicle as described in paragraph E of this section, the reporting obligations of that Investment Entity in respect of its interest in that collective investment vehicle shall be deemed to have been met.

2. Consistent with paragraph 3 of Article 4 of the Agreement (third-party service providers), for interests held in an Investment Entity established in the [CD] that is not as described in paragraph E of this section, the reporting obligations of all Investment Entities with respect to their interests in that [CD] Investment Entity shall be deemed to be satisfied if the information required to be reported under the Agreement with respect to all such interests is reported by the [CD] Investment Entity itself or another person.

# 6. EXEMPTIONS

## NOTE [SECTION TO BE MADE CD SPECIFIC]

### 6.1. General

Exemptions from the definition of Reporting Financial Institution or Financial Account are set out in Annex II to the US Agreement and Annex III to the UK Agreement. This section sets out those entities and products that are treated as exempt for [CD] but this is not an exclusive list. Consideration should be given to the criteria set out in the Annexes noted and if the entity or product qualifies, it will be treated as exempt. If any such entities or products are identified and not listed below, please contact [the Comptroller/Assessor/Director] for inclusion.

The exemption applies to both Agreements unless otherwise stated.

### 6.2. Governmental Entities

(To be jurisdiction specific in the next version)
For Jersey this includes:

- JFSC

For Guernsey this includes

- The States of Guernsey

For the Isle of Man this includes

- The Isle of Man Government

### 6.3. Retirement/pension funds

The following are treated as exempt accounts for the purpose of the Agreements by virtue of being a Pension Fund of an Exempt Beneficial Owner:

For the purpose of the Agreements, retirement funds are ‘subject to government regulation’ if they are registered with the tax authority for tax purposes.

Annex III of the UK Agreement allows for additional entities to be agreed between the UK Government and the [CD]. Additional pension schemes have been included in the revised Annex III for each jurisdiction, which are available on the individual CD’s website.

Additional information is included in the jurisdiction specific Pension Annex to these Guidance Notes.

### 6.4. Financial Institutions with a Local Client Base

The following are considered to qualify in this category:

- Jersey Community Bank

### 6.5. Limited Capacity Exempt Beneficial Owners

An addition has been made to Annex II (I) Exempt Beneficial Owners in the UK Agreement, by adding a new Section E - Limited Capacity Exempt Beneficial Owners - and a corresponding addition to Annex III (I) Exempt Beneficial Owners by adding a new Section H. These new sections ensure that the Controlling Persons of a charity shall be treated as an Exempt Beneficial Owners solely in their capacity as a Controlling Person of that charity, therefore removing the requirement to 'look through' the charity to the Controlling Persons This brings the treatment under the UK Agreement in line with the treatment under the US Agreement (see section 11.3).

### 6.6. To be completed locally

## 7. TRUSTS

This Section applies to all [CD] resident trusts regardless of nature except for Collective Investment Vehicles established as a trust which are treated differently (see Section 9) or trusts that are treated as exempt (see Section 6).

References in the rest of this Section to a trust are to a [CD] resident trust unless otherwise specified. See Section 7.2 for definition of [CD] resident trust.

***NOTE: Trust and Company Service Providers and any trustee that is considered to be a Financial Institution in its own right will have registration obligations under the US Agreement even if no Specified US Persons are identified in relation to the trusts that they manage or administer.***

### 7.1. How do the Agreements apply to [CD] trusts?

The reporting obligations imposed under the Agreements only apply to [CD] resident trusts where one of the following is identified as a Specified Person (see Section 1.6 for definition of Specified Person):

- settlor
- beneficiary or class of beneficiary
- trustee
- any other natural person exercising ultimate effective control over the trust

If any of the above is identified as a Specified Person, information in relation to the trust may need to be reported. How this is reported, and by whom, will depend on whether the trust is a Financial Institution or a Non-Financial Foreign Entity (NFFE). How trusts are categorised and the extent to which registration or reporting is required will be determined by a number of factors as set out in the following Sections.

If none of the above is identified as a Specified Person, no further reporting action is required in respect of the trust (although as noted above, the TCSP must register with the IRS under the US Agreement).

### 7.2. What is a [CD] resident trust?

A trust is resident in [CD], for the purpose of the Agreements, if it has a [CD] resident trustee even if there are no [CD] settlors, beneficiaries or protectors. A [CD] resident trust may be established under [CD] law or under the law of another jurisdiction.

Accordingly a trust which is established or governed under [CD] law or administered in [CD] but has no [CD] resident trustees does not fall within the scope of the Agreements.

### 7.3. Multi-jurisdictional trustees

In circumstances where there are trustees in different jurisdictions, there is a risk of duplicate reporting. The Reporting [CD] Financial Institution/[CD] resident trustee must undertake the reporting obligations in respect of a [CD] resident trust, where required, unless it has actual knowledge that the information that is required to be reported under the Agreements is being reported by another Financial Institution, whether that Financial Institution is a [CD] Financial Institution or not. A [CD] resident trustee will have actual knowledge where they hold written confirmation from the trustee in the other jurisdiction that the trust has been reported for FATCA purposes or under an agreement equivalent to the UK Agreement. There is no need for the [CD] resident trustee in this case to report anything to the [Comptroller/Assessor/Director] in respect of that trust. This does not remove the responsibility for the trustee to ensure that a report has been made and so should it be determined that no report has been made by any Reporting Financial Institution in respect of a trust that is a Reportable Account, penalties may be imposed by the [Comptroller/Assessor/Director].

### 7.4. How are trusts categorised for the purposes of the Agreements?

The Agreements set out that a Trust is, for these purposes, to be treated as an Entity.

A trust may either be a Financial Institution, or a Non-Financial Foreign Entity (NFFE).

A trust could fall within any of the definitions of Financial Institution depending on the nature of its activities and the assets it holds. It is expected that a trust will be treated as a Financial Institution most commonly where it meets the definition of an Investment Entity. This section sets out how a trust would be treated if it was an Investment Entity or an NFFE. It does not deal with those that would be another type of Financial Institution.

#### *7.4.1. Trusts as Investment Entities*

See Section 3.9 for a full definition of Investment Entity and comment on what is meant by “managed by’. As there is a choice of definition of Investment Entity, a trust could be an Investment Entity under one definition but not under another. It will be a policy decision of the entity to determine which definition to apply.

In practice, a trust that is “managed by” a Trust and Company Service Provider (TCSP), or any other Financial Institution, will be an Investment Entity under the IGA definition. If the trust is to use the US Treasury Regulation or CRS definitions then the trust must also satisfy the financial assets test as defined in 3.9. A trust may also be an Investment Entity if it otherwise qualifies as an Investment Entity as defined in 3.9. Otherwise it will be an NFFE and its activity will determine whether it is a Passive or Active NFFE.

When using the US Treasury Regulation or CRS definitions of an Investment entity, in determining whether a trust’s gross income is primarily attributable to

Financial Assets, it is important to consider the underlying source of the income. For example, while a real estate trust may hold its property through companies and so receives its income in the form of dividends, the underlying activity is property holding which is not a financial asset for this purpose. The trust would not be an Investment Entity in this case.

The status of any trust that is not managed by a TCSP or another Financial Institution will be determined by its activity. It could still be a Financial Institution or a Passive or Active NFFE.

A trust that is managed by an individual will not be an Investment Entity under the "managed by" condition but may still fall to be an Investment Entity by virtue of its activity.

The holding of a Financial Account by the trustee, such as a bank account, with a Financial Institution where that Financial Institution does not participate in the management of the trust or Financial Assets does not in itself make the trust an Investment Entity.

***Example 1 Trust managed by an individual.***
X, an individual, establishes Trust A, for the benefit of X's children, Y and Z. X appoints Trustee A, an individual, to act as the trustee of Trust A. Trust A's assets consists solely of financial assets, and its income consists solely of income from those financial assets. Pursuant to the terms of the trust instrument, Trustee A manages and administers the assets of the trust. Trustee A does not hire any entity as a third-party service provider to perform any of the activities described in Section 3.9.

Under the IGA definition, Trust A is not an Investment Entity because it does not conduct as a business any of the activities listed in 3.9.1 and it is not managed by a Financial Institution.

Under the Regulations/CRS definition Trust A is not an Investment Entity because it is managed solely by Trustee A, an individual.

***Example 2 Trust managed by a trust company.***
The facts are the same as in Example 1, except that X hires Trust Company, a Financial Institution, to act as trustee on behalf of Trust A. As trustee, Trust Company manages and administers the assets of Trust A in accordance with the terms of the trust instrument for the benefit of Y and Z.

Under the IGA definition, Trust A is an Investment Entity because it is managed by a TCSP (a Financial Institution).

Under the Regulations/CRS definition Trust A is an Investment Entity because it is managed by a Financial Institution and all of its income is attributable to financial assets.

***Simplified reporting and registration requirements***
A trust that is an Investment Entity may be able to utilise one of the following categories of Financial Institution to simplify the registration and reporting process.

- A Trustee-Documented Trust (Section 7.4.1.1)
- A Sponsored Investment Entity (Section 7.4.1.2)
- Owner Documented Financial Institution (Section 7.4.1.3)

In these cases, the trust will be a Non-Reporting Financial Institution and also, for US Agreement purposes only, will be treated as Deemed Compliant.

If none of these categories apply, and the trust is not an NFFE, the trust will be a Reporting Financial Institution and will need to register and report in accordance with the rules that apply to Reporting [CD] Financial Institutions as an Investment Entity (see [ ]).

#### *7.4.1.1. Trustee-Documented Trust*

If a trustee of a trust is any of the following:

- A Reporting US Financial Institution;
- A Reporting UK Financial Institution;
- A Reporting [CD] Financial Institution;
- A Reporting Model 1 Financial Institution; or
- A Participating Foreign Financial Institution;

and the trustee agrees to report all the information required to be reported with respect to the trust, the trust may be treated as a Trustee-Documented Trust.

Under the US Agreement, the trust itself is not required to register. The trustee will register itself by virtue of being a Financial Institution but will not have to register the trust.

In practice, all [CD] resident trusts, whether or not established in [CD] that are managed by a [CD] regulated TCSP may qualify as a Trustee-Documented Trust, provided the trustee meets one or more of the requirements set out above.

#### *7.4.1.2. Sponsored Investment Entity*

***US Agreement***
Any trust that is an Investment Entity, even if professionally managed, may appoint a sponsor to undertake its due diligence, registration and reporting responsibilities, except where it is a withholding foreign trust in accordance with US Treasury Regulations.

If a sponsoring entity is appointed by a trust, no registration of the trust is required unless there is a US Reportable Account. If a US Reportable Account is identified, the sponsoring entity must register the trust on or before the later of 31 December 2015 or 90 days after the Reportable Account is identified.

This contrasts with a Trustee-Documented Trust which is not required to be registered at any time.

See 4.2.1 for further information on the obligations of a sponsoring entity under the US Agreement.

***UK Agreement***
Any [CD] trust that is an Investment Entity, even if professionally managed, may appoint a [CD] sponsoring entity to undertake its due diligence and reporting responsibilities. The [CD] sponsoring entity must identify the trust in the reporting completed on behalf of the trust and notify the [Comptroller/Assessor/Director] of its status as sponsor.

See section 5 for further information on the obligations of a sponsoring entity under the UK Agreement.

#### *7.4.1.3. Owner Documented Financial Institution*
This option will be available under the US Agreement to trusts that are Investment Entities if appropriate. (See Section 4.4.)

### *7.4.2. Trusts as NFFEs*
A trust that is not a Financial Institution will be an NFFE. Depending on the trust activities, it will either be a Passive NFFE or an Active NFFE.

For further information on the reporting obligations in respect of these trusts, refer to the Section on NFFEs (Section 11).

- ***A Passive NFFE***

  A trust that is not a Financial Institution and has 50% or more passive assets and/or income is treated as a Passive NFFE. See Section 11.3 for definition of passive income.

  This might, for example, apply to a family trust that is not professionally managed and has no income or predominately passive income. A trust, whether or not professionally managed, that only holds real estate for example, may be treated as a Passive NFFE.

- ***An Active NFFE***

  A trust that is not a Financial Institution and satisfies the criteria as set out in Section 11 will be treated as an Active NFFE. There are no reporting requirements in respect of these trusts.

## 7.5. Registration – US Agreement only
***A trustee will be required to register in its own right if it is a Financial Institution even if it does not identify a Specified US Person in any of the trusts that it manages or administers.***

The registration requirements for trusts depend on how the trust is categorised.

If a trust is a Trustee-Documented Trust, the trustee is obliged to register in its own right as it is a Financial Institution. There is no requirement for details of the trust to be registered or disclosed.

If a trust utilises the Sponsored Investment Entity category the sponsoring entity may have to register the trust in certain circumstances. See Section 7.4.1.2.

If a trust utilises the Owner Documented Financial Institution category it does not have to register.

If a trust is treated as a Reporting [CD] Financial Institution in accordance with Section 3.3 and does not utilise the Trustee-Documented Trust, Sponsored Investment Entity or Owner Documented Financial Institution categories, it is required to register.

There are no registration requirements for a trust treated as an NFFE (other than if the trust has elected to be classed as a "Direct-Reporting NFFE").

See Section 13 for further details on registration under the US Agreement. There are no registration requirements for any entity under the UK Agreement.

### 7.6. Reporting obligations

If a trust utilises the Trustee-Documented Trust, Sponsored Investment Entity or Owner Documented Financial Institution categories, it is a Non-Reporting [CD] Financial Institution. For the purposes of the US Agreement only it will also be treated as Deemed Compliant. In both of these cases, the trustee, sponsoring entity or other Financial Institution that has taken on the reporting obligations, is responsible for reporting the information required under the Agreements (see Section 19 for general information on reporting).

If a trust is a Reporting [CD] Financial Institution in its own right and cannot utilise any of the categories to make it a Non-Reporting [CD] Financial Institution, it is required to undertake the reporting obligations.

A trustee or trust which is a Reporting [CD] Financial Institution can use third party service providers to undertake the reporting on their behalf but the responsibility for reporting remains with the Reporting [CD] Financial Institution.

If a trust is a Passive NFFE, the Financial Institution where the trust holds Financial Accounts will be required to undertake the necessary due diligence procedures to determine if the account is a Reportable Account.

### 7.7. Information to be reported – trusts as Investment Entities

This Section relates to trusts that are Investment Entities. Trusts that are NFFEs (other than Direct-Reporting NFFEs) do not have any reporting obligations themselves although any Financial Institution that holds a Financial Account for such a trust which has a Specified Person as a Controlling Person will need to report the information as set out in Section 11.

The Equity Interest in the trust is the Financial Account. The Financial Account will depend on the nature of the trust and the relationship between the trust and the account holder. In determining the value of the Financial Account consideration must be given to the value of the property which is subject to the Financial Account. This will include underlying companies and other assets owned by the trust in relation to the equity interest of the account holder.

Where any of the trust property is a non-financial asset, such as real estate which is considered to be a non-financial asset under the US Treasury Regulations, the value of this asset should be included in the valuing the Reportable Account where it forms part of the account holder's equity interest in the trust.

Exempt Products can be excluded from valuing the Reportable Account where they form part of the account holder's equity interest in the trust but can be included if it is easier to do so due to the record keeping procedures of the trustee.

The following information must be reported in respect of any person listed in 7.1 who has been identified as a Specified Person.

a) Name, address and TIN/National Insurance Number (where applicable)
b) Account number or functional equivalent
c) Name and Global Intermediary Identification Number ('GIIN') of the Reporting Financial Institution
d) Equity Interest (balance or value) in the trust at the end of the calendar year or other appropriate reporting period
e) Total gross amount paid or credited to the Specified Person during the calendar year or other appropriate reporting period.

In practice, the following will be treated as having an equity interest in the trust and reporting will apply to those individuals who are identified as a Specified Person:

i. A settlor of the trust;
ii. A beneficiary that is entitled to a mandatory distribution or benefit (directly or indirectly) from the trust;
iii. A beneficiary that receives a discretionary distribution or benefit (directly or indirectly) from the trust in the calendar year; and
iv. Any person that exercises ultimate effective control over the trust.

The amounts reported under d) and e) above will depend on the nature of the trust and the interest held by the Specified Person. Sections 7.8 to 7.11 set out the amounts to be reported in each case. The amounts reported are not ascribable for the purposes of determining a tax liability.

### 7.8. Equity Interest (balance or value)

The Equity Interest in a trust is the value of the proportion of the trust assets in which any person set out in 7.7 has an interest. The value of the Equity Interest will be the most recent value of the trust calculated by the Financial Institution and should

include the value of all assets, financial and non-financial, but can exclude Exempt Products.

The total value of the assets of the trust must be consistent with that used by the trustees for valuation purposes and should be based on a recognised accounting standard. Refer to section 8 for the application of this principle to retirement /pension funds. Listed securities should be valued at the appropriate market rate on the day concerned. Unlisted securities may be valued at the original book value unless another accounting basis was used by the trust for normal valuation purposes.

The Equity Interest attributable to the settlor of any settlor interested trust is the whole value of the trust. Where a settlor is excluded from the trust, the Equity Interest can be considered to be nil but will still be a Financial Account and hence reportable.

The Equity Interest of a beneficiary that is entitled to mandatory distributions (directly or indirectly) from a trust will be the net present value of amounts payable in the future and should be measured on a recognised actuarial basis. It is recognised that this may be difficult and expensive to calculate in which case it is permitted to use the accounting net asset value of the assets in which the beneficiary has an interest. Refer to section 8 for the application of this principle to retirement /pension funds.

For a discretionary trust, the Equity Interest attributable to a beneficiary directly or indirectly in receipt of a distribution and/or benefit will be the amount of the distribution and/or benefit received in the relevant reporting year.

In the case of a pre-existing account, the amount of distributions and/or benefits (directly or indirectly) made to a discretionary beneficiary during the period 1 July 2013 to 30 June 2014 should form the base of determining the value or balance of an equity interest attributable to the beneficiary as at 30 June 2014.

Where a discretionary beneficiary receives a distribution and/or benefit (directly or indirectly) after 1 July 2014, the equity interest in the trust may be treated as a pre-existing account if the beneficiary has received previous distributions or benefits (directly or indirectly) and the trustee has current KYC documentation on the beneficiary.

### 7.9. Amounts paid or credited to the Specified Person

The amounts to be reported as paid or credited to a Specified Person are the total gross amounts paid or credited to any person who receives a mandatory or discretionary distribution from the trust, including aggregate payments in redemption of the account.

Amounts attributable for tax purposes to a settlor or other person are not treated as paid or credited to a Specified Person. In addition, the amounts reported are not ascribable for the purposes of determining a tax liability.

### 7.10. Nil returns

Where a Financial Institution has identified no Reportable Accounts, it does not need to file a nil return.

## 7.11. Treatment of [CD] underlying trust companies

This Section is relevant for registration requirements under the US Agreement.

Where a trust that is a CD Financial institution is treated as a Non-Reporting Financial Institution, underlying related Entities (see section 3.13) that are Guernsey, Jersey or Isle of Man Financial Institutions may also be treated as Non-Reporting [CD] Financial Institutions. In that case, the trustee of the trust will be the Reporting Financial Institution and will be required to report in respect of those companies.

For the avoidance of doubt if the underlying related Entity is not a Guernsey, Jersey or Isle of Man Financial Institution then the provisions of this section of the Guidance notes will not apply.

Subject to them being Financial Institutions, [CD] underlying companies in the circumstances described above are not required to register although in certain circumstances may choose to register, for example where they require a GIIN to be recognised as a Financial Institution by a non-[CD] Financial Institution.

## 7.12. Trusts that hold Non-Financial Assets

Under the US Treasury Regulation or CRS definitions of an Investment entity, a trust where at least 50% of its gross income is derived from non-financial assets (see section 3.9.2) is not considered to be a Financial Institution. It will be an NFFE. Where the non-financial asset is held through a company or other entity, it is possible to ignore the company/entity and treat the structure as a whole in determining whether the 'gross income' test is met.

This test applies to the three years ended 31 December of the year preceding the year in which the determination is made or the period since commencement if shorter.

If a trust owns non-financial assets and financial assets, all of the trust's investments and activities will need to be considered when determining whether it is a Financial Institution or NFFE, and not just those that are carried out by the entity that holds the non-financial assets.

Alternatively the trust may use the IGA definition of an Investment Entity and disregard the necessity of considering the 'financial assets' test as detailed above.

This also applies to company holding structures where non-financial assets are held through subsidiary/nominee entities.

## 7.13. Employee Benefit Trusts (EBTs)

Trusts established in the context of employment arrangements to provide benefits for employees should be considered in the same way as any trust and categorised accordingly.

In circumstances where the required reporting is carried out by a non-CD administrator or company, for an EBT resident in the [CD], the information would be required to be reported to the Comptroller/Director/Assessor, albeit by a non-CD administrator on behalf of the trust.

Notwithstanding this, provided that reporting does take place to the Comptroller/Director/Assessor on behalf of the [CD] FIs it is agreed that these EBTs (although not technically a domestically sponsored FI as per the UK Agreement) are fully compliant with their obligations as the reporting is undertaken via a third party service provider.

### 7.14. Trusts set up to pay school fees

The Equity Interest of a trust set up solely and specifically to pay school fees will depend on the contractual obligation of the trust. If the contract to pay the school fees is directly with the school, no reporting is required in relation to that agreement. If there is no agreement with the school, the Equity Interest of the trust should be disclosed in respect of the settlor and not the minor beneficiaries.

### 7.15. Non professional trustees/family trusts/family offices

The obligations of the trust and trustees will depend on the nature of the trust. Each trust will need to be analysed to determine whether it is a Financial Institution or an NFFE.

A trust that is managed by an individual may not be a Financial Institution and so may be a Passive or Active NFFE depending on the nature of its activities.

### 7.16. Charitable trusts

Under the US Agreement, [CD] Charitable Trusts may be viewed as Active NFFEs under the religious, charitable, scientific, artistic, cultural or educational purposes clause (see section 11.3). Under the UK Agreement, such trusts will also be viewed as Active NFFEs where all of the trust's beneficiaries are limited capacity exempt beneficial owners (see 6.5) and the trust deed does not permit and income or assets to be distributed to, or applied for the benefit of, any person other than limited capacity exempt beneficial owners.

### 7.17. Unit trusts

A unit trust that is a regulated or unregulated fund as defined in Section 9 will be treated as a Collective Investment Vehicle. [A privately owned Jersey Property Unit Trust for example would not be a CIV.] Where a unit trust is not a CIV it should be categorised in the same way as any other trust as set out in this section.

### 7.18. UK Resident Non Domiciled Specified UK Person – UK Agreement only

This relates to the Alternative Reporting Regime (ARR) under the UK Agreement which is an optional regime. See Appendix 4 for further information on the ARR.

As noted above, the equity interest in a trust is the Financial Account which, if the settlor, beneficiary or person with ultimate effective control is a Specified UK Person,

is the UK Reportable Account. This remains the case where that Specified Person is a UK Resident Non-Domiciled Person.

The Reporting [CD] Financial Institution, which in the case of a professionally managed trust is the trustee, has to report gross payments and movement of assets from a UK source or from a jurisdiction that cannot be determined to the Reportable Account, i.e. the equity interest in the trust. It also has to report gross payments from the trust to a UK destination or destination in an undetermined jurisdiction.

No disclosure is required in respect of interest or other income arising in the trust.

## 8. FOUNDATIONS

Under domestic law, foundations are treated as corporate taxpayers and, therefore, can be a Financial Institution or an NFFE depending on the nature of the foundation's activities.

If the foundation is a Financial Institution, it can be treated in the same way as a trust, provided the following circumstances apply:

- The foundation has established a council to administer the foundation's assets and carry out its objects.
- The council has a qualified person who is the qualified member on the council.
- That qualified person is registered to carry on trust company business.
- In the case of a single member council, that single member will be the qualified person and so registered to carry on trust company business.

The categories that apply to trusts that are Financial Institutions, such as trustee-documented trusts, can apply to foundations that are Financial Institutions. See Section 8.

A foundation that is an NFFE must be reviewed to determine whether it is an Active NFFE or a Passive NFFE and treated accordingly. See Section 11.

# 9. COLLECTIVE INVESTMENT VEHICLES

## 9.1. Definition of a Collective Investment Vehicle

For the purposes of the Agreements, Collective Investment Vehicles includes any entity which is:

- a collective investment fund as defined in the [CD relevant]

This therefore includes all regulated funds and unregulated funds as defined in the [CD relevant legislation].

Any entity treated as a Collective Investment Vehicle for these purposes will be an Investment Entity, and hence a Financial Institution under the IGA definition. Under the US Treasury Regulations and CRS definitions, the entity will need to consider its investment strategy and gross income position to determine whether it is classed as an Investment Entity. For example, a Collective Investment Vehicle that invests primarily in non-financial assets such as real property would not be classed as an Investment Entity (see section 3.9.2).

The following will not be treated as a Collective Investment Vehicle but may be a Financial Institution.

a. Any entity regulated under the [CD relevant]
b. Very private structures; and
c. Privately owned [CD] Property Unit Trusts.

Consideration must be given to the activities of the entity in determining whether it is a Financial Institution, and if so which category, or an NFFE.

## 9.2. How the Agreements apply to fund entities

The following types of entities resident, for the purposes of the Agreements, in [CD] are treated as Investment Entities:

- Collective Investment Vehicles (as defined above);
- Fund managers;
- Investment managers;
- Fund administrators;
- Transfer agents; **and**
- Depositories and trustees of unit trusts.

However, the only Financial Accounts relevant to the Agreements are the Equity and Debt Interests issued in Collective Investment Vehicles. See section 9.

Where an Investment Entity is a Collective Investment Vehicle constituted by a person, only the Collective Investment Vehicle will have reporting responsibilities in relation to the Financial Accounts (i.e. the Equity & Debt Interests) issued in that Collective Investment Vehicle.

Generally, any Investment Entity which is part of a fund structure other than:

- a Collective Investment Vehicle; or
- a manager or operator of a Collective Investment Vehicle that is not constituted as a person,

will not have any reporting responsibilities in relation to the interests in the Collective Investment Vehicle UNLESS it is the trustee of a trustee-documented trust (see 7.4.1.1) or is a Sponsoring Entity (see 7.4.1.2).

### 9.3. Residency of Collective Investment Vehicles

A Collective Investment Vehicle may be considered 'resident' in [CD] for the purposes of the Agreement if it is incorporated in [CD] or if not incorporated in the [CD], its business is managed and controlled in the island. In the case of partnerships, notwithstanding their treatment for tax purposes and their actual legal status, they are considered entities for the purposes of the Agreement. Therefore, a Collective Investment Vehicle constituted as a partnership will be considered resident in [CD] it is managed and controlled in [CD]; in relation to limited partnerships, this will generally be where the general partner is resident.

The residence of a unit trust is established by the residence of its trustee.

### 9.4. Reporting Obligations

For US Reportable Accounts, if a Collective Investment Vehicle takes advantage of the Sponsored Investment Entity Financial Institution categories, it is a Non-Reporting [CD] Financial Institution. In these cases, the sponsoring entity or other Financial Institution that has taken on reporting obligations is responsible for reporting the information required under the Agreement.

A Collective Investment Vehicle may look to delegate their obligations under the Agreements to a Third Party Service Provider. This arrangement is permitted by the Agreements, although ultimate responsibility may not be delegated and will remain with the Collective Investment Vehicle as the Reporting Financial Institution

If a Collective Investment Vehicle is a Reporting [CD] Financial Institution in accordance with [section 3.3] it will be subject to reporting requirements.

Various entities may fall within the definition of Investment Entity [see section 3.9]. However, provided the fund is a Collective Investment Vehicle, only the Collective Investment Vehicle will have obligations under the Agreement. The fund will need to determine which Investment Entity carries out the obligations to identify, verify and report on Account Holders that are Specified Persons, by reference to the principal documents, information particulars and other agreements by which the scheme is constituted.

#### *9.4.1. Information to be reported*

This section relates to Collective Investment Vehicles that are Investment Entities.

The Reportable Account in a Collective Investment Vehicle is the Equity or Debit Interest issued in that Collective Investment Vehicle except where the interests are regularly traded on an established securities market.

The following information must be reported in respect of any person who has been identified as a Specified Person under the relevant Agreement
The information to be reported is that set out in section 19.1.1 and 19.1.2 but with the following clarification in the context of Collective Investment Vehicles.

- "Account balance or value" means Equity Interest (balance or value) in the Collective Investment Vehicle at the end of the calendar year or other appropriate period.

- g & h) The total gross amount paid or credited to the Account Holder (in respect of the Reportable Account) including the aggregate amount of any redemption payments, or similar type payments made to the Account Holder by the Collective Investment Vehicle in respect of the Reportable Account during the calendar year or other appropriate reporting period.

### 9.5. Related Entities

Refer to section [3.13] for information on Related Entities

### 9.6. Platforms and other distributors of Funds

Fund distributors may include:

- Independent Financial Advisers (IFAs)
- Fund platforms
- Wealth managers
- Brokers (including execution-only brokers)
- Banks
- Building societies; **and**
- members of an insurance group

may fall within the definition of Investment Entity because of their role in distributing a Collective Investment Vehicle as defined for the purposes of the Agreement.

There are two different types of fund distributors:

- those that act as an intermediary in holding the legal title to the interests in Collective Investment Vehicle (such as nominee); and
- those that act on an advisory basis.

Where a customer appears on the Collective Investment Scheme's register, the responsibility to report on that customer lies with the fund. As shown in the following example, if a customer invests via a fund platform, the responsibility to report on the customer may lie with the platform.

***Example 1***

Fund platforms typically hold legal title to Interests in a Collective Investment Vehicle on behalf of their customers (the investors) as nominee who access the platform in order to buy and sell investments and to manage their investment portfolio. The platform will back the customers' orders with holdings in the Collective Investment Vehicle, and possibly other assets. But only the platform will appear on the register of investors in the Collective Investment Vehicle. Where this is the case the platform will be responsible for reporting on its interests in the Collective Investment Vehicle as Financial Accounts.

Where financial advisers' activities do not go beyond the provision of investment advice to their customers and/or acting as an intermediary between the Collective Investment Scheme, or fund platform and the customer, then they will not hold legal title to the assets and therefore are not in the chain of legal ownership of a Collective Investment Scheme. Such financial advisers will not be regarded as the Financial Institution that maintains the Financial Account in respect of the accounts on which they advise (see 9.6.2 below).

A platform may have a 'mixed business' i.e. it acts as an adviser or 'pure intermediary' between the investor and the underlying Financial Institution (such as a Collective Investment Scheme), on behalf of some customers. In addition, it also holds legal title to interests on behalf of other customers. In the case where legal title is held, the platform will be a Financial Institution with a reporting obligation in respect of those interests. From the platform's perspective it will not be treated as maintaining those accounts where it acts as an adviser or pure intermediary. This is consistent with the treatment of a Central Securities Depository.

### *9.6.1. Fund nominees- Distributors in the chain of legal ownership*

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Vehicles are Financial Institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

When considering whether such a distributor meets the condition requiring 20 per cent of the entity's gross income to derive from holding of financial assets and from related financial services, so as to be considered as a Custodial Institutions for the purposes of the Agreement, consideration should be given as to whether the income derived from acting as nominee arises in another group company, or whether income is derived from commission, discounts or other sources.

Fund nominees, fund intermediaries and fund platforms will nevertheless still be Financial Institutions because they would otherwise be within the definition of Investment Entity. In this case the Financial Accounts will be the Financial Accounts maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

The [CD Authority] will treat fund nominees, fund intermediaries and fund platforms as Custodial Institutions unless specific factors indicate that their

businesses are better characterised as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold financial assets for the account of others.

For the purpose of aggregating accounts to determine whether any Pre-existing Custodial Accounts are below the de minimis threshold, a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customers' underlying interests are in different Collective Investment Vehicles.

### *9.6.2. Advisory only distributors*

Such distributors, which may include Financial Advisors, may nevertheless be asked by Financial Institutions to provide assistance in identifying Account Holders and obtaining self-certification.

For example, Independent Financial Advisors will often have the most in-depth knowledge of the investor and direct access to the customer so will be best placed to obtain self-certifications. However, the [**CD Authority**] does not regard such advisory only distributors as Financial Institutions and they will only have obligations pursuant to contractual agreements with those Financial Institutions where they act as a third party service provider in relation to those Financial Accounts.

## 9.7. Qualified Collective Investment Vehicles

See [section 4.2.4 ].

Qualified Collective Investment Vehicles are treated as Registered Deemed Compliant Financial Institutions.

This category is intended to provide relief for Investment Entities that are owned solely through [CD] Financial Institutions, Partner Jurisdiction Financial Institution [PFFI in US Regulations], or directly by large institutional investors not typically subject to FATCA withholding or reporting.

An Investment Entity with other types of investors may qualify as deemed compliant if meeting the requirements of a restricted fund. [Section 1.8]

A Qualified Collective Investment Vehicle must be an Investment Entity and must be regulated as an Investment Entity in [CD] and every other country in which it operates. A Fund is considered to be regulated if its manager is regulated with respect to the Collective Investment Vehicle in all of the countries in which the Collective Investment Vehicle is registered and in all of the countries in which the investment fund operates.

A Qualified Collective Investment Vehicle's investors are limited to equity investors, direct debt investors with an interest greater than $50,000 and other Financial Account Holders are limited to participating Foreign Financial Institutions, Registered Deemed Compliant Foreign Financial Institutions, retirement funds classified as

Exempt Beneficial Owners, US Persons that are not Specified US Persons, Non-Reporting IGA Foreign Financial Institutions, or other Exempt Beneficial Owners.

Each member of the group of Related Entities must be a Participating Foreign Financial Institution, a Registered Deemed Compliant Foreign Financial Institution, a sponsored Foreign Financial Institution, a Non-Reporting IGA Foreign Financial Institution or an Exempt Beneficial Owner.

### 9.8. Restricted Funds

Refer to 1475-5(f)(1)(i)(D) of the US Treasury Regulations (p436).

### 9.9. Sponsored Investment Entities

Any Financial Institution which is an Investment Entity, even if professionally managed, may appoint a sponsor to undertake all of its registration, due diligence and reporting responsibilities, except where it is a Qualified Intermediary or Withholding Foreign Partnership or Withholding Foreign Trust in accordance with US Treasury Regulations. In doing so, the Financial Institution will become a Sponsored Investment Entity. A Collective Investment Vehicle's manager, for example, may be appointed as a sponsor to that Scheme and in that capacity will be a sponsoring entity to the Collective Investment Vehicle.

In relation to the US Agreement, where a sponsoring entity has been appointed by a manager of a Collective Investment Vehicle, the sponsoring entity must register as such with the IRS.

A sponsor must undertake all due diligence and reporting obligations under the Agreements on behalf of the Sponsored Investment Entity (and where appropriate outsource such obligations to third party service providers). This will include account identification and documentation. A sponsor will need to ensure that new investors in the Schemes it sponsors are appropriately documented for meeting its obligations as a sponsor and fulfilling all due diligence reporting obligations under the Agreements for the purposes of its Sponsored Investment Entities.

Where a sponsor acts on behalf of a range of Collective Investment Vehicles, the classification of an account as a New Account or Pre-existing Account can be done by reference to whether the account is new to the sponsor (e.g. the manager of the Collective Investment Vehicle) and not the Collective Investment Vehicle itself. This will prevent the manager from having to seek appropriate documentation from the same account holder repeatedly, where the account holder is invested in more than one of the Collective Investment Vehicles. Where a sponsor is able to link accounts in this manner, the account will also need to be aggregated.

Where the sponsoring entity subsequently identifies a US Reportable Account in respect of the Collective Investment Vehicle, the sponsoring entity must register the sponsored entity on or before the later of 31 December 2015 or 90 days after the US Reportable Account is identified.

If a sponsoring entity is appointed by Investment Entity, no registration of the Sponsored Investment Entity is required, unless a US Reportable Account is

identified. If such an account is identified, the sponsoring entity must register to the IRS on or before the later of 31 December 2015 or 90 days after the US Reportable Account is identified**.**

The Sponsoring Entity will report to [CD] on all of the Account Holders of the Sponsored Investment Entities that it manages.

### *9.9.1. Sponsored Offshore Collective Investment Vehicles*

In practice, a manager may act for Collective Investment Vehicles located in a number of jurisdictions. When acting as sponsor, the manager will need to act on behalf of the sponsored Collective Investment Vehicle ranges independently, with respect to each tax authority in which they are domiciled.

***Example 1***

A [CD] fund manager manages fund ranges in [CD] (A), another Model 1 IGA Country '(B) and a non-IGA Country, '(C). The [CD] manager can register as sponsor for all or some of the Collective Investment Vehicles in each of these jurisdictions. The sponsor would:

- Report to [CD ] on behalf of the [CD] Collective Investment Vehicle range (A);
- Report to the relevant authority in IGA Country (B) on behalf of the Collective Investment Vehicles domiciled there (subject to the law of Country B in relation to data protection, duties of confidentiality etc); and
- Report directly to the IRS on behalf of the funds domiciled in the non-IGA country (C), (subject to the law of Country B in relation to data protection, duties of confidentiality etc).

## 9.10. Registration

Current draft IRS documentation [form 8957], relating to the registration process for FATCA, indicates that the application form makes reference to a Financial Institution's country for tax residence purposes.

Where the Financial Institution is a member of an Expanded Affiliated Group, current IRS procedures require that the lead of this group registers and has obtained their Global Intermediary Identification Number (GIIN) so that when other group members/ Related Entities are registering they are also able to use this information

See also section 13.4, which sets out the timetable for registration.

### *9.10.1. Equity & Debt Interest in an Investment Entity*

Where an Investment Entity is an asset manager, investment advisor or other similar Entity, then their Debt and Equity Interests issued in such Investment Entity, are excluded from being a Financial Account. This mirrors the treatment of Debt and Equity Interests in Entities that are solely Depository or Custodial Institutions.

Debt and Equity Interests (other than interests that are regularly traded interests) are only Financial Accounts in relation to those Entities that are Investment Entities because:

- the Entity's gross income is attributable to investing, reinvesting or trading in financial assets, and they are managed by a Financial Institution including another Investment Entity, **or**

- the Entity functions or holds itself out as a Collective Investment Vehicle, mutual fund, exchange traded fund, private equity fund, or any similar investment vehicle established with an investment strategy or investing, reinvesting or trading in financial assets.

In the case of a partnership that is a Financial Institution, the term Equity Interest means either a capital or profits interest in the partnership.

In the case of a unit trust that is a Financial Institution, an Equity Interest means an interest held by a unitholder.

A Specified Person under an Agreement shall be treated as being a beneficiary of a Trust if such a person has the right to receive directly, or indirectly a mandatory or discretionary distribution from the Trust.

#### *9.10.2. Debt or Equity interest regularly traded on an established securities market*

For the purposes of the Agreements the term listed on a recognised stock exchange, in respect of shares and securities, will take its meaning as set out in sections 12.9 in respect of the UK Agreement and 12.10 in respect of the US Agreement:

### 9.11. Aggregation of Accounts

For the purposes of determining whether an Equity or Debt Interest in a Collective Investment Vehicle represents a Low or High Value Account for due diligence purposes it is necessary for the reporting [CD] Financial Institution to aggregate all Equity and Debt Interests held by an identified Specified Person in any Financial Account for which the Financial Institution is the Reporting Financial Institution but only where the accounts are linked by a computerised system.

For the purpose of aggregating accounts to determine whether any Pre-existing Custodial Accounts are below the de minimis threshold (i.e. those maintained by the distributor), a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customer's underlying interests are held in different Collective Investment Vehicles.

## 10. OTHER SPECIFIC VEHICLES

### 10.1. Partnerships

For the purposes of the Agreement, partnerships are regarded as an entity. The type of entity will depend on the activities undertaken by the partnership but a partnership may fall into any of the categories of Financial Institution. Where a partnership is a Financial Institution it will need to identify any Financial Accounts it holds, including any equity interest in the partnership itself. The Equity Interest in this regards will be the capital or profits interest in the partnership of any partners who are Specified Persons.

### 10.2. Securitisation vehicles

Securitisation structures are in many instances legally remote from the Financial Institution in relation to which the risks and rewards of the structure are associated. Typically, a securitisation structure will include an issuing entity, funding entity, seller, mortgage trustee and often counterparties.

The common principles (as set out in Section 3) as to whether an entity meets the definition of a Financial Institution should be applied to all entities within a securitisation structure. More specifically, the expectation would be that issuing entities are likely to be classified as Investment Entities on the basis of their activities, Trusts should be classified in accordance with the Trust principles set out within Section 7 and holding and funding entities will likely be treated as Financial Institutions in their own right. A securitisation vehicle that is a Financial Institution will need to consider if it has any Financial Accounts that may be reportable. If there are no Financial Accounts a nil return is not required.

**Example of a post 17 January 2013 (in accordance with the US Final and Temporary Regulations) Securitisation programme**

***Cash Flows:***

1. Mortgage customer makes their regular monthly mortgage payment to Bank A plc.
2. Bank A plc identifies appropriate SPV that cash belongs to and pays cash to the Trust.
3. Once a month on the distribution date the Trust pays cash to the funding company.
4. Funding company pays cash on payment date to Bank B.
5. Bank B passes the cash to Euroclear or Clear Stream, the exchanges on which the Bonds are held.
6. Euroclear and Clear Stream pass the cash to the custodian bank who then credits the Bondholders' accounts. Bondholders then draw on their cash at the custodian bank.

The above scenario provides the following reporting obligations:

- Mortgages are not within the Financial Account definition so there is no Financial Account with Bank A Plc and therefore no reporting requirement in relation to them.

- Steps 3 – 5 involve payments made between Financial Institutions and as such there is no need for any of these payments to be reported. The Trust though may have reporting requirements if any of its controlling persons are Specified US/UK persons.
- In step 6 the Custodian will have Financial Accounts in which the Bonds are held and as such the Custodian will need to identify if it has any reportable accounts. Where it does, it must perform the necessary reporting which will include gross amounts of interest paid.

For pre 17 January 2013 securitisation programmes, please see section 4.3.6 (Limited Life Debt Investment Vehicles) for transitional rules.

### 10.3. Non-trust companies (standalone companies) administered by TCSP

Non-trust companies administered by TCSPs must be categorised as a Financial Institution or NFFE as appropriate.

### 10.4. Personal Investment Companies

Personal Investment Companies will need to consider whether they are within the definition of Investment Entity. Where a Personal Investment Company is managed by a Financial Institution it may be an Investment Entity; consideration must be given to the definitions of Investment Entity in section 3.9.

### 10.5. Protected Cell Companies, Incorporated Cell Companies and umbrella funds

Protected Cell Companies **,** Incorporated Cell Companies and umbrella funds may be considered as a whole or separate, and categorised accordingly. It is not necessary to treat each cell or fund separately, unless the entity wished to do so.

### 10.6. Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs [US Agreement only]

In its Notice 2013-69 the U.S. has indicated changes to their Regulations that will introduce a new category of Passive NFFE - a Direct Reporting NFFE.

The Notice sets out that a Direct Reporting NFFE will be treated as an Exempt Beneficial Owner by the Financial Institution that maintains the Financial Accounts of the NFFE. It will be required to elect to, and report directly to the IRS certain information about its direct or indirect substantial U.S. owners. The NFFE will also be required to register with the IRS to obtain its Global Intermediary Identification Number (GIIN).

The Notice also sets out that an Entity will be allowed to sponsor one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs).

The [CD] Competent Authority will update this section of the guidance following confirmation of the changes to the U.S. Regulations.

# 11. NON FINANCIAL FOREIGN ENTITIES (NFFEs)

## 11.1. General

An NFFE is either anon-US entity under the US Agreement or a non-UK entity under the UK agreement, that is not treated as a Financial Institution. In practice therefore this could apply to any [CD] company, partnership, trust, foundation or any other legal entity that is not a Financial Institution.

There are two categories of NFFE.

a) Active NFFE
b) Passive NFFE

An NFFE, whether Passive or Active, has no registration or reporting obligations,. However the entity is required to determine its FATCA/IGA classification and, where necessary, self certify its classification to the Financial Institution that maintains the NFFE's Financial Accounts. A passive NFFE may also be required to obtain self certification from a Controlling Person of that NFFE.

An NFFE may be asked to certify its status as a Passive NFFE to a Financial Institution which holds a Financial Account for the NFFE in accordance with the due diligence obligations in Annex I.

A Financial Institution only has to report Financial Accounts that are held by Passive NFFEs with Controlling Persons that are Specified Persons.

## 11.2. Passive NFFE

A Passive NFFE is any NFFE that is not:

a) an Active NFFE; or
b) in relation to the US Agreement, a withholding foreign partnership or withholding foreign trust.

## 11.3. Active NFFE

An Active NFFE is any NFFE that meets any of the following criteria:

a) Less than 50% of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (see 11.4) and less than 50% of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

b) The stock of the NFFE is regularly traded on an established securities market (see Section 12.9 for the US Agreement and 12.10 for the UK Agreement) or the NFFE is a Related Entity of an entity the stock of which is traded on an established securities market;

c) In respect of the US Agreement only, the NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory. A US Territory is defined in Article 1(1)(b) of the US Agreement;

d) The NFFE is a government, a political subdivision of a government (which includes a state, province, county or municipality), an international organisation, a non-US central bank of issue, or an entity wholly owned by one or more of the foregoing.

e) Substantially all of the activities of the NFFE consist of holding, in whole or in part, the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution. However, an entity will not qualify as an active NFFE if the NFFE functions as, or holds itself out to be, an investment fund, such as a Private Equity Fund, Venture Capital Fund, Leveraged Buyout Fund or any Investment Vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes. In these circumstances the entity will be a passive NFFE.

f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;

g) The NFFE was not a Financial Institution in the past five years, and is the process of liquidating its assets, or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;

h) The NFFE primarily engages in financing and hedging transactions with, or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; **or**

i) For the US Agreement ONLY, the NFFE meets <u>all</u> of the following requirements:

    a. It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;
    b. It is exempt from income tax in its country of residence;
    c. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
    d. The applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment representing the fair market value of property which the entity has purchased; **and**

e. The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or non-profit organisation, or escheat to the government of the entity's country of residence or any political subdivision thereof.

### 11.4. Passive Income

Passive income means income other than trading income and would include, for example:

a) Distributions, as defined by [CD specific legislation];
b) Interest;
c) Income equivalent to interest, including amounts received in lieu of interest;
d) Rents and royalties;
e) Annuities;
f) Foreign currency gains;

Passive income does not include:

g) Any income from interest, dividends, rents or royalties that is received or accrued from a related person if that amount is properly derived from income of that related person that is not passive income. For this purpose, related person has the meaning given to Related Entity (see Section 3.12), substituting person for entity;

### 11.5. Value of assets

For the purpose of this Section, the value of an NFFE's assets is the fair market value or book value of the assets that is reflected on the NFFE's balance sheet.

### 11.6. Controlling Person

For this purpose, a Controlling Person means a natural person who exercises direct or indirect control over an entity. This term corresponds to the term 'beneficial owner' as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.

This includes the natural person on whose behalf a transaction is being conducted and those persons who exercise ultimate effective control by means of control other than direct control.

For trusts this includes the settlor, the trustees, the protector, the identifiable beneficiaries or class of beneficiaries and other natural person exercising ultimate effective control over the trust.

In the case of any other legal arrangement, Controlling Person means a person in equivalent or similar positions.

For this purpose, and in relation only to NFFEs, a 25% ownership threshold applies for low and medium risk companies, partnerships, trusts and foundations; for high

risk entities, you are required to resort to your AML procedures to determine the appropriate percentage ownership. For trusts this would only apply to beneficiaries, settlors when they are also beneficiaries and protectors where they have the power to change the trustees, thereby influencing the distribution of trust assets.

## 11.7. Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs

In Notice 2013-69 and subsequent changes to the US Regulations, a new category of Passive NFFE was introduced - a Direct Reporting NFFE. A Direct Reporting NFFE is described at §1.1472-1(c)(3) of the US Regulations and will be treated as an Excepted NFFE. It is a Passive NFFE that elects to report certain information about its direct or indirect substantial U.S. owners directly to the IRS as opposed to providing such information to the [CD] Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain its Global Intermediary Identification Number (GIIN).

The US Regulations also allow an entity to serve as a sponsor for one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs), which will require the sponsoring entity to report information about a Sponsored Direct Reporting NFFE's direct or indirect substantial U.S. owners directly to the IRS.

## 11.8. Examples

***Example 1***

A non financial trading company that is managed by a Company Service Provider may be an NFFE rather than an Investment Entity under the US Treasury Regulations and CRS definitions. Whether it is an Active or Passive NFFE would depend on the activity of the company but most companies that are not Investment Entities, other than property companies or those involved in trading in certain commodities are likely to be Active NFFEs. For example a retail business would be an Active NFFE.

***Example 2***

The holding company of a trading company that is an Active NFFE that receives only dividend income from that trading company and bank interest would be treated as an active NFFE. This is because, although the income of the holding company is dividend income and so prima facie passive as defined, that dividend is sourced from income that is active in nature according to paragraph 11.3(l) above.

***Example 3***

A company that invests solely in real estate and receives rental income and realises capital gains on the sale of such property would be a Passive NFFE, provided either at least 50% of the income is rental income (paragraph 11.3(d) applies) or the capital gains arises from the sale of the property that generated the rental income.

***Example 4***

A real estate trust may be treated as a Passive NFFE, provided at least 50% of the gross income is passive income or at least 50% of the trust's assets produce passive income, even if that trust is managed by an Investment Entity or the property is held through a company under the US Treasury Regulations and CRS definitions.

# 12. FINANCIAL ACCOUNTS

## 12.1. General

Under the Agreements, Reporting [CD] Financial Institutions must provide information to the [Comptroller] on an annual basis in relation to Financial Accounts held by Specified Persons. In the US Agreement these are referred to as US Reportable Accounts and in the UK Agreement to UK Reportable Accounts.

A Financial Institution, unless otherwise exempt, must identify:

- Whether it maintains any Financial Accounts;
- The type of Financial Account maintained; and
- Whether the account holder of those Financial Accounts is a Specified Person or a Passive NFFE with one or more Controlling Persons who are Specified Persons.

For the purposes of the Agreements, the term Financial Account is broadly defined and may include products or obligations that would not normally be regarded as a Financial Account in other [CD] legislation or in everyday commercial use.

For the purposes of the Agreements, a Financial Account is an account that is maintained by a Financial Institution. See Section 12.1.1 for the meaning of 'maintained'.

However, not all accounts held by the Financial Institution will be Financial Accounts for these purposes. Some products are exempt from the definition of Financial Account. See Section 6.

There are five categories of Financial Account:

- Depository Accounts (Section 12.3)
- Custodial Accounts (Section 12.4)
- Cash Value Insurance Contracts (Section 12.6)
- Annuity Contracts (Section 12.7)
- Equity and Debt Interests (Section 12.8)

Each category of Financial Account is subject to exclusions and exemptions and further details can be found in the relevant Sections indicated above.

For the purposes of reporting to the Comptroller under the Agreements, the Financial Account must be a US or UK Reportable Account and, in relation to a Depository Account, Custodial Account, Cash Value Insurance or Annuity Contract, must be maintained by a [CD] Financial Institution.

Shareholdings and loan/debenture stock holdings can be 'financial instruments/contracts' and are reportable if held in a Custodial Account (see Section 12.4).

Where a Financial Institution is acting as an executing broker, and simply executing trading instructions, or receiving and transmitting such instructions to another executing broker, (either through a recognised exchange, multilateral trading facility or non EU equivalent of such, a clearing organisation or on a bilateral basis) the Financial Institution will not be required to treat the facilities established for the purposes of executing a trading instruction, or receiving and transmitting such instructions, as a Financial Account under the Agreements. The Financial Institution acting as custodian will be responsible for performing due diligence procedures and reporting where necessary.

In certain circumstances "placing agents" will typically acquire shares for a 2-3 day period (maximum 7 days) and hold these as nominee for an underlying investor. The placing agent will also have cash funds deposited by the investor for a similar period. The two would ultimately be matched and the shares delivered to the designated custodian of the investor. To eliminate the creation of a series of custodial accounts which would open and close in a 2-3 day window and therefore be potentially reportable such funds will not be regarded as Financial Accounts provided that;

- The account is established and used solely to secure the obligation of the parties to the transaction.
- The account only holds the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction.
- The assets of the account, including the income earned thereon, is paid or otherwise distributed for the benefit of the parties when the transaction is completed.

### *12.1.1. Accounts 'maintained' by Financial Institutions*

In relation to each type of Financial Account, 'maintained' has the following meaning:

- A Depository Account is maintained by the Financial Institution which is obliged to make payments with respect to that account.
- A Custodial Account is maintained by the Financial Institution that holds custody over the account, including a Financial Institution that holds assets in the name of a broker ('in street name') for an account holder.
- An Insurance Contract or an Annuity Contract is maintained by the Financial Institution that is obligated to make payments with respect to the contract.
- Any Equity or Debt Interest in a Financial Institution, where that Equity or Debt Interest constitutes a Financial Account, is treated as being maintained by that Financial Institution where that Financial Institution is an Investment Entity.

A Financial Institution may maintain more than one type of Financial Account. For example, a Depository Institution may maintain Custodial Accounts as well as Depository Accounts.

When a Financial Account is created will depend on the type of account. An account will be created when the Financial Institution is required to recognise the account based on existing operating procedures or under the regulatory or legal requirements of the jurisdiction in which it operates.

Where a customer exercises their cancelation rights (i.e. they cancel the account within the “cooling off” period) a Financial Account is created and the value to be reported (if reportable) is the closing value.

A Financial Account maintained by a non-[CD] branch of a [CD] Financial Institution is not reportable by the [CD] Financial Institution.

#### *12.1.2. Reportable Accounts*

A Financial Account is a US Reportable Account where it is held by one or more Specified US Persons or by a non-US Entity with one or more Controlling Persons that are Specified US Persons.

A Financial Account is a UK Reportable Account where it is held by one or more Specified UK Persons or by a non-UK Entity with one or more Controlling Persons that are Specified UK Persons.

Financial Institutions with no Reportable Accounts will not be required to make a nil return to the [Comptroller] on an annual basis.

Where a Financial Institution engages a third party to carry out the Financial Institutions’ due diligence and reporting obligations then those obligations remain with the Financial Institution.

### 12.2. Account Holders

In order to identify the person or entity that is the account holder under the terms of the Agreement, a Financial Institution may need to consider the type of account and the capacity in which it is held.

#### *12.2.1. Trusts and Estates*

Where a Trust or Estate is listed as the holder of a Financial Account then they are to be treated as the account holder, rather than any settlor or beneficiary. This doesn’t remove the requirement to identify the Controlling Persons of a Trust or Estate, where the Trust or Estate is a Passive NFFE.

In relation to a share register, where an issuer's share register has been the subject of an acquisition, (for example a takeover by Company A of Company B) and shareholders of Company B have not responded and accepted the offer, they become known as dissenters or dissenting shareholders. On completion of the takeover, the consideration is transferred to a trustee to be held on the dissenters’ behalf until they claim the proceeds and it is paid to them, however the trustee does not become the account holder. This is because the original shareholdings (equity interests) are not Financial Accounts unless Section 12.8 applies.

### *12.2.2. Partnerships*

Where a Financial Account is held in the name of the partnership it will be the partnership that is the account holder rather than the partners in the partnership.

### *12.2.3. Accounts held by persons other than a Financial Institution.*

A person, other than a Financial Institution, that holds a Financial Account for the benefit of another person, as an:

- agent,
- custodian,
- nominee,
- signatory,
- investment adviser, or
- intermediary

is not treated as an account holder with respect to such account for purposes of the Agreement. Where the Financial Account does not meet the conditions relating to Intermediary Accounts (Section 12.15) then the person on whose behalf the account is held is the account holder.

***Example 1***

Where a parent opens an account for a child, the child will be the account holder.

### *12.2.4. Joint Accounts*

Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to all joint holders of the account. This will apply for both aggregation and reporting purposes.

If an account is jointly held by an individual and an entity, the Financial Institution will need to apply separately both the individual and entity due diligence requirements in relation to that account.

### *12.2.5. Cash Value Insurance Contracts and Annuity Contracts*

An Insurance or Annuity Contract is held by each person entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.

Where no person can access the contract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder**.**

### *12.2.6. Joint life second death Cash Value Insurance Contracts*

Joint life second death Cash Value Insurance Contracts are sometimes taken out by spouses. Such policies insure both parties, but do not pay out on the

death of the first person. Instead the policy remains in force until the other person has died or the policy is surrendered.

Where one of the policyholders whose life is assured is a Specified Person (and the other is not a Specified Person) this will be a Reportable Account which is reported annually. If the Specified Person dies during the term of the insurance it will cease to be a Reportable Account.

### 12.3. Depository Account

A Depository Account is any commercial current account, and savings account evidenced by a certificate of deposit, investment certificate, certificate of indebtedness, or other similar instrument where cash is placed on deposit with an entity engaged in a banking or similar business.

The account does not have to be an interest bearing account. A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card company engaged in banking or similar business.

However, credit cards will not be considered to be Depository Accounts where the issuer of the credit card implements policies and procedures (by the later of 30 June 2014 or the date it registers as a Financial Institution) either to prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days.

Where a Financial Institution elects to apply the threshold for Depository Accounts this will mean that a credit card account will only be reportable where, after applying the aggregation rules (See Section 14.14):

- there are no other accounts and the balance exceeds $50,000; and
- the total balance on all aggregated Depository Accounts (including the credit card balance) exceeds $50,000. See Section 4.2.6 regarding the US Agreement and section 5.2.3 regarding the UK Agreement for information in respect of entities that are credit card issuers.

The definition of Depository Account also includes an amount held by an Insurance Company under an agreement to pay or credit interest. However, amounts held by an Insurance Company awaiting payment in relation to a Cash Value Insurance Contract where the term has ended will not constitute a Depository Account.

### 12.4. Custodial Account

A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment.

Financial instruments/contracts which can be held in such accounts can include, but are not limited to:

- a share or stock in a corporation
- a note, bond, debenture, or other evidence of indebtedness

- a currency or commodity transaction
- a credit default swap
- a swap based upon a non-financial index
- a notional principal contract (in general, contracts that provide for the payment of amounts by one party to another at specified intervals. These are calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts)
- an Insurance Contract or Annuity Contract, and
- any option or other derivative instrument for the benefit of another person.

A Cash Value Insurance Contract or an Annuity Contract is not considered to be a Custodial Account, but these could be assets held in a Custodial Account. Where they are assets in a Custodial Account, the Insurer will only need to provide the Custodian with the cash/surrender value of the Cash Value Insurance Contract.

A Custodial Account does not include financial instruments/contracts (for example, a share or stock in a corporation) held in a nominee sponsored by the issuer of its own shares, which are in every other respect analogous to those held on the issuer's share register.

#### *12.4.1. Collateral*

Notwithstanding the above, the Custodial Accounts definition includes all accounts which are maintained for the benefit of another, or arrangements pursuant to which an obligation exists to return cash or assets to another.

Transactions which include the collection of margin or collateral on behalf of a counterparty may fall within the definition of Custodial Account. The exact terms of the contractual arrangements will be relevant in applying this interpretation however any obligations to return equivalent collateral at conclusion of the contract, and potentially make interim payments (such as interest) to counterparties during the contract term will constitute a Custodial Account for the purposes of the Agreements.

### 12.5. Insurance Contract

An insurance contract is a contract, other than an Annuity Contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk, including [any CD specific reference could be added here].

An insurance contract is not to be considered to be a Custodial Account but it could be one of the assets held in a Custodial Account.

### 12.6. Cash Value Insurance Contract

A Cash Value Insurance Contract is an Insurance Contract (as defined in [11.5]) where the cash surrender or termination value (determined without the deduction for any surrender charges or policy loan) or the amount the policyholder can borrow under (or with regard to) the contract is, greater than $50,000. The $50,000 limit only

applies under the UK Agreement if the Financial Institution makes the appropriate election.

This definition excludes indemnity reinsurance contracts between two insurance companies.

The cash value does not include an amount payable under an insurance contract in the following situations:

- the amount payable on the insured event, which includes death;
- a refund on a non-life insurance policy premium due to cancellation or termination of the policy, a reduction in amount insured, or a correction of an error in relation to the premium due; or
- a policyholder on-boarding incentive or bonus.

When a policy becomes subject to a claim and an amount is payable this does not create a new account, it is still the same policy.

### 12.7. Annuity Contract

An Annuity Contract is a contract under which the Financial Institution agrees to make payments for a period of time, determined in whole or in part by reference to the life expectancy of one or more individuals. The term Annuity Contract also includes a contract that is considered to be such in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

An Annuity Contract is not to be considered to be a custodial account but it could be one of the assets that are held in a custodial account.

The following are not considered to be an Annuity Contract for these purposes.

- Pension annuities – as per Section 6 these are exempt products.
- Immediate needs annuities.
- Periodic payment orders.
- Reinsurance of Annuity Contracts between two Insurance Companies.

### 12.8. Equity or debt interest in an Investment Entity

Where an Investment Entity is an asset manager, investment advisor or other similar entity then the Debt and Equity Interests in that entity are generally excluded from being a Financial Account. This mirrors the treatment of Debt and Equity interests in entities that are solely Depository or Custodial Institutions. Debt and Equity Interests (other than regularly traded interests – see 12.9 and 12.10) are only Financial Accounts if they are issued in entities that are Investment Entities because:

- the entity‘s gross income is attributable to investing, reinvesting or trading in financial assets, **and** they are managed by a Financial Institution including another Investment Entity, **or**

- the entity functions or holds its self out as a Collective Investment Vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

In the case of a partnership that is a Financial Institution, the term Equity Interest means either a capital or profits interest in the partnership.

In the case of a Trust that is a Financial Institution, an Equity Interest means an interest (if any) held in that Trust by the following persons:

i. A settlor of the trust;
ii. A beneficiary that is entitled to a mandatory distribution or benefit (directly or indirectly) from the trust;
iii. A beneficiary that receives a discretionary distribution or benefit from the trust in the calendar year; and
iv. Any person that exercises ultimate effective control over the trust.

**12.9. Equity or Debt Interests regularly traded on an established securities market – UK Agreement**

Equity or Debt Interests of an Investment Entity that are regularly traded on an established securities market are not Financial Accounts for the purposes of the Agreements.

For the purposes of the UK Agreement, an equity or debt interest is “regularly traded” if it is listed and/or available for trading on an established securities market. There is no need to check annually whether any transactions have been undertaken.

An established securities market can be considered to take its meaning from the definition of recognised stock exchange in [add relevant cross reference].

The Channel Islands Stock Exchange is considered to be an established securities market for these purposes.

**Restrictions applying to regularly traded on an established securities market**

To prevent the risk that an entity could circumvent the appropriate IGA reporting by seeking a listing where there is no intention of the investment vehicle being widely available the [CD] Competent Authorities will in all cases treat as Financial Accounts those equity or debt interests established with a purpose of avoiding reporting in accordance with the Agreement - including interests that nevertheless meet the underlying criteria for regularly traded on an established securities market.

Where there is an attempt to set up a particular interest or class of interest to avoid reporting under the Agreement then all debt and equity interests will become reportable. This also should achieve the objectives of not requiring major financial

institutions to report on their interests but targets reporting at where it will be of most relevance.

In assessing whether a class of interest has been set up to avoid reporting the [CD] Competent Authority will consider a number of factors, such as, for example:

- whether the Investment Entity is subject to regulation in the [CD],
- whether the investor has any right to redeem their holding at net asset value,
- the degree to which the assets held in the underlying portfolio are exposed to investment or trading risk. These rules require a company to have a published investment policy which demonstrates how they intend to manage their assets with a view to spreading investment risk), and whether the product is publically advertised through the issuance of a prospectus.

**Please note the above is not an exhaustive list and where appropriate the [CD] Competent Authorities will consider each case on its particular circumstances.**

### 12.10. Debt or Equity Interests regularly traded on an established securities market – US Agreement

For the purposes of the US Agreement, an equity or debt interest in an Investment Entity is "regularly traded" if there is a meaningful volume of trading with respect to that interest on an ongoing basis.

An interest is not "regularly traded" if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. This exclusion does not apply to interests registered on the books of the Financial Institution prior to 1 July 2014 and, with respect to interests so registered after 1 July 2014, a Financial Institution is not required to apply this exclusion prior to 31 December 2015.

An established securities market can be considered to take its meaning from the definition of recognised stock exchange in [add relevant cross reference].

The Channel Islands Securities Exchange Authority is not considered to be an established securities market for these purposes.

For example, a [CD] fund which is listed on the London Stock Exchange, in respect of which there is meaningful trading :-

- For the purposes of the UK agreement (see section 12.9), because the interest is listed on an established securities market, the "regularly traded" exemption should apply and no interests in the fund should be treated as financial accounts.

- For the purposes of the US agreement :-

    - Where the holder of the interest is a Financial Institution acting as intermediary (e.g. a nominee or other platform), then the "regularly traded" exemption

should apply and the fund should not need to report on this financial account. The Financial Institution acting as intermediary may need to report on the ultimate beneficial owner under its own FATCA obligations.

- Where the holder of the interest is an individual investing directly into the fund in their own name, or an entity other than a financial institution, then for accounts registered prior to 1 July 2014 the "regularly traded" exemption should apply and the fund should not need to report on this financial account.

- Where the holder of the interest is an individual investing directly into the fund in their own name, or an entity other than a financial institution, then for accounts registered post 1 July 2014, the "regularly traded" exemption does not apply and the fund will need to comply with the FATCA obligations in respect of these financial accounts. However, they will not be treated as financial accounts until the 2016 period, and therefore reporting will not be required until 30 June 2017 (in respect of the 2016 period). There will however be an obligation for the fund to obtain the requisite information in respect of these new interests, in accordance with sections [16] and [18] of these guidance notes. Such information will need to be obtained for these interests post 1 July 2014, even though they will not be treated as financial accounts until the 2016 period.

### 12.11. Central Securities Depository (CSD)

In [CD[ a CSD will not be treated as maintaining financial accounts. The participants of [CD] securities settlement systems that hold interests recorded in the CSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor). It is these Financial Institutions that maintain the accounts and it is these participants and/or sponsors that are responsible for undertaking any reporting obligations.

This treatment will also apply to a [CD] entity which is a direct or indirect subsidiary used solely to provide services ancillary to the business operated by that CSD (CSD Related Entity).

The relationship between the securities settlement system and its participants is not a financial account and accordingly the CSD and any CSD Related Entity is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants.

### 12.12. Products Exempt from being Financial Accounts

Annex II of the US Agreement and Annex III of the UK Agreement set out certain products that have been agreed as low risk (in terms of the likelihood of being used for tax evasion) and which are exempt from being treated as Financial Accounts. As such, Financial Institutions will have no reporting obligations under the Agreements in respect of these accounts or products.

The Agreements also provide the capacity for the respective Annexes to be updated, either to allow for other low risk products to be added or to remove products that are no longer deemed low risk.

Sections 13.12 and 13.13 detail identified [CD] accounts that are exempt from being a Financial Account.

### 12.13. Retirement Accounts and Products

Consideration should be given to the criteria set out in Annex II of the US Agreement and Annex III of the UK Agreement in relation to retirement accounts and products.

The following are treated as exempt accounts for the purpose of the Agreements by virtue of being a Pension Fund of an Exempt Beneficial Owner:

- [CD specific]

For the purpose of the Agreements, retirement funds are 'subject to government regulation' if they are registered with the tax authority for tax purposes.

### 12.14. Certain other Tax Favoured Accounts or Products*[CD Specific]*

There are currently no other Tax Favoured Accounts or Products identified as being exempt. Consideration should be given to the criteria set out in Annexes II of the Agreements and should accounts or products be identified as potentially qualified, the [Comptroller/Assessor/Director] should be notified and will consider including in this Section.

### 12.15. Accounts of deceased persons

Accounts of deceased persons will not be Financial Accounts if the [CD] Financial Institution that maintains them has received and is in possession of a formal notification of the account holder's death (for example a copy of the deceased's death certificate, a copy of the coroner's interim certificate or a copy of the will). Such an account will not be reportable in the year of the account holder's death and subsequent years.

Where the Estate is established by a Grant of Probate in respect of deceased persons account(s) the Reporting [CD] Financial Institution is required (as per Section 12.2.1) to identify the Controlling Persons of the Estate.

### 12.16. Intermediary/Escrow Accounts

Accounts that meet the conditions below will not be Financial Accounts.

Accounts held by a [CD] Financial Institution for a non-Financial Intermediary (such as a firm of solicitors or estate agents) and established for the purposes of either:

- a court order, judgement or other legal matter on which the non-Financial Intermediary is acting on behalf of their underlying client;
- a sale, exchange, or lease of real or personal property where it also meets the following conditions:
  - The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction;

- The account is established and used solely to secure the obligation of the parties to the transaction;
- The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed;
- The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
- The account is not associated with a credit card account.

- An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;

or

- An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

Accounts provided by a non-Financial Intermediary as an intermediary (such as non-legal Escrow type accounts) that meet the conditions above will also not be Financial Accounts.

Where the Financial Account does not meet the above conditions then please refer to Section 12.16.

### 12.17. Undesignated accounts

Where a Financial Account held by a non-Financial Intermediary such as a solicitor does not meet any of the conditions set out in Section 12.15, but is an account holding, on a pooled basis, the funds of underlying clients of the non-Financial Intermediary where:

- the only person listed or identified on the Financial Account with the Financial Institution is the non-Financial Intermediary; **and**
- the non-Financial Intermediary is not required to disclose or pass their underlying client or clients' information to the Financial Institution for the purposes of AML/KYC or other regulatory requirements,

then the Financial Institution is only required to undertake the due diligence procedures in respect of the non-Financial Intermediary.

### 12.18. Designated accounts

A designated client account is an account held with a Financial Institution, operated by a non-Financial Intermediary but where the underlying client or clients of the intermediary are listed or can be identified by the Financial Institution.

### 12.19. Segregated accounts

Where an investment manager is appointed to provide investment management services directly by the legal owner of assets as segregated accounts, then these are not Financial Accounts of the investment manager. Instead they will be Custodial Accounts of a Custodian, who will need to treat the investors as their account holders as there is no interposing fund. Note that in cases where a discretionary investment manager also holds assets on behalf of clients (by acting

as Custodian), reporting will be required on those accounts by virtue of the investment manager falling within the definition of a Custodial Institution.

This also applies to discretionary investment managers who arrange for custody as agent on their clients' behalf, where the custody accounts are pooled nominee accounts.

There will be situations where an investment manager does not hold custody for its customers (e.g. investment managers who arrange for custody as agent on their customers' behalf or where the custody accounts are pooled nominee accounts) but holds the information required for due diligence and reporting.

The investment manager will be the reporting Financial Institution for those accounts by virtue of its status as an Investment Entity where:

- it alone has direct knowledge of its customers and their accounts and
- it carries out the AML/KYC procedures on those accounts.

### *12.19.1. Fully disclosed clearing and settlement (Model B)*

This refers to arrangements designed to facilitate the clearing and settlement of security transactions utilising a third party provider's existing information technology infrastructure 'IT' systems, specifically those that interface with the international securities settlement and clearing systems (clearing firms).

A tri-partite relationship between the underlying customer, the broker and the clearing firm (the 'tripartite relationship') is created, by virtue of the fact that the broker has entered into a fully disclosed clearing relationship with the clearing firm on his own behalf, and, acting as the agent of its underlying client.

For the avoidance of doubt where a broker has opened an account (or sub-accounts) with the clearing firm, in the name of its underlying client and fulfils all verification and due diligence requirements on its underlying clients the Financial Accounts remain those of the broker and not the clearing firm.

Therefore, reporting and classification in respect of the underlying client required under the Agreement and the relevant legislation is the responsibility of the broker.

The clearing firm however will treat the broker as its client and consequently as the person for which it maintains a Financial Account and will undertake reporting and classification with respect to such broker accordingly.

The term broker in respect of fully disclosed clearing and settlement would include any Financial Institution who acts on behalf of the underlying investor in respect of executing, placing or transmitting orders and would therefore include FAs if their business is more than simply advisory.

## 12.20. Dormant accounts

A [CD] Financial Institution may apply its existing normal operating procedures to classify an account as dormant. Where normal operating procedures are not applicable, then the Financial Institution is to classify an account as dormant for the purposes of the Agreement where:

- there has been no activity on the account in the past three years;
- the account holder has not contacted the Financial Institution regarding that account or any other account in the past six years;
- the account is not linked to an active account belonging to the same account holder.

The Financial Institution should classify the account based upon existing documentation it already has in its possession for the account holder. Where this review determines that the dormant account is reportable, then the Financial Institution should make the appropriate report notwithstanding that there has been no contact with the account holder. Where the Financial Institution has closed the account and transferred the customer's account balances to a pooled 'unclaimed balances account', however described, maintained by the bank there will be no customer account to report.

An account that has a nil balance is not necessarily dormant if the above conditions do not apply.

An account will no longer be dormant where:

- under normal operating procedures the account is not considered dormant;
- the account holder contacts the Financial Institution in relation to that account or any other account held by the account holder with that Financial Institution including a former account holder whose account balances have been transferred to an unclaimed balances account;
- the account holder initiates a transaction with respect to the dormant account or other any other account held by the account holder with that Financial Institution.

The Financial Institution would then have to ensure it establishes the account holders' status as if the account were a New Account.

### *12.20.1. Dormant Funds*

When a fund is closed but there remain residual debtors and recovery actions are being pursued, the fund will be not an Investment Entity for the purposes of this Agreement.

## 12.21. Rollovers

Where some or all of the proceeds of a maturing fixed term product are rolled over, automatically or with the account holder's interaction, into a new fixed term product this shall not be deemed to be the creation of a New Account.

### 12.22. Syndicated Loans

In relation to syndicated loan activities an Entity acting as a lead manager/fronting bank/agent ("Agent") of a syndicated Invoice Finance facility would not in itself be sufficient to bring that entity into the Investment Entity or Custodian Institution definition as a Financial Institution, provided no other business activities would bring the entity into that classification.

Where a borrower requires a large or sophisticated facility, or multiple types of facility, this is commonly provided by a group of lenders, known as a syndicate, under a syndicated loan agreement.

To facilitate the process of administering the loan on a daily basis, one bank from the syndicate is typically appointed as Agent. The Agent's role is to act as the agent for the lenders, (i.e. not of the borrower) and to coordinate and administer all aspects of the loan once the loan agreement has been executed, including acting as a point of contact between the borrower and the lenders in the syndicate and monitoring the compliance of the borrower with certain terms of the facility.

In essence, the Agent performs exclusively operational functions. For example, the borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Agent and the Agent then passes these monies back to the lenders to which they are due. Similarly, the lenders advance funds to the borrower through the Agent. The terms of a syndicated loan agreement usually entitle the Agent to undertake the roles described above in return for a fee.

In these circumstances the participation of a lender in a syndicated loan, where a [CD] FI Agent acts for and on behalf of a syndicate of lenders which includes that lender, does not lead to the creation of a "Custodial Account" held by the [CD] Agent.

The lenders hold their interests in a loan directly rather than through the Agent and, therefore, the participation of a lender does not amount to a "Custodial Account" held by a [CD] Agent.

### 12.23. Electronic money issuers (E-Money)

The following table details some types of E-Money formats.

| Product | 'Financial Account' Under FATCA? | Comments |
|---|---|---|
| **E-voucher*** | No | None |
| **Pay card** | Yes | Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could |

| | | |
|---|---|---|
| | | only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption. |
| **Prepaid credit card** | Yes | Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption. |
| **'Merchant services' account** | Possibly | If cash is retained within a merchant 'account' then this is not a depository account, but is a custodial account.<br>If merchant services payments simply flow through systems but were not retained in an account, such payments would not be financial accounts. If in scope, the only comparable exemption in the US legislation is 'escrow account' exemption, but these are not "escrow" accounts. |

In addition to the above, any account that would otherwise fall within the definition of a financial account (depository, investment, custodial, insurance) shall not fail to qualify as a financial account just because it is maintained in an e-Money format. For example, an online depository account (sometimes known as an ‘e-wallet’) is treated the same way as a traditional depository account.

# 13. REGISTRATION

## 13.1. General requirements

Registration is only required under the US Agreement and references to registration refer to registration on the IRS FATCA portal under the US Treasury Regulations.

There is no requirement to register with the [CD] authorities.

## 13.2. Who needs to register

All Reporting [CD] Financial Institutions and any entity that is a Registered Deemed Compliant Entity as defined under the US Agreement (see Section 4) must register and obtain a Global Intermediary Identification Number (GIIN) from the IRS.

A [CD] Financial Institution can be a Reporting [CD] Financial Institution and so be required to register even if it does not identify any Specified US Persons as holders of Financial Accounts.

A Financial Institution with a Local Client Base that has a reporting obligation, because it has some Reportable Accounts, will require a GIIN and so will need to register.

Entities that are Reporting Financial Institutions and also acting as a sponsor for other entities or the trustee of a Trustee Documented Trust will need to register separately for each of these roles.

## 13.3. Which Financial Institutions do not need to register

The following entities do not need to register:

- Any Non-Reporting Financial Institution as described in Annex II of the US Agreement
- Any Deemed Compliant Financial Institution, except a Registered Deemed Compliant Entity (see Section 4.2)
- Any entity that qualifies as a Exempt Beneficial Owner (see Section 6.)
- Any Active or Passive NFFE (unless a Direct or Sponsored Direct Reporting NFFE) (see Section 11)

## 13.4. Timetable for registration

The registration service for non IGA Financial Institutions is open. The IRS has published guidance regarding the registration process.

Financial Institutions in a Model 1 jurisdiction are not required to provide a GIIN to withholding agents in order to establish their FATCA status prior to 1 January 2015. Before that date Model 1 Financial Institutions can confirm their status by either:

- providing a Withholding Certificate;
- providing a pre FATCA W-8 with an oral or written confirmation that the Entity is a Model 1 Financial Institution; or

- informing the withholding agent that they are a Model 1 Financial Institution (which will be supported by a list of IGA jurisdictions published by the IRS).

# 14. DUE DILIGENCE REQUIREMENTS

## 14.1. General

Financial Institutions are responsible for the identification and reporting of Financial Accounts held by Specified Persons or by Passive NFFEs with one or more Controlling Persons who are Specified Persons or by Non-Participating Financial Institutions. This Section sets out the procedures Financial Institutions must carry out to identify those account holders.

A Financial Institution can rely on a third party service provider to fulfil its obligations under the [CD] Regulations, but the obligations remain the responsibility of the Financial Institution and so any failure will be seen as a failure on the part of the Financial Institution.

A Financial Institution will need to follow one or more of these three processes for identification of account holders depending on whether the account holder is an individual or an entity and whether the account is pre-existing or not:

a) Indicia search
   Searching for relevant indicia by reference to documentation or information held or collected in accordance with opening or maintaining an account. This may include information held for the purpose of compliance with [CD] AML/CFT rules. Refer to the relevant Section for details of relevant indicia for each type of account.

b) Self-certification
   Requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable. See Section 14.8.

c) Publicly available information (for entities only)
   Searching publicly available information to determine the FATCA status of an entity, for example whether it is an Active or Passive NFFE.

## 14.2. Acceptable documentary evidence

A Financial Institution, or the third party service provider acting on behalf of the Financial Institution, can accept documentary evidence to support an account holder's status provided the documentation meets one of the following criteria:

- A certificate of residence issued by an authorised government body of the country in which the account holder claims to be resident, for example a certificate of tax residence issued by the tax authority.
- For individuals, any valid identification issued by an authorised government body that includes the name of the individual and is typically used for identification purposes, for example a passport or driving licence.
- For entities, any official document issued by an authorised government body that includes the name of the entity and either the principal office address in the country in which the entity claims to be resident or in which the entity was incorporated or formed.
- Any financial statement, third party credit report or US Securities and Exchange Commission report.

- Any of the documents referenced in [CD]'s attachment to the QI Agreement as follows:
    - For a natural person
        a) Passport, or
        b) National identity card, or
        c) Armed forces identity card, or
        d) Driving licence.

    - For legal persons
        a) For partnerships; a copy of the partnership agreement and any subsidiary or subsequent agreement evidencing the appointment and powers of the current partners, or certified copies of extracts therefrom covering the appointment and powers of the partners.
        b) For corporations: a copy of the certificate of incorporation or the memorandum and articles of association (or foreign equivalent).
        c) For trusts: a copy of the trust deed and any subsidiary or subsequent deed evidencing the appointment and powers of the current trustees, or certified copies therefrom covering the appointment and powers of the trustees.

### 14.3. IRS withholding certificates (US Agreement)

Withholding certificates issued by the IRS such as the W-8 and W-9 series are acceptable in establishing an account holder's status. A pre-FATCA W-8 form may be accepted in lieu of obtaining an updated W-8 until such time as the W-8 needs to be renewed.

### 14.4. Non official forms for individuals

Financial Institutions can use their own forms in lieu of an official form for individual account holders provided the replacement form contains the following information:

a) The name and permanent residence address of the account holder.
b) City/town of birth.
c) All countries in which the account holder claims to be tax resident.
d) Tax identification number(s), if available, for each country listed. Where a country does not issue a tax identification number a 'functional equivalent' may be used. For an individual this would include, for example, a social security or national insurance number, a citizen or personal identification number or a resident registration number. For an entity it would include a business or company registration number or other similar form of identification.

The form must be signed by the account holder and dated and be accompanied by documentary evidence that supports the individual's status as set out in 14.2.

The form can include other information required for other purposes such as AML due diligence and can be in paper or electronic format.

A Financial Institution can use its own forms to support a claim by the account holder that any indicia found do not properly represent the account holder's status.

### 14.5. Validity of documentation

All documentary evidence, including self-certification, used to establish an account holder's status will remain valid indefinitely until a change in circumstances or knowledge results in a change in of the account holder's status.

### 14.6. Retention of Documentary Evidence

A Financial Institution, sponsoring entity or third party service provider undertaking due diligence on behalf of a Financial Institution, must retain records of the documentary evidence, or a notation or record of documents reviewed and used to support an account holder's status for six years following the end of the year in which the status was established.

The documentary evidence can be retained as originals, photocopies or in an electronic format.

A Financial Institution that is not required to retain copies of documentation reviewed under AML due diligence procedures, by virtue of not being covered by the AML regulations, will be treated as having retained a record of such documentation if it retains a record noting:

a) The date the documentation was reviewed,
b) Each type of documentation reviewed,
c) The document's identification number where present, such as a passport number, and
d) Whether any relevant indicia were identified.

For High Value Pre-existing Accounts where a Relationship Manager enquiry is required (see Section 15.7), records of electronic searches, requests made and responses to Relationship Manager enquiries should be retained for six years following the end of the year in which the due diligence was undertaken. Guidance on the identification and role of a Relationship Manager are in Section 15.11.

### 14.7. Document sharing

Documentation is required to support the status of each Financial Account held. However in the following circumstances documentation obtained by a Financial Institution can be used in relation to more than one Financial Account.

#### *14.7.1. Single branch system*

Where an existing customer opens a new Financial Account with the same Financial Institution and both accounts are treated as a single account or obligation it may be possible to rely on existing documentation. See Section 18.4.

#### *14.7.2. Universal account systems*

A Financial Institution may rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or at a branch location of a related entity of the Financial Institution if:

- the Financial Institution treats all accounts that share documentation as a single account or obligation, **and**
- the Financial Institution and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer.

In this scenario a Financial Institution must be able to produce to the Comptroller/Assessor/Director, if requested, the necessary records and documentation relevant to the status claimed, or a notation of the documentary evidence reviewed, if the Financial Institution is not required to retain copies of the documentary evidence for AML purposes.

### *14.7.3. Shared account systems*

A Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the expanded affiliated group of the Financial Institution, if:

- the Financial Institution treats all accounts that share documentation as consolidated accounts, **and**
- the Financial Institution and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, that is described below.

A shared account system must allow the Financial Institution to easily access data about the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation.

If the Financial Institution becomes aware of any fact that may affect the reliability of the documentation, the information system must allow the Financial Institution to easily record this data in the system.

Additionally the Financial Institution must be able to show how and when it transmitted data regarding such facts into the information system and demonstrate that any data it has transmitted to the information system has been processed and the validity of the documentation subjected to appropriate due diligence.

A Financial Institution that opts to rely upon the status designated for the account holder in the shared account system, without obtaining and reviewing copies of the documentation supporting the status, **must** be able to produce upon request by the Comptroller all documentation, or a notation of the documentary evidence reviewed, if the Financial Institution is not required to retain copies of the documentary evidence for AML purposes, relevant to the status claimed.

### 14.8. Self-Certification

Self-certification may be used by a Financial Institution in relation to individual account holders as follows:

a) To establish where a holder of a New Individual Account is resident for tax purposes,

b) To obtain a TIN or similar identification number such, date of birth or National Insurance Number from a New Individual account holder who is a resident of another country for tax purposes, **or**

c) In order to show that an individual is not in fact a resident for tax purposes in a country, even if indicia are found indicating such residence in respect of a Lower Value or High Value Pre-existing Individual Account that they hold.

Self-certification is required in relation to entities as follows, if the Financial Institution cannot determine the status from information in its possession or that is publicly available:

a) To establish the status of an entity where a Financial Institution cannot reasonably determine that the account holder is not a Specified Person.

b) To establish the status of a Financial Institution that is neither a [CD] Financial Institution nor a Partner Jurisdiction Financial Institution, unless a Financial Institution's status can be established from an IRS published list.

c) To establish whether an entity is a Passive NFFE.

d) To establish the status of a Controlling Person of a Passive NFFE and whether or not they are a resident in a relevant country for tax purposes.

Self-certification can be in any format and can include the use of withholding certificates or other similar agreed forms.

A self-certification provided by an account holder cannot be relied upon if a Financial Institution has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status.

### 14.9. Confirming the Reasonableness of Self-certification

A Financial Institution receiving a self-certification must consider other information it has obtained concerning the account holder to check whether the self-certification is reasonable particularly where there is an apparent conflict.

**Example 1**

Where an account holder provides one of the US indicia, such as a US address, to the Financial Institution but then provides a self-certification confirming they are not US resident for tax purposes, the Financial Institution would need to make further enquiries to establish whether or not the self-certification is reasonable.

Where a Financial Institution relies on AML procedures performed by other parties and no self-certification is provided directly to the Financial Institution, the Financial Institution may request that the third party should obtain a self-certification for the purposes of the legislation. The third party should then confirm the reasonableness of the self-certification based on information that it has obtained.

For the avoidance of doubt, where self-certification is received directly by the Financial Institution, there is no requirement to ensure that any third party that carried out AML/KYC procedures has confirmed its reasonableness. The Financial Institution is required to confirm the self-certification provided to it based on any other information it alone has obtained or holds. So where a Financial Advisor (FA) has performed AML checks, the Financial Institution is not deemed to have seen any documentation the financial adviser has seen, unless the documentation is also provided to the Financial Institution.

**Example 2**
A Financial Institution has received a new account opening instruction from an individual (that may have been by telephone) which includes a self-certification regarding the account holder's residence status. The Financial Institution has performed AML procedures by checking the identity of the individual (name, address and date of birth) against the records of, for example, a credit reference agency. The check confirmed the identity of the individual.

The Financial Institution can satisfy its obligations under the Agreements by confirming the reasonableness of the self-certification against other information in the account opening instruction and any other information it has on the individual. Where no other information exists, the reasonableness is confirmed based on information in the account opening instruction alone.

If the account opening instruction is received by telephone, the account holder may receive paperwork that includes their response to the self-certification question and other questions asked. The account holder should be requested to contact the Financial Institution in the event that any of the information is not correct within a specified period. Provided the Financial Institution does not receive any other information from the account holder within the specified time, and provided the self-certification is otherwise reasonable, then the requirements are met.

**Example 3**
A Financial Institution has received new account opening documentation from an individual who has been advised by a financial adviser. The Financial Institution is unaware of any previous contact with the individual and has not delegated the financial adviser to carry out the FATCA due diligence procedures on its behalf. However, the Financial Institution can rely on the introducing financial adviser to perform the necessary AML checks to identify the individual and is provided with a confirmation by the financial adviser that they have done so.

The Financial Institution must ensure it identifies the account holder's status for FATCA purposes. The documents received regarding the account opening contains

information about the individual (name, address, date of birth, contact details including telephone number and email address), and a self-certification that the individual is not resident, for example, in the US for tax purposes, and is not a citizen of the US.

The Financial Institution can satisfy its requirements under the Agreements by confirming the reasonableness of the self-certification against other information contained in the account opening instruction and any other information it has on the individual. Where no other information exists the reasonableness is confirmed based on the information in the account opening instruction alone. The Financial Institution is not deemed to have seen any documentation the financial adviser has seen.

**Example 4**
As per example 2, but the Financial Institution has delegated the financial adviser to perform the FATCA due diligence procedures on its behalf.

The introducing financial adviser carries out the AML checks and obtains a self-certification from the individual confirming their FATCA status. The Financial Institution can satisfy its requirements under the Agreements by obtaining confirmation from the financial adviser that they have confirmed the reasonableness of the self-certification.

**Example 5**
As per example 1, but the individual has been introduced by an FA, although the Financial Institution has not placed reliance on the FA's AML procedures and instead has performed its own AML procedures.

The Financial Institution can satisfy its requirements under the Agreements by confirming the reasonableness of the self-certification against other information contained in the account opening instruction and any other information it has on the individual. Where no other information exists the reasonableness is confirmed based on the information in the account opening instruction alone.

### 14.10. Self-certification for New Individual Accounts

This Section reflects the fact that [CD] has signed the UK Agreement in addition to the US Agreement and that there may be further similar agreements with other countries in due course.

The requirements for self-certification for New Individual Accounts are focused on establishing the tax residency or residencies of the account holder, and for the specific purposes of the Agreements whether or not the account holder is a US citizen.

#### *14.10.1. Obtaining a self-certification*

Unless the Financial Account is of a type that does not need to be reviewed, identified or reported, a Financial Institution must obtain a self-certification to enable it to determine where the account holder is tax resident and, in the case of the US Agreement, whether or not they are a US citizen. The self-

certification process and documentation should allow for cases where the account holder is a tax resident of more than one country.

Citizenship is important when considering the US Agreement as a US citizen is considered a US resident for tax purposes even if they are also tax resident elsewhere.

For the UK Agreement, residence in the UK is important and citizenship is not relevant.

For the purposes of the US Agreement, where a self-certification determines that a New Individual account holder is a US citizen or resident for tax purposes, there is also a requirement to obtain a US Taxpayer Identification Number (TIN) from the account holder.

For the purposes of the UK Agreement, where a self-certification determines that a New Individual account holder is a UK resident for tax purposes, there is also a requirement to obtain the date of birth and National Insurance Number from the account holder.

### *14.10.2. Wording of self-certification*

A Financial Institution can choose the form of wording it uses to determine the tax residence of a New Individual account holder. However the wording must be sufficient for an account holder to confirm the country or countries where they are tax resident and, in respect of the US Agreement, if they are a US citizen.

### *14.10.3. Format of self-certification*

Financial Institutions may permit individuals to open accounts in various ways. For example individuals can make investments or purchase financial products by telephone, online or on paper application forms. They may even invest without using any of the Financial Institution's set application processes and instead send a payment with a covering letter, which is then followed up with required documentation. The method of self-certification does not necessarily have to follow the account application method.

Self-certifications can be obtained in any of these account opening procedures. The following examples are intended to illustrate how these may operate, but are not exhaustive.

***Example 1 - Telephone Applications***

An individual makes a telephone call to a Financial Institution, asking to open an account in line with the Financial Institution's normal account opening procedures.

The Financial Institution asks the account holder to state the countries in which they are tax resident and whether they are a US citizen. The individual provides this information on the phone and the Financial Institution records the confirmation on its system. The paperwork sent to the investor to confirm the

account opening should include their response to these self-certification questions and require them to contact the Financial Institution in the event that it is not correct.

***Example 2 - Online Applications***
An individual accesses the website of a Financial Institution to open an account in line with the Financial Institution's normal account opening procedures. On the account opening web page, along with information about the individual such as name and address, the individual is asked to select the appropriate country or countries in which they are tax resident and whether they are a US citizen.

### 14.11. Self-certification for Pre-existing Individual Accounts

If indicia are found suggesting that the account holder is potentially a US citizen or resident for tax purposes in a country with which [CD] has an Agreement, then the Financial Institution must treat the account as a Reportable Account under the relevant Agreement.

However, if the Financial Institution obtains a self-certification from the account holder confirming that the indicia do not properly reflect their actual status (for example the indicia suggests that they are a US citizen but the self-certification states that they are not) and obtains or has previously reviewed and recorded details of any other documents required under the due diligence procedures applicable to Pre-Existing Individual Accounts, then the account would not be treated as reportable.

### 14.12. Self-certification for New Entity Accounts

Unless a Financial Institution can identify or rely on information it holds or that is publically available, it should obtain a self-certification from the Entity account holders who are identified as one of the following:

a) a Specified Person.

b) a Financial Institution that is neither a [CD] Financial Institution nor a Partner Jurisdiction Financial Institution, a Participating Financial Institution, a Deemed Compliant Financial Institution or an Exempt Beneficial Owner (as these will not be Reportable Accounts).

c) a Passive NFFE.

For entities that are Passive NFFEs, the Financial Institution must identify the Controlling Persons and obtain a self-certification from the account holder or any Controlling Persons to determine whether they are a US citizen, in respect of the US Agreement, or where they are resident for tax purposes.

This determination can be achieved in the same way as described for New Individual Accounts in Section 14.10 above.

## 14.13. Self-certification for Pre-existing Entity Accounts

Self-certification is required for Pre-existing Entity Accounts in the following situations.

a) An entity account holder is identified as a Specified Person.
The Financial Institution will be required to treat the account as reportable unless it obtains a self-certification showing that the account holder is not a Specified Person.

b) The entity account holder is a Financial Institution but not a [CD] Financial Institution or Partner Jurisdiction Financial Institution.
The Financial Institution will be required to treat the account as reportable (and as a Non-Participating Financial Institution, for the purposes of the US Agreement) unless it obtains a self-certification that the entity is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner.

c) The entity account holder is a Passive NFFE (an entity account holder will be a Passive NFFE if it is not an Active NFFE – see Section 11).
The Financial Institution must obtain a self-certification from the account holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the entity is an Active NFFE.

If the account balance held by one or more Passive NFFEs exceeds $1,000,000, a self-certification from the account holder or Controlling Person can be accepted as evidence of status of the Controlling Person.

## 14.14. Aggregation

To identify whether Financial Accounts are reportable, and the extent to which enhanced review procedures are required in respect of High Value Accounts, a Financial Institution will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

### *14.14.1. When do the aggregation rules apply?*

For purposes of determining the aggregate balance or value of Financial Accounts, all accounts belonging to an individual or entity will need to be aggregated where the Financial Institution has elected under the [CD] legislation to apply the thresholds set out in Annex 1 of the Agreements (as amended by these guidance notes – see Section [ ]).

A Financial Institution is required to aggregate all Financial Accounts, belonging to an individual or entity, maintained by it or by a Related Entity, but only to the extent that the Financial Institution's current computerised systems link the Financial Accounts by reference to a data element, for example a customer or taxpayer identification number.

Where accounts can be linked by a data element and details of the balances are provided, but the system does not provide an aggregated balance of the

accounts, the Financial Institution will still be required to carry out the aggregation process.

### *14.14.2. Relationship Manager*

Where the aggregate balance of all Financial Accounts linked by a common data element as belonging to an individual or entity exceeds $1,000,000, and so are to be treated as a High Value Account, the Financial Institution must make enquiry of any Relationship Manager(s) assigned to that individual or entity to establish whether the Relationship Manager(s) knows of any additional accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person.

A Financial Institution may appoint a relationship manager for a customer's accounts. The due diligence requirements vary where there is a relationship manager depending on the value of accounts held by the customer.

***Example 1 – Lower Value Account***

An individual holds a number of accounts with Bank A and has been assigned a relationship manager. Bank A can aggregate the accounts by virtue of a taxpayer identification number found during the due diligence process. The aggregated balance of accounts exceeds $50,000 and is less than $1million.

Bank A must apply due diligence procedures relevant to Lower Value Accounts (see 5.4). There is no need for Bank A to carry out the relationship manager enquiry as the $1million High Value Account threshold has not been exceeded.

***Example 2 – High Value Accounts***

The facts are as in Example 1 above but the aggregated balance exceeds $1millon. As the aggregate balance of all Financial Accounts linked by a common data element and held by the individual exceeds $1,000,000 the Financial Institution must also make enquiry of any relationship manager(s) assigned to that individual to establish whether the relationship manager(s) knows of any additional accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person.(see Section 5.16 - Relationship Managers)

### *14.14.3. Exempt products*

If a product is exempt from being treated as a Financial Account (see Section 6), it does not need to be included for the purposes of aggregation. If however the exclusion of exempt products creates an additional burden, such products can be aggregated.

### *14.14.4. Related Entities*

Where a computer system links accounts across Related Entities, irrespective of where they are located, the Financial Institution will need to aggregate in considering whether any of the reporting thresholds apply. However, once it

has considered the thresholds, the Financial Institution will only be responsible for reporting on the accounts it holds. The following example sets out how this could work in practice.

***Example 1***

Bank A is a [CD] Financial Institution and has a related entity Bank C which is also a [CD] Financial Institution. Bank A can link the Depository Account of Specified Person X to another Depository Account in the name of Specified Person X with Bank C, by virtue of the taxpayer identification number. The aggregation exercise shows that Specified US Person X is above the Depository Account threshold for reporting.

Bank A and Bank C must each report individually on the accounts they hold for Specified Person X.

If Bank C is located in another jurisdiction it would have to report on the account it holds if it is a Reporting Financial Institution under the FATCA arrangements of that jurisdiction.

***Example 2***

Bank A is a [CD] Financial Institution and has a related entity Bank B which is also a [CD] Financial Institution. Bank A can link the Depository Account of US Person X to a Custodial Account in the name of the same US Person X with Bank B, by virtue of the taxpayer identification number found during the due diligence process. The accounts have balances as follows:

Depository Account with Bank A - $30,000
Custodial Account with Bank B - $40,000

As the aggregated balance or value is $70,000 the accounts are potentially reportable. However, the Depository Account balance is below the $50,000 threshold for Depository Accounts and is therefore not reportable.

The Custodial Account in this example is reportable because the aggregated total exceeds $50,000 and there is no Custodial Account exemption that can apply.

### *14.14.5. Aggregation of Pre-Existing Individual Accounts - Examples*

The following examples provide illustrative outcomes that could occur from the aggregation process.

***Example 1 – Application of the $50,000 threshold***

Bank A has elected to apply the relevant thresholds in Annex 1. It can link the following accounts of Specified Person X by a taxpayer identification number.

A Depository Account with a balance of $25,000

A Custodial Account with a balance of $20,000.

The aggregated total is below $50,000; therefore regardless of the types of account neither account will be reportable.

***Example 2 – Application of the $50,000 threshold***
In this scenario the account balances of Specified Person X are:

A Depository Account with a balance of $45,000
A Custodial Account with a balance of $7,000.

As the aggregated balance or value is $52,000 then the accounts are potentially reportable. However, the Depository Account balance is below the $50,000 threshold for Depository Accounts and is therefore not reportable by virtue of Annex 1, I, A, 4. If both accounts were Depository Accounts, both would need to be reported as the aggregated amount is above $50,000.

The Custodial Account in this example is reportable because the aggregated total exceeds $50,000 and there is no Custodial Account exemption that can apply.

***Example 3 – Application of the $250,000 Cash Value Insurance Contract threshold***
Company B is a UK Financial Institution and has elected to apply the relevant thresholds in Annex 1. It can link the following accounts of Specified Person Y by a client number:

A Cash Value Insurance Contract with a value of $230,000
A Custodial Account with a balance of $30,000

The aggregated balance or value indicates the accounts are potentially reportable (aggregated value above $50,000). However, as the Cash Value Insurance Contract is below the threshold of $250,000 that applies to that type of account (Annex 1, I, A, 4), it is not reportable.

There is no Custodial Account exemption; therefore the Custodial Account is reportable.

***Example 4 – Application of the $1million threshold for High Value Accounts***

Bank A can link the accounts of US Person Z by a taxpayer identification number found during the due diligence process:

A Depository Account with a balance of $40,000
A Custodial Account with a balance of $980,000.

As the aggregated total is in excess of $1million US Person Z is identified as a holder of a High Value Account. However, the Depository Account balance is

below the $50,000 threshold for Depository Accounts and is therefore not reportable.

The Custodial Account in this example is reportable as a High Value Account.

***Example 5 – Aggregation involving joint accounts***
Two Specified Persons have three accounts between them, one deposit account each and a jointly held deposit account with the following balances:

Specified Person A $35,000
Specified Person B $25,000
Joint Account $30,000

A data element in the Financial Institution's computer system allows the joint account to be associated with both A and B. The system shows the individual balances of the accounts; however, it does not show a combined balance. The fact that there is not a combined balance does not prevent the aggregation rules applying.

The balance on the joint account is attributable in full to each of the account holders. In this example the aggregate balance for A would be $65,000 and for B $55,000. As the amounts after aggregation are in excess of the $50,000 threshold, both account holders will be reportable. Although the Depository Accounts themselves are each below $50,000, the exemption in Annex 1, I, A, 4 does not apply as the aggregated balance of Depository Accounts has to be taken into account.

If A was not a Specified Person then only B would be reportable following an aggregation exercise.

***Example 6 – Aggregation of negative balances***
Two Specified Persons have three accounts between them, one account each and a jointly held account, all with the same Financial Institution with the following balances:

Specified Person A $53,000
Specified Person B $49,000
Joint Account ($ 8,000) – treated as nil

The accounts can be linked and therefore must be aggregated, but for the purposes of aggregation the negative balances should be treated as nil.

Therefore the only reportable account after applying the thresholds would be that for A.

### *14.14.6. Reporting*
Once aggregation has taken place and it is determined that the accounts are reportable, the accounts should be reported individually. A Financial Institution should not consolidate the accounts for reporting purposes.

***Example 6 – Separate account reporting***
Specified Person Y holds three Depository Accounts with bank Z. The balances are as follows:

Account 0001 $ 3,000
Account 0002 $32,000
Account 0003 $25,000

The aggregated balances total $60,000 and all the accounts are reportable. Bank Z should report on the three accounts individually and not consolidate the information into a single entry for reporting purposes.

### *14.14.7. Aggregation of Pre-existing Entity Accounts*

***Example 7***
Specified Person A has an individual Depository Account with Bank X. Specified Person A also controls 100 per cent of entity Y and 50% of entity Z both of which also have Depository Accounts with Bank X. The balances are as follows:

Individual Depository Account $ 35,000
Entity Y Depository Account $130,000
Entity Z Depository Account $90,000

Bank X has elected to apply the relevant thresholds in Annex 1 and both of these accounts can be linked in Bank X's system.

The individual Depository Account is not reportable as it is below the $50,000 threshold. There is no need to aggregate Depository Accounts held by entities controlled by an individual with those held directly by that individual to determine whether the $50,000 exemption applies under Annex 1, I, A, 4.

Entity Y's and Entity Z's Depository Accounts are also non reportable as the aggregated balances are below the $250,000 threshold that applies to Pre-existing Entity Accounts. In calculating the aggregated amount 100% of each entity's Depository Account is taken into account and so the aggregated amount in this case is $220,000 which is below the threshold.

***Example 8***
Specified Person A has an individual Depository Account with Bank X. Specified Person A also controls 100 per cent of entity Y and 20% of entity Z both of which also have Depository Accounts with Bank X. The balances are as follows:

Individual Depository Account $ 35,000

Entity Y Depository Account $330,000
Entity Z Depository Account $90,000

Bank X has elected to apply the relevant thresholds in Annex 1 and both of these accounts can be linked in Bank X's system.

The individual Depository Account is not reportable as it is below the $50,000 threshold. There is no need to aggregate Depository Accounts held by entities controlled by an individual with those held directly by that individual to determine whether the $50,000 exemption applies under Annex 1, I, A, 4.

Entity Y's Depository Accounts is reportable as it exceeds the $250,000 threshold that applies to Pre-existing Entity Accounts. Entity Z's Depository Account is not reportable as Specified Person A is not a Controlling Person since he owns less than 25% of Entity Z (assuming Entity Z is a low/medium risk entity).

***Example 9***

Specified Person A has an individual Depository Account with Bank X. Specified Person A also controls 100 per cent of entity Y and 65% of entity Z both of which also have Depository Accounts with Bank X. The balances are as follows:

Individual Depository Account $ 35,000
Entity Y Depository Account $130,000
Entity Z Depository Account $170,000

Bank X has elected to apply the relevant thresholds in Annex 1 and both of these accounts can be linked in Bank X's system.

The individual Depository Account is not reportable as it is below the $50,000 threshold. There is no need to aggregate Depository Accounts held by entities controlled by an individual with those held directly by that individual to determine whether the $50,000 exemption applies under Annex 1, I, A, 4.

Entity Y's and Entity Z's Depository Accounts are both reportable as the aggregated balances is above the $250,000 threshold that applies to Pre-existing Entity Accounts. In calculating the aggregated amount 100% of each entity's Depository Account is taken into account and so the aggregated amount in this case is $300,000 which is above the threshold. It is not correct to take 65% of Entity Z's Depository Account which would have given an aggregated balance of $240,500, below the threshold.

## 14.15. Aggregation of Sponsored funds

The sponsor of a range of funds acts on behalf of the funds and stands in their place in relation to meeting the FATCA obligations of the funds, however the ultimate responsibility for these obligations remain that of the Sponsored Financial Institution.

Aggregation is required across the range of funds that have the same sponsor, where the sponsor or its service provider uses the same computerised systems to link the accounts.

In practice a sponsor (typically the fund manager) will use a service provider (the transfer agent) to manage the client relationships of the account holders (the investors in the funds). Where different service providers are used by the same sponsor, the systems might not link account information across service providers and aggregation would only be required at the level of the service provider (transfer agent).

For example, where a sponsor manages all the client relationships through a single transfer agent, aggregation should happen at the level of the sponsor (to the extent that the system links accounts). Where a sponsor has two fund ranges each using a different transfer agent, in practice aggregation is possible only at the fund range/transfer agent level, as this is where the client relationship is held. The sponsor would aggregate at the level of the transfer agent (to the extent that the system links accounts).

### 14.16. Currency Conversion

Where accounts are denominated in a currency other than US dollars then the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply.

This should be done using a published spot rate of 31 December, or where the 31 December falls on a weekend or non-working day, the published rate for the last working day prior to 31 December, of the year being reporting upon, or in the case of an insurance contract or annuity contract, the most recent contract anniversary date when applicable.

In the case of closed accounts the spot rate to be used is the rate on the date the account was closed.

**Example 1**

The threshold to be applied to GBP denominated Pre-existing Individual Depository Accounts when a published spot rate as of 31 December 2013 is 1.6500 would be £30,303. ($50,000/1.6500)

**Example 2**

A Pre-existing Insurance Contract is valued at £155,000 as of 30 April 2013. In order to be measured against the $250,000 threshold, the Financial Institution can use the spot rate at 30 April 2013.

Alternatively a Financial Institution could convert non-US dollar balances into US dollars and then apply the thresholds. Regardless of the method of conversion, the rules for determining the spot rate apply.

The method of conversion must be applied consistently.

Examples of acceptable published exchange rates include, Reuters, Bloomberg, Financial Times and exchange rates published on the HMRC website. (www.hmrc.gov.uk)

**14.17. Change of circumstances**

A change in circumstances includes any change to or addition of information in relation to the account holder's account (including the addition, substitution, or other change of an account holder) or any change to or addition of information to any account associated with such account.

A change of circumstance will only have relevance if the change to or addition of information affects the status of the account holder for the purposes of the Agreements. For instance, a change of address within the same jurisdiction would not indicate a change of circumstances.

Associated accounts are those accounts that are associated through the aggregation rules or where a New Account is treated as being a pre-existing obligation. See Section 14.14 for aggregation and Sections 15 and 17 for pre-existing obligation rules.

**Example 1**

Where an account holder with a Pre-existing Account opens a New Account that is linked to the Pre-existing Account in the Financial Institution's computer systems and, as part of the account opening process, a US telephone number is provided, then this is a change in circumstance with respect to the Pre-existing Account.

The change will only be relevant if it indicates that an account holder's status has changed. That is, it either indicates that they are a Specified Person or that they are no longer a Specified Person.

If there is a change of circumstances that causes the Financial Institution to know or have reason to know that the original self-certification (such as one obtained on the opening of a New Individual Account) is incorrect or unreliable, the Financial Institution can no longer rely on the original self-certification.

The Financial Institution should then obtain a new self-certification that establishes whether the account holder is a US citizen or where he is tax resident.

In the event that there is a change in circumstance which indicates a change in the account holder's status, the Financial Institution should verify the account holder's actual status in sufficient time to allow it to report the account, if required, in the next reportable period.

If the account holder fails to respond to a Financial Institution's requests for a self-certification or for other documentation to verify the account holder's status, then the Financial Institution should treat the account as a Reportable Account until such time as the Financial Institution is given the necessary information to be able to correctly verify the status.

## 14.18. Assignment or Sale of Cash Value Insurance Contract

A cash value insurance contract such as an endowment policy may be the subject of assignment or sale by the beneficial owner of the policy. Such an assignment or sale will result in the Reporting Financial Institution having to consider the reportable status of the new beneficial owner of the policy.

**Example 1**
An individual holds a mortgage with lender A, and as part of their mortgage arrangements they hold an endowment policy. This endowment was taken out by the individual borrower and although the endowment is part of the mortgage arrangements it is the individual who is beneficially entitled to receive sums payable on the surrender or redemption of the policy (for instance they may be able to keep amounts payable under the endowment if they are able to pay off the mortgage from an alternative source). The borrower takes out a mortgage with a new lender but under the terms of the mortgage agreement they keep their existing endowment. In this case the endowment policy has not been assigned, even if the policy is named in the underlying mortgage arrangement. The endowment is an individual account and continues to be held by the same beneficial owner (the borrower).

**Example 2**
The same individual holds a mortgage with lender B, and as part of their mortgage arrangements they have taken out an endowment policy. However in this case mortgage lender B (which is a financial institution) has the direct benefit of the endowment policy such that they are beneficially entitled to receive sums payable on the surrender or redemption of the policy, or the sum insured in the event of the death of the borrower. In this case mortgage lender B is an Entity Account Holder. The borrower takes out a new mortgage with mortgage lender C, repays the existing loan and the financial institution assigns the benefit of the policy to mortgage lender C. The account with mortgage lender C is treated as a new account; the Reporting Financial Institution must determine the status of the new account holder mortgage lender C. In all likelihood, mortgage lender C will also be a UK Financial Institution or other Partner Jurisdiction Financial Institution, which can be identified on the basis of publicly available information.

**Example 3**
Individual X holds an endowment policy with a Reporting Financial Institution. This is a Financial Account. Individual X sells the benefit of the policy to another person - Individual Y. Individual Y will be subject to the due diligence procedures as a new individual account holder. This is a different situation from a new account being opened where the Financial Institution has direct contact with the individual and if that individual does not provide the necessary information the Financial Institution can simply turn down the business. Where there is an assignment the Financial Institution has no choice in the matter and must therefore take reasonable steps to obtain the necessary information from the new owner of the policy. If the new owner fails to provide a valid self certification, despite the reasonable efforts of the Financial Institution to obtain one, the account would become reportable.

## 14.19. Introducers

Under the [CD] AML regulations a [CD] Financial Institution may accept business from an introducer provided the Financial Institution has an agreement with that introducer that it can access the KYC information that the introducer has collected. The Financial Institution is not required to hold that information directly.

For the purposes of applying the Agreements, the Financial Institutions are not required to undertake any further due diligence that is required by the [CD] AML regulations unless specifically set out in the Agreements. Therefore if the Financial Institution does not hold the KYC information and as a result cannot identify any indicia, it will be unable to report in respect of that account. This does not mean that the account is not reportable but recognises that the Financial Institution may not be in a position to undertake that reporting.

## 14.20. Mergers or Bulk Acquisitions of Accounts

Where a Financial Institution acquires accounts by way of a merger or bulk acquisition of accounts, the Financial Institution can rely on the status of account holders as determined by a predecessor that is a Reporting Model 1 Financial Institution, US withholding agent, or a Participating Financial Institution for a period of six months. This is provided that the predecessor Financial Institution has met its due diligence obligations.

The Financial Institution may continue to rely on the due diligence work of the predecessor beyond the six month period where the documents that it holds, including any documentation (or copies of documentation) that was acquired as part of the merger or acquisition, continues to support the claimed status of account holders. An account holder's status will need to be verified by the acquiring Financial Institution in accordance with the due diligence procedures should the acquirer have reason to know that it is incorrect or if there is a change in circumstance.

Where a Deemed Compliant Financial Institution becomes part of a group as the result of a merger or acquisition, the status of any account maintained by the Deemed Compliant Financial Institution can be relied upon unless there is a change in circumstance in relation to the account.

### *14.20.1. Merger of Investment Entities*

Mergers of Investment Entities can be different to mergers of Custodial Institutions or Depository Institutions. Because the Financial Accounts of Investment Entities are its Equity and Debt Interest, the merger of two such entities creates a series of New Accounts in the surviving entity.

Mergers of Investment Entities will normally involve a surviving fund taking over the assets of the merging fund in exchange for issuing shares or units to the investors of the merging fund. The shares or units in the merging fund are then extinguished. The new shares in the surviving fund will be New Accounts except where both funds are sponsored by the same sponsor – see below.
So that fund mergers are not impeded, or held up by the requirement to perform due diligence on a series of New Accounts, special rules apply to the documentation of New Accounts on a merger of Investment Entities. There are

a number of potential scenarios depending upon whether the merging fund (the investors of which will create the New Accounts in the surviving fund) is a [CD] Financial Institution and whether it is a Reporting or Participating Financial Institution Deemed Compliant Financial Institution or Non-Participating Financial Institution. These are considered below.

***Example 1 - More than one fund sponsored by the same [CD] sponsor***

Where both funds are sponsored [CD] funds with the same [CD] sponsor, no New Accounts are created. This is because for Sponsored Financial Institutions, whether a Financial Account is a New Account or not is determined by reference to whether it is new to the sponsor (for example the fund manager), and not whether it is new to the Sponsored Financial Institution (the fund).

***Example 2 - Merging fund is a Reporting Financial Institution***

Where the merging fund is a Reporting Financial Institution (including a Sponsored Financial Institution, but where the funds do not share the same sponsor), a FATCA Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution, the surviving fund can rely on the account identification and documentation performed by the merging fund and will not need to undertake any further account due diligence in order to comply with its FATCA obligations. The surviving fund can continue to use the same account classification as the merging fund until there is a change in circumstances for the Financial Account.

***Example 3 - Merging fund is not a Reporting Financial Institution***

Where the merging fund is not a Reporting Financial Institution, a FATCA Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution (because it is a Deemed Compliant fund, a Non-Participating [CD] Financial Institution or a Non-Participating Foreign Financial Institution), the surviving fund will need to undertake account identification procedures on the New Accounts. However, in these circumstances the account identification procedures will be limited to those that are required for Pre-existing Accounts (See Sections 15 and 17) and should be carried out at the latest by the 31 December following the date of the merger or 31 December of the year following the year of the merger, if the merger takes place after 30 September of any calendar year.

### *14.20.2. Mergers and Acquisitions in relation to Pre-existing Cash Value Insurance Contracts*

It is fairly common for Insurance Companies to sell off “backbooks” of business to another company, especially when the Insurance Company no longer sells that type of business. Where this relates to Pre-existing Accounts, the transferor can continue to rely on the original identification of the transferee company. Therefore provided the transferee company was prohibited from selling the business into the US in relation to the US Agreement (See Section [ ]) the policies will remain out of scope, and the transferor company does not need to undertake any further due diligence checks.

### 14.21. Discretionary trusts

It is recognised, specifically in the case of discretionary trusts, that the individual beneficiaries are not always identified under AML procedures until such time as the first distribution is made to that beneficiary by the trust.

If the trust has made no such distributions and the beneficiaries have not been identified through AML procedures as they are not required to be so identified under [CD] law or cannot be determined due to the discretionary nature of the trust, no further due diligence or reporting procedures are required.

Each time a distribution is made, the trustee must ensure that all recipients who have not previously been identified are so identified and should undertake the due diligence procedures for identifying Specified US Persons.

# 15. PRE-EXISTING INDIVIDUAL ACCOUNTS

## 15.1. General

The information in this section 15 applies to both Agreements except in relation to indicia. Separate sections covering indicia for the UK and US Agreements have been included.

A Pre-existing Individual Account is a Financial Account maintained by a Financial Institution as of 30 June 2014.

Pre-existing Individual Accounts will fall into one of four categories depending on the balance or value of the account. These are:

a) Financial Accounts below the threshold exemption limit (15.3)
b) Cash Value Insurance Contracts and Annuity Contracts unable to be sold to US residents (US Agreement only) (15.4)
c) Lower Value Accounts (15.5 and 15.6)
d) High Value Accounts. (15.7 to 15.11)

## 15.2. Reportable Accounts

Pre-existing Individual Accounts will be reportable if they are not exempt (see Section 6) and the Financial Institution has identified relevant indicia, (see Section [ ]) and those indicia have not been cured or repaired.

Where a Pre-existing Lower Value or High Value Individual Account closes prior to the Financial Institution carrying out its due diligence procedures, the account still needs to be reviewed (other than where the account was closed prior to 30 June 2014 as in that case it is not a Pre-existing Account). Where, following the due diligence procedures the account is found to be reportable, the Financial Institution must report the information for the closed account as required under Section [ ].

Once an account is identified as a Reportable Account the account will remain reportable for all subsequent years unless the account holder ceases to be a Specified Person (including death), unless it is a Depository Account.

Whether a Depository Account is a Reportable Account is dependent on whether the balance or value is above the reporting threshold of $50,000 and an election has been made to apply the threshold exemption limit. A Depository Account is the only type of account where the reporting requirement can alter annually even where the account holder remains a Specified Person.

**Example 1**

A Depository Account belonging to a Specified Person with a balance of $65,000 at 31 December will need to be reported. The following year there is a large withdrawal from the account bringing the balance down to $20,000 at 31 December. As the balance is now below the $50,000 threshold the account does not need to be reported.

### 15.3. Threshold Exemptions that apply to Pre-existing Individual Accounts

The Isle of Man Regulations allow for Financial Institutions to elect to apply the threshold exemptions when reviewing and identifying Pre-existing Individual Accounts.

*Note that this is a departure from the IGA which requires Financial Institutions to elect to disapply the thresholds and so report all Financial Accounts regardless of balance or value. This departure is required to ensure compliance with [CD] data protection legislation. In the absence of an election, therefore, a Financial Institution will be required to review all Pre-existing Individual Accounts.*

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained.

The form the election will take and rules governing such elections are yet to be decided and business will be consulted on the most suitable approach.

The Jersey and Guernsey Regulations follow the provisions of the IGA and, therefore, the threshold exemptions apply automatically and Financial Institutions will have to elect to disapply the thresholds if required.

In the case of the Isle of Man, the accounts listed below (a – c) do not need to be reviewed, identified or reported to the Assessor provided the election is made by the Financial Institution.

In the case of Jersey and Guernsey, the following accounts do not need to be reviewed, identified or reported to the Comptroller/Director;

a) Any Depository Accounts with a balance or value of $50,000 or less.

b) Pre-existing Individual Accounts with a balance not exceeding $50,000 at the 30 June 2014, unless the account subsequently becomes a High Value Account (see [ ]).

c) Pre-existing Individual Accounts that qualify as Cash Value Insurance Contracts or Annuity Contracts with a balance or value of $250,000 or less at the 30 June 2014, unless the account subsequently becomes a High Value Account (see [ ]).

### 15.4. Pre-existing Cash Value Insurance Contracts or Annuity Contracts unable to be sold to US residents – US Agreement only

Pre-existing Cash Value Insurance Contracts or Annuity Contracts that are unable to be sold to US residents because of legal or regulatory restrictions do not need to be reviewed, identified or reported. This also applies to Insurance policies written in Trust or assigned to a Trust on or before 30 June 2014.

This exemption only applies where both of the following conditions are met:

- The Financial Institution's Cash Value Insurance Contracts and Annuity Contracts cannot be sold into the US without legal or regulatory authority, **and**

- [CD] law requires reporting or withholding in respect of these products.

No existing [CD] law prevents the sale of Cash Value Insurance products or Annuity Contracts to US residents. However, the sale of contracts to US residents will be considered effectively prevented if the issuing Specified Insurance Company (not including any US branches) is not licensed to sell insurance in any state of the US and the products are not registered with the Securities and Exchange Commission.

Under [CD] law there will either be reporting or withholding on such Pre-existing Contracts through one of the following mechanisms:

- Chargeable events reporting regime.

- Income minus Expense Regime (I-E).

- Basic rate tax deducted from the interest portion of a Purchased Life Annuity.

There is no equivalent category for the UK Agreement.

#### *15.4.1.* Assignment of Pre-existing Insurance Contracts

When a Pre-existing Cash Value Insurance Contract or Annuity Contract is assigned to another person then this will be treated as a New Account. This is to ensure that Pre-existing Insurance Contracts assigned after 1 July 2014 to US Persons are correctly identified and reported where necessary.

Once the Insurance Company becomes aware that an assignment has been made, the Insurance Company will need to carry out checks on the New account holder within the timescales for New Accounts. If the policyholder is reluctant to self certify their status or provide relevant documentation, the [CD] Insurance Company will assume the person to be a US Person and will provide the relevant reports to the Comptroller on an annual basis.

### 15.5. Lower Value Accounts

These are Pre-existing Individual Accounts with a balance or value that exceeds $50,000 or $250,000 for Cash Value Insurance Contracts and Annuity Contracts, but does not exceed $1,000,000.

### 15.6. Electronic Record Searches and Lower Value Accounts

#### *15.6.1. Identifying indicia - US Agreement*

A Financial Institution must review its electronically searchable data for any of the following US indicia.

a) Identification of the account holder as a US citizen or resident.
b) Unambiguous indication of a US place of birth.
c) Current US mailing or residence address (including PO Box).

d) Current US telephone number
e) Standing instruction to transfer funds to an account maintained in the US.
f) Current effective power of attorney or signatory authority granted to a person with a US address.
g) An 'in care of' or 'hold mail' address that is the sole address the Financial Institution holds for the account holder. An 'in care of' or 'hold mail' address is **not** treated as US indicia for the purposes of electronic searches, but is a US indicia where a review of paper records is required.

Where none of the indicia listed above are discovered through an electronic search, no further action is required in respect of Lower Value Accounts, unless there is a subsequent change of circumstance that results in one or more US indicia being associated with the account. Where that happens the account will become reportable unless further action is taken by the Financial Institution to attempt to cure or repair the indicia. (See Section [15.6.2].)

A Financial Institution will not be treated as having reason to know that an account holder's status is incorrect because it retains information or documentation that may conflict with its review of the account holder's status if it was not necessary under the procedures described in this Section to review that information or documentation.

***Example 2***
For Lower Value Accounts, where only an electronic search is required and no US indicia are identified, the Financial Institution will not have reason to know that the account holder was a US Person even if it held a copy of a US passport for the account holder but this was not referenced in the electronic search. This applies only if the Financial Institution was not required to or had not previously reviewed that documentation or information in accordance with the Agreements.

Where a Financial Institution has started its review, found indicia and attempted to verify or cure the indicia by contacting the account holder, but the account holder does not respond, the account should be treated as reportable 90 days after initiating contact. The 90 day limit is to allow the account holder sufficient time to respond to requests for information and does not alter the timings set out in Section [ ].

### *15.6.2. Curing indicia - US Agreement*
Where any of the indicia listed in 15.6.1 are found, the presumption is that the account is reportable. In certain circumstances however the indicia can be cured such that evidence shows that the account holder is not a Specified US Person.

Where the indicia found indicates that the account holder is a US citizen or US resident by birth, the account needs to be reported unless the Financial Institution obtains or currently maintains a record of all of the following:

If all the telephone numbers associated with the account are US telephone numbers:

- a self-certification showing that the account holder is neither a US citizen nor a US resident for tax purposes, and
- evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification).

If there are both US and non-US telephone numbers associated with the account:

- a self certification that the account holder is neither a US citizen nor a US resident for tax purposes; or
- a form of acceptable documentary evidence which establishes the account holder's non-US status. See Section 14.2.

Where there is uncertainty whether a phone number is US (for example a mobile phone number) a Financial Institution should take reasonable steps (in accordance with the relevant due diligence requirements for the type of account) to establish whether or not it is a US phone number. It should not then be treated as a US phone number if its status remains uncertain.

In the case of any number that is known not to relate to a telephone, for example a permanent fax number, the number should not be treated as a US indicia. However if there is any doubt over the function, or the number has a combined function at least one of which is as a phone number, the number should be treated as US indicia if it is a US number.

Where the indicium found is an unambiguous US place of birth then the account needs to be reported unless the Financial Institution obtains or currently maintains a record of **all** of the following:

- a self-certification showing that the account holder is neither a US citizen nor a US resident for tax purposes,
- evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification); **and**
- a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of the reason the account holder does not have such a certificate or the reason the account holder did not obtain US citizenship at birth.

Where the indicia found fall within 15.6.1 c), d), e,) or f) the account must be reported unless the Jersey Financial Institution obtains or currently maintains a record of the following:

- a self-certification that the account holder is neither a US citizen nor a US resident for tax purposes; **and**

- a form of acceptable documentary evidence which establishes the account holder's non-US status. See Section [ ].

There will be a standing instruction if the account holder has mandated the Financial Institution to make repeat payments without further instruction from the account holder, to another account that can clearly be identified as being an account maintained in the US.

Instructions to make an isolated payment will not be a standing instruction even when given significantly in advance of the payment being made.

### *15.6.3. Identifying indicia - UK Agreement*

A Financial Institution must review its electronically searchable data for any of the following UK indicia.

a) Identification of the account holder as a UK tax resident.
b) Current UK mailing or residence address (including PO Box, 'in care of' or 'hold mail' address).
c) Current effective power of attorney or signatory authority granted to a person with a UK address.
d) For accounts that are not Depository Accounts the Reporting Financial Institution must also review electronically searchable data maintained by them for standing instructions to transfer funds to an account maintained in the UK. This removes the need to report accounts in [CD] from which payments for services such as television subscriptions are made as this is recognised to be a common occurrence for many [CD] resident persons who otherwise do not have a link to the UK and are not UK tax resident.

Where none of the indicia listed above are discovered through an electronic search, no further action is required in respect of Lower Value Accounts, unless there is a subsequent change of circumstance that results in one or more UK indicia being associated with the account. Where that happens the account will become reportable unless further action is taken by the Financial Institution to attempt to cure or repair the indicia. (See Section [15.6.4].)

A Financial Institution will not be treated as having reason to know that an account holder's status is incorrect because it retains information or documentation that may conflict with its review of the account holder's status if it was not necessary under the procedures described in this Section to review that information or documentation.

### *15.6.4. Curing indicia - UK Agreement*

Where any of the indicia listed in [15.6.3] are found, the presumption is that the account is reportable. In certain circumstances however the indicia can be cured such that evidence shows that the account holder is not a Specified UK Person.

Where Account Holder information contains a current mailing or residence address (including a post office box, "in-care-of" or "hold mail" address) in the other Party, the Reporting Financial Institution obtains or has previously reviewed and maintains a record of:

(1) a self-certification that the Account Holder is not resident in the UK for tax purposes; ***and***

(2) ***either;***

(a) a certificate of residence for tax purposes issued by an appropriate official of the country or jurisdiction in which the Account Holder claims to be resident; ***or***

(b) the provision of a local tax identification number of the country or jurisdiction in which the Account Holder claims to be resident, ***and,*** a passport issued by the jurisdiction in which the Account Holder claims to be resident.

Where Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the other Party, or in the case of Financial Accounts other than Depository Accounts where Account Holder information contains standing instructions to transfer funds to an account maintained in the other Party, the Reporting Financial Institution obtains or has previously reviewed and maintains a record of:

(1) a self-certification that the Account Holder is not resident in the UK for tax purposes; ***and***

(2) documentary evidence, as defined in [ ], establishing the Account Holder's non-residence status.

## 15.7. High Value Accounts

High Value Accounts are Pre-existing Individual Accounts with a balance or value that exceeds $1,000,000 at 30 June 2014 or at 31 December of any subsequent year.

## 15.8. Electronic Record Searches and High Value Accounts

A Financial Institution must review its electronically searchable data in the same manner as for Lower Value Accounts.

## 15.9. Paper Record Searches and High Value Accounts

*US Agreement*

A paper record search will not be required where all the following information is electronically searchable:

a) the account holder's nationality or residence status;
b) the account holder's residence address or mailing address currently on file;
c) the account holder's telephone number(s) currently on file;
d) whether there are standing instructions to transfer funds to another account;
e) whether there is a current "in-care-of" address or "hold mail" address for the account holder; and
f) whether there is any power of attorney or signatory authority for the account.

For this purpose, electronically searchable means that the Financial Institution has a system that is capable of capturing this data even if the searchable databases do not include these specific fields; for example optical recognition systems.

The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last 5 years.

a) The most recent documentary evidence collected with respect to the account;
b) the most recent account opening contract or documentation;
c) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes;
d) any power of attorney or signature authority forms currently in effect; **and**
e) any standing instructions to transfer funds currently in effect.

These should be reviewed for any US indicia as set at Section [ ].A Financial Institution can rely on the review of High Value Accounts performed by third party distributors, for example financial advisers, on their behalf where there is a contract obligating the distributor to perform the review.

*UK Agreement*

A paper record search will not be required where all the following information is electronically searchable:

g) the account holder's residence address and mailing address currently on file;
h) in the case of Financial Institutions other than Depository Accounts whether there are standing instructions to transfer funds in the account to another account;
i) whether there is a current "in-care-of" address or "hold mail" address for the account holder; and
j) whether there is any power of attorney or signatory authority for the account.

For this purpose, electronically searchable means that the Financial Institution has a system that is capable of capturing this data even if the searchable databases do not include these specific fields; for example optical recognition systems.

The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last 5 years.

f) The most recent documentary evidence collected with respect to the account;
g) the most recent account opening contract or documentation;
h) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes;
i) any power of attorney or signature authority forms currently in effect; **and**
j) in the case of Financial Institutions other than Depository Accounts any standing instructions to transfer funds currently in effect.

These should be reviewed for any UK indicia as set at Section [ ].

A Financial Institution can rely on the review of High Value Accounts performed by third party distributors, for example financial advisers, on their behalf where there is a contract obligating the distributor to perform the review.

#### *15.9.1. Exceptions*

A Financial Institution is not required to perform the paper record search for any Pre-existing Individual Account for which it has retained a withholding certificate and acceptable documentary evidence (See Section [ ]) which establishes the account holder's non-US status.

### 15.10. Qualified Intermediaries

A Financial Institution that has previously established an account holder's status in order to meet its obligations under a Qualified Intermediary, Withholding Partnership or Withholding Trust Agreement, or to fulfil its reporting obligations as a US payor under Chapter 61 of the IRS Code, can rely on that status for the purposes of the Agreement where the account holder has received a reportable payment under those regimes. The Financial Institution is not required to perform the electronic search, or in respect of High Value Accounts a paper record search, in relation to those accounts. Any UK Financial Institution that falls into this category is required, however, to perform the Relationship Manager enquiry (See Section [ ]) where the accounts are High Value Pre-existing Individual Accounts.

### 15.11. Relationship Manager

In addition to the electronic and paper searches, the Financial Institution must also consider whether any Relationship Manager associated with the High Value Account (including any accounts aggregated with such account) has actual knowledge that would identify the account holder as a Specified Person.

If the Relationship Manager has actual knowledge that the account holder is a Specified US Person then the account must be reported unless the indicia can be cured (see [ ]).

For these purposes a Relationship Manager is assumed to be any person who is an officer or other employee of the Financial Institution assigned responsibility for specific account holders on an ongoing basis, and who advises the account holders regarding their accounts and arranges for the overall provision of financial products, services and other related assistance.

A person is only considered a Relationship Manager for these purposes with respect to an account with a balance or value exceeding $1,000,000, taking into account the aggregation rules (see [ ]).

A Financial Institution must also ensure that it has procedures in place to capture any change of circumstance in relation to a High Value Individual Account made known to the Relationship Manager in respect of the account holder's status.

**Example 3**
If a Relationship Manager is notified that the account holder has a new mailing address in the US, this would be a change in circumstance and the Financial Institution would either need to report the account or obtain the appropriate documentation to cure or repair that indicia.

The electronic search and paper search only need to be done once for each account identified as a High Value Account, but the responsibilities of Relationship Managers to ensure that any knowledge regarding the account holder's status or aggregation of accounts is captured are constant and ongoing.

### 15.12. Effects of Finding US or UK Indicia

Where one or more indicia are discovered through the enhanced review procedures and none of the cures or repairs can be applied, the Financial Institution must treat the account as a Reportable Account for the current and all subsequent years.

Where no indicia are discovered in the electronic search, the paper record search or by making enquiries of the Relationship Manager, no further action is required unless there is a subsequent change in circumstances.

If there is a change in circumstances that results in one or more of the indicia listed in this Section being associated with the account and none of the cures or repairs can be applied, it must be treated as a Reportable Account for the year of change and all subsequent years. This applies for all accounts except Depository Accounts (See Section [ ]), unless the account holder ceases to be a Specified Person.

Where a Financial Institution has started its review, indicia are found and attempts made to verify or cure those indicia by contacting the account holder, but the account holder does not respond, the account should be treated as reportable 90 days after initiating contact. The 90 day limit is to allow the account holder sufficient time to respond to requests for information.

**15.13. Timing of reviews –**

***15.13.1. Lower Value Accounts***

The review of Pre-existing Individual Accounts that are Lower Value Accounts at 30 June 2014 must be completed by 30 June 2016.

Pre-existing Lower Value Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

***Example 1***

The due diligence procedures are carried out on a Lower Value Account during March 2015 and the account is determined as reportable. The Financial Institution is only required to report on the account information for the year ending 31 December 2015 onwards.

***15.13.2. High Value Accounts***

The review of Pre-existing Accounts that are High Value Accounts at 30 June 2014 must be completed by 30 June 2015.

***Example 2***

The due diligence procedures are carried out on a High Value Individual Account during April 2015 and the account is determined as reportable. The Financial Institution is required to report on the account for 2015 and subsequent years.

Where the balance or value of an account does not exceed $1,000,000 as of 30 June 2014, but does as of the last day of 31 December 2015 or a subsequent calendar year, the Financial Institution must perform the procedures described for High Value Accounts by 30 June of the year following the year in which the balance or value exceeded $1,000,000.

# 16. NEW INDIVIDUAL ACCOUNTS

## 16.1. General

A New Individual Account is an account opened on or after 1 July 2014.

When opening a New Individual Account, the Financial Institution must obtain the TIN for Specified US Persons and/or the date of birth and National Insurance Number (where available) for Specified UK Persons. See sections 19.2.2 and 19.2.3 respectively.

## 16.2. Reportable Accounts

Where it is established that the holder of a New Individual Account is a Specified Person then the account must be treated as a Reportable Account.

In this instance, in respect of Specified US Persons, the Financial Institution is required to retain a record of an IRS form W-9 or US TIN. The US TIN may be retained in any manner and does not need to be on an IRS form. There is no equivalent requirement for Specified UK Persons.

## 16.3. Threshold Exemptions that apply to New Individual Accounts

The Isle of Man Regulations allow for Financial Institutions to elect to apply the threshold exemptions when reviewing and identifying New Individual Accounts, in the same way as for Pre-existing Individual Accounts (see [15.3]).

The Agreements are written to provide for exemptions to apply to certain accounts based on thresholds subject to an election to remove them. The Isle of Man Regulations reverse this requirement meaning that no thresholds apply unless a Financial Institution elects to apply the appropriate threshold exemptions set out in the Agreements when reviewing and identifying Pre-existing Individual Accounts.

The Jersey and Guernsey Regulations follow the provisions of the IGA and, therefore, the threshold exemptions apply automatically and Jersey and Guernsey Financial Institutions will have to elect to disapply the thresholds if required.

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business.

The form the election will take and rules governing such elections are yet to be decided and business will be consulted on the most suitable approach.

The threshold exemption for New Individual Accounts is $50,000 for Depository Accounts and Cash Value Insurance Contracts. These do not need to be reviewed, identified or reported unless the account balance exceeds $50,000.

There is no threshold exemption for any other type of Financial Account.

If a Financial Institution **does not make** an election under the Regulations to apply the threshold exemptions to Reportable Accounts, it will need to review and identify the status of all of its New Individual account holders.

### 16.4. New Accounts for holders of Pre-existing Accounts

Where a Pre-existing account holder wishes to open a New Account with the same Financial Institution, there is no need to re-document the account holder as long as:

- the appropriate due diligence requirements have already been carried out, or are in the process of being carried out for the Pre-existing Account; **and**

- the accounts are treated as linked or as a single account or obligation for the purposes of applying any of the due diligence requirements.

This means that the standards of knowledge to be applied, the change of circumstances rules and aggregation requirements will apply to all accounts held by the account holder.

Therefore where there is a change of circumstance or where the Financial Institution has reason to know that the account holder's status is inaccurate in relation to one account, this will apply to all other accounts held by the account holder.

Where the Financial Institution has elected to apply thresholds, the accounts must be treated as linked for aggregation purposes.

This can also be applied on a group basis where documentation is shared within the group. See Section [14.7].

### 16.5. Identification of New Individual Accounts

For accounts that are not exempt, and for accounts that previously qualified for the threshold exemption, but now have a balance or value above the threshold, the Financial Institution can carry out the following procedures to determine the account holder's status.

- Obtain a self-certification (See Section [14.8]) that allows the Financial Institution to determine where the account holder is tax resident; **and**

- Confirm the reasonableness of this self-certification based on the information the Financial Institution obtains in connection with the opening of the account, including any documentation obtained for AML/KYC procedures.

For the purpose of the US Agreement a US citizen is considered to be resident in the US for tax purposes even where they are also tax resident in another country.

In the absence of a valid self-certification being provided by the account holder, the account would become reportable.

Alternatively the Financial Institution can retain documentary evidence of the type identified in Section [14.2] and confirm the reasonableness of the documentary

evidence based on the information the Financial Institution obtains in connection with the opening of the account, including any documentation obtained for AML/KYC or other regulatory procedures.

If the information provided during the account opening process contains any of the indicia described in Section [15.6] then the account will become reportable unless further action is taken by the Financial Institution to attempt to cure or repair the indicia. (See Section [15.6.2]).

The identification of these accounts should be completed as soon as practicable after the account has been opened and in any event amounts cannot be transferred to the account until such time as the AML procedures have been completed. The expectation would be that this would follow AML/KYC time limits. For accounts that were previously exempt because of the threshold exemptions being applied but no longer are, the Financial Institution must determine the account holder's status in sufficient time to report the account, if necessary, for the year in which the account ceased to be exempt.

### 16.6. Group Cash Value Insurance Contracts or group Annuity Contracts

A Financial Institution can treat an account that is a group Cash Value Insurance Contract or a group Annuity Contract, and that meets the requirements set out below, as a non-US account until the date on which an amount is payable to an employee/certificate holder or beneficiary, provided the Financial Institution obtains a certification from an employer that no employee/certificate holder (account holder) is a US Person.

A Financial Institution is not required to review all the account information collected by the employer to determine if an account holder's status is unreliable or incorrect.
The requirements are that:

- the group Life Insurance Contract or group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; **and**

- the employee/certificate holders are entitled to receive any contract value; and to name beneficiaries for the benefit payable upon the employee's death; **and**

- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

### 16.7. Accounts held by beneficiaries of a Cash Value Insurance Contract that is a Life Insurance Contract

A Financial Institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract that is a Life Insurance Contract as a non-US Person and treat such account as a non-US account unless the participating Financial Institution has knowledge or reason to know that the beneficiary is a US Person.

### 16.8. Reliance on Self-certification and Documentary evidence

Where information already held by a Financial Institution conflicts with any statements or self-certification, or the Financial Institution has reason to know that

the self-certification or other documentary evidence is incorrect, it may not rely on that evidence or self-certification.

A Financial Institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts; a reasonably prudent person would know this to be the case.

## 17. PRE-EXISTING ENTITY ACCOUNTS

### 17.1. General

#### *17.1.1. US Agreement*

Pre-existing Entity Accounts are those accounts that are in existence at 31 December 2014. IRS Notice 2014-33 advised that 'a withholding agent or FFI may treat an obligation (which includes an account) held by an entity that is opened, executed, or issued on or after July 1, 2014, and before January 1, 2015, as a pre-existing obligation…subject to certain modifications' which is a six month delay to the dates detailed in the IGA.

A [CD] Financial Institution may apply this amended definition or the original definition of Pre-existing Entity Accounts, ie those that are in existence at 30 June 2014.

#### *17.1.2. UK Agreement*

Pre-existing Entity Accounts are those accounts that are in existence at 30 June 2014.

### 17.2. Reportable Accounts

An account holder of a Pre-Existing Entity Account must be classified as either:

a) a Specified Person;
b) a US or UK Person other than a Specified Person;
c) a [CD] Financial Institution or other Partner Jurisdiction Financial Institution ;
d) a Participating FFI, a Deemed Compliant FFI or an Exempt Beneficial Owner;
e) an Active NFFE or Passive NFFE; **or**
f) a Non-Participating Financial Institution.

A Pre-Existing Entity Account is only reportable where the account is held by one or more entities that are Specified Persons or by Passive NFFEs with one or more Controlling Persons who are Specified Persons.

Under the due diligence procedures in Annex 1 of the CD and Gibraltar Agreement, any account held by an entity that is a Foreign Financial Institution shall NOT be held to be a reportable account, regardless of the identity of the controlling persons.

If the account holder is one of those listed below then the account **is not** a Reportable Account:

a) a US or UK Person other than a Specified Person;
b) a [CD] Financial Institution or other Partner Jurisdiction Financial Institution;
c) a Participating FFI, a Deemed Compliant FFI or an Exempt Beneficial Owner;
d) an Active NFFE; **or**
e) a Passive NFFE where none of the Controlling Persons are Specified Persons.

Where a Pre-existing Entity Account closes prior to the Financial Institution carrying out its due diligence procedures, then the account is still required to be reviewed. Where following the due diligence procedures the account is found to be reportable,

the Financial Institution must report the information as required under Section [ ]. This should only apply to accounts that exist at 30 June 2014 and close before 30 June 2016 as all accounts should have been reviewed by that date. This will not apply to accounts that are closed prior to 30 June 2014.

If the account holder is a Non-Participating Financial Institution (NPFI), only payments made to the NPFI will be reportable. (See Section [ ]).

An entity account will also be reportable where a self-certification is not provided or the entity's status cannot be determined from information held or that is publically available. In this situation the account should continue to be reported until such time that the entity's status is correctly identified.

### 17.3. Threshold Exemptions that apply to Pre-existing Entity Accounts

The Isle of Man Regulations allow for Financial Institutions to elect to apply the threshold exemptions when reviewing and identifying Pre-existing Entity Accounts in the same way as for Individual Accounts.

The Agreements are written to provide for exemptions to apply to certain accounts based on thresholds subject to an election to remove them. The Isle of Man regulations reverse this requirement meaning that no thresholds apply unless a Financial Institution elects to apply the appropriate threshold exemptions set out in the Agreements when reviewing and identifying Preexisting Entity Accounts.

The Jersey and Guernsey Regulations follow the provisions of the IGA and, therefore, the threshold exemptions apply automatically and Jersey and Guernsey Financial Institutions will have to elect to disapply the thresholds if required.

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business.

If the threshold exemption is applied and where the account balance or value does not exceed $250,000 at 30 June 2014 there is no requirement to review, identify or report the account until the account balance exceeds $1,000,000, at 31 December of a subsequent calendar year.

If a Financial Institution **does not make** an election under the Regulations to apply the threshold exemption, it will need to review and identify all Pre-existing Entity Accounts.

The form the election will take and rules governing such elections are yet to be decided and business will be consulted on the most suitable approach.

### 17.4. Standardised Industry Codes and indicia for Pre-existing Entities

A Financial Institution can rely on information previously recorded in its files in addition to standardised industry codes, in determining the status of an entity. For these purposes, a standardised industry code may be any coding system employed by the Financial Institution.

The term standardised industry code means a code that is part of a coding system used by the Financial Institution to classify account holders by business type and was in use by the later of 1 January 2012, or six months after the date the Financial Institution was formed or organised.

Where a standardised industry code is used, the Financial Institution is unable to rely on this to determine the entity's status if there are identifying US or UK indicia, as described in sections 15.6.1 and 15.6.3 respectively.

If there are indicia, the Financial Institution may treat the entity as non-reportable only if the Financial Institution obtains a self-certification for the entity and one form of acceptable documentary evidence which establishes the entity's non-US or non-UK status as appropriate such as a Certificate of Incorporation.

### 17.5. Identification of an entity as a Specified Persons

In order to identify if an entity is a Specified Person, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) can be relied upon.

A place of incorporation or organisation, an address, or the indicia listed above would be examples of information indicating that an entity is a Specified Person of a particular jurisdiction.

If the account holder is found to be a Specified Person then the account should be treated as reportable unless a self-certification is obtained from the account holder which shows that the account holder is not a Specified Person or it can be reasonably determined from information held or that is publicly available, that the account holder is not a Specified Person.

Article 1.1) ff) of the Agreements include a list of exceptions for Specified Persons. To avoid unnecessary reporting, a self-certification may be obtained from any entity that is believed to be within this definition, but where there is insufficient information held by the Financial Institution to allow it to make a correct determination.

### 17.6. Identification of an entity as a Financial Institution

In order to identify whether an entity is a Financial Institution, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) or a Global Intermediary Identification Number can be relied upon.

If the entity is a Financial Institution, including Non-Reporting Financial Institutions (see [ ]) that account is not a Reportable Account for the purposes of the Financial Institution that holds the Financial Account on behalf of the entity.

### 17.7. Identification of an entity as a Non-Participating Financial Institution (NPFI) (US AGREEMENT ONLY)

If the account holder is a Financial Institution, but not a [CD] Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial

Institution, then it should be treated as a Non-Participating Financial Institution (see [ ] for definition of NPFI).

This applies unless the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner, or unless the Reporting Financial Institution is able to verify that the entity is a participating Financial Institution or Registered Deemed Compliant Financial Institution, for instance from its Global Intermediary Identification Number.

If the account holder is a Non-Participating Financial Institution then the Reporting Financial Institution will need to report on payments made to it (See Section [ ]).

### 17.8. Identification of an entity as a Non-Financial Foreign Entity (NFFE)

When an entity account holder is not identified as either a Specified Person or a Financial Institution, the Financial Institution must consider whether the entity is a Passive NFFE and if any of the Controlling Persons of that entity are Specified Persons.

To determine whether the entity is a Passive NFFE, the Financial Institution must obtain a self-certification from the account holder establishing its status unless it has information in its possession or that is publicly available that enables the Financial Institution to reasonably determine whether or not the entity is an Active NFFE.

To identify the Controlling Persons of an entity, a Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are Specified Persons, Financial Institutions may rely on:

- Information collected and maintained pursuant to AML/KYC procedures in the case of an account held by one or more Passive NFFEs, with a balance that does not exceed $1,000,000, or

- A self-certification from an account holder or Controlling Person in the case of an account held by one or more Passive NFFEs, with a balance that exceeds $1,000,000.

### 17.9. Electronic Searches

Electronic searches may be sufficient **provided** all of the [CD] AML information is stored electronically and can be mined to identify the relevant information. If this is not the case, the search must include a paper review.

### 17.10. Timing of reviews

The review of Pre-existing Entity Accounts with an account balance or value that exceeds $250,000 at 30 June 2014 must be completed by 30 June 2016.

The review of Pre-existing Entity Accounts with a balance or value that does not exceed $250,000 at 30 June 2014, but exceeds $1,000,000 as of 31 December 2015 or of any subsequent year, must be completed by 30 June of the following year.

## 18. NEW ENTITY ACCOUNTS

### 18.1. General

#### *18.1.1. US Agreement*

A New Entity Account is an account opened by or for an entity on or after 1 January 2015. IRS Notice 2014-33 advised that 'a withholding agent or FFI may treat an obligation (which includes an account) held by an entity that is opened, executed, or issued on or after July 1, 2014, and before January 1, 2015, as a pre-existing obligation…subject to certain modifications' which is a six month delay to the dates detailed in the IGA.

A [CD] Financial Institution may apply this amended definition or the original definition of Pre-existing Entity Accounts, i.e. those that are in existence at 30 June 2014.

#### *18.1.2 UK Agreement*

A New Entity Account is an account opened by or for an entity on or after 1 July 2014.

### 18.2. Reportable Accounts

An account holder of a New Entity Account must be classified as either:

g) a Specified Person;
h) a US or UK Person other than a Specified Person;
i) a [CD] Financial Institution or other Partner Jurisdiction Financial Institution ;
j) a Participating FFI, a Deemed Compliant FFI or an Exempt Beneficial Owner;
k) an Active NFFE or Passive NFFE; **or**
l) a Non-Participating Financial Institution.

New Entity Accounts will only be reportable where there is an account holder who is a Specified Person or is a Passive NFFE with one or more Controlling Persons who are Specified Persons, as with Pre-existing Entity Accounts.

If the account holder is one of those listed below then the account **is not** a Reportable Account:

f) a US or UK Person other than a Specified Person;
g) a [CD] Financial Institution or other Partner Jurisdiction Financial Institution;
h) a Participating FFI, a Deemed Compliant FFI or an Exempt Beneficial Owner;
i) an Active NFFE; **or**
j) a Passive NFFE where none of the Controlling Persons are Specified Persons.

### 18.3. Exemptions that apply to New Entity Accounts

There are no threshold exemptions that apply to New Entity Accounts so there will be no need to apply any aggregation or currency conversion rules.

However, where a Financial Institution maintains credit card accounts, these do not need to be reviewed, identified or reported where the Financial Institution has

policies or procedures that prevent the account holder establishing a credit balance in excess of $50,000.

### 18.4. New Accounts for Pre-Existing Entity account holders

Where a New Account is opened by an entity account holder who already has a Pre-existing Account the Financial Institution may treat both accounts as one account for the purposes of applying AML/KYC due diligence. In these circumstances, the Financial Institution may choose to apply the identification and documentation procedures for either Pre-existing or New Accounts to derive the FATCA classification for any New Account or Accounts opened on or after 1 July 2014 by the same entity.

### 18.5. Identification of an entity as a Financial Institution

A Financial Institution may rely on publicly available information, a GIIN or information within the Financial Institution's possession to identify whether an account holder is an Active NFFE, Participating FFI or a [CD] or Partner Jurisdiction Financial Institution. In all other instances the Financial Institution must obtain a self-certification from the account holder to establish the account holder's status.

It is possible that the name of the entity with the GIIN does not reflect the name of the account holder. This might be the case for example with respect to a trust which is a Non-Reporting Financial Institution. A Financial Institution does not need to undertake any further due diligence to confirm whether the GIIN provided is correct.

### 18.6. Identification of an entity as a Non-Participating Financial Institution (US AGREEMENT ONLY)

If the entity is a [CD] Financial Institution or a Financial Institution in another Partner Jurisdiction, no further review, identification or reporting will normally be required. The exception to this is if the Financial Institution becomes a Non-Participating Financial Institution following significant non-compliance.

If the account holder is a Financial Institution, but not a [CD] Financial Institution, Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then the entity is treated as a Non-Participating Financial Institution.
This applies unless the Reporting Financial Institution:

- obtains a self-certification from the entity stating that it is a Certified Deemed Compliant Financial Institution, an Exempt Beneficial Owner, or an Excepted Financial Institution; **or**

- verifies its status as a Participating Financial Institution or Registered Deemed Compliant Financial Institution for instance by obtaining a GIIN (see [18.5] regarding relying on a GIIN).

If the account holder is a Non-Participating Financial Institution, then reports on certain payments made to such entities will be required. (See Section [ ])

### 18.7. Identification of an entity account holder as a Specified Person

If the Financial Institution identifies the account holder of a New Entity Account as a Specified Person, the account will be a Reportable Account and the Financial Institution must obtain a self-certification (see [ ]).

### 18.8. Identification of an entity as a Non-Financial Foreign Entity (NFFE)

If on the basis of a self-certification the holder of a New Entity Account is established as a Passive NFFE, the Financial Institution must identify the Controlling Persons of the entity as determined under AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are Specified Persons the Reporting Financial Institution must obtain a self-certification from the account holder or Controlling Person.

If they are Specified Persons, the account shall be treated as a Reportable Account.

## 19. REPORTING OBLIGATIONS

Once a Financial Institution has identified Reportable Accounts then it must report certain information regarding those accounts to the Comptroller/Assessor/Director in accordance with the timetable in Section [19.3].

Separate reports are required to be submitted to the Comptroller/Assessor/Director in respect of US and UK Reportable Accounts.

### 19.1. Information required

#### *19.1.1. Specified Persons and Controlling Persons of certain Entity Accounts*

In relation to each Specified Person that is the holder of a Reportable Account and in relation to each Controlling Person of certain Entity Accounts (i.e. a Passive NFFE) who is a Specified Person, the information to be reported is:

a) Name
b) Address
c) Tax Identification Number (TIN) (for Specified US Persons, where available)
d) Date of birth and National Insurance Number (for Specified UK Persons, where available)
e) Name, address and TIN (if any) of the entity
f) The account number or functional equivalent
g) The name and Global Intermediary Identification Number of the Reporting Financial Institution.
h) The account balance or value as of the end of the calendar year or other appropriate period (except for Cash Value Insurance Contracts, Purchased Life Annuities and some Deferred Annuities – see [19.1.4 to 19.1.6]).

In relation to f) for the UK Agreement only, where the GIIN is not available as the Reporting Financial Institution has not registered under the US Agreement, the local tax identification number of the Reporting Financial Institution must be reported instead.

In relation to h) if the account was closed during the year, the amount transferred from the account before the account was closed.

**Account number or functional equivalent**

If the Reportable Account has a unique identifying number or code then this should be reported. This will include identifiers such as Bank Account Numbers and Policy numbers for insurance contracts as well as other non-traditional unique identifiers. The unique identifier should be sufficient to enable the Financial Institution to identify that Reportable Account in future.

If the Reportable Account does not have a unique identifying number or code then any functional equivalent should be reported. This may include non

unique identifiers that relate to a class of interests. A non-unique identifier should be sufficient to enable the Financial Institution to identify the Reportable Account held by the named account holder in future.

Exceptionally, if the Reportable Account does not have any form of identifying number or code then a description sufficient for the Financial Institution to identify the Reportable Account held by the named account holder in future should be reported.

### *19.1.2. Custodial Accounts*

In addition to a) to g) above, where the account is a Custodial Account the following information is also required in relation to the calendar year or other appropriate reporting period:

i) The total gross amount of interest paid or credited to the account
j) The total gross amount of dividends paid or credited to the account
k) The total gross amount of other income paid or credited to the account
l) The total gross proceeds from the sale or redemption of property paid or credited to the account.

Elements h) to j) are only required to be reported in respect of Reporting Year 2015 onwards. Element k) is required to be reported in respect of Reporting Year 2016 onwards.

### *19.1.3. Depository Accounts*

In addition to a) to g) above, where the account is a Depository Account the following information is also required:

m) The total amount of gross interest paid or credited to the account in the calendar year or other appropriate period, in respect only of Reporting Year 2015 onwards.

### *19.1.4. Cash Value Insurance Contracts*

In addition to a) to f) above and if the account is still in existence at the end of the year the following information must be reported each year from Reporting Year 2015 onwards:

n) the annual amount reported to the policyholder as the "surrender value" of the account; **or**
o) the amount calculated by the Specified Insurance Company as at 31 December; **and**
p) any part surrenders taken throughout the policy year.

### *19.1.5. Purchased Life Annuities (PLAs)*

As [[CD]] Purchased Life Annuities do not have a cash/surrender value, there is no account balance to report. A Specified Insurance Company will only be required to report the amount paid out or credited to the policy holder.

### *19.1.6. Deferred Annuities*

In [CD], deferred annuities have two stages:

- The accumulation phase where the product is similar to a Cash Value Insurance Contract and should be treated as such for reporting as set out above.
- The pay-out phase where the annuity becomes a PLA and should be treated as such for reporting as set out above.

When a deferred annuity is ending its accumulation phase, some contracts provide the option for the account holder to take the surrender value of contract, instead of converting the account into a PLA; this is the amount that should be reported.

#### *19.1.7. Other Accounts*

For accounts other than Custodial or Depository Accounts, in addition to a) to g) above, for other accounts the following information is also required in respect of Reporting Year 2015 onwards:

q) The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.

#### *19.1.8. Account closures and transfers*

In addition to 19.1 a) to f) above, in the case of a Depository or Custodial Account closed or transferred in its entirety by an account holder during a calendar year the payments made with respect to the account shall be:

r) The payments and income paid or credited to the account that are described earlier in this Section for Custodial, Depository and Other Accounts.
s) The amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

In the case of a Cash Value Insurance Contract that has been fully surrendered during the calendar year the Specified Insurance Company will need to report the total amount paid out to the account holder or nominated person at the close of the account. This will include any amount of interest following maturity where the amount is awaiting payment.

In the case of a Purchased Life Annuity, if the annuitant has died or the term has ended, the Specified Insurance Company will have no further reporting requirement if the annuitant died at a time before the annual payment has been made.

### 19.2. Explanation of information required

#### *19.2.1. Address*

The address to be reported with respect to an account held by a Specified Person is the residence address recorded by the Reporting Financial Institution for the account holder or, if no residence address is associated with

the account holder, the address for the account used for mailing or other purposes by the Reporting Financial Institution.

In the case of Controlling Persons of a Passive NFFE, the address required will be the address of each Controlling Person who is reportable.

### *19.2.2. Taxpayer Identification Numbers (TINs) – US Agreement*

Where it has been established that an account holder is a US Person a Financial Institution is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identification Number.

For Pre-existing Individual Accounts that are Reportable Accounts then a US TIN need only be provided if it exists in the records of the Reporting Financial Institution. In the absence of a record of the US TIN, a date of birth should be provided, but again only where it is held by the Reporting Financial Institution.

In line with the Agreement, [CD] has introduced legislation to require Reporting Financial Institutions to obtain the US TIN for relevant Pre-existing Individual Accounts from the 1 January 2017.

For all New Individual Accounts that are identified as Reportable Accounts from 1 July 2014 onwards, the Reporting Institution must obtain a self-certification from account holders identified as resident in the US that includes a US TIN. This self-certification could be on for example, IRS forms W-9 or on another similar agreed form.

Where for a New Individual Account the proposed account holder fails to provide a US TIN or evidence of non-US status and the account becomes active, the account is to be treated as reportable.

There is no requirement for a Financial Institution to verify that any US TIN provided is correct. A Financial Institution will not be held accountable where information supplied by an individual proves to be inaccurate and the Financial Institution had no reason to know.

### *19.2.3. Date of Birth and National Insurance Numbers – UK Agreement*

Where it has been established that an account holder is a UK Person a Financial Institution is required to obtain a Date of Birth and National Insurance Number in several instances.

For Pre-existing Individual Accounts that are Reportable Accounts then this information need only be provided if it exists in the records of the Reporting Financial Institution.

In line with the Agreement, [CD] has introduced legislation to require Reporting Financial Institutions to obtain the information for relevant Pre-existing Individual Accounts from 1 January 2017.

For all New Individual Accounts that are identified as Reportable Accounts from 1 July 2014 onwards, the Reporting Institution must obtain a self-certification from account holders identified as resident in the UK that includes this information. In respect of the National Insurance Number this information must be obtained by 1 January 2017.

Where for a New Individual Account the proposed account holder fails to provide the information and the account becomes active, the account is to be treated as reportable.

There is no requirement for a Financial Institution to verify that any of this information provided is correct. A Financial Institution will not be held accountable where information supplied by an individual proves to be inaccurate and the Financial Institution had no reason to know.

### *19.2.4. Account Number*

The account number to be reported with respect to an account is the identifying number assigned to the account or other number that is used to identify the account within the Financial Institution.

### *19.2.5. Account balance or value*

The account balance or value of an account may be reported in US dollars or in the currency in which the account is denominated.

For ***Depository Accounts***, the balance or value will be that shown on the 31 December, unless the account is closed on a date before that.

***Example 1*** *For a reportable Depository Account the balance or value to be reported will be the balance or value as of the 31 December 2014. This will be reported in 2015.*

For ***trusts*** see Section 7.

For ***other Financial Accounts***, the balance or value will either be that shown on 31 December of the year to be reported or where it is not possible to or usual to value an account at 31 December, the normal valuation point for the account that is nearest to 31 December is to be used.

***Example 2*** *When a Specified Insurance Company has chosen to use the anniversary date of a policy for valuation purposes, if for example the policy was opened on 3 June 2013, it will be valued on 2 June 2014. If it exceeds the reporting threshold then it is the 2 June 2014 value that will be reported for the year ending 31 December 2014. This will be reported to the Comptroller in 2015.*

Where the 31 December falls on a weekend or non working day, the date to be used is the last working day before the 31 December.

The balance or valuation of a Financial Account is the balance or value calculated by the Financial Institution for purposes of reporting to the account holder.

The balance or value of an Equity Interest is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.

The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

### *19.2.6. Jointly held Financial Accounts*

Where a Financial Asset is jointly held the balance or value to be reported in respect of the Specified Person is the entire balance or value of the account. The entire balance or value will be attributable to each holder of the account. The same applies for the Controlling Persons of NFFEs that jointly hold accounts.

***Example 3***

*Where a jointly held Depository Account has a balance or value of $100,000 and one of the account holders is a Specified Person then the amount to be attributed to that person would be $100,000.*

*If both account holders were Specified Persons then each would be attributed the $100,000 and reports would be made for both.*

***Example 4***

*Where a Specified Person owns 50% of the shares in a company, the full value of the company is reported as being the Financial Account held by that Specified Person.*

### *19.2.7. Account Closures*

The process for closing accounts will differ between institutions and between different products and accounts. The intention is to capture the amount withdrawn from the account in connection with the closure process, as opposed to the account balance at the point of closure given there is an expectation the balance will be reduced prior to point of closure. For these purposes it is acceptable for the Financial Institution to:

- record the balance or value within five business days of when they receive instructions from the account holder to close the account; **or**
- record the most recent available balance or value that is obtainable following receipt of instructions to close the account, where a Financial Institution is unable to record the balance or value at the time of

receiving instructions to close the account. This may include a balance or value that predates the instructions to close the account if this is the balance or value that is the most readily available.

For accounts that close as a result of switching to another bank, the balance calculated as the transferable balance as part of the new BACS Account Switching service.

### 19.3. Nil returns

Returns will not be required by [CD] Financial Institutions if there are no Reportable Accounts.

### 19.4. Multiple Financial Institutions – duplicate reporting

It is likely that a number of unconnected Financial Institutions could have a reporting obligation in respect of the same account which could result in duplicate reporting. Each Financial Institution has an obligation to report all Reportable Financial Accounts **unless** it has actual knowledge that the account is being reported by another Financial Institution, whether that Financial Institution is a [CD] Financial Institution or not. For this purpose, the [CD] Financial Institution has actual knowledge where they hold written confirmation from the Reporting Financial Institution in the other jurisdiction that the Financial Account has been reported for FATCA purposes or under an agreement equivalent to the UK Agreement. There is no need for the [CD] Financial Institution in this case to report anything to the [Comptroller/Assessor/Director] in respect of that Financial Account. This does not remove the responsibility for the [CD] Financial Institution to ensure that a report has been made and so should it be determined that no report has been made by any Reporting Financial Institution in respect of a Financial Account that is a Reportable Account, penalties may be imposed by the [Comptroller/Assessor/Director].

### 19.5. Timetable for reporting

**US Agreement**

| Reporting Year | In respect of | Information to be reported | Reporting date to Comptroller/ Assessor |
|---|---|---|---|
| **2014** | Each Specified US Person either holding a Reportable Account<br><br>**Or**<br><br>as a Controlling Person of an Entity Account | Name<br>Address<br>US TIN (where applicable or DoB for Pre-existing Accounts)<br>Account number or functional equivalent<br>Name and identifying number of Reporting Financial Institution<br>Account balance or value | 30 June 2015 |

| | | | |
|---|---|---|---|
| **2015** | As 2014 plus payments to NPFI (see [19.4]) | As 2014 plus:<br><br>**Custodial Accounts**<br>Total gross amounts of interest, dividends and other income paid or credited to the account<br><br>**Depository Accounts**<br>Total amount of gross interest paid or credited to the account in the calendar year or other reporting period<br><br>**Cash Value Insurance contracts**<br>Surrender value; or<br>Amount calculated by the Specified Insurance Company; and<br>Any part surrenders.<br><br>**All other accounts**<br>The total gross amount paid or credited to the account including the aggregate amount of any redemption payments. | 30 June 2016 |
| **2016** | As 2014 plus payments to NPFI (see [19.4]) | As 2015 plus:<br><br>**Custodial Accounts**<br>Total gross proceeds from the sale or redemption of property paid or credited to the account | 30 June 2017 |
| **2017 onwards** | As 2014 | All of the above | 30 June following the end of the reported calendar year |

## UK Agreement – Full reporting

| Reporting Year | In respect of | Information to be reported | Reporting date to Comptroller |
|---|---|---|---|
| **2014** | Each Specified US Person either holding a Reportable Account<br><br>**Or**<br><br>as a Controlling Person of an Entity Account | Name<br>Address<br>Date of birth and National Insurance number (where applicable for Pre-existing Accounts)<br>Account number or functional equivalent<br>Name and identifying number (GIIN or local tax identification number) of Reporting Financial Institution<br>Account balance or value | 30 June 2016 |
| **2015** | As 2014 | As 2014 plus:<br><br>**Custodial Accounts**<br>Total gross amounts of interest, dividends and other income paid or credited to the account<br><br>**Depository Accounts**<br>Total amount of gross interest paid or credited to the account in the calendar year or other reporting period<br><br>**Cash Value Insurance contracts**<br>Surrender value; or<br>Amount calculated by the Specified Insurance Company; and<br>Any part surrenders.<br><br>**All other accounts**<br>The total gross amount paid or credited to the account including the aggregate amount of any redemption payments. | 30 June 2016 |

| | | | |
|---|---|---|---|
| **2016** | As 2014 | As 2015 plus:<br><br>**Custodial Accounts**<br>Total gross proceeds from the sale or redemption of property paid or credited to the account | 30 June 2017 |
| **2017 onwards** | As 2014 | All of the above | 30 June following the end of the reported calendar year |

**UK Agreement - Annex IV Alternative Reporting Regime**

See Appendix 4, section 1

## 19.5. Reporting on Non-Participating Financial Institutions – US Agreement only

Where a Reporting Financial Institution makes payments to a Non-Participating Financial Institution (NPFI), under the Agreements it is required to report the name and the aggregate value of payments made to each Non-Participating Financial Institution for the years 2015 and 2016.

This obligation was included as a temporary solution to the requirement to withhold on 'foreign passthru payments' which is included in the US provisions.

Whether or not this reporting requirement continues will need to be considered alongside any discussion on the longer term solution that delivers the underlying policy objectives of passthru payments, but which removes the legal problems for Financial Institutions outside the US.

Only payments that relate to the Financial Account maintained by the Reporting [CD] Financial Institution for the Non-Participating Financial Institutions must be reported.

### *19.5.1. Exceptions*

The following do not need to be reported:

a) Payments for the following: services (including wages and other forms of employee compensation such as stock options), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services;
b) Payments where the Reporting Financial Institution has only a passive role in the payment process and so, alternatively either no knowledge of the facts that give rise to the payment or no control over the payment or no custody of the property which relates to the payment (e.g. processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer's account) or does not have custody of property which relates to the payment;
c) Capital markets payments in c) above that are not directly traceable to a US source
d) Payments where the Reporting [CD] Financial Institution does not hold documentation to identify the payee as a Non-Participating FFI, unless the payee is a prima facie FFI.

### *19.5.2.* Reporting

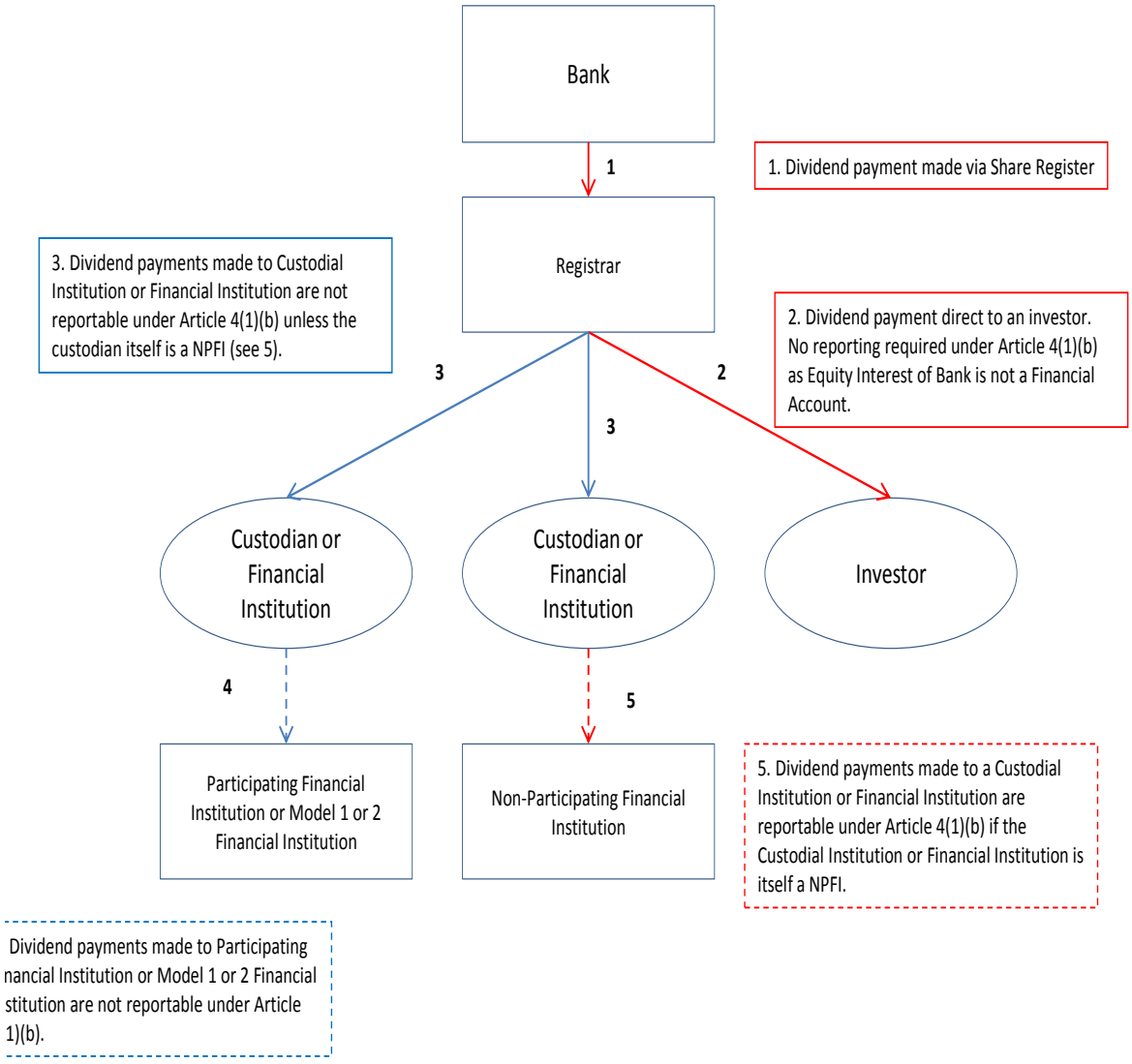
1. A payment will be treated as being made when an amount is paid or credited to an NPFFI.
2. Only the aggregate amount of payments made to the payee during the calendar year need to be reported.

## 19.6. Payments of Dividends made by a Financial Institution

Dividend payments made by a Financial Institution to its shareholders will only be reportable where the shareholding is held in a Financial Account, for example where the shareholding is held in a Custodial Account of an NPFI.

Shareholdings of a Financial Institution, other than shareholdings or equity interest in certain Investment Entities (See Section [ ]), are not deemed to be Financial Accounts in their own right and as such where a payment is made directly to an Investor who is an NPFI, the payment will not be reportable.

The diagram below shows where the reporting for dividend payments will apply



### 19.7. Withholding on US Source Withholdable Payments paid to Non-Participating Financial Institutions – US Agreement only

Consultations with business suggest that [CD] does not have any Financial Institutions who are Qualified Intermediaries (QIs) **and** have elected to assume primary withholding responsibility. There are a number of QIs in [CD], but any withholding is undertaken by a withholding agent and the primary withholding is not done by the [CD] Financial Institution itself.

Therefore we do not expect Article 4(1)(d) of the US Agreement to apply to [CD] Financial Institutions, who should instead fall within the provisions of Article 4(1)(e). This means that [CD] Financial Institutions will not have to withhold on US source withholdable payments to a Non-Participating Financial Institution, but they may have to report on such payments to any immediate payor.

### 19.8. Reporting payments of US Source Withholdable Payments paid to Non-Participating Financial Institutions – US Agreement only

The requirement to report US Source Withholdable Payments to Non-Participating Financial Institutions will fall on Financial Institutions other than those acting as qualifying intermediaries, withholding foreign partnerships or withholding foreign trusts (see Article 4(1)(d)&(e) of the Agreement).

Where such a Financial Institution pays, or acts as an intermediary for the payment of a US Source Withholdable Payment to a Non-Participating Financial Institution, the Financial Institution is required to provide information to the “immediate payor” of that income. The immediate payor is the person with withholding and reporting obligations to the US authorities.

The information that must be provided in respect of the payment is that required for withholding and reporting to occur.

### 19.9. Third party service providers

Third party service providers can be used by Financial Institutions to undertake the reporting obligations but the responsibility for ensuring that it is complete, correct and timely remains with the Financial Institution.

### 19.10. Format of reporting

The format in which reporting will be required is still to be finalised but this will be consistent with the format used by the UK and is being developed with the OECD for the Common Reporting Standard. The format to be used will be mandatory and returns in any other format will not be accepted and could result in the information not being submitted to the other authority.

### 19.11. Transmission to the [CD] Competent Authority

The way in which Financial Institutions will submit the information to the Comptroller/Assessor/Director is still to be finalised.

## 19.12. Penalties

The [CD] Regulations set out that penalties will be applicable where a Reporting Financial Institution fails to provide the required information and where it provides inaccurate information.

## 20. COMPLIANCE

### 20.1. Minor errors

In the event that the information reported is corrupted or incomplete, the recipient country will notify the Comptroller/Assessor/Director.

The Comptroller/Assessor/Director will contact the Reporting [CD] Financial Institution to resolve the problem. Examples of minor errors could include:

a) Data fields missing or incomplete;
b) Data that has been corrupted;
c) Use of an incompatible format.

Where this leads to the information having to be resubmitted this will be via the Comptroller/Assessor/Director.

Penalties may be imposed by the Comptroller/Assessor/Director if the error is considered to contravene the [CD] Regulations.

Continual and repeated administrative or minor errors could be considered as significant non-compliance where they continually and repeatedly disrupt and prevent transfer of the information.

### 20.2. Significant non compliance

Significant non-compliance may be determined by either the IRS (in respect of the US Agreement), HMRC (in respect of the UK Agreement) or the Comptroller/Assessor/Director. In any event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the Financial Institution must resolve the non-compliance.

Where the Comptroller/Assessor/Director is notified of or identifies significant non-compliance by a Reporting [CD] Financial Institution, the Comptroller/Assessor/Director will apply any relevant penalties under the [CD] Regulations.

The Comptroller/Assessor/Director will also engage with the Reporting [CD] Financial Institution to:

- discuss the areas of non-compliance;
- discuss remedies/solution to prevent future non-compliance;
- agree measures and a timetable to resolve its significant non-compliance.

The Comptroller/Assessor/Director will inform the Competent Authority of the other party of the outcome of these discussions.

The following are examples of what would be regarded as significant non-compliance include:

- Repeated failure to file a return or repeated late filing.
- Ongoing or repeated failure to register, supply accurate information or establish appropriate governance or due diligence processes.
- The intentional provision of substantially incorrect information.
- The deliberate or negligent omission of required information

In the event that the issues remain unresolved after a period of 18 months then the Reporting [CD] Financial Institution will be treated as a Non-Participating Financial Institution under the US Agreement. Details of how such an entity can correct its status will be published at later date. There is no equivalent sanction under the UK Agreement but penalties could be imposed by the Comptroller/Assessor/Director under the [CD] Regulations.

## 21. DATA PROTECTION

Financial Institutions are not required to share information with other jurisdictions, for example under the aggregation rules (see Section [ ]) or Sponsored Entity regime (see Section [ ]), where doing so would be in breach of the [CD] Data Protection rules. In those circumstances customer approval would be required.

## 22. PREVENTION OF AVOIDANCE

The [CD] Regulations include an anti-avoidance measure which is aimed at arrangements taken by any person to avoid the obligations placed upon them by the Regulations.

It is intended that 'arrangements' will be interpreted widely and the effect of the rule is that the Regulations will apply, as if the arrangements had not been entered into.

## APPENDIX 1

## AGREEMENTS IN FORCE (TO BE UPDATED)

| Jurisdiction | Date of entry into force | Implementing regulations | Link to Agreement |
|---|---|---|---|
| United States of America | [add date] | [add link] | [add link] |
| United Kingdom | [add date] | [add link] | [add link] |

## APPENDIX 2

## RELEVANT DOCUMENTS

### US Agreement

| | |
|---|---|
| Intergovernmental Agreement | [add link] |
| Tax Information Exchange Agreement | [add link] |
| US Treasury FATCA Regulations | [add link] |
| [CD] Regulations | [add link] |

### UK Agreement

| | |
|---|---|
| Intergovernmental Agreement | [add link] |
| Tax Information Exchange Agreement | [add link] |
| UK Regulations | [add link] |
| [CD] Regulations | [add link] |
| UK Guidance Notes | [add link] |

## APPENDIX 3

## DEFINITIONS

## (with hyperlinks to references in main body)

## APPENDIX 4

## UK AGREEMENT – SPECIFIC ELEMENTS

### 1. Annex IV – Alternative Reporting Regime for UK Resident Non-Domiciled Individuals

#### *A. General*

Annex IV to the UK Agreement includes provisions for the Alternative Reporting Regime (ARR). This ARR applies only to UK Resident Non-Domiciled (RND) individuals that have claimed the remittance basis of tax under Part 14 Chapter A1 Income Tax Act 2007.

The ARR is elective by both the Reporting [CD] Financial Institution and the RND. In the absence of an election by both parties (see paragraph B below), and self-certification by the RND (see paragraph C below) the full reporting under the UK Agreement applies.

If the Reporting [CD] Financial Institution and RND have elected for the ARR to apply, and the self-certification has been completed by the RND, the ARR must be applied to all UK Reportable Accounts held with that Reporting [CD] Financial Institution by that RND, whether directly or indirectly through an entity of which the RND is a Controlling Person.

#### *B. Elections*

In order for the ARR to apply, two elections need to be made.

1. *Reporting [CD] Financial Institution*

The Reporting [CD] Financial Institution must submit an election to the Comptroller/Assessor/Director confirming that it is offering the ARR to its RND clients. The election must be made by 30 May following the end of the first Relevant Tax Year in respect of which it offers the ARR. The election will remain valid until it is revoked by the Reporting [CD] Financial Institution.

2. *RND*

The RND must submit an election to the Reporting [CD] Financial Institution that will be reporting in respect of Financial Accounts held by the RND and maintained by that Reporting [CD] Financial Institution. The election must be made annually and by 30 May following end of the Relevant Tax Year.

The Reporting [CD] Financial Institution may determine that the election should be made by an earlier date provided they notify their client in advance such as when they notify the client that they can offer the ARR. This might be preferable if the Financial Institution cannot obtain electronically all of the information required to be reported under the full

reporting or ARR and has to collate it through manual file searches, for example.

The format of the election can be determined by the Reporting [CD] Financial Institution.

### *C. Self-certification*

The RND electing for the ARR to apply to his accounts must provide written and signed confirmation of the following to the Reporting [CD] Financial Institution by 28 February following the end of the Relevant Tax Year:

- that the RND's UK tax return for the Relevant Tax Year:
    - contains a claim or statement that the RND is not domiciled anywhere in the UK; and
    - includes a claim to be taxed under the remittance basis under Part 14 Chapter A1 Income Tax Act 2007 and, if appropriate, the tax chargeable under section 809H Income Tax Act 2007 has been paid, or any such equivalent sections in any successor legislation; and

- to the best of their knowledge, the domicile status and claim to be taxed on the remittance basis is not being formally disputed by the UK Competent Authority.

The format of the self-certification can be determined by the Reporting [CD] Financial Institution but must be in writing and signed by the Specified Person. The document must be retained by the Reporting [CD] Financial Institution for a period of 6 years following the end of the Relevant Tax Year.

### *D. Information to be provided*

The following information should be provided in respect of the Relevant Reporting Period instead of the information to be provided under Article 2 of the UK Agreement.

- Name, address, date of birth and National Insurance Number.

    In the case of date of birth and National Insurance Number, this information is only reported where it is available. As set out in [ ] this information should be obtained for all new accounts established after 1 July 2014. In respect of accounts that exist at 30 June 2014, Reporting [CD] Financial Institutions should have in place mechanisms to obtain this information by 1 January 2017 so that this information can be included in reporting for the Relevant Tax Year ended 5 April 2018.

    In the case of an account holder being an entity that is identified as having one or more Controlling Persons that is a RND, the name and address of the entity must also be reported or retained by the Reporting [CD] Financial Institution for the Comptroller/Assessor/Director to have access to if required, in addition to the information above in respect of the RND Controlling Persons.

- Instead of income and account balance information that is required to be reported under the UK Agreement, the following financial information is to be reported in respect of the Relevant Tax Year:

    - Gross Payments and Movements of Assets from an originating UK source into the UK Reportable Account;
    - Gross Payments and Movements of Assets from an originating source territory or jurisdiction that cannot be determined;
    - Gross Payments from the UK Reportable Account to an ultimate UK destination; and
    - Gross Payments from the UK Reportable Account to an ultimate territory or jurisdiction that cannot be determined.

- Where gross payments and movements of assets have been made during the Relevant Tax Year, the Financial Institution must also report the following:
    - The account number, or functional equivalent.

    - The name of the Reporting [CD] Financial Institution and, where available, the Global Intermediary Identification Number (obtained if the Reporting [CD] Financial Institution registers with the IRS under the US Agreement). Where the Reporting [CD] Financial Institution does not have a GIIN, it should report its [CD] tax identification number.

### *E. Ultimate destination and originating source*

The use of the words ‘ultimate’ and ‘originating’ was to deal with the situation where payments were made via UK clearing institutions. It is not intended that the Reporting [CD] Financial Institution has to trace the funds or assets through every possible future or previous location.

If a payment is made or an asset is moved directly from the UK Reportable Account to a UK account it should be assumed that the UK is the ultimate destination and so the transaction is reportable, unless there is evidence that the payment or asset is destined for another identifiable jurisdiction.

Evidence in this case for example would be assumed if the Reporting [CD] Financial Institution has instructions to transfer the funds or assets from a [CD] account to an account in France but the funds are transferred via a UK clearing account.

If a payment is made or an asset is moved from the UK Reportable Account to an account in another jurisdiction, and that jurisdiction is identifiable (which would be expected to be the case), then the transaction is not reportable, unless there is evidence that the payment or asset is destined for the UK. The

Reporting CD Financial Institution is not required to enquire with the Specified UK Person as to whether the funds will be transferred elsewhere.

Evidence in this case for example would be assumed if the Reporting [CD] Financial Institution has instructions to transfer the funds from a [CD] account to an account in France and then from the French account to an account in the UK. This would be treated as being a transfer to an ultimate UK destination.

### *F. ARR reporting periods*

The reporting period for the ARR is aligned with the UK tax year and is referred to as the Relevant Tax Year in the Agreement.

The first reporting period for ARR is for 2014 and covers the period from 30 June 2014 to 5 April 2015. This information must be reported to the [Comptroller/Assessor/Director] by [30 June 2016] for onward submission to HMRC by 30 September 2016.

The reporting period for 2015 covers the period from 6 April 2015 to 5 April 2016 and must be reported to the [Comptroller/Assessor/Director] by [30 June 2017] for onward submission to HMRC by 30 September 2017. In all subsequent years, the reporting follows this pattern.

If a RND elects for ARR to apply but does not complete the self-certification process, the Reporting [CD] Financial Institution must report the information set out in Article 2 of the UK Agreement. This will necessarily result in a 12 month delay in the information being reported.

For example, taking the reporting period for 2016 (6 April 2016 to 5 April 2017), the RND will have elected for ARR to apply by [30 May] 2017. The self-certification by the RND is needed by 28 February 2018. If the self-certification is not provided, the Reporting [CD] Financial Institution must report to the [Comptroller/Assessor/Director] by [30 June 2018] the income, gains and account balances as set out in Article 2 for the 2016 calendar year in respect of the accounts held by that RND so that this can be reported to HMRC by 30 September 2018.

### *G. Additional reporting for Reporting [CD] Financial Institutions*

For each year for all clients who have elected for the ARR to apply, regardless of whether the RND has provided the self-certification, the Reporting [CD] Financial Institution must provide the following information to the Comptroller/Assessor/Director by 30 June following the end of the Relevant Tax Year:

- Name, address and, where available, the date of birth and National Insurance Number.

Therefore, for all RNDs who have made the election in respect of the tax year ended 5 April 2017, a list of those persons must be sent to the [Comptroller/Assessor/Director] by 30 June 2017 so that it can be submitted to

HMRC by 30 September 2017 in accordance with paragraph E.1. of Annex IV. It is recognised that this might result in some duplicate reporting when the Gross Payments and Movement of Assets is reported in respect of the same period 12 months later.

## Summary timetable for ARR elections and self-certification

| Reporting period | Period covered | Election/self-certification made by: | Election made to: | Deadline for making election |
|---|---|---|---|---|
| **2014** | 30 June 2014 to 5 April 2015 | i) Reporting [CD] Financial Institution - election | i) [Comptroller] | i) [30 May] 2015 |
| | | ii) RND – election | ii) Reporting [CD] Financial Institution | ii) [30 May] 2015 |
| | | iii) RND – self-certification | iii) Reporting [CD] Financial Institution | iii) 28 February 2016 |
| **2015** | 6 April 2015 to 5 April 2016 | i) Reporting [CD] Financial Institution - election | i) [Comptroller] | i) [30 May] 2016 |
| | | ii) RND – election | ii) Reporting [CD] Financial Institution | ii) [30 May] 2016 |
| | | iii) RND – self-certification | iii) Reporting [CD] Financial Institution | iii) 28 February 2017 |
| **2016** | 6 April 2016 to 5 April 2017 | i) Reporting [CD] Financial Institution - election | i) [Comptroller] | i) [30 May] 2017 |
| | | ii) RND – election | ii) Reporting [CD] Financial Institution | ii) [30 May] 2017 |
| | | iii) RND – self-certification | iii) Reporting [CD] Financial Institution | iii) 28 February 2018 |
| **2017 onwards** | Same pattern as 2016 | Same pattern as 2016 | Same pattern as 2016 | Same pattern as 2016 |

## Summary timetable for ARR reporting

| Reporting period | In respect of: | Information to be reported | Period covered | Reporting date to Comptroller |
|---|---|---|---|---|
| **2014** | i) Each Specified UK Person who has elected for the ARR to apply | i) Name, address, DoB and NI Number<br><br>**and if no self-certification made**<br><br>full reporting as set out in [19.5] | i) 30 June 2014 to 5 April 2015<br><br>1 January 2014 to 31 December 2014 | 30 June 2016<br><br>30 June 2016 |
| | ii) Each Specified UK Person who has elected for the ARR to apply and has completed the self-certification process | ii) Name, address, DoB and NI Number; and<br><br>Gross Payments and Movements of Assets as set out in paragraph D | ii) 30 June 2014 to 5 April 2015 | 30 June 2016 |
| **2015** | As for 2014 | i) Name, address, DoB and NI Number<br><br>**and if no self-certification made**<br><br>full reporting as set out in [19.5]<br><br>ii) Name, address, DoB and NI Number; and<br><br>Gross Payments and Movements of Assets as set out in paragraph D | i) 6 April 2015 to 5 April 2016<br><br>1 January 2015 to 31 December 2015<br><br>ii) 6 April 2015 to 5 April 2016 | 30 June 2016<br><br>30 June 2017<br><br>30 June 2017 |

| | | | | |
|---|---|---|---|---|
| **2016** | As for 2014 | i) Name, address, DoB and NI Number<br><br>**and if no self-certification made**<br><br>full reporting as set out in [19.5]<br><br>ii) Name, address, DoB and NI Number; and<br><br>Gross Payments and Movements of Assets as set out in paragraph D | i) 6 April 2016 to 5 April 2017<br><br>1 January 2016 to 31 December 2016<br><br>ii) 6 April 2016 to 5 April 2017 | 30 June 2017<br><br>30 June 2018<br><br>30 June 2018 |
| **2017 onwards** | As for 2014 | i) Name, address, DoB and NI Number<br><br>**and if no self-certification made**<br><br>full reporting as set out in [19.5]<br><br>ii) Name, address, DoB and NI Number; and<br><br>Gross Payments and Movements of Assets as set out in paragraph D | Following the same pattern as 2016 | Following the same pattern as 2016 |

### *H. Trusts*

The interest in a trust is the Financial Account which, if the settlor, beneficiary or person with ultimate effective control is a Specified UK Person, is the UK Reportable Account. This remains the case where that Specified Person is a UK Resident Non-Domiciled person.

The Reporting [CD] Financial Institution, which in the case of a professionally managed trust is the trustee, has to report Gross Payments and Movement of Assets from a UK source or from an undeterminable jurisdiction to the UK

Reportable Account, i.e. the trust. The Reporting [CD] Financial Institution also has to report Gross Payments from the UK Reportable Account, i.e. the trust, to a UK destination or destination in an undetermined jurisdiction.

No disclosure is required in respect of interest or other income arising in the trust.