Isle of Man Government

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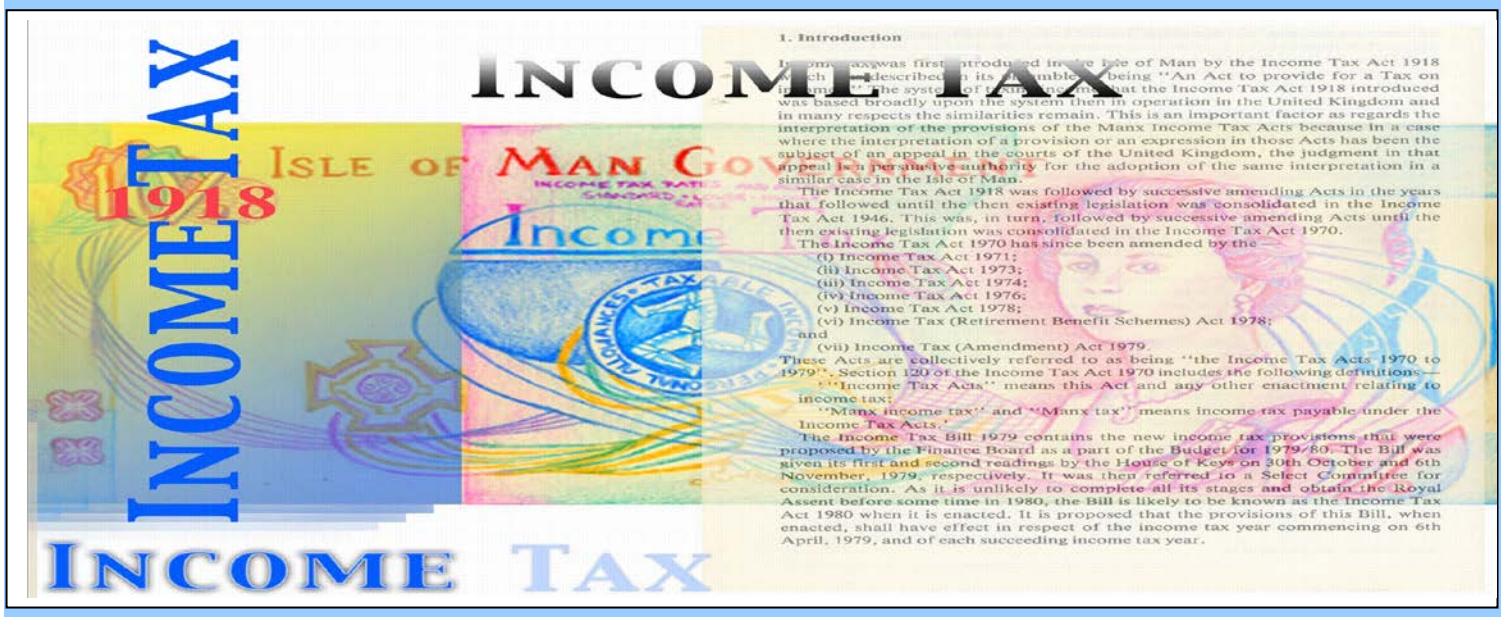

The International Tax Compliance (United States of America) Regulations 2014

Application of FATCA for Isle of Man Financial Institutions

Guidance Note

GN 55

The Treasury - Yn Tashtey
ITD Income Tax Division

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THE INTERNATIONAL TAX COMPLIANCE (UNITED STATES OF AMERICA) REGULATIONS 2014

ISLE OF MAN GUIDANCE NOTES

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These Guidance Notes are Isle of Man specific and follow previous versions that were drafted by Guernsey, the Isle of Man and Jersey jointly.

This version of the guidance has been updated to remove all references to The International Tax Compliance (United Kingdom) Regulations 2014 (the UK Agreement) as UK reportable accounts became reportable under the CRS from 1 January 2016.

Guidance on the CRS can be found in GN 53 also on the Income Tax Division website.

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.

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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 (FIs) 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 FIs is equivalent in substance to that required to be reported by US citizens in their US tax returns.

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

The US recognised that in some jurisdictions there are legal barriers to implementing FATCA as well as some practical difficulties for FIs 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 FIs.

Developments in the area of automatic exchange of information progressed quickly and on 13 December 2013 the Isle of Man 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 an Isle of Man Financial Institution.

Under the terms of the US Agreement Isle of Man Financial Institutions will provide the Isle of Man Competent Authority, the Assessor of Income Tax, with the required information. The Assessor will then forward that information to the US Competent Authority.

The Isle of Man legislation dealing with the implementation of the US Agreement is The International Tax Compliance (United States of America) Regulations 2014 which can be accessed at https://www.gov.im/media/1311870/2014-sd-0187_pdf.pdf.

1.2 Purpose of these guidance notes

These guidance notes are intended to provide practical assistance to both business and the Income Tax Division staff who deal with entities affected by the US Agreement.

This document is not a legal document and does not replace the need to take professional advice.

These guidance notes and the Isle of Man Regulations have been prepared to deliver these overarching principles, abiding by the spirit of the US Agreement and developing

international standards. As such in delivering the reporting obligations, the guidance also recognises the burden of reporting for affected businesses.

An Isle of Man Financial Institution must apply the Isle of Man Regulations in force at the time with reference to the published guidance.

These guidance notes apply to:

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

US Specified Persons, the persons in respect of which reporting will be made, are defined in section 1.7.

1.3 The UK IGA

In October 2013 the Isle of Man and the UK signed an IGA based on the US Agreement (the UK Agreement).

Previous versions of these guidance notes covered **both** the US and UK Agreements as they were based upon the same model, and therefore many of the provisions were the same.

In September 2016 the Isle of Man and UK signed a further agreement, in which a transition from automatic exchange of information in accordance with the UK Agreement to exchange in accordance with the Common Reporting Standard (the CRS), developed by the Organisation for Economic Co-operation and Development (OECD), was agreed.

These guidance notes, (version 5), have therefore been revised to remove all references to the UK Agreement. Please continue to use version 4 of these guidance notes, dated 15 December 2014, for guidance in respect of the reporting years 2014 and 2015, including ARR reporting for 2015/16.

From 2016 UK accounts should be reported in accordance with the CRS; therefore Isle of Man FIs should refer to GN 53, the Isle of Man CRS Guidance Note.

1.4 Scope of the US Agreement

The US Agreement and the Isle of Man Regulations implementing that Agreement apply to all Isle of Man Financial Institutions, regardless of whether they hold any Financial Accounts for US Specified Persons.

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

In addition to reporting information on Reportable Accounts, Isle of Man Financial Institutions may need to report payments made to a Non-Participating Financial Institution (NPFI).

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

Isle of Man Financial Institutions may have reporting obligations in respect of Financial Accounts they maintain for Passive NFFEs.

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?

1.5 Interaction with US Regulations and Other IGAs

The Isle of Man Regulations and these guidance notes seek to clarify any areas of uncertainty within the US Agreement. To the extent that issues are not covered by the US Agreement, the Isle of Man Regulations or this Guidance Note, reference should be made to the US Regulations.

In policy terms, an Isle of Man Financial Institution should not be at a disadvantage from applying the Isle of Man Regulations implementing the US Agreement, 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 US Agreement.

However an Isle of Man Financial Institution must apply the Isle of Man Regulations in force at the time with reference to this, the Isle of Man's published guidance notes.

If the US authorities subsequently amend the underlying US Regulations to introduce additional or broader exemptions, the Isle of Man authorities will incorporate these changes into the Isle of Man Regulations or guidance notes subject to the agreement of the IRS. Any updates will be published on the International Agreements, FATCA and Common Reporting Standard pages of the Income Tax Division's website www.gov.im/incometax.

The definitions set out in the US Agreement apply in place of those in the US Regulations and differ in some cases to those in the US Regulations. The US Agreement states that the Isle of Man may permit Isle of Man Financial Institutions to apply definitions in the US Regulations in place of those in the US Agreement provided that doing so would not frustrate the purpose of the US Agreement.

1.6 The Role of the Isle of Man Competent Authority

The Isle of Man Competent Authority is the Assessor of Income Tax or her delegate.

The Isle of Man Competent Authority will collect the information required to be disclosed and pass that information to the IRS in respect of the US Agreement.

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

As necessary the Isle of Man Competent Authority will enforce the Isle of Man Regulations in cases of significant non-compliance notified to it by the US Competent Authority.

1.7 Specified US Persons

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.

2 THE US AGREEMENT

2.1 When did the US Agreement come into force?

The US Agreement was ratified by Tynwald on 20 February 2014 and entered into force on 26 August 2015, when the amended TIEA (see section 2.2) also entered into force. The US did not need to ratify the Agreement.

2.2 Tax Information Exchange Agreement

A Tax Information Exchange Agreement (TIEA) is the mechanism through which the information reported under the US Agreement will be exchanged. The provisions in the US/Isle of Man TIEA relating to confidentiality apply in respect of information exchanged under the US Agreement.

The US/Isle of Man TIEA is the agreement that entered into force on 26 June 2006, and was amended by the Protocol dated 13 December 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 (see section 3.7)
- Depository Institution (see section 3.8)
- Investment Entity (see section 3.9)
- Specified Insurance Company (see section 3.10)

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 Isle of Man entities as the definition in the US Agreement takes priority over those in the US Treasury Regulations unless doing so puts Isle of Man Financial Institutions in a less advantageous position. That is not considered to be the case here. However, an Isle of Man Financial Institution 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 (see section 4), and hence Non-Reporting Financial Institutions, under the US Agreement 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 (see section 5).

The first step to be undertaken by an entity or its representative is to establish whether, for the purposes of the US Agreement, the entity is an Isle of Man 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 Isle of Man Financial Institution

An Isle of Man Financial Institution is any Financial Institution resident in the Isle of Man as well as any non-resident Financial Institution which has a permanent establishment located in the Isle of Man through which it conducts a business of a Financial Institution.

A Financial Institution will be resident in the Isle of Man if it is tax resident in the Isle of Man. Although tax residence in the Isle of Man determines whether an entity falls within the scope of the US Agreement, 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 or organised.

A dual resident entity that is tax resident in the Isle of Man and therefore within scope of the US Agreement, and resident for these purposes in another jurisdiction (or is organised under the laws of another jurisdiction) will have to apply the Isle of Man Regulations in respect of

any Reportable Accounts maintained in the Isle of Man unless it has actual knowledge that it is undertaking the appropriate reporting in the other jurisdiction (see sections 6.4 and 18.5).

An Isle of Man Financial Institution will have actual knowledge where it holds written confirmation that the US Reportable Accounts have been reported for FATCA purposes.

There may be other situations involving related or unrelated entities where the reporting requirements are being met elsewhere and duplication of reporting can be avoided. In these circumstances the responsibility rests with the Isle of Man Financial Institution to satisfy itself that the reporting requirements are being met.

For these purposes resident for tax purposes in the Isle of Man means the following:

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

An entity that is not otherwise resident in Isle of Man for the purposes of the US Agreement and has one or more Isle of Man regulated service provider which provide regulated services to the Entity (eg. Corporate Service Provider/Trust Service Provider, custodian or adviser) can be treated as being resident in Isle of Man for the purposes of the US Agreement.

An Isle of Man Financial Institution will be classified as a Non-Reporting Isle of Man Financial Institution or a Reporting Isle of Man Financial Institution.

A Reporting Isle of Man Financial Institution is required to:

- Undertake due diligence procedures to identify Reportable Accounts (see sections 13-17) and report annually to the Assessor the required information in the prescribed time and manner (see sections 18 and 19);
- Report annually to the Assessor payments made to Non-Participating Financial Institutions (see section 17.6); and
- Comply with registration requirements (see section 12).

3.3 Reporting Isle of Man Financial Institutions

A Reporting Isle of Man Financial Institution is any Isle of Man Financial Institution that is not a Non-Reporting Isle of Man Financial Institution as defined in section 3.4.

A Reporting Isle of Man Financial Institution will be responsible for ensuring that the due diligence requirements are met and for reporting to the Assessor under the terms of the Isle of Man 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 Isle of Man Financial Institution (see section 18.11).

3.4 Non-Reporting Isle of Man Financial Institutions

A Non-Reporting Isle of Man Financial Institution is any Isle of Man Financial Institution that falls within the exemptions set out in Annex II to the US Agreement or one which otherwise qualifies as:

- a Deemed Compliant Financial Institution (see section 4);
- an Owner Documented Financial Institution (see section 4.4); or
- an Exempt Beneficial Owner (see section 5).

Most Non-Reporting Isle of Man 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 US Agreement. They will need to provide certain documentation to withholding agents to certify their status.

The following Non-Reporting Isle of Man Financial Institutions (Registered Deemed Compliant Financial Institutions – see section 4.2 for more information) will have some registration and/or reporting obligations under the US Agreement:

- 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; and
- Qualified Credit Card Issuers.

3.5 Withholding Tax

Isle of Man 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 Isle of Man 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

Isle of Man Financial Institutions will not be required to close recalcitrant accounts, provided they comply with the Isle of Man 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 section 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.

An execution only broker that simply executes trading instructions, or receives and transmit such instructions to another executing broker will not hold assets for the account of others should not fall to be custodial institutions (although it is possible that they could be an investment entity – see section 3.9).

3.8 Depository Institution

A Depository Institution is broadly any entity that is engaged in a banking or similar business. The US Agreement refers 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 US Agreement.

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 Financial Services Act 2008 provided they also undertake one of the other activities listed above.

Deposit takers which are specifically exempted from registering under the Financial Services Act 2008 may be exempted from the definition of Financial Institution and if so will be listed in section 5.

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; or
- 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 US IGA, the definitions in the US Treasury Regulations and the Common Reporting Standard (CRS) are different.

Since the CRS has become the global standard, and is substantially similar to the US Treasury Regulations definition, this has also been included in the Isle of Man Regulations giving Entities a choice of which definition to apply.

An Investment Entity does not include any entity that is an Active NFFE because it meets any of the criteria in section 10.3 subparagraphs d) through to g).

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 under the IGA definition, 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 an Isle of Man company's directors are employees of an Isle of Man TCSP which itself is a Financial Institution and the Isle of Man company is administered by that Isle of Man TCSP Financial Institution, the Isle of Man 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 Common Reporting Standard may be used when classifying an entity for the purpose of the US Agreement.

This may be preferable for Isle of Man Financial Institutions looking to adopt a consistent approach to FATCA and the CRS as, for the purpose of the CRS, neither the US Treasury Regulations' definition nor the IGA definition can be used in place of the CRS's own definition.

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.

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.

An entity would generally be considered an Investment Entity if it 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. An entity that primarily conducts as a business investing, administering, or managing non-debt interests in real property on behalf of other persons such as a type of real estate investment trust, will not be an Investment Entity.

3.9.3 US Regulations Definition

As permitted under the US Agreement, 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 US 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 a 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 income.

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 US Regulations' 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 income in which case the company might be categorised as a passive NFFE.

3.12 Nominee Companies

Subsidiary companies of licensed TCSPs, 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; such companies can be treated as Financial Institutions if preferred and if they meet the requisite conditions (see section 8.6.1 for Fund nominees).

3.13 Subsidiaries and Branches

A subsidiary or branch of a non-Isle of Man 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 the Isle of Man, will be a Reporting Isle of Man Financial Institution.

Subsidiaries and branches of Isle of Man Financial Institutions that are not located in the Isle of Man are outside the scope of the US Agreement and will not be treated as Isle of Man 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 Isle of Man by an Isle of Man Financial Institution and is subject to Isle of Man regulatory requirements, the account will be within the scope of the US Agreement.

The Isle of Man Financial Institution will be required to undertake the appropriate due diligence processes and report the appropriate details to the Isle of Man.

Where an Isle of Man 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 US Agreement or not, due to the fact that assets backing all policies form part of the Long Term Business Fund of the Isle of Man 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; and
- 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 US Agreement, 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 Isle of Man, then those policies will be governed by the US Agreement.

Example 1

Astra Bank Limited, located in the Isle of Man, has within its group the following entities:

- Its parent (P), located in a Model 1 Partner Jurisdiction;
- A foreign branch (A) located in a Model 2 Partner Jurisdiction;
- A foreign subsidiary (X) located in a non IGA jurisdiction; and
- A foreign branch (Y) located in the US

Under the terms of the US Agreement:

- Astra Bank will report on Specified US Persons for whom it holds Financial Accounts to the Assessor;
- P will report to its respective jurisdiction's competent authority;
- A 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; and
- Y will report on Isle of Man persons who hold accounts to the IRS.

An Isle of Man branch of a non-Isle of Man Financial Institution is an Isle of Man Financial Institution and must report in accordance with the US Agreement.

Example 2

Australia Bank has a branch J, which is a permanent establishment for tax purposes, located in the Isle of Man.

Under the terms of the US Agreement, as J is a permanent establishment for Isle of Man tax purposes, it is an Isle of Man Financial Institution and will need to comply with the Isle of Man Regulations and report information on any reportable US Financial Account to the Assessor.

Please refer to section 13.19 in respect of subsidiaries and branches acting as introducers with regard to a Financial Account.

3.14 Related Entities

For the purposes of the US Agreement, when an Isle of Man Financial Institution is considering its own group, the definition for Related Entity is as set out in the US Agreement. 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.

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, the concept of Related Entity is relevant in the context of the reporting obligations of the Isle of Man Financial Institutions in respect of any Related Entities that are Non-Participating Financial Institutions (NPFIs). See section 3.15 for information on when a Financial Institution is treated as a NPFI.

When an Isle of Man 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 Isle of Man Financial Institution must fulfil the obligations set out in the US Agreement. Further information is set out in section 18.7.

3.15 Non-Participating Financial Institution

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 an Isle of Man Financial Institution to a NPFI, whether resident in the Isle of Man or otherwise, must be reported by the Isle of Man Financial Institution. See sections 16.7 and 17.6 for details on how to identify a NPFI and sections 18.6, 18.9 and 18.10 for details on reporting and withholding requirements.

4 DEEMED COMPLIANT FINANCIAL INSTITUTIONS

4.1 General

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 (see section 4.2)
- Certified Deemed Compliant (see section 4.3)
- Owner Documented Financial Institutions (see section 4.4)
- Non-Registering Local Banks (see section 4.3.2)
- Financial Institutions with only Low Value Accounts (see section 4.3.3)
- Limited Life Debt Investment Vehicles (see section 4.3.6)
- Investment Advisers and Investment Managers (see section 4.3.5)

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

An Isle of Man 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.

Sponsoring Entities must register with the IRS. The Sponsored Investment Entities that it manages are not currently 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-Isle of Man Financial Institution.

With effect from 1 January 2017, Sponsoring Entities must register each of the Sponsored Investment Entities that it manages to obtain their own GIIN 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 section 13.14 for more information on aggregation of accounts.

An Isle of Man Sponsoring Entity will report on all Reportable Accounts held by the Sponsored Investment Entities that it sponsors.

If the Sponsoring Entity withdraws from the contractual arrangement with the Sponsored Investment Entity, and it is not replaced with another such arrangement the obligations will become the obligations of the Sponsored Investment Entity.

See section 8 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 the Isle of Man.

b) The Financial Institution must have no fixed place of business outside the Isle of Man other than where the location outside of the Isle of Man 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 the Isle of Man. For this purpose, a Financial Institution shall not be considered to have solicited such customers outside of the Isle of Man merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to non-Isle of Man 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 the Isle of Man if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside of the Isle of Man, 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 the Isle of Man. 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 the Isle of Man.

d) The Financial Institution is:

- required under the tax laws of the Isle of Man to perform information reporting, or the withholding of tax with respect to accounts held by residents of the Isle of Man; **or**
- is required to identify whether account holders are resident in the Isle of Man 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 the Isle of Man. 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 the Isle of Man (including a US Person that was a resident of the Isle of Man when the account was opened, but subsequently ceases to be a resident of the Isle of Man);
- 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 the Isle of Man.

Where a Local Client Base Financial Institution provides Financial Accounts to US citizens who are resident in the Isle of Man, these Financial Accounts do not need to be reported to the Assessor unless the account holder subsequently ceases to be a resident of the Isle of Man.

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 Isle of Man 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 the Isle of Man 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 Isle of Man 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 the Isle of Man 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 the Isle of Man.

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.

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 the Isle of Man 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 6.3);
  - 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 the Isle of Man 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 Assessor 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 Assessor 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 US 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

Under the US Agreement Non-Reporting Isle of Man Financial Institutions include categories of Deemed Compliant Financial Institutions, excepted Financial Institutions and exempt beneficial owners as set out under the US Regulations.

An Isle of Man 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 the Isle of Man, to the extent that the trustee of the trust is a Reporting Isle of Man Financial Institution and reports all information required to be reported pursuant to the US Agreement with respect to all US Reportable Accounts of the trust.

Trustee-Documented Trusts (TDTs) are not required to be registered with the IRS and do not need to obtain their own GIINs. However, the Trustee will need to register and should select “Sponsoring Entity” as its Financial Institution Type. The Trustee may also need to register itself, separately as an FFI in its own right, and thereby obtain two GIINs.

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 the Isle of Man. A fixed place of business outside the Isle of Man 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 the Isle of Man.

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.

An Isle of Man credit union will fall within this category.

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 the Isle of Man 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 17 January 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 US Financial Institution or made through a transfer agent that is a participating Financial Institution, reporting Model 1 Financial Institution, or US 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 9.2 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 US Agreement 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 Person, an Exempt Beneficial Owner or an Excepted NFFE.

5 EXEMPTIONS

5.1 General

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

5.2 Governmental Entities

For the Isle of Man this includes:

- The Isle of Man Government

5.3 Retirement/Pension Funds

This section applies to the US Agreement and provides guidance for Isle of Man resident pension schemes.

In most cases, an Isle of Man pension scheme constituted as a trust is classified as an Isle of Man resident pension scheme for the purposes of the US Agreement, where it has an Isle of Man resident trustee.

The treatment of a pension scheme for FATCA purposes should follow the treatment of the vehicle in which the scheme is held. However, pension schemes have general exemptions within the US Agreement, as well as jurisdiction specific exemptions which have been agreed.

Pension providers, TCSPs and any trustee that is considered to be an Isle of Man 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 retirement/pension funds that they manage or administer. Sole purpose trustee companies for Plans with no operating income are not expected to be Financial Institutions and hence will be Passive NFFEs.

It should also be noted that as a pension scheme is generally held in a trust it may be possible for the Financial Institution to utilise either the “Trustee Documented Trust” or “Sponsored Entity” route (see section 6 which provides full details of the treatment of trusts).

5.3.1 Settlors or Beneficiaries

Within the guidance on trusts in section 6, the reporting treatment is based on whether the settlor and/or beneficiary is a US Specified Person. For the purpose of an Isle of Man resident pension scheme under FATCA, an individual who has contributed to a scheme will be said to be a settlor and the treatments for a settlor of a trust should be followed.

If a person is in receipt of a pension or payment from a scheme or a person who is entitled to a payment from a scheme will be said to be the beneficiary for FATCA purposes.

5.3.2 Equity Interest

The Equity Interest of an Isle of Man resident pension scheme should be calculated in the same was as for a trust. However, the Equity Interest attributable to an employer of any employer sponsored scheme can be considered to be nil while the scheme continues, even where the employer might have rights to any residual surplus assets on the dissolution of the scheme.

The Equity Interest of a beneficiary (including settlor) is the individual account balance in the scheme. If the trustee does not know, or have reason to know based on readily accessible information, the account balance in the scheme (as may be the case with a defined benefit scheme, for example), the Equity Interest of a beneficiary is the total amount of benefits paid during the year. If the trustee does not know, or have reason to know based on readily accessible information, the account balance in the scheme and the beneficiary received no benefit payments during the year, the Equity Interest is nil.

5.3.3 Exemptions (General)

Within the US Agreement there are specific exemptions for retirement benefit schemes.

5.3.3.1 Exempt Beneficial Owners

The following entities are exempt beneficial owners and are treated as Non-Reporting Isle of Man Financial Institutions.

Broad Participation Retirement Fund

A fund established in the Isle of Man to provide retirement, disability, or death benefits, or any combination, to beneficiaries that are current or former employees in consideration for past service will be exempt provided that the fund:

1. Does not have a single beneficiary with a right to more than 5 percent of the fund's assets;

2. Is subject to Government regulation and provides annual information reporting about its beneficiaries to relevant tax authorities in the Island;

3. Satisfies at least one of the following requirements:

    a. The fund is generally exempt from tax in the Isle of Man on investment income under the laws of the Isle of Man due to its status as a retirement or pension plan;
    b. The fund receives at least 50 percent of its total contributions from the sponsoring employers;
    c. Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death, or penalties apply to distributions or withdrawals made before such specified events; or
    d. Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed $50,000 annually, applying the rules for account aggregation and currency translation.

Narrow Participation Retirement Fund

A fund established in the Isle of Man to provide retirement, disability, or death benefits to beneficiaries that are current or former employees in consideration for services rendered, provided that:

1. The fund has fewer than 50 participants;
2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. The employee and employer contributions to the fund are limited by reference to earned income and compensation of the employee, respectively;
4. Participants that are not residents of the Isle of Man are not entitled to more than 20% of the fund's assets; and
5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the Assessor.

5.3.3.2 Exempt Products

The following account is excluded from the definition of Financial Account and therefore shall not be treated as a Reportable Account.

Retirement and Pension Account - A retirement or pension account maintained in the Island that satisfies the following requirements under the laws of the Isle of Man.

a) Annual contributions into the scheme are not more than $50,000 or there is a maximum lifetime contribution limit to the account of $1,000,000 or less;
b) The scheme is tax-favoured (i.e. contributions to the scheme that would otherwise be subject to tax laws of the Isle of Man are deductible or excluded from the gross income of the scheme or taxed at a reduced rate, or taxation on investment income from the scheme is deferred or taxed at a reduced rate);
c) Funds contributed cannot be accessed before the age of 55 except in circumstances of serious ill health and withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events;
d) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
e) Annual information reporting is required to the Assessor in the Isle of Man with respect to the account.

6 TRUSTS

6.1 General

This section applies to all Isle of Man resident trusts regardless of nature except for Collective Investment Vehicles established as a trust which are treated differently (see section 8) or trusts that are treated as exempt (see section 5).

References in the rest of this section to a trust are to an Isle of Man resident trust unless otherwise specified. See section 6.3 for definition of an Isle of Man resident trust.

Note: Trust and Corporate Service Providers (TCSPs) 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.

6.2 How do the Agreements apply to Isle of Man trusts?

The reporting obligations imposed under the US Agreement only apply to Isle of Man resident trusts where one of the following is identified as a Specified US Person (see section 1.7 for definition of Specified US Person):

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

If any of the above is identified as a Specified US Person, information in relation to that person and 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 US 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).

6.3 What is an Isle of Man Resident Trust?

A trust is resident in the Isle of Man, for the purpose of the US Agreement, if it has an Isle of Man resident trustee even if there are no Isle of Man settlors, beneficiaries or protectors.

An Isle of Man resident trust may be established under Isle of Man law or under the law of another jurisdiction.

Accordingly a trust which is established or governed under Isle of Man law or administered in the Isle of Man but has no Isle of Man resident trustees does not fall within the scope of the US Agreement.

A trust that has an Isle of Man resident trustee, and so is an Isle of Man resident trust, but is established under the law of another jurisdiction may be resident for FATCA purposes in that other jurisdiction. In such cases, reference should be made to the IGA, local regulations and guidance notes to determine whether a trust is dual resident.

6.4 Multi-Jurisdictional Trustees

In circumstances where there are trustees in different jurisdictions, there is a risk of duplicate reporting. The Reporting Isle of Man Financial Institution/Isle of Man resident trustee must undertake the reporting obligations in respect of an Isle of Man resident trust, where required, unless it has actual knowledge that the information that is required to be reported under the US Agreement is being reported by another Financial Institution, whether that Financial Institution is an Isle of Man Financial Institution or not.

An Isle of Man 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. There is no need for the Isle of Man resident trustee in this case to report anything to the Assessor 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 Assessor.

6.5 How are Trusts categorised for the purposes of the Agreement?

The US Agreement sets 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 and does not deal with those that would be another type of Financial Institution.

6.6 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 TCSP, or any other Financial Institution, will be an Investment Entity under the IGA definition. If a trust that is "managed by" a TCSP, or any other Financial Institution, is to apply the US Treasury Regulation or CRS definitions then the

trust must also satisfy the financial assets test as defined in section 3.9. A trust may also be an Investment Entity if it otherwise qualifies as an Investment Entity as defined in section 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 definition 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 section 3.9.1 and it is not managed by a Financial Institution.

Under the US Treasury 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 US Treasury 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.

6.6.1 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 (see section 6.6.1.1)
- A Sponsored Investment Entity (see section 6.6.1.2)
- Owner Documented Financial Institution (see section 6.6.1.3)

In these cases, the trust will be a Non-Reporting Financial Institution and 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 Isle of Man Financial Institutions as an Investment Entity.

6.6.1.1 Trustee-Documented Trust (TDT)

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

- A Reporting US Financial Institution;
- A Reporting UK Financial Institution;
- A Reporting Isle of Man 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 TDT.

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 Isle of Man resident trusts, whether or not established in Isle of Man that are managed by an Isle of Man regulated TCSP may qualify as a TDT, provided the trustee meets one or more of the requirements set out above.

6.6.1.2 Sponsored Investment Entity

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 by 31 December 2016 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 section 4.2.1 for further information on the obligations of a Sponsoring Entity under the US Agreement.

6.6.1.3 Owner Documented Financial Institution

This option is available under the US Agreement to trusts that are Investment Entities (see section 4.4)

6.7 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 (see section 10).

6.7.1 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 10.4 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.

6.7.2 Active NFFE

A trust that is not a Financial Institution and satisfies the criteria as set out in section 10 will be treated as an Active NFFE. There are no reporting requirements in respect of these trusts.

6.8 Registration

A corporate 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 TDT, the trustee is obliged to register in its own right as it is a Financial Institution as well as a Sponsor (as there is no separate registration process for the trustee of a TDT). There is no requirement for details of the trust to be registered or disclosed in the Trustee's registration.

If a trust utilises the Sponsored Investment Entity category the Sponsoring Entity may have to register the trust as a Sponsored Entity prior to 31 December 2016 (see section 6.6.1.2).

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

If a trust is treated as a Reporting Isle of Man 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 classified as a "Direct-Reporting NFFE").

See section 12 for further details on registration under the US Agreement.

6.9 Reporting Obligations

If a trust utilises the TDT, Sponsored Investment Entity or Owner Documented Financial Institution categories, it is a Non-Reporting Isle of Man Financial Institution and for the purposes of the US Agreement 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 Agreement (see section 18 for general information on reporting).

If a trust is a Reporting Isle of Man Financial Institution in its own right and cannot or chooses not to utilise any of the categories to make it a Non-Reporting Isle of Man Financial Institution, it is required to undertake the reporting obligations.

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

6.10 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 maintains a Financial Account for such a trust which has a Specified US Person as a Controlling Person will need to report the information as set out in section 10.

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 section 6.2 who has been identified as a Specified US 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; and
e) Total gross amount paid or credited to the Specified US 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 any who are identified as a Specified US 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 US Person. Sections 6.11 to 6.14 set out the amounts to be reported in each case. The amounts reported are not ascribable for the purposes of determining a tax liability.

6.11 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 6.10 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 5.3 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.

It is recognised that the valuation of the Financial Account may be difficult, time consuming and costly; as such, it may be appropriate, depending on the specific circumstances, to use

the NAV of the appropriate assets as determined by the trust's latest set of financial statements.

The Equity Interest attributable to the settlor of any settlor interested trust is the total value of the trust's property. Where a settlor is specifically excluded from the trust, the Equity Interest can be considered to be nil but will still be a Financial Account and hence reportable, if appropriate.

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 report the total value of the trust property using the accounting net asset value of the trust's assets. Refer to section 5.3 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 will be nil.

Where a discretionary beneficiary does not receive a distribution in the relevant year it will not be considered a reportable account for that year.

The equity interest of any other natural person exercising ultimate effective control over a trust is the total value of the trust's property.

In the case of a pre-existing account, the amount of distributions 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 to establish whether the account is a Low Value or Higher Value account for due diligence purposes.

Where a discretionary beneficiary receives a distribution 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 and the trustee has current KYC documentation on the beneficiary.

6.12 Amounts Paid or Credited to the US Specified Person

The amounts to be reported as paid or credited to a US Specified Person are, in the case of a settlor, the value of any payments made to the settlor during the period, whilst for a mandatory or discretionary beneficiary it will be the total value of distributions from the trust, including aggregate payments in redemption of the account.

6.13 Nil returns

Where a Financial Institution has identified no Reportable Accounts, it does not need to file a nil return. This is not the same as having an account, held by a US Specified Person with a nil value, which is still reportable.

6.14 Treatment of Isle of Man Underlying Trust Companies

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

Where a trust that is an Isle of Man Financial Institution is treated as a Non-Reporting Financial Institution, underlying Related Entities (see section 3.14) that are Guernsey, Jersey or Isle of Man Financial Institutions may also be treated as Non-Reporting Isle of Man 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, the 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-Isle of Man Financial Institution.

6.15 Trusts that hold Non-Financial Assets

Under the US Treasury Regulations' definition of an Investment Entity, a trust, where at least 50% of its gross income is derived from non-financial assets (see section 3.9.4), is not considered to be a Financial Institution. 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 both 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 need to consider the 'financial assets' test as detailed above.

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

6.16 Employee Benefit Trusts (EBTs)

There is no definition of an EBT in Isle of Man Income Tax Law. 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.

Shares held in trust under an employee equity incentive arrangement may be a Financial Account and therefore subject to reporting by the Financial Institution that maintains the account. Such trusts should be considered in the same way as any trust and categorised accordingly.

Where an Employee Benefit Trust holds shares for the future benefit of employees, but the shares are unallocated to a named or identified employee, then under most circumstances this right to a future allocation would not fall to be either a Custodial or an Investment Account.

An unallocated right does not constitute a Financial Account. EBTs will have reporting obligations, but only when they have Reportable Accounts. In most cases this will be where the EBT holds assets (of whatever type) either in the name of the employee, or for the benefit of an identified employee.

In cases such as Employee Benefit Trusts, or other similar structures which do NOT maintain Financial Accounts, when shares become allocated and the trustee is directed as soon as reasonably possible to transfer the assets (to the beneficiary, broker, custodian etc), the Trust will not be treated as maintaining a Financial Account for the duration of time it takes to complete the transfer.

In circumstances where reporting is required and this is carried out by a non- Isle of Man administrator or company, for an EBT resident in the Isle of Man, the information would be required to be reported to the Assessor, albeit by a non- Isle of Man administrator on behalf of the trust.

Notwithstanding this, provided that reporting does take place to the Assessor on behalf the Isle of Man FIs it is agreed that these EBTs are fully compliant with their obligations where the reporting is undertaken through a third party provider.

6.17 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.

6.18 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.

6.19 Charitable Trusts

Under the US Agreement, Isle of Man Charitable Trusts may be viewed as Active NFFEs under the religious, charitable, scientific, artistic, cultural or educational purposes clause (see section 10.3).

6.20 Unit Trusts

A unit trust that is a regulated or unregulated fund as defined in section 8 will be treated as a Collective Investment Vehicle (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 FOUNDATIONS

Under Isle of Man law, foundations established under The Foundations Act 2011 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 not established under The Foundations Act 2011 (ie. was established in a foreign jurisdiction) and is a Financial Institution, it will be treated in the same way as a trust.

The categories that apply to trusts that are Financial Institutions, such as Trustee-Documented Trusts, can apply to foreign foundations that are Financial Institutions (see section 6).

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 10).

8 COLLECTIVE INVESTMENT VEHICLES

8.1 Definition of a Collective Investment Vehicle

For the purposes of the US Agreement, Collective Investment Vehicles includes any entity which is a collective investment fund as defined in the Collective Investment Schemes Act 2008.

This includes all regulated funds and unregulated funds as defined in the Collective Investment Schemes Act 2008.

Any entity treated as a Collective Investment Vehicle (CIV) for these purposes will be an Investment Entity, and hence a Financial Institution under the IGA definition. Under the US Treasury Regulations, 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 3.9.3).

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.

8.2 How the Agreements apply to fund entities

The following types of entities resident, for the purposes of the US Agreement, in the Isle of Man 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 US Agreement are the Equity and Debt Interests issued in Collective Investment Vehicles (see section 8.10.1).

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 section 6.6.1.1) or is a Sponsoring Entity (see section 6.6.1.2).

8.3 Residency of Collective Investment Vehicles

A Collective Investment Vehicle may be considered 'resident' in the Isle of Man for the purposes of the US Agreement if it is incorporated in the Isle of Man or if not incorporated in the Isle of Man, 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 US Agreement. Therefore, a Collective Investment Vehicle constituted as a partnership will be considered resident in the Isle of Man it is managed and controlled in the Isle of Man; 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.

8.4 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 Isle of Man 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 US Agreement.

A Collective Investment Vehicle may look to delegate their obligations under the US Agreement to a Third Party Service Provider. This arrangement is permitted by the US Agreement, 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 Isle of Man 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 US Agreement. The fund will need to determine which Investment Entity carries out the obligations to identify, verify and report on Account Holders that are US Specified Persons, by reference to the principal documents, information particulars and other agreements by which the scheme is constituted.

8.4.1 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 US Specified Person under the US Agreement.

The information to be reported is that set out in sections 18.2.1 and 18.2.2 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.

8.5 Related Entities

Refer to section 3.14 for information on Related Entities

8.6 Platforms and other distributors of Funds

Fund distributors including:

- 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 US 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

Fund platforms typically hold legal title to Interests in a Collective Investment Vehicle on behalf of their customers (the investors) as nominees 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 section 8.6.2 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.

8.6.1 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 Institution 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 Assessor 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.

8.6.2 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 Assessor 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.

8.7 Qualified Collective Investment Vehicles

Qualified Collective Investment Vehicles are treated as Registered Deemed Compliant Financial Institutions (see section 4.2).

This category is intended to provide relief for Investment Entities that are owned solely through Isle of Man 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 (see section 4.2.5).

A Qualified Collective Investment Vehicle must be an Investment Entity and must be regulated as an Investment Entity in the Isle of Man 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.

8.8 Restricted Funds

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

8.9 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.

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 US Agreement 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 2016 or 90 days after the US Reportable Account is identified.

If a Sponsoring Entity is appointed by an 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 2016 or 90 days after the US Reportable Account is identified.

With effect from 1 January 2017, the Sponsoring Entity must register each of the Sponsored Investment Entities that it manages to obtain their own GIIN, to the extent that the Sponsored Investment Entities hold Reportable Accounts.

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

8.9.1 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

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

- Report to the Assessor on behalf of the Isle of Man 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).

8.10 Registration

Each Reporting Isle of Man Financial Institution and any entity that is Registered Deemed Compliant or a Direct Reporting NFFE will be required to register and obtain a Global Intermediary Identification Number (GIIN) from the IRS.

The IRS encourages FFIs to register via their secure web-based system available at http://www.irs.gov/Businesses/Corporations/FATCA-Foreign-Financial-Institution-Registration-Tool.

IRS documentation (form 8957), may also be used to register by mail, but is anticipated to take longer for the IRS to process. Form 8957 makes reference to a Financial Institution's country for tax residence purposes; please refer to section 3.2 for guidance on residency for the purposes of FATCA.

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 GIIN so that when other group members/Related Entities are registering they are also able to use this information.

See also section 12.4, which sets out the timetable for registration.

8.10.1 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 US Specified Person under the US 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.

8.10.2 Debt or Equity interest regularly traded on an established securities market

For the purposes of the US Agreement the term listed on a recognised stock exchange, in respect of shares and securities, will take its meaning as set out in section 11.9.

8.11 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 Isle of Man Financial Institution to aggregate all Equity and Debt Interests held by an identified Specified US 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.

9 OTHER SPECIFIC VEHICLES

9.1 Partnerships

For the purposes of the US 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 US Persons.

9.2 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 6 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 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.

9.3 Companies Administered by TCSP

Companies administered by TCSPs must be categorised as a Financial Institution or NFFE as appropriate. See section 6.14 for optional alternative treatment for underlying trust companies.

9.4 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.

9.5 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 wishes to do so.

10 NON FINANCIAL FOREIGN ENTITIES (NFFEs)

10.1 General

An NFFE is a non-US entity that is not a Financial Institution. In practice therefore this could apply to any Isle of Man company, partnership, trust, foundation or any other legal entity that is not a Financial Institution.

There are two categories of NFFE:

- Active NFFE, or
- Passive NFFE.

An NFFE, whether Passive or Active, has no registration or reporting obligations. However the entity is required to determine its FATCA classification and, where necessary, self-certify that classification to any Financial Institution that maintains its 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 maintains 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 US Persons.

10.2 Passive NFFE

A Passive NFFE is any NFFE that is not:

a) an Active NFFE; or
b) a withholding foreign partnership or withholding foreign trust.

10.3 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 section 10.4) 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 11.9) or the NFFE is a Related Entity of an entity the stock of which is traded on an established securities market;

c) 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) 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.

10.4 Passive Income

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

a) Distributions, as defined by section 2PA of the Income Tax Act 1970;
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 3.14), substituting person for entity;

10.5 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.

10.6 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.

10.7 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 US owners directly to the IRS as opposed to providing such information to the Isle of Man Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain its 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 US owners directly to the IRS.

10.7.1 Examples

Example 1

A non-financial trading company that is managed by a TCSP may be an NFFE rather than an Investment Entity under the US Treasury Regulations' definition. 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' definition.

11 FINANCIAL ACCOUNTS

11.1 General

Under the US Agreement, Reporting Isle of Man Financial Institutions must provide information to the Assessor on an annual basis in relation to Financial Accounts held by Specified US Persons. In the US Agreement these are referred to as US Reportable Accounts.

An Isle of Man 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 US Person or a Passive NFFE with one or more Controlling Persons who are Specified US Persons.

For the purposes of the US Agreement, 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 Isle of Man legislation or in everyday commercial use.

For the purposes of the US Agreement, a Financial Account is an account that is maintained by an Isle of Man Financial Institution. See section 11.1.1 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 5.

There are five categories of Financial Account:

- Depository Accounts (see section 11.3)
- Custodial Accounts (see section 11.4)
- Cash Value Insurance Contracts (see section 11.6)
- Annuity Contracts (see section 11.7)
- Equity and Debt Interests (see section 11.8)

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 Assessor under the US Agreement, the Financial Account must be a US Reportable Account and, in relation to a Depository Account, Custodial Account, Cash Value Insurance or Annuity Contract, must be maintained by an Isle of Man Financial Institution.

Where an Isle of Man 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 Isle of Man 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 US Agreement. In these case the Isle of Man Financial Institution, acting as custodian, will be responsible for performing due diligence procedures and reporting where necessary.

It is also possible that an Isle of Man Financial Institution acting as an executing broker may be subject to failed trades and find themselves with the legal ownership of the asset that they intended to broker. In this case neither the holding of the asset, nor any resultant claims (market claims such as the passing of entitlement on dividend and coupon payments, claims compensated through a clearing house, securities depository etc.) will lead to a Financial Account being established by the executing broker.

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.

11.1.1 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-Isle of Man branch of an Isle of Man Financial Institution is not reportable by the Isle of Man Financial Institution.

11.1.2 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.

Isle of Man Financial Institutions with no Reportable Accounts will not be required to make a nil return to the Assessor on an annual basis.

Where an Isle of Man Financial Institution engages a third party to carry out the Isle of Man Financial Institutions' due diligence and reporting obligations then compliance with those obligations remains the responsibility of the Financial Institution.

11.1.3 Ceasing to be a Reportable Account

If the account holder of a US Reportable Account ceases to be a Specified US Person, or the Controlling Persons of a Non-US Entity cease to be Specified US Persons, then the Financial Account will cease to be a US Reportable Account.

If the account holder or the Controlling Persons of a Non-US Entity are Specified US Persons at any point in the reportable period then the Financial Account will be a US Reportable Account for that period.

However, following a change in circumstance, if the Isle of Man Financial Institution is not in a position to review multiple statuses held during the reportable period when preparing their report (for instance if the account holder has had one or more changes in address) then the Isle of Man Financial Institution should treat the Financial Account as a US Reportable Account or not based on the status at the end of the reportable period.

11.2 Account Holders

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

11.2.1 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 (although accounts held by the estate of a deceased person are not Financial Accounts – see section 11.14). However, when a Trust/Estate is treated as the account holder of a Financial Account, this

does not 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 11.8 applies.

11.2.2 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.

11.2.3 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 US Agreement. Where the Financial Account does not meet the conditions relating to Intermediary Accounts (see section 11.15) then the person on whose behalf the account is held is the account holder.

If an account is held for the benefit of another person by a Financial Institution (including an Exempt Beneficial Owner or a Deemed Compliant Financial Institution) such as a Custodial Institution, then the Financial Institution will be the account holder and not the person on whose behalf the account is held. It will be the account that the person maintains with that Financial Institution where they are the account holder.

Example

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

11.2.4 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.

11.2.5 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**.**

11.2.6 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 US Specified Person (and the other is not a US Specified Person) this will be a US Reportable Account which is reported annually. If the US Specified Person dies during the term of the insurance it will cease to be a US Reportable Account.

11.2.7 Entity Account Holders

An entity account may be a US Reportable Account if either the entity itself is a Specified US Person, or it is a non-US entity that has Controlling Persons who are Specified US Persons.

The entity itself will be resident where it is tax resident. The general rules for where an NFFE is held to be resident are the same as those for a Financial Institution (see section 3.2).

In most circumstances, an entity is tax resident where it is incorporated and/or where it is managed and controlled (although this will depend on the domestic legislation).

However, a reportable entity may also be tax transparent (partnerships, trusts, foundations etc).

For reporting purposes, an entity will be held to be resident, even if the law of that country or jurisdiction does not treat the entity as a taxable person, e.g. a business entity based in the US will be resident in the US, whether or not it has ‘checked the box’ to be treated as a taxable person.

11.3 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 an Isle of Man 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 13.14):

- 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 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.

11.4 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.

11.4.1 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, if collateral is provided on a full title transfer basis, so that the collateral holder is the full legal and beneficial owner of the collateral in the term of the contract. This will not constitute a Custodial Account for the purposes of the US Agreement.

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 US Agreement.

11.5 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.

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.

11.6 Cash Value Insurance Contract

A Cash Value Insurance Contract is an Insurance Contract (as defined in section 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.

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.

11.7 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 5 these are exempt products;
- Immediate needs annuities;
- Periodic payment orders; and
- Reinsurance of Annuity Contracts between two Insurance Companies.

11.8 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 section 11.9) 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 (directly or indirectly) from the trust;
iii. A beneficiary that receives a discretionary distribution from the trust in the calendar year; and
iv. Any person that exercises ultimate effective control over the trust.

11.9 Debt or Equity Interests regularly traded on an established securities market

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 US Agreement.

The US Agreement defines what is meant by "regularly traded" and "an established securities market" and introduces a series of tests in order to then meet these definitions, as follows (for the avoidance of doubt, all tests must be met):

Test 1

Subject to the note below on Holders that are registered on the books after 30 June 2014, Equity or Debt Interests are "regularly traded" if there is a meaningful volume of trading with respect to the stock on an ongoing basis.

Applying these tests
In regards to the equity or debt interest itself, there is a "meaningful volume of trading" on an ongoing basis if:

- trades in each such class are effected, other than in de minimis quantities, on one or more established securities markets for at least 60 business days in the prior year; and
- the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year.

Holders that are registered on the books after 30 June 2014

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 1 January 2016.

Test 2

An "established securities market" means an exchange:

a) that is officially recognized and supervised by a governmental authority in which the market is located; and
b) that has a meaningful annual value of shares traded on that exchange.

Specific guidance regarding Test 2(a)

An exchange that is "officially recognised and supervised by a governmental authority in which the market is located" can be considered to include those recognised stock exchanges, for the avoidance of doubt this includes the Channel Islands Securities Exchange and any regulated market as defined by the Market in Financial Instruments Directive 2004/39/EC (MiFID).

Specific guidance regarding Test 2(b)

An exchange will be considered to have a "meaningful annual value of shares traded on that exchange" if it has an annual value of shares traded on that exchange (or a predecessor exchange) exceeding $1,000,000,000 during each of the three calendar years immediately preceding. If an exchange has more than one tier of market level on which stock may be separately listed or traded, each tier must be treated as a separate exchange.

An Equity or Debt Interest that meets all of the tests above will not be a Financial Account.

In view of the requirement to satisfy all of the above tests it is anticipated that, currently, the Channel Islands Securities Exchange will not be considered to be an established securities market for the purposes of the US Agreement.

Example

In applying 11.9 to an Isle of Man fund which is listed on the London Stock Exchange, in respect of which there is meaningful trading:

- 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 applies 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 US Agreement's obligations in respect of these Financial Accounts. However, they will not be treated as Financial Accounts until 1 January 2016, and therefore reporting will not be required until 30 June 2017 (in respect of the 2016 period). From 1 January 2016 there will be an obligation for the fund to obtain the requisite information in respect of these new interests, treating them as a "New Account". The fund would then have to establish the account holder's status as if the account were any other type of New Account in accordance with section 15 of these guidance notes. For practical reasons, it is anticipated funds will have sought to gather this information prior to 1 January2016.

- Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required. The frequency of these checks will depend on the systems and processes in place. For example, an annual check may be adequate where performed at year end in the systems in place a sufficiently robust. However, the registrar may choose to perform the checks at 6 months, or more frequent intervals.

- For new primary market issues, the share application form can be amended to include the self-certification required on new account opening. Incomplete applications would need to be returned to the applicant. In accordance with existing AML practise, incomplete applications could be accepted and the missing information be requested but if the missing information was not received the shares could be re-allotted or sold to a third party and/or the register of members rectified, provided terms and conditions of the offer allowed this.

11.10 Central Securities Depository (CSD)

In the Isle of Man a CSD will not be treated as maintaining financial accounts. The participants of Isle of Man 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 an Isle of Man 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.

11.11 Products Exempt from being Financial Accounts

Annex II of the US Agreement sets 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, Isle of Man Financial Institutions will have no reporting obligations under the US Agreement in respect of these accounts or products.

The US Agreement also provides the capacity for the Annex 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.

11.12 Retirement Accounts and Products

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

Section 5.3 outlines those accounts 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 US Agreement, retirement funds are 'subject to government regulation' if they are registered with the tax authority for tax purposes.

11.13 Certain other Tax Favoured Accounts or Products

There are currently no other Tax Favoured Accounts or Products identified as being exempt. Consideration should be given to the criteria set out in Annex II of the US Agreement and should accounts or products be identified as potentially qualified, the Assessor should be notified and will consider including in this section.

11.14 Accounts of deceased persons

Accounts of deceased persons will not be Financial Accounts if the Isle of Man 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 Isle of Man_Financial Institution is required (as per section 11.2.1) to identify the Controlling Persons of the Estate, where the Trust/Estate is a Passive NFFE.

11.15 Intermediary/Escrow Accounts

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

Accounts held by an Isle of Man 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 11.16.

11.16 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 11.15, 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.

11.17 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.

11.18 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.

11.18.1 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.

11.19 Dormant accounts

An Isle of Man 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.

Where the Financial Institution has closed the account and there is no customer account to report, 'reactivation' will be treated as the opening of a New Account. The Financial Institution would then have to establish the account holder's status as if the account were any other type of New Account.

Although a dormant account will still be reportable, in the case of a Financial Institution who is a QI, there may be withholding implications to the dormant status.

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; or
- 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.

11.19.1 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 the US Agreement.

11.20 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.

11.21 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 an Isle of Man 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 Isle of Man 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 an Isle of Man Agent.

11.22 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. 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.

12 REGISTRATION

12.1 General Requirements

Registration with the IRS is required under the US Agreement and unless specified otherwise references to registration in this guidance refer to registration on the IRS FATCA portal under the US Treasury Regulations.

Isle of Man Financial Institutions that believe they will be required to register with the IRS should refer to the IRS Online Registration User Guide (publication 5118), available at https://www.**irs**.gov/pub/**irs**-pdf/p5118.pdf, for assistance.

Isle of Man Financial Institutions, Sponsors or Third Parties who need to file reports with the Assessor must register for the Information Providers' online service (see section 19.5.1).

12.2 Who needs to register with the IRS?

All Reporting Isle of Man 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.

An Isle of Man Financial Institution can be a Reporting Isle of Man 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 US 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 are the trustee of a Trustee Documented Trust (TDT) will need to register for these roles separately to any registration they are required to make in their own right. An entity that acts as both Sponsor and trustee of a TDT only requires one Sponsor Registration.

12.3 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 an Exempt Beneficial Owner (see section 5); and
- Any Active or Passive NFFE (unless a Direct or Sponsored Direct Reporting NFFE) (see section 10).

12.4 Timetable for Registration

Financial Institutions in a Model 1 jurisdiction, like the Isle of Man, were 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 were able to 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).

13 DUE DILIGENCE REQUIREMENTS

13.1 General

Isle of Man Financial Institutions are responsible for the identification and reporting of Financial Accounts held by Specified US Persons or by Passive NFFEs with one or more Controlling Persons who are Specified US Persons or by Non-Participating Financial Institutions. This section sets out the procedures Isle of Man 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 Isle of Man 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:

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 Isle of Man AML/CFT rules. Refer to the relevant section for details of relevant indicia for each type of account.

Self-Certification

Requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable and applying the reasonableness test (see section 13.8).

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.

13.2 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 the Isle of Man's attachment to the QI Agreement as follows:

    - For a natural person:-
        a) Passport;
        b) National identity card;
        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.

13.3 IRS Withholding Certificates

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.

13.4 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) (TIN), if available, for each country listed.

Where a country does not issue a TIN 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 section 13.2.

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.

13.5 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.

13.6 Retention of Documentary Evidence

A Financial Institution, Sponsoring Entity or third party service provider undertaking due diligence on behalf of an Isle of Man 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. The date the information was (i) received and (ii) reviewed should be documented in the records of the Reporting Financial Institution, Sponsoring Entity or Third Party. Information received electronically may be accepted if the person furnishing the documentary evidence is the person named on the evidence (or an authorised representative) and the copy does not appear to have been altered from its original form.

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 (see section 14.7) where a Relationship Manager enquiry is required, 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 14.11.

13.7 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.

13.7.1 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 17.4).

13.7.2 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 Assessor, 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.

13.7.3 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 related entity 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 related entity 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 Assessor 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.

13.8 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 or a Pre-Existing 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 an Isle of Man 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 (IRS forms W-8) or other similar agreed forms.

Similar agreed forms include:

- a substitute withholding certificate (as determined by the US Regulations e.g. substitute forms W-8BEN,W-8BEN-E,W-8ECI,W-8EXP or W-8IMY where the content is similar to the original forms or a combination of these forms into a single substitute form);
- a written statement to document an entity's chapter 4 status (as listed in the IRS FAQs and determined by the US Regulation § 1.1471-3(c)(4));

- an unrestricted format self-certification determining the tax residence/FATCA status of the account holder under Isle of Man law.

However, please note that although an unrestricted format self-certification that determines the tax residence/FATCA status of the account holder under Isle of Man law is compliant with the Isle of Man Regulations for due diligence purposes it is unlikely to be an accepted document for QI or other US withholding purposes. If documentation is needed for any purposes other than compliance with the FATCA due diligence regime then documentation will have to be provided suitable for the regime in question.

Documents can be received as originals, photocopies, or in electronic form (scanned, email or faxed). Forms may be received electronically where they have been completed and signed with a handwritten signature.

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.

Example self-certification forms for Individual and Entity Account Holders that are suitable for the US Agreement, can be found on the FATCA/CRS page of the Income Tax Division website at the link below:-

- Individual https://www.gov.im/media/1349971/iom-fatca-crs-self-cert-individual-example.pdf
- Entity https://www.gov.im/media/1349972/iom-fatca-crs-self-cert-entity-example.pdf

13.9 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 US Agreement 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 US Agreement 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.

13.10 Self-certification for New Individual Accounts

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 US Agreement whether or not the account holder is a US citizen.

13.10.1 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 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 purposes of the US Agreement, where a self-certification determines that a New Individual account holder is a US citizen or US resident for tax purposes, there is also a requirement to obtain a US Taxpayer Identification Number (TIN) from the account holder.

13.10.2 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 if they are a US citizen.

13.10.3 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.

13.10.4 Where a Self-Certification is already held

If a Financial institution already holds a self-certification for the account holder, for instance, if one has been obtained for another Financial Account held by that Financial institution or a Related Entity, then provided the Financial Institution is able to access this document they will be held to have 'obtained' this document.

However, if there has been a change in circumstance since this self-certification was obtained, or any of the information obtained when the New Account is opened indicates that the previous self-certification can no longer be relied upon, then a new self-certification must be obtained.

13.11 Self-Certification for Pre-existing Individual Accounts

If indicia are found suggesting that the account holder is potentially a US citizen or US resident for tax purposes, then the Financial Institution must treat the account as a Reportable Account under the US 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.

13.12 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 US Person;

b) a Financial Institution that is neither an Isle of Man 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); or

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 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 13.10 above.

13.13 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 US 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 US Person.

b) The entity account holder is a Financial Institution but not an Isle of Man 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) 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 10).

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.

13.14 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.

13.14.1 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 Isle of Man legislation to apply the thresholds set out in Annex 1 of the US Agreement (as amended by these guidance notes – see sections 14.3, 15.3 and 16.3).

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.

13.14.2 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 15.5). 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 14.11 - Relationship Managers).

13.14.3 Exempt products

If a product is exempt from being treated as a Financial Account (see section 5), 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.

13.14.4 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 an Isle of Man Financial Institution and has a related entity Bank C which is also an Isle of Man Financial Institution. Bank A can link the Depository Account of Specified US Person X to another Depository Account in the name of Specified US 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 US 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 an Isle of Man Financial Institution and has a related entity Bank B which is also an Isle of Man Financial Institution. Bank A can link the Depository Account of Specified US Person X to a Custodial Account in the name of the same Specified 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.

13.14.5 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 US 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 US 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 I, II, A, 4 of the US Agreement. 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 an Isle of Man Financial Institution and has elected to apply the relevant thresholds in Annex 1. It can link the following accounts of Specified US 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 I, II, A, 2 of the US Agreement), 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 Specified 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 Specified 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 US Persons have three accounts between them, one deposit account each and a jointly held deposit account with the following balances:

Specified US Person A $35,000
Specified US 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 I, II, A, 4 of the US Agreement does not apply as the aggregated balance of Depository Accounts has to be taken into account.

If A was not a Specified US Person then only B would be reportable following an aggregation exercise.

Example 6 – Aggregation of negative balances

Two Specified US 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 US Person A $53,000
Specified US 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.

13.14.6 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 7 – Separate account reporting

Specified US 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.

13.14.7 Aggregation of Pre-existing Entity Accounts

Example 8

Specified US Person A has an individual Depository Account with Bank X. Specified US 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 I, II, A, 4 of the US Agreement.

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 9

Specified US Person A has an individual Depository Account with Bank X. Specified US 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 I, II, A, 4 of the US Agreement.

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 US 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 10

Specified US Person A has an individual Depository Account with Bank X. Specified US 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 I, II, A, 4 of the US Agreement.

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.

13.15 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).

13.16 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.

13.17 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 US Agreement. 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 13.14 for aggregation and sections 14 and 16 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 US Person or that they are no longer a Specified US 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.

13.18 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 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.

13.19 Introducers

Under the Isle of Man AML regulations an Isle of Man 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 US Agreement, the Financial Institutions are not required to undertake any further due diligence that is required by the Isle of Man AML regulations unless specifically set out in the US Agreement. 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.

13.20 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.

13.20.1 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 an Isle of Man 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 Isle of Man sponsor

Where both funds are sponsored Isle of Man funds with the same Isle of Man 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 Isle of Man 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 14 and 16) 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.

13.20.2 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 (see section 14.4) the policies will remain out of scope, and the transferor company does not need to undertake any further due diligence checks.

13.21 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 Isle of Man 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.

14 PRE-EXISTING INDIVIDUAL ACCOUNTS

14.1 General

A Pre-existing Individual Account is a Financial Account maintained by an Isle of Man 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 (see section 14.3);
b) Cash Value Insurance Contracts and Annuity Contracts unable to be sold to US residents (see section 14.4);
c) Lower Value Accounts (see sections 14.5 and 14.6); and
d) High Value Accounts (see sections 14.7 to 14.11).

14.2 Reportable Accounts

Pre-existing Individual Accounts will be reportable if they are not exempt (see section 5) and the Financial Institution has identified relevant indicia, (see sections 14.6.1 and 14.6.2) 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 as the notification of account closure is a change in circumstance which should trigger an immediate review of the account. This is not applicable 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 18.2.8.

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 US 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 US Person.

Example 1

A Depository Account belonging to a Specified US 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 so long as the Isle of Man Financial Institution has made an election to apply the threshold exemption for that year.

14.3 Threshold Exemptions that apply to Pre-existing Individual Accounts

The Isle of Man Regulations allow for Isle of Man Financial Institutions to elect to apply the threshold exemptions when reviewing and identifying Pre-existing Individual Accounts.

Note: 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 Isle of Man 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 election should be made to the Assessor in writing on or before the reporting due date for the year to which the election relates; for example, if an Isle of Man Financial Institution applies the exemption for the 2016 reporting year the election should be made to the Assessor no later than 30 June 2017.

In 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:-

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 section 14.7);

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 section 14.7).

14.4 Pre-existing Cash Value Insurance Contracts or Annuity Contracts unable to be sold to US residents

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**

- Isle of Man law requires reporting or withholding in respect of these products.

No existing Isle of Man 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 Isle of Man law insurers are required to report details of policies held by policyholders resident in the Island to the Assessor under section 78A of the Income Tax Act 1970.

14.4.1 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.

For policies assigned after 1 January 2016, the account will be considered to be a New Account for both the US Agreement and the CRS, therefore if the Isle of Man Specified Insurance Company is unable to obtain a completed self-certification from the newly assigned policyholder, they must treat the account as 'Undocumented' (see section 5.3.2 of GN 53, the CRS guide, for further information) and include it in their annual CRS reports until such time as the policyholder certifies their status.

The Assessor will make enquiries, and may take compliance action against Isle of Man Financial Institutions who fail to obtain self-certifications where required, or report a disproportionately high number of Undocumented Accounts.

14.5 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.

14.6 Electronic Record Searches and Lower Value Accounts

14.6.1 Identifying Indicia

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; and

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 14.6.2).

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 US Agreement.

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 14.13.

14.6.2 Curing Indicia

Where any of the indicia listed in section 14.6.1 are found, the presumption is that the account is reportable. However, in certain circumstances 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 13.2).

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 that listed in section 14.6.1 c), d), e,) or f) the account must be reported unless the Isle of Man 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 13.2).

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.

14.7 High Value Accounts

Under the US Agreement High Value Accounts are Pre-existing Individual Accounts with a balance or value that exceeded $1,000,000 at 30 June 2014 or at 31 December of any subsequent year.

14.8 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.

14.9 Paper Record Searches and High Value Accounts

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 14.6.1. 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.

14.9.1 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 13.2) which establishes the account holder's non-US status.

14.10 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 US 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 Isle of Man Financial Institution that falls into this category is required, however, to perform the Relationship Manager enquiry (see section 14.11) where the accounts are High Value Pre-existing Individual Accounts.

14.11 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 US 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 section 14.6.2).

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 section 13.14).

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.

If the Relationship Manager has knowledge that there are archived records for the account that are not currently treated as maintained for regulatory or customer relationship purposes, such as knowledge that there are archived records which hold alternate addresses, then this, in itself, is not knowledge that would identify the account holder as a Specified US Person.

In order for knowledge of these records to be knowledge that would identify the account holder as a Specified US Person the Relationship Manager would have to actually know that one or more of those addresses was based in the US.

14.12 Effects of Finding US 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, unless the account holder ceases to be a Specified US 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.

14.13 Timing of reviews

Pre-existing Individual Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

For pre-existing accounts being reviewed the data being considered should be that which is held at the date of the review. However, if the Financial Institution has archived data from the point when the account is identified as reportable then this may also be used, provided that any subsequent changes in circumstance are included in the review process.

14.13.1 Lower Value Accounts

The review of Pre-existing Individual Accounts that are Lower Value Accounts at 30 June 2014 should have been 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.

14.13.2 High Value Accounts

The review of Pre-existing Accounts that are High Value Accounts at 30 June 2014 should have been 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.

Example 3

At 30 June 2014 an account's balance is $200,000 therefore the account is classified as a Pre-existing Lower Value account and is reviewed, in accordance with the procedures described in section 14.6.1 by 30 June 2016, and is not found to be Reportable. However, at 31 December 2017 the balance of the account exceeds $1,000,000 therefore, the Financial Institution must perform the additional procedures described for High Value Accounts by 30 June 2018 (the 30 June following the year in which the balance or value exceeded $1,000,000). If, following these procedures, the account is found to be reportable it should be included in the 2018 and subsequent US reports until such time as the accountholder ceases to be a Specified US Person.

14.14 Information maintained for regulatory or customer relationship purposes

Under certain circumstances, Financial Institutions will have an obligation to review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures).

This is needed when:

- determining whether an Entity Account Holder is a Specified US Person;
- undertaking a paper based review of a High Value account holder;
- identifying whether a Controlling Person of a Passive NFFE is a Specified US Person; or
- confirming the reasonableness of a self-certification.

For the purposes of complying with the regulations a Financial Institution only needs to review 'active' information, as this is the information being 'maintained' for customer and regulatory purposes, i.e. information that is accessible and is in current use. Information that is in use for automated purposes only, such as mailing lists, will still qualify as active.

Information that is simply being *retained* for regulatory or customer purposes (i.e. AML says you must keep for X years, or access to the information will only be needed on a 'just in case' basis, a change of status, such as death of the named contact or maturation of a policy) will not need to be reviewed as, for the purposes of the Isle of Man Regulations, is not being maintained so does not have to be reviewed until such time as it is used again.

Data that is being retained will need to be reviewed if the information ever becomes 'active' again. This will be when the information is used with respect to the operation of the account, such as on a change in status of the type mentioned above. A review of the information that does not relate to operation of the account (such as an AML review of the Financial Institution) will not lead to the information being treated as 'active' and no review would be needed.

When the material is reviewed, new information found will qualify as a change in circumstance. Information is only 'new' if it is in addition to what was found on previous reviews, for example the finding of an indicia for an individual where that indicia has been identified from other documentation and was cured, will not be new information. If the Financial Institution has previously "cured or repaired" other indicia the same information may be used, provided that the date of the 'cure' postdates the date of the information being reviewed, and that the cure obtained meets the criteria for curing the new indicia found.

In practice this is likely to mean that the data held electronically then this is the information maintained for regulatory purposes. Although there may be situations where paper files or electronic non-searchable documents also need to be reviewed, archived data that may have been obtained for regulatory purposes or historic records that being retained until account closure or in case of dispute do not need to be reviewed.

15 NEW INDIVIDUAL ACCOUNTS

15.1 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 a self-certification including a valid US TIN for Specified US Persons (see section 18.3.2).

15.2 Reportable Accounts

Where it is established that the holder of a New Individual Account is a Specified US Person then the account must be treated as a Reportable Account.

In this instance 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.

15.3 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 section 14.3).

The US Agreement is 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 an Isle of Man Financial Institution elects to apply the appropriate threshold exemptions set out in the US Agreement when reviewing and identifying Pre-existing Individual Accounts.

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 election should be made to the Assessor in writing on or before the reporting due date for the year to which the election relates; for example, if an Isle of Man Financial Institution applies the exemption for the 2016 reporting year the election should be made to the Assessor no later than 30 June 2017.

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.

15.4 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 13.7).

15.5 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 **must** carry out the following procedures to determine the account holder's status:-

- Obtain a self-certification (see section 13.8) 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.

It is expected that Isle of Man Financial Institutions will maintain account opening processes that facilitate the collection of a valid self-certification at the time an account is opened.

Although it is not mandatory that the self-certification must be obtained *before* the account can be opened, Isle of Man Financial Institutions **must** request and obtain the self-certification within a reasonable period (90 days or a reasonable length of time determined by the circumstances).

It is accepted that in certain, rare circumstances, such as where an insurance contract has been assigned from one person to another, an Isle of Man Financial Institution may be unable to obtain a valid self-certification by the time that the account would need to be reported. New accounts such as this, opened after 1 January 2016, must be reported to the Assessor as an Undocumented Account in the Isle of Man Financial Institution's CRS report (see section 5.3.2 of GN 53, the CRS guide for further information).

There should be no other circumstances on a New Account opening where a self-certification cannot be obtained. Isle of Man Financial Institutions failing to collect a valid self-certification are committing an offence and may be penalised.

The Assessor will make enquiries, and take compliance action against Isle of Man Financial Institutions who fail to obtain self-certifications where required, or report a disproportionately high number of Undocumented Accounts.

If an Isle of Man Financial Institution subsequently receives a self-certification that shows the account was NOT reportable they should make an appropriate 'correction' to their report.

15.6 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 Specified 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.

15.7 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 Specified US Person.

15.8 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.

16 PRE-EXISTING ENTITY ACCOUNTS

16.1 General

Pre-existing Entity Accounts are those accounts that were 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 US Agreement.

An Isle of Man 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.

16.2 Reportable Accounts

An account holder of a Pre-Existing Entity Account must be classified as either:

a) a Specified US Person;
b) a US Person other than a Specified Person;
c) an Isle of Man 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 US Persons or by Passive NFFEs with one or more Controlling Persons who are Specified US Persons.

Under the due diligence procedures in Annex 1 of the US Agreement, any account held by an entity that is a FFI 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 Person other than a Specified Person;
b) an Isle of Man 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 US Persons.

Where a Pre-existing Entity Account was closed prior to the Financial Institution carrying out its due diligence procedures, the account was still required to be reviewed, as the notification of account closure was a change in circumstance which should have triggered an immediate review of that account. Where, following the due diligence procedures the account is found to be reportable, the Financial Institution must report the information as required under section 18. This should have only applied to accounts that existed at 30 June 2014 and closed before 30 June 2016 as all accounts should have been reviewed by

that date. This will not apply to accounts that were closed prior to 30 June 2014 as they were not classed as Pre-Existing accounts.

If the account holder is a Non-Participating Financial Institution (NPFI), only payments made to the NPFI will be reportable (see section 18.7).

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.

16.3 Threshold Exemptions that apply to Pre-existing Entity Accounts

The Isle of Man Regulations allow for Isle of Man 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 US Agreement is 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 US Agreement when reviewing and identifying Preexisting Entity Accounts.

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 did 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 an Isle of Man 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 election should be made to the Assessor in writing on or before the reporting due date for the year to which the election relates; for example, if an Isle of Man Financial Institution applies the exemption for the 2016 reporting year the election should be made to the Assessor no later than 30 June 2017.

16.4 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 indicia, as described in section 14.6.1.

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 status as appropriate such as a Certificate of Incorporation.

16.5 Identification of an entity as a Specified US Person

In order to identify if an entity is a Specified US 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 or an address in the United States would be examples of information indicating that an entity is a Specified US Person.

Although there is no exemption from a paper record search for Pre-Existing entity accounts, as is the case for High Value individual accounts, a paper record search will not be required in areas where all of the information is electronically searchable.

If the account holder is found to be a Specified US 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 US Person or it can be reasonably determined from information held or that is publicly available, that the account holder is not a Specified US Person (see section 1.7).

Article 1.1) ff) of the US Agreement includes a list of exceptions for Specified US 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.

16.6 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 section 3.4) then that account is not a Reportable Account for the purposes of the Financial Institution that holds the Financial Account on behalf of the entity.

16.7 Identification of an entity as a Non-Participating Financial Institution (NPFI)

If the account holder is a Financial Institution, but not an Isle of Man 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 section 3.15 for definition of NPFI).

This applies unless:

- the Reporting Financial Institution can determine if the entity is an Isle of Man Financial Institution or other Partner Jurisdiction on the basis of information already held/publically available;
- the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner; or
- 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 GIIN.

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 18.7).

16.8 Identification of an entity as a Non-Financial Foreign Entity (NFFE)

When an entity account holder is not identified as either a Specified US 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 US 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 US 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.

16.9 Electronic Searches

Electronic searches may be sufficient **provided** all of the Isle of Man 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.

16.10 Timing of Reviews

The review of Pre-existing Entity Accounts with an account balance or value that exceeded $250,000 at 30 June 2014 should have been completed by **30 June 2016**.

The review of Pre-existing Entity Accounts with a balance or value that did not exceed $250,000 at 30 June 2014, but exceeded $1,000,000 as of 31 December 2015, or of any subsequent year, must be completed by 30 June of the following year.

Pre-existing Entity Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

For Pre-Existing accounts being reviewed the data being considered should be that which is held at the date of the review. However, if the Financial Institution has archived data from the point when the account is identified as reportable then this may also be used, provided that any subsequent changes in circumstance are included in the review process.

17 NEW ENTITY ACCOUNTS

17.1 General

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.

An Isle of Man 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.

17.2 Reportable Accounts

An account holder of a New Entity Account must be classified as either:

g) a Specified US Person;
h) a US Person other than a Specified US Person;
i) an Isle of Man 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 US Person or is a Passive NFFE with one or more Controlling Persons who are Specified US 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 Person other than a Specified US Person;
g) an Isle of Man 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.

17.3 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.

17.4 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.

17.5 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 an Isle of Man 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.

17.6 Identification of an entity as a Non-Participating Financial Institution

If the entity is an Isle of Man 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 an Isle of Man 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 section 17.5 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).

17.7 Identification of an entity account holder as a Specified US Person

If the Financial Institution identifies the account holder of a New Entity Account as a Specified US Person, the account will be a Reportable Account and the Financial Institution must obtain a self-certification (see section 13.8) which **must** include a US TIN.

It is expected that a self-certification will be requested as part of the account opening procedure for new customers. It is not mandatory that the self-certification must be obtained *before* the account can be opened, however the Financial Institution must request and obtain the self-certification within a reasonable period (90 days or a reasonable length of time determined by the circumstances).

17.8 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 US Persons the Reporting Financial Institution must obtain a self-certification from the account holder or Controlling Person.

If they are Specified US Persons, the account shall be treated as a Reportable Account.

18 REPORTING OBLIGATIONS

18.1 General

Once a Financial Institution has identified Reportable Accounts then it must report certain information regarding those accounts to the Assessor in accordance with the timetable in section 18.6.

Separate reports are required to be submitted to the Assessor in respect of US and CRS Reportable Accounts (please refer to GN 53 the CRS guide for further information on CRS reporting).

18.2 Information Required

18.2.1 Specified Persons and Controlling Persons of certain Entity Accounts

In relation to each Specified US Person that is the holder of a Reportable Account and in relation to each Controlling Person of certain Entity Accounts (ie. a Passive NFFE) who is a Specified US Person, the information to be reported is:

a) Name;
b) Address;
c) Tax Identification Number (TIN);
d) Name, address and TIN (if any) of the entity;
e) The account number or functional equivalent;
f) The name and Global Intermediary Identification Number of the Reporting Financial Institution; and
g) 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 sections 18.2.4 to 18.2.6).

In relation to g) if the account was closed during the year, the amount transferred from the account before the account was closed.

18.2.2 Custodial Accounts

In addition to a) to f) 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:

h) The total gross amount of interest paid or credited to the account;
i) The total gross amount of dividends paid or credited to the account;
j) The total gross amount of other income paid or credited to the account; and
k) The total gross proceeds from the sale or redemption of property paid or credited to the account.

Elements h) to j) were 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.

18.2.3 Depository Accounts

In addition to a) to g) above, where the account is a Depository Account the following information is also required:

l) 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.

18.2.4 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:

m) the annual amount reported to the policyholder as the "surrender value" of the account; **or**
n) the amount calculated by the Specified Insurance Company as at 31 December; **and**
o) any part surrenders taken throughout the policy year.

18.2.5 Purchased Life Annuities (PLAs)

As Isle of Man 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.

18.2.6 Deferred Annuities

In the Isle of Man, 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; and
- 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.

18.2.7 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:

p) 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.

18.2.8 Account Closures and Transfers

In addition to a) to f) listed in section 18.2.1 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 reportable payments and account balance with respect to the account shall be:-

q) The payments and income paid or credited to the account that are described earlier in this section for Custodial, Depository and Other Accounts; and
r) 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.

18.3 Explanation of Information Required

18.3.1 Address

The address to be reported with respect to an account held by a Specified US 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.

18.3.2 Taxpayer Identification Numbers (TINs)

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.

There is no requirement for a Financial Institution to verify that any US TIN provided is correct. An Isle of Man 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.

18.3.2.1 Pre-Existing Accounts

Until 31 December 2016, for Pre-existing Individual Accounts that are Reportable Accounts a US TIN only needed to be provided if it existed in the records of the Reporting Financial Institution. In the absence of a record of the US TIN, a date of birth should have been provided, but again only where it was held by the Reporting Financial Institution.

However, in order to prevent an ICMM record level error (see section 19.3) Isle of Man Reporting Financial Institutions still needed to include the TIN element in their report and enter the default TIN of nine zeros (000000000) to signify that a valid TIN was not yet held (see section 19.4.7).

In line with the US Agreement, the Isle of Man introduced legislation to require Reporting Financial Institutions to obtain the US TIN for relevant Pre-existing Individual Accounts from **1 January 2017**.

As a result, from January 2018, the IRS intended to update its record validation rules (the ICMM – see section 19.3) so that an error notification would be issued if a reporting Model 1 FI (which includes all Isle of Man Financial Institutions) reported nine zeros as the TIN for an account holder (as confirmed in FAQ F15 issued 11 April 2017).

However, in its Notice 2017-46, published 25 September 2017, the IRS has confirmed that it understands that 'some reporting Model 1 FFIs need additional time to implement practices and procedures to obtain and report required US TINs for pre-existing accounts that are US reportable accounts' and will, as a result, 'not determine that there is significant non-compliance with the obligations' under the US Agreement 'solely because of a failure to obtain and report each required US TIN' for the **2017**, **2018** and **2019** reporting years so long as certain conditions are met.

Isle of Man Financial Institutions that have not yet been able to obtain a valid US TIN from any pre-existing account identified as a US reportable account, must therefore:

- Obtain and report the date of birth of each accountholder and controlling person whose US TIN is not reported; and
- Request annually from each accountholder any missing required US TIN; and
- Before making its 2017 report to the Isle of Man Competent Authority search all electronically searchable data maintained for any missing US TINs.

Further details on how Financial Institutions should report missing TINs will be provided by the US authorities in due course; in the interim Isle of Man Financial Institutions should continue to use the 'default' nine zero TIN to signify a valid TIN is not held until such updated guidance is made available by the US.

18.3.2.2 New Accounts

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.

18.3.3 Account Number or Functional Equivalent

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.

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.

18.3.4 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.

Depository Accounts

This is 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.

Trusts

Please see section 6.

Other Financial Accounts

This is 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 Assessor 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.

18.3.5 Jointly held Financial Accounts

Where a Financial Asset is jointly held the balance or value to be reported in respect of the Specified US 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

A jointly held Depository Account has a balance or value of $100,000 and one of the account holders is a Specified US Person; the amount to be attributed to that person would be $100,000.

If both account holders were Specified US Persons then each would be attributed the $100,000 and reports would be made for both.

Example 4

An Isle of Man Financial Institution maintains a Depository Account for ABC Ltd, a Passive NFFE, which at 31 December 2016 had a balance of $200,000. A Specified US Person is identified as owning 50% of the shares in the company. The full $200,000 value of the account is reported as being the Financial Account held by that Specified US Person.

Example 5

DEF Limited is an Investment Entity. A Specified US Person is identified as owning 50% of the shares in the company. The value of the Specified US Person's 50% share, his Equity Interest, in the company is reported as being the Financial Account held by that Specified US Person.

18.3.6 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.

18.4 Nil Returns

Returns will not be required by Isle of Man Financial Institutions if there are no Reportable Accounts.

This is not the same as having accounts with a nil value which are still reportable.

Isle of Man Financial Institutions that want to voluntarily file nil returns can do so if they wish but in order to do so they must:

- register for the Information Providers' Online Service (see section 19.5.1); and
- ensure that the nil return validates against the applicable schema (see section 19.2).

18.5 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 an Isle of Man Financial Institution or not.

For this purpose, the Isle of Man 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. There is no need for the Isle of Man Financial Institution in this case to report anything to the Assessor in respect of that Financial Account. This does not remove the responsibility for the Isle of Man 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 Assessor.

Duplicate reporting also could arise in respect of the interaction of US domestic legislation and the Isle of Man regulations which give effect to the US Agreement. For example, a US limited partnership which is managed and controlled in the Isle of Man and hence Isle of Man resident under Isle of Man law (for limited partnerships this is generally where the General Partner is resident), as well as a US person under US domestic law, could have US domestic reporting and withholding obligations and also might be viewed as an Isle of Man Financial Institution for the purposes of the US Agreement. If the Isle of Man Financial Institution is to avoid the reporting obligation it would need to be satisfied that those obligations were being met by the domestic reporting. If that satisfaction can be obtained then duplicate reporting can be avoided.

18.6 Timetable for Reporting

Reporting Year	In respect of	Information to be reported	Reporting date to The Assessor
2014	Each Specified US Person either holding a Reportable Account **Or** as a Controlling Person of an Entity Account	– Name – Address – US TIN (where applicable or DoB for Pre-existing Accounts) – Account number or functional equivalent – Name and identifying number of Reporting Financial Institution – Account balance or value	30 June 2015
2015	As 2014 plus payments to NPFI (see section 18.7)	As 2014 plus: **Custodial Accounts** – Total gross amounts of interest, dividends and other income paid or credited to the account **Depository Accounts** – Total amount of gross interest paid or credited to the account in the calendar year or other reporting period **Cash Value Insurance contracts** – Surrender value; or – Amount calculated by the Specified Insurance Company; and – Any part surrenders. **All other accounts** – The total gross amount paid or credited to the account including the aggregate amount of any redemption payments.	30 June 2016
2016	As 2015	As 2015 plus: **Custodial Accounts** – Total gross proceeds from the sale or redemption of property paid or credited to	30 June 2017

		the account	
2017 onwards	As 2015	All of the above including valid US TIN for Pre-Existing Accounts	30 June following the end of the reported calendar year

18.7 Reporting on Non-Participating Financial Institutions

Where a Reporting Isle of Man Financial Institution makes payments to a Non-Participating Financial Institution (NPFI), under the US Agreement 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 Isle of Man Financial Institution for the Non-Participating Financial Institutions must be reported.

18.7.1 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 non-US source dividends paid on a shareholding held in a Financial Account held by the NPFI that are not directly traceable to a US source; and
d) Payments where the Reporting Isle of Man Financial Institution does not hold documentation to identify the payee as a Non-Participating FFI, unless the payee is a prima facie FFI.

18.7.2 Reporting

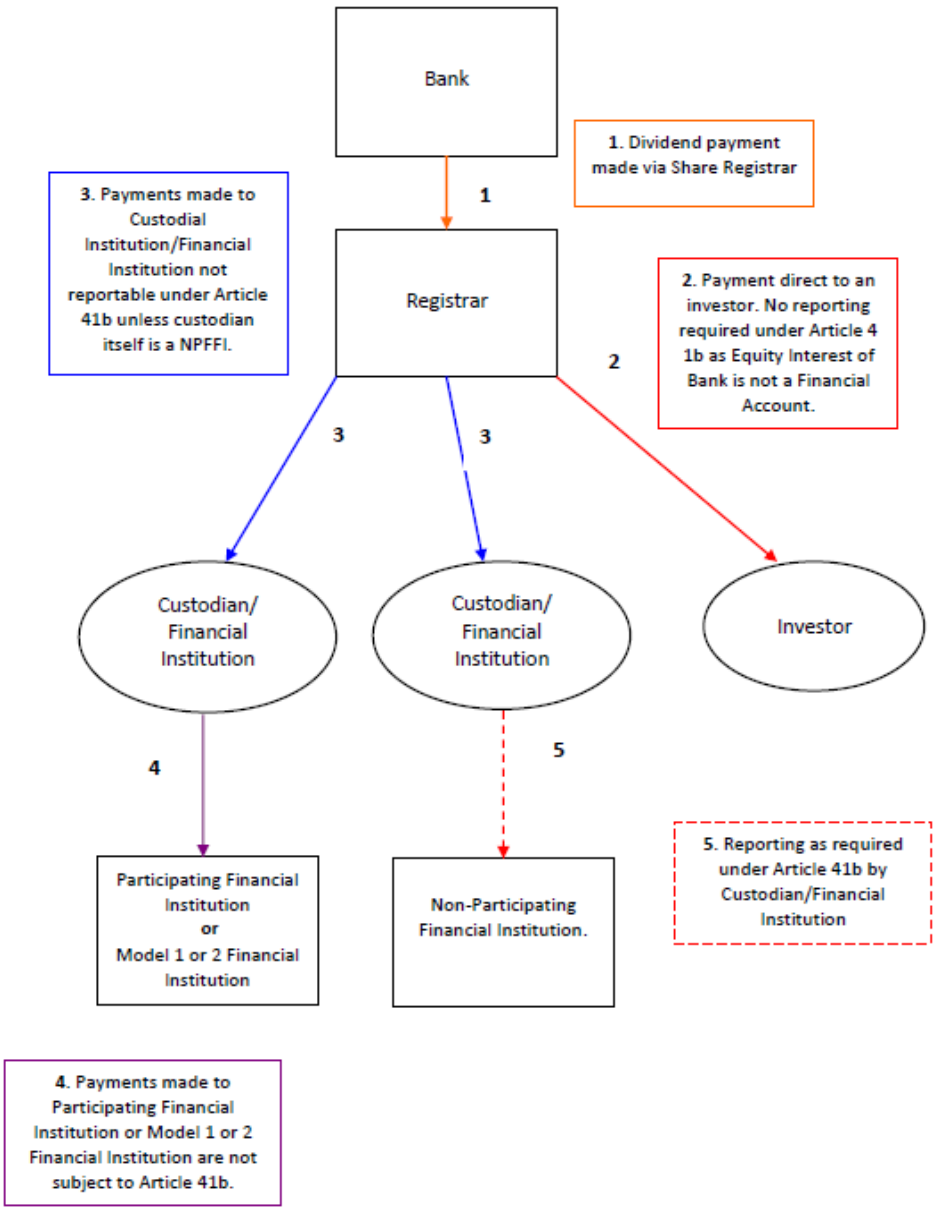
1. A payment will be treated as being made when an amount is paid or credited to an NPFFI.
2. Only the aggregate amount of payments made to the payee during the calendar year need to be reported.

18.8 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 11.8), 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:



18.9 Withholding on US Source Withholdable Payments paid to Non-Participating Financial Institutions

Consultations with business suggest that the Isle of Man 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 the Isle of Man, but any withholding is undertaken by a withholding agent and the primary withholding is not done by the Isle of Man Financial Institution itself.

Therefore, it is not expected Article 4(1)(d) of the US Agreement will apply to Isle of Man Financial Institutions, who should instead fall within the provisions of Article 4(1)(e). This means that Isle of Man 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.

18.10 Reporting payments of US Source Withholdable Payments paid to Non-Participating Financial Institutions

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 US 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.

18.11 Third party service providers

Third party service providers can be used by Isle of Man Financial Institutions to undertake the reporting obligations but the responsibility for ensuring that it is complete, correct and timely remains with the Isle of Man Financial Institution.

18.12 Reporting on Cessation

Where an Isle of Man entity ceases to be a Reporting Financial Institution it will need to file any outstanding reports **prior to** its dissolution.

Example

ABC Limited, an Isle of Man Depository Institution, intends to surrender its banking licence and cease to operate in the Isle of Man in spring 2017. ABC Limited has filed reports to the Assessor in respect of the 2014 and 2015 reporting years in respect of the depository accounts it maintained for Specified US Persons.

Although under normal circumstances ABC Limited would have until 30 June 2017 and 30 June 2018 to report in respect of the 2016 and 2017 reporting years, ABC Limited should file both the 2016 and final 2017 part year report to the Assessor as soon as practically possible after the final financial accounts it maintains are closed in the spring of 2017.

If following those final submissions the Assessor has any follow up queries, eg. receives a notification of record level errors from the IRS after ABC Limited's cessation, they will be directed to the person/s who the Isle of Man Financial Services Authority (FSA) have agreed will be responsible for maintaining ABC Limited's records at the time its banking licence was surrendered.

19 FORMAT OF REPORTING

19.1 Extensible Mark-up Language (XML)

Reporting of US Reportable Accounts **must** be made to the Assessor in the prescribed XML format set by the IRS.

The XML format to be used is mandatory and returns in any other format will not be accepted and could result in the information not being submitted to the other authority.

19.2 Schema

In order for an XML file to be accepted it must be valid, in accordance with the applicable XML schema.

Up until **31 December 2015** the schema for reporting was IRS FATCA XML v1.1.

The IRS recently updated IRS FATCA XML v1.1 to version 2.0 and it is this schema that **must** be used for **all** submissions, including revisions to earlier year's reports, from **1 January 2017** onwards. The updated schema and associated user guide are available at the links below:

- Schema XSD https://www.irs.gov/pub/fatca/fatcaxml_v2.0.zip
- User Guide https://www.irs.gov/pub/fatca/pub5124userguidev20draft.pdf

19.3 International Compliance Management Model (ICMM)

The Isle of Man, like other Model 1 jurisdictions, exchanges FATCA data securely with the US using the IRS's International Data Exchange Service (IDES) which is then processed, validated, stored and managed by the International Compliance Management Model (ICMM).

The ICMM imposes a secondary layer of validation on each individual account contained in a file and may identify what are known as 'record level' errors in a submission; further details of these errors can be found in the IRS's ICMM User Guide at the link below:

- ICMM User Guide https://www.irs.gov/pub/fatca/fatcareportsicmmnotificationsuserguidefinal.pdf

Where record level errors are found a notification will be issued to the Assessor, who has 120 days to ensure that the Isle of Man Financial Institution corrects the errors and resubmits.

In order to minimise the potential need for corrections by Isle of Man Financial Institutions, where possible, the Income Tax Division has enhanced the validation applied to US FATCA files uploaded through the Information Providers' Online Service (see section 19.5), which are explained below.

19.4 Validation

All reports submitted must be valid in accordance with the applicable schema and any additional validation added to the Information Providers' Online Service as specified by the Assessor and explained below.

19.4.1 Invalid Characters

FATCA XML documents should conform to recommended XML schema best practices and therefore certain characters are prohibited. If those characters are included in a report it will cause the file to be rejected by the US when the Isle of Man tries to transmit it through IDES, generating an error notification.

The tables below detail the non-allowable characters, or combinations of non-allowable characters, for US FATCA XML files:

Character	Description	Entity Reference
- -	Double Dash	n/a
/*	Slash Asterisk	n/a
&#	Ampersand Hash	n/a

Character	Description	Entity Reference
<	Less Than	&lt;
'	Apostrophe	&apos;
&		&amp;

The characters, or combinations of characters, listed above should not appear within the XML file of the data being submitted and should you need to use any of the prohibited characters (with the exception of double dash, slash asterisk and ampersand hash), you should use the 'Entity Reference' instead.

19.4.1.1 Apostrophes

The Information Providers' Online Service will accept apostrophes and the entity reference for an apostrophe in all instances. However, due to complex rules that exist within the IRS's IDES system concerning the acceptance of certain character/letter combinations, the Assessor will be removing all apostrophes from Isle of Man reports, and replacing them with a space, prior to exchanging the information with the US authorities, as illustrated below:

Example

```
<Individual>
   <ResCountryCode>US</ResCountryCode>
   <TIN>000000000</TIN>
   <First Name>John</First Name>
   <Last Name> O'Smith</ Last Name>
<Address>
   <CountryCode>IM</CountryCode>
   <AddressFree>1 The Road/St John's/Isle of Man</ /AddressFree>
</Address>
```

Example

```
<Individual>
   <ResCountryCode>US</ResCountryCode>
   <TIN>000000000</TIN>
   <First Name>John</First Name>
   <Last Name> O Smith</ Last Name>
<Address>
   <CountryCode>IM</CountryCode>
   <AddressFree>1 The Road/St John s/Isle of Man</AddressFree>
</Address>
```

19.4.2 Namespace

With effect from 1 January 2017 US reports must validate against version 2.0 of the IRS's FATCA XML schema (see section 19.2).

All Isle of Man Financial Institutions must therefore ensure that their files contain the updated v 2.0 XML Schema Instance Namespace at the start of their report in order for it to validate. The XML text below illustrates the difference between part of the namespace in v 1.1 to v 2.0:

Example

```
<ftc:FATCA_OECD xmlns=" urn:oecd:ties:stffatcatypes_v1.1.xsd"...
<ftc:FATCA_OECD xmlns="urn:oecd:ties:stffatcatypes_v2.0.xsd"...
```

19.4.3 MessageSpec

The Message Header (MessageSpec) part of the report identifies the Isle of Man Financial Institution sending the report along with other information such as when it was created, what year it is for and the nature of the report.

The 'TransmittingCountry' and 'ReceivingCountry' elements identify the jurisdiction from which the report is being sent from and to. Therefore, Isle of Man Financial Institutions must ensure that the elements are completed with the Isle of Man and United States country codes 'IM' and 'US' respectively:-

Example

```
<MessageSpec>
   <TransmittingCountry>IM</TransmittingCountry>
   <ReceivingCountry>US</ReceivingCountry>
```

19.4.4 Unique DocRefIds

Since 1 January 2016 the IRS has required the 'DocRefId' element of a report to be completely unique across **all** Foreign Financial Institutions. The element should contain at least 21 characters whilst the maximum length is 200 characters.

In order for the 'DocRefId' to be unique and acceptable it must appear in the following prescribed format set by the US:

<reportingFI GIIN><period character (.)><unique value across all time for the reportingFI>

- The first part **<reportingFI GIIN>** is the Isle of Man Financial Institution's GIIN;
- The second part **<period character (.)>** is a period character/full stop; and
- The final part **<unique value across all time for the reportingFI>** is an identifying value for the referenced record that is unique to the Isle of Man Financial Institution for all time and should be adaptable each year for each account.

For the unique value the IRS recommends the use of a Globally Unique Identifier (GUID) but it is not mandatory to use this.

Example

```
<DocRefId>XXXXXX.XXXXX.SL.833.12291cc2-37cb-42a9-ad7406bb5746b60b</DocRefId>
<DocRefId>XXXXXX.XXXXX.ME.833.406abc8a1830490e847890ba3b13a646</DocRefId>
<DocRefId>XXXXXX.XXXXX.ME.833.Client120-2017-1</DocRefId>
```

19.4.5 Global Intermediary Identification Number (GIIN)

The GIIN of a Financial Institution is assigned by the IRS to each FATCA approved registered entity. The registered GIIN list for US FATCA can be found online at:-

- https://apps.irs.gov/app/fatcaFfiList/flu.jsf

GIINs are 19 characters in length, formatted as **XXXXXX.XXXXX.XX.XXX** and never contain the letter **O**.

An Isle of Man Financial Institution must include the correct GIIN in the 'ReportingFI', 'TIN' element of their report.

Further information on GIINs can be found in the IRS's FAQs at the link below:-

- https://www.irs.gov/Businesses/Corporations/FAQsFATCARegistrationSystem#GlobalQ1

19.4.6 FilerCategory

This element was added to version 2.0 of the schema in order to specify in what capacity the filer is making the report, for example as a Participating Foreign Financial Institution, a Sponsoring Entity of a Sponsored Foreign Financial Institution or Trustee of a Trustee-Documented Trust.

A full list of the 'Filer Category Types' can be found in the IRS's v 2.0 schema user guide (see section 19.2 for hyperlink). However, the most common filer category codes for Isle of Man Financial Institutions are listed below:-

Registered Deemed Compliant Financial Institution – Including Reporting Model 1 FFIs	FATCA602
Sponsoring Entity of a Sponsored FFI	FATCA607
Trustee of a Trustee-Documented Trust	FATCA609

Where an Entity is filing as the Reporting FI itself, the Filer Category should be added to the 'ReportingFI' segment of the report:

Example

```
<ReportingFI>
    <ResCountryCode>IM</ResCountryCode>
    <TIN>000000.00000.LE.833</TIN>
    <Name>Example FI Ltd</ Name>
    <Address>
        <CountryCode>IM</CountryCode>
        <AddressFree>123 High Street/Douglas/Isle of Man</AddressFree>
    </Address>
    <FilerCategory>FATCA602</FilerCategory>
    <DocSpec>
```

Where an Entity is filing as a Sponsor or as the Trustee of a Trustee-Documented Trust (and therefore using the Sponsor section of the report), the Filer Category should be added to the Sponsor segment of the report only with no Filer Category in the 'ReportingFI' section in such instances:

Example

```
<ReportingFI>
    <ResCountryCode>IM</ResCountryCode>
    <TIN>000000.00000.LE.833</TIN>
    <Name>Example FI Ltd</ Name>
    <Address>
        <CountryCode>IM</CountryCode>
        <AddressFree>123 High Street/Douglas/Isle of Man</AddressFree>
    </Address>
    <DocSpec>
        <DocTypeIndic>FATCA11</DocTypeIndic>
        <DocRefId>000000.00000.LE.833.123456789.2016v1</DocTypeIndic>
    </DocSpec>
</ReportingFI>
<ReportingGroup>
<Sponsor>
    <ResCountryCode>IM</ResCountryCode>
    <TIN>000000.00000.SP.833</TIN>
    <Name>Example Sponsor</ Name>
    <Address>
        <CountryCode>IM</CountryCode>
        <AddressFree>45 High Street/Douglas/Isle of Man</AddressFree>
    </Address>
    <FilerCategory>FATCA607</FilerCategory>
    <DocSpec>
```

19.4.7 US TIN

The Tax Identification Number (TIN) to be reported for each accountholder must be a valid US TIN and can follow one of three prescribed formats:

- Nine consecutive numerical digits eg. **123456789**
- Nine consecutive numerical digits with two hyphens, one hyphen entered after the third numeric digit and the second hyphen entered after the fifth numeric digit eg. **123-45-6789**
- Nine consecutive numerical digits with one hyphen entered after the second numeric digit eg. **12-3456789**

A US TIN should never contain any characters other than numerical digits or hyphens.

The 'TIN' element has an optional attribute to specify the jurisdiction which issued the TIN.

In order to be accepted by the ICMM the TIN attribute must be set to 'US' or be absent completely, in which case the US will automatically assume the issuing country was the US:

Example

```
<AccountHolder>
<Individual>
    <ResCountryCode>US</ResCountryCode>
    <TIN issuedBy="US">000000000</TIN>
```

Example

```
<AccountHolder>
<Individual>
    <ResCountryCode>US</ResCountryCode>
    <TIN>000000000</TIN>
```

19.4.7.1 Unknown US TIN

The accountholder's US TIN must be provided and there cannot be blank characters in the 'TIN' element.

In the event a valid US TIN is not yet held for an accountholder, the 'TIN' element should be populated with nine zeros eg. **000000000** .

Where the actual US TIN is unknown as the 'default' TIN is used, the accountholder's date of birth should be provided.

Under the terms of the US Agreement, from 1 January 2017 Isle of Man Financial Institutions **must** obtain a valid US TIN from any Pre-existing accountholders who are Specified US Persons. Please see section 18.3.2.1 for further details concerning the collection of US TINs.

19.4.8 Multiple Jurisdictions of Residence

If an accountholder is tax resident in other non-US jurisdictions there is no requirement under the US Agreement to provide this information in the US FATCA return. However, should an Isle of Man Financial Institution still wish to include the information the report will not fail validation so long as only the 'ResCountryCode' element is repeated and the TIN element is not.

The XML example text below illustrates this for an accountholder who is both a US and Irish tax resident, with an Isle of Man Financial Account:-

Example

```
<AccountHolder>
        <Individual>
                <ResCountryCode>US</ResCountryCode>
                <ResCountryCode>IE</ResCountryCode>
                <TIN issuedBy=”US”>123456789</TIN>
```

19.4.9 Substantial Owners

This element was added to the version 2.0 schema in order to specify whether the Controlling Person/s of an Entity AccountHolder are Individuals or Organisations:

Example

```
<AccountHolder>
<Organisation>
    <ResCountryCode>IM</ResCountryCode>
    <TIN>000000000</IN>
    <Name>Example PNFFE</Name>
    <Address>
        <CountryCode>IM</CountryCode>
        <AddressFree>123 High Street/Douglas/Isle of Man</AddressFree>
    </Address>
</Organisation>
<AcctHolderType>FATCA102</ AcctHolderType >
</AccountHolder>
<SubstantialOwner>
    <Individual>
        <ResCountryCode>US</ResCountryCode>
```

19.4.10 Sponsoring Entities and Trustees of TDTs

Where an Isle of Man Financial Institution is Sponsored, or is a TDT, details of the Sponsoring Entity/Trustee should be provided in the 'Sponsor' section of the report, the details of the Sponsored Entity/Trust in the 'ReportingFI' section, and the accountholders' details provided in the 'AccountHolder' section.

19.5 Transmission to the Isle of Man Competent Authority

Isle of Man Financial Institutions **must** submit their US FATCA XML reports to the Assessor using the Information Providers' Service, which is part of Isle of Man Government's Online Services, accessible at the link below:

https://services.gov.im/income-tax/.

19.5.1 Registration

Registration with the Isle of Man authorities is only required where a Financial Institution has reporting obligations under the US Agreement (or the CRS – please see GN 53 for more information on CRS reporting).

In order to report US FATCA information to the Assessor, Isle of Man Financial Institutions will need to register for Government Online Services at www.gov.im/onlineservices and enrol for the Information Providers' Service within Income Tax Services.

In order to enrol for the Information Providers' Service an Isle of Man Financial Institution will require:

- an Information Providers' Tax Reference Number;
- a security code; and
- an activation code.

To obtain this information, Isle of Man Financial Institutions, their Sponsor or Third Party should complete the Information Providers' registration form found at the link below:-

- https://www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/fatca-and-common-reporting-standard/information-providers-reporting-registration-form/

20 COMPLIANCE

20.1 General

The IRS announced that calendar years 2014 and 2015 would be regarded as a transition period for purposes of IRS enforcement and administration of the due diligence, reporting, and withholding provisions. For this period it was proposed that the IRS would take into account the extent to which a Financial Institution has made good faith efforts to comply with the requirements.

If a Reporting Isle of Man Financial Institution has taken all reasonable efforts to supply accurate information and to establish appropriate governance and due diligence processes then they will be held to be compliant with the Isle of Man Regulations.

This will be the case despite the occurrence of minor and administrative errors, or a failure to supply accurate information despite reasonable care having been taken. It is the view of the Assessor that if an Isle of Man Financial Institution has made all good faith efforts for 2014 and 2015 reporting (as outlined in the IRS notice) then this will also constitute all reasonable efforts for the purposes of establishing compliance with the Isle of Man Regulations.

20.2 Minor Errors

In the event that the information reported is corrupted or incomplete, the US will notify the Assessor.

The Assessor will contact the Reporting Isle of Man Financial Institution to resolve the problem. Examples of minor errors could include:

- Data fields missing or incomplete;
- Data that has been corrupted;
- Use of an incompatible format.

Where this leads to the information having to be resubmitted this will be via the Assessor.

Penalties may be imposed by the Assessor if the error is considered to contravene the Isle of Man 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.

20.3 Significant Non-Compliance

Significant non-compliance may be determined by either the IRS or the Assessor. In any event the relevant Competent Authority 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 Assessor is notified of or identifies significant non-compliance by a Reporting Isle of Man Financial Institution, the Assessor will apply any relevant penalties under the Isle of Man Regulations.

The Assessor will also engage with the Reporting Isle of Man 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 Assessor will inform the US Competent Authority 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 Isle of Man 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 a later date.

20.4 Penalties

The Isle of Man 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.

Failure to comply with any requirement of the Isle of Man Regulations could result in a fine not exceeding £5,000.

A person providing or producing any document that is false or misleading may be liable to imprisonment of a term of 2 years and to a fine not exceeding £5,000.

In determining whether a person has complied with any requirement of these Regulations, a court must have regard to any guidance issued or approved by the Assessor.

A Reporting Isle of Man Financial Institution may use a third party for the purpose of complying with these Regulations but compliance with such requirements remains the responsibility of the Reporting Isle of Man Financial Institution.

20.5 Prevention of Avoidance

The Isle of Man 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.

21 DATA PROTECTION

Isle of Man Financial Institutions are not required to share information with other jurisdictions, for example under the aggregation rules (see section 13.14) or Sponsored Entity regime (see section 13.15), where doing so would be in breach of the Isle of Man Data Protection rules. In those circumstances customer approval would be required.

APPENDIX I

RELEVANT DOCUMENTS

US Agreement

Intergovernmental Agreement
http://www.gov.im/media/915720/signed_iga.pdf

Tax Information Exchange Agreement
http://www.gov.im/media/1047940/iom-usa_tiea_amendment_.pdf

US Treasury FATCA Regulations

http://www.irs.gov/Businesses/Corporations/FATCA-Regulations-and-Other-Guidance

Isle of Man Regulations
http://www.gov.im/media/1311870/2014-sd-0187_pdf.pdf