



GUIDANCE FOR THE IMPLEMENTATION OF THE PROVISIONS OF CABINET DECISION NO. (63) OF 2022 CONCERNING THE IMPLEMENTATION OF AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE FOREIGN ACCOUNT TAX COMPLIANCE ACT

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TABLE OF CONTENT

| | |
|---|----|
| 1. INTRODUCTION | 5 |
| 1.1 Introduction to Guidance..... | 5 |
| 1.2 What is FATCA..... | 5 |
| 1.3 Intergovernmental Agreement | 5 |
| 1.4 Scope of the Agreement..... | 6 |
| 1.5 Reporting and Non-Reporting Financial Institutions..... | 6 |
| 1.6 Non-Financial Foreign Entities..... | 7 |
| 2. DEFINED TERMS | 7 |
| 3. UAE FATCA REGULATORY FRAMEWORK..... | 7 |
| 3.1 Overall structure..... | 7 |
| 3.2 Functions of the Competent Authority | 7 |
| 3.3 Functions of the Regulatory Authorities | 8 |
| 3.4 Functions of the Federal Tax Authority | 9 |
| 3.5 Powers of Inspection and Investigation..... | 9 |
| 3.6 Requirement to Provide Information | 10 |
| 3.7 Cooperation by Governmental Authorities..... | 10 |
| 3.8 Exchange of Information..... | 10 |
| 4. FINANCIAL INSTITUTIONS | 11 |
| 4.1 Defining what is and what is not a Financial Institution | 11 |
| 4.1.1 Defining a Financial Institution..... | 11 |
| 4.1.1.1 <i>Residence Requirements</i> | 11 |
| 4.1.1.2 <i>Type of Entity</i> | 11 |
| A. Depository Institution..... | 11 |
| B. Custodial Institution | 12 |
| C. Investment Entity | 12 |
| D. Specified Insurance Company | 13 |
| 4.1.2 Related Entities | 13 |
| 4.1.2.1 Definition | 13 |
| 4.1.2.2 Exceptions..... | 14 |
| 4.1.3 Determining whether a Financial Institution is a Reporting Financial Institution..... | 15 |
| A. Reporting Financial Institutions | 15 |
| (a) Exempt Beneficial Owners | 16 |
| (b) Deemed-Compliant Financial Institutions | 16 |
| (c) Owner Documented Financial Institutions | 19 |

| | | |
|---------|---|----|
| 4.1.4 | Defining a Non-Financial Foreign Entity..... | 19 |
| 4.1.4.1 | Active NFFEs..... | 20 |
| 4.1.4.2 | Passive NFFEs..... | 21 |
| 4.1.4.3 | Direct Reporting NFFEs..... | 22 |
| 4.2 | Financial Accounts..... | 22 |
| 4.2.1 | Does the Financial Institution maintain Financial Accounts? | 22 |
| 4.2.2 | Defining Financial Accounts..... | 23 |
| 4.2.3 | Exempt Accounts | 24 |
| 4.2.4 | Are The Financial Accounts US Reportable Accounts? | 26 |
| (a) | Financial Accounts held by Specified US Persons..... | 26 |
| (b) | Accounts held by a Non-US Entity where one or more Controlling Persons are Specified US Persons | 27 |
| (c) | Accounts with US indicia discovered after Due Diligence | 28 |
| | Documentary Evidence..... | 28 |
| | Aggregation and Currency Translation..... | 29 |
| 4.3 | OBLIGATIONS | 30 |
| 4.3.1 | Registration Requirements..... | 30 |
| A. | Registration with the IRS | 30 |
| (a) | Entities Required to Register | 30 |
| (b) | Entities Not Required to Register | 30 |
| (c) | IRS Registration Walkthrough..... | 30 |
| 4.3.2 | Due Diligence | 33 |
| B. | Due Diligence Procedures for Individual Accounts | 33 |
| (i) | Pre-existing Individual Accounts..... | 33 |
| (ii) | New Individual Accounts..... | 35 |
| C. | Due Diligence Procedures for Entity Accounts | 36 |
| (i) | Pre-Existing Entity Accounts | 36 |
| (ii) | New Entity Accounts | 37 |
| 4.3.3 | Self-Certification..... | 38 |
| | Change in Circumstances | 39 |
| 4.3.4 | Reporting Obligations..... | 39 |
| 4.3.5 | Systems and Procedures | 41 |
| (a) | Record Keeping | 41 |
| (b) | Records of arrangements, steps and measures..... | 41 |
| 4.3.6 | Use of Third Parties..... | 41 |
| 5. | ACCOUNT HOLDERS/ CONTROLLING PERSONS | 41 |
| 5.1 | Requirements on Account Holders/Controlling Persons | 41 |

| | |
|--|----|
| (a) Self-Certification..... | 41 |
| (b) Information, Documentation and Assistance..... | 41 |
| 6. COMPLIANCE..... | 42 |
| 6.1 Non Compliance with the Agreement..... | 42 |
| (a) Administrative or Minor Errors..... | 42 |
| (b) Significant Non-Compliance..... | 42 |
| 6.2 Compliance, Monitoring and Enforcement under the FATCA Resolution..... | 43 |
| 6.3 Violations and Penalties | 44 |
| FLOWCHART 1 – ASSESSING OBLIGATIONS OF FIs..... | 45 |
| FLOWCHART 2 – ASSESSING OBLIGATIONS OF NFFEs..... | 45 |
| FLOWCHART 3 – ASSESSING WHETHER AN INSURANCE COMPANY IS A FI..... | 46 |
| FLOWCHART 4 – ASSESSING DUE DULIGENCE OBLIGATIONS FOR INDIVIDUAL ACCOUNTS..... | 46 |
| FLOWCHART 5 – ASSESSING DUE DULIGENCE OBLIGATIONS FOR ENTITY ACCOUNTS..... | 46 |
| CHECKLIST 1 - CHECKLIST OF COMPLIANCE PROCEDURES | 47 |
| A. Obligations of Financial Institutions..... | 47 |
| B. Obligations of NFFES..... | 48 |
| CHECKLIST 2 - DUE DILIGENCE CHECKLIST | 49 |
| A. Due Diligence Checklist - Individual Accounts | 49 |
| B. Due Diligence Checklist – Entity Accounts..... | 49 |
| ANNEXURE 2 – SECTOR SPECIFIC GUIDANCE..... | 50 |
| PART 1. – BANKING SECTOR | 50 |
| PART 2 – INSURANCE SECTOR | 54 |
| A. SPECIAL FATCA CONSIDERATION FOR INSURANCE COMPANIES | 54 |
| B. APPLICATION OF FATCA TO INSURANCE ENTITIES..... | 57 |
| Part 3 – FINANCIAL SERVICES SECTOR | 64 |
| e.g. 1 - EXCHANGE | 67 |
| e.g. 2 - SECURITIES BROKER..... | 68 |
| e.g. 3 - COMMODITIES BROKER FIRM | 69 |
| e.g. 4 - SECURITIES CUSTODIAN..... | 70 |
| e.g. 5 - INVESTMENT MANAGER..... | 71 |
| e.g. 6 - FINANCIAL CONSULTATION AND FINANCIAL ANALYSIS FIRM | 71 |
| e.g. 7 - FUND ADMINISTRATOR | 72 |

1. INTRODUCTION

1.1 Introduction to Guidance

This Guidance is issued in implementation of Cabinet of Ministers Resolution No. (63) of 2022 Concerning the Implementation of Federal Decree No. (9) of 2016 Ratifying the Agreement between the Government of the United Arab Emirates and the Government of the United States of America to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act ("**FATCA Resolution**").

The key objective of this Guidance is to provide guidance to UAE Financial Institutions subject to the provisions of the Agreement and the FATCA Resolution. The Guidance is based on the Agreement and the FATCA Resolution and should be read in conjunction with the provisions thereof.

An entity subject to the Agreement and the FATCA Resolution shall have regard to this Guidance for the purposes of ensuring compliance with the Agreement and FATCA Resolution. It may be necessary, from time to time, to revise or expand on this Guidance.

1.2 What is FATCA

The Foreign Account Tax Compliance Act (**FATCA**) was introduced by the United States in 2010 as part of the Hiring Incentives to Restore Employment ("**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 Financial Institutions do not comply with the US Regulations, a 30% withholding tax is imposed on US source income and gross proceeds paid to that FI, both on its own US investments and those held on behalf of its customers. Financial Institutions are also required to close accounts where their US customers do not provide the information that needs to be collected by the Financial Institution.

The US recognised that in some jurisdictions there are legal barriers to implementing FATCA as well as some practical difficulties for Financial Institutions in complying with FATCA. Therefore the US has entered into Intergovernmental Agreements ("**IGAs**") with other jurisdictions in order to facilitate the implementation of FATCA. There are two Model IGA versions. The first model agreement ("**Model 1**") involves the provision of information to the FATCA Partner government followed by a government-to-government exchange of information; the second ("**Model 2**") involves the direct provision of information to the IRS. There are several variations of each Model Agreement. The Model 1 Agreement comes in both a reciprocal ("**Model 1A**") and nonreciprocal ("**Model 1B**") version.

1.3 Intergovernmental Agreement

The UAE signed a Model 1B Intergovernmental Agreement with the US to improve international tax compliance and to implement FATCA on 17 June 2015. The Agreement was ratified on 27 January 2016 ("**the Agreement**").

Subsequently, the UAE Competent Authority and the US Competent Authority (for the purpose of this Guidance, the Internal Revenue Service (“**IRS**”)), entered into the Competent Authority Arrangement, pursuant to Article 3(6) of the Agreement (“**the Arrangement**”).

Pursuant to Article 1 of the Agreement, the UAE Minister of Finance, or his delegate is the Competent Authority for the purposes of the Agreement.

The UAE FATCA regulatory framework is implemented through the Competent Authority, the Regulatory Authorities and the Federal Tax Authority, as detailed in Chapter 3 below.

1.4 **Scope of the Agreement**

The Agreement and the FATCA Resolution apply to all UAE Financial Institutions.

Annex I sets out the due diligence requirements for certain Financial Institutions to determine whether their accounts and payments are reportable information and Annex II described the classes of entities not required to report and products that will not be treated as financial accounts.

Some action will be required of all UAE 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 Accounts.

1.5 **Reporting and Non-Reporting Financial Institutions**

Entities that are Financial Institutions under the Agreement are initially categorized as Reporting Financial Institutions or Non-Reporting Financial Institutions.

- **Reporting UAE Financial Institutions** – that is, FIs that do not fall within any of the exceptions “Non-Reporting Financial Institutions” – are required to comply with Article 4 of the Agreement, which generally includes reporting the information specified in Article 2 of the Agreement with respect to US Reportable Accounts to the UAE, reporting information with respect to payments made to Nonparticipating Financial Institutions to the UAE, and properly registering on the IRS FATCA registration website by 31 December 2014. Entities that become Reporting Financial Institutions after 31 December 2014 must also comply and register on the IRS FATCA website. Additional requirements apply depending on whether a Reporting UAE Financial Institution is an intermediary that has undertaken primary withholding responsibility under the US Internal Revenue Code (**IRC**) and the regulations thereunder.
- **Non-Reporting Financial Institutions** include Financial Institutions that are Deemed-Compliant or Exempt Beneficial Owners under the US Treasury Regulations or that are Non-Reporting Financial Institutions under the Annex II. Non-Reporting Financial Institutions are generally not required to report information to the UAE; however, they will need to provide properly completed US tax forms or self-certifications to withholding agents in order to avoid FATCA withholding on US source payments to them.

In addition to reporting information on Reportable Accounts, UAE Financial Institutions may need to report payments made to a Nonparticipating Financial Institution.

1.6 Non-Financial Foreign Entities

Any entity that is not a Financial Institution will be a Non-Financial Foreign Entity ("**NFFE**"). NFFEs are classified as either "Active" or "Passive" NFFEs and do not have to report pursuant to the Agreement.

However –

- Active NFFEs may be required to provide certification of their active status on an IRS Form W-8 (or other self-certification) to withholding agents to avoid FATCA withholding on payments to it, but are not required to report or disclose their ownership;
- Passive NFFEs may be required to report and disclose their "Substantial US Owners" and/or "Controlling Persons" who are "Specified US Persons" and certify their status as a Passive NFFE on an IRS Form W-8 (or other self-certification) to avoid 30 % FATCA withholding on certain

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

2. DEFINED TERMS

- 2.1. Unless the context otherwise requires, words or expressions defined in the FATCA Resolution shall have the same meaning as set out in this Guidance.
- 2.2. In accordance with Article 4 (7) of the Agreement, Financial Institutions may use a definition in the US Treasury Regulations in lieu of a corresponding definition in the Agreement, provided that such application would not frustrate the purposes of the Agreement.

3. UAE FATCA REGULATORY FRAMEWORK

3.1 Overall structure

The UAE FATCA regulatory framework is implemented through the following authorities –

- the UAE Competent Authority, being the Minister of Finance or his delegate;
- the Regulatory Authorities, appointed pursuant to Article 3 of the FATCA Resolution for the purpose of implementing the FATCA requirements;
- the Federal Tax Authority, which is delegated certain functions on behalf of the Ministry of Finance in its capacity as a Regulatory Authority pursuant to Article 4 of the FATCA Resolution.

3.2 Functions of the Competent Authority

Pursuant to Article 1 of the Agreement, the UAE Minister of Finance, or his delegate, is the Competent Authority for the purposes of the Agreement.

In accordance with Article 11 of the FATCA Resolution, the Competent Authority shall, among other things:

- obtain the information in respect of each US Reportable Account under Article 2 of the Agreement; and such other information as may be required under the Agreement; and
- annually exchange this information with the US Competent Authority.

In order to ensure compliance in respect of its obligations under the Agreement, the Competent Authority may –

- issue the necessary forms to be used for the purposes of implementation of this Resolution, the Agreement or the Competent Authority Arrangement;
- prescribe the dates and manner by which information is reported by a Reporting UAE Financial Institution under this Resolution;
- receive and request the information required to be reported under this Resolution in the form and within the dates prescribed by it; and
- request the relevant Regulatory Authority or Reporting UAE Financial Institution to provide any such additional information and documentation as shall be reasonably required by it for the purposes of implementing the provisions of this Resolution.

3.3 Functions of the Regulatory Authorities

In order to implement the provisions of the FATCA Resolution, the UAE Cabinet of Ministers appointed the following Regulatory Authority for the purposes of implementing the FATCA requirements –

- (a) The Central Bank of the United Arab Emirates, in respect of a Financial Institution subject to its supervision under the applicable laws and regulations of the Central Bank of the United Arab Emirates (**CBUAE**);
- (b) Securities & Commodities Authority, in respect of a Financial Institution subject to its supervision under applicable laws and regulations of the Securities & Commodities Authority (**SCA**);
- (c) Each of the Financial Free Zone Authorities, in respect of a Financial Institution registered in the relevant Financial Free Zone (**FFZs**); and
- (d) Ministry of Finance, in respect of a Financial Institution not otherwise regulated by any of the aforementioned Regulatory Authorities referred to in paragraphs (a) – (c) above (**MoF RA**).

The functions of the Regulatory Authorities are set out in Article 3(2) of the FATCA Resolution and include –

- issuing the necessary forms required to be filed for the purpose of ensuring compliance with the FATCA requirements, in coordination with the Competent Authority;
- collecting and reviewing the information and supporting documentation required to be submitted by a Financial Institution, Account Holder and/or Controlling Person;

- undertaking reviews and investigations as may be required to ensure compliance with the with the FATCA requirements;
- undertaking risk assessment and audit procedures as may be required to ensure compliance with the FATCA requirements;
- imposing and administering the administrative penalties stipulated under the FATCA Resolution;
- administering the procedures and mechanisms for appeals against administrative penalties;
- providing the Competent Authority with such information, documents, and records within its possession relating to a Financial Institution, Account Holder and, if applicable, Controlling Person, as may be requested by the Competent Authority; and
- exercising any other powers and functions as may be required to implement and ensure compliance with the FATCA requirements.

3.4 Functions of the Federal Tax Authority

In respect of the exercise of the functions of the Ministry of Finance as the Regulatory Authority under Article 3(1)(d) of FATCA Resolution (**MoF RA**), the Federal Tax Authority (**FTA**) is delegated certain functions, as set out in Sub-Clauses 2(f), 2(h), and 2(i) of Article 3 of FATCA Resolution on behalf of the MoF RA –

- undertaking risk assessment and audit procedures as may be required to ensure compliance with the FATCA requirements;
- imposing and administering the administrative penalties stipulated under the FATCA Resolution; and
- administering the procedures and mechanisms for appeals against administrative penalties.

In exercising the functions delegated to it, the FTA –

- shall provide the Competent Authority with such information, documents and records as may be requested by the Competent Authority in accordance with Article 3(2)(d) of the FATCA Resolution;
- shall collect and review information and supporting documentation submitted by a Financial Institution, Account Holder and/or Controlling Person, per Article 3(2)(b) and 2(c) of the FATCA Resolution; and

The FTA may also undertake the functions set out under Article 3(2)(e), (2)(g), (2)(j) and (2)(k) of the FATCA Resolution.

3.5 Powers of Inspection and Investigation

In accordance with Article 6 of the FATCA Resolution, in order to exercise any of their functions and powers, the relevant Regulatory Authority and the FTA may –

- (a) request any information or documentation as may be reasonably required from a Financial Institution for the purposes of ensuring compliance with the FATCA requirements;
- (b) request any information from any Account Holder and any Controlling Person that has an account with the Financial Institution, including the account records and all other records related to information or statements submitted to this institution;
- (c) request the assistance of the Financial Institution in order to obtain the relevant information or records of the Account Holder or, if applicable, the Controlling Person;
- (d) in the event of a suspicion that any of the administrative violations stipulated in FATCA Resolution have occurred, enter the business premises of the Financial Institution for the purpose of examining documents and information related to the suspected administrative violation;
- (e) view the original records and documents related to the suspected administrative violation and obtain copies of it/them; and
- (f) request any information, documentation, or such reasonable assistance from the Financial Institution, Account Holder or, if applicable, the Controlling Person, as may be necessary for the purpose of any administrative investigation to ensure compliance with the FATCA requirements.

3.6 Requirement to Provide Information

In accordance with Article 11(3) of the FATCA Resolution, each Regulatory Authority is required to provide the Competent Authority with any further information as may be requested by the Competent Authority for the purposes of carrying out its functions.

3.7 Cooperation by Governmental Authorities

In accordance with Article 12 of the FATCA Resolution, all ministries and other governmental authorities, whether federal or local, shall –

- (a) cooperate with the Competent Authority, the Regulatory Authorities and the FTA to carry out whatever is required to implement the FATCA Requirements; and
- (b) provide the Competent Authority, the Regulatory Authorities and the FTA with any data, information or documentation within its possession or control, as may be requested by any of the aforementioned authorities for the purposes of carrying out their functions with respect to the FATCA Requirements.

3.8 Exchange of Information

The Competent Authority exchanges information in respect of each U.S. Reportable Account, under Article 2 of the Agreement, and any other information as may be required under the Agreement, with the U.S. Competent Authority annually, in the manner prescribed under the Agreement and the Arrangement.

4. FINANCIAL INSTITUTIONS

4.1 Defining what is and what is not a Financial Institution

Any entity operating in the UAE falls into one of two categories under the FATCA regime: it is either considered a Financial Institution (“**FI**”) or a Non-Financial Foreign Entity (“**NFFE**”). The relevance of this distinction is to allow each entity to identify whether it has any obligations under the Agreement, and if so, what is the nature and extent of such obligations.

The concept of an “**NFFE**” aims to identify entities that are neither US entities nor Financial Institutions (as defined in the Agreement). It generally includes foreign entities that are not engaged in banking or investment management business activities.

Financial Institutions are the defined category under the Agreement, any entity that does not fit any of the definitions of a Financial Institution, and which is not a US entity, will automatically be considered a NFFE.

4.1.1 Defining a Financial Institution

The Agreement imposes certain due diligence, reporting and other obligations on Financial Institutions. A “Financial Institution”, for these purposes:

- (i) Meets certain residence requirements; and
- (ii) Is a certain type of entity, as defined in the Agreement.

4.1.1.1 *Residence Requirements*

The Agreement will apply to:

- (a) Financial Institutions, as defined below, organized under the laws of the UAE, not including branches of UAE Financial Institutions located outside of the UAE; and
- (b) Branches, located in the UAE, of non-UAE Financial Institutions.

For these purposes, organized under the laws of the UAE means the following:

- for a company, if the company is incorporated in the UAE.
- for a partnership, if the partnership is established in the UAE.

4.1.1.2 *Type of Entity*

A UAE Financial Institution can be one of four types of entities:

- (a) a Depository Institution;
- (b) a Custodial Institution;
- (c) an Investment Entity; or
- (d) a Specified Insurance Company.

A. Depository Institution

A Depository Institution means any entity that accepts deposits in the ordinary course of a banking or similar business. Depository institutions are usually banks or similar institutions. An entity is not considered to be engaged in a banking or similar business if it solely provides asset based finance services or accepts deposits solely from persons as collateral or security pursuant to a sale or lease of property, a loan secured by property, or pursuant to similar financing arrangements between that entity and the person making the deposit.

The following would NOT be expected to fall within the definition of Depository Institution:

- Insurance brokers;
- Attorneys at law;
- Factoring or invoice discounting businesses; and
- Entities that complete money transfers by instructing agents to transmit funds.

B. Custodial Institution

A Custodial Institution means any entity that holds, as a "substantial portion" of its business, financial assets for the account of others. Custodial institutions can include custodial banks, trust companies or brokers, in certain circumstances.

An entity will hold financial assets for the account of others as a "substantial portion" of its business if its gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 % of its total gross income over, in general terms, a specified 3-year period (or over the period that the entity has been in existence, if that is less than 3 years). The relevant three year period is the entity's accounting period.

The term income attributable to holding financial assets and related financial services means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

An execution only broker that simply executes trading instructions, or receives and transmits such instructions to another executing broker, will not hold assets for the account of others and should not be a custodial institution (although it is possible that it could be an investment entity).

Entities that only provide advice, do not hold, and will not hold financial assets; and therefore have no financial accounts should not be treated as custodial institutions. As noted above, the term "income attributable to holding financial assets" from financial assets is limited to providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

C. Investment Entity

Investment Entity means any entity that:

- (i) primarily conducts a business (or is managed by an entity that conducts a business) of one or more of the following activities or operations, for or on behalf of a customer:

- trading in money market instruments (such as checks, bills, certificates of deposit and derivatives), foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading;
 - individual and collective portfolio management; or
 - otherwise investing, administering, or managing funds or money on behalf of other persons, or
- (ii) 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 above. “Primarily” for this paragraph means such income exceeds 50 % of the entity’s gross income during the shorter of the prior three year period or the period in which the entity has been in existence.

Investment entities can include investment funds and other fund structures, in certain circumstances. Generally, entities that are professionally managed will be treated as Investment Entities because its managing entity is an Investment Entity.

D. Specified Insurance Company

Specified Insurance Company means any insurance company (or the holding company of such insurance company) that issues (or writes) or is obliged to make payments in respect of a Cash Value Insurance Contract or an Annuity Contract.

“Insurance company” means (under the US Treasury Regulations) an entity or arrangement:

- (i) that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;
- (ii) the gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 % of total gross income for such year; or
- (iii) the aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 % of total assets at any time during such year.

4.1.2 Related Entities

Related Entities are relevant in the context of the obligations placed on UAE Financial Institutions, in respect of any Related Entities that are Nonparticipating Financial Institutions.

Where a UAE Financial Institution has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UAE Financial Institution must treat the related entity as an NPFI and fulfil obligations in respect of that NPFI as set out in Article 4 of the Agreement.

4.1.2.1 Definition

In accordance with the Agreement, an Entity is a “Related Entity” of another Entity if either Entity controls the other Entity, or the two Entities are under the common control (the “related entity group”). For this purpose, control includes direct or indirect ownership of more than 50 % of the vote or value in an Entity. Notwithstanding the foregoing, the UAE Ministry of Finance will not treat an Entity as a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 471(e)(2) of the Code.

4.1.2.2 Exceptions

Inter-affiliate FFIs. Pursuant to Annex I, Art. VI (4) (i), an “Excepted NFFE” is not a Financial Institution. Excepted NFFEs include, but are not limited to, an “Excepted inter-affiliate FFI”. An entity that is a member of a related entity group will not be a Financial Institution if:

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- The entity does not hold an account with or receive US source withholdable payments from any withholding agent other than a member of its related entity group;
- The entity does not make US source withholdable payments to any person other than to members of its related entity group that are not limited FIs or limited branches; and
- The entity has not agreed to undertake reporting as a Sponsoring Entity or otherwise act as an agent regarding the Agreement on behalf of any Financial Institution, including a member of its related entity group.

Investment entities: Investment Entities which have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the Agreement. In general, a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes 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 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.

4.1.3 Determining whether a Financial Institution is a Reporting Financial Institution

All Financial Institutions fall under one of two categories: they will either be -

- (a) a Reporting Financial Institution; or
- (b) a Non-Reporting Financial Institution.

The relevance of this distinction lies in the fact that most of the subsequent due diligence, reporting and compliance obligations imposed by the Agreement fall on UAE Reporting Financial Institutions (rather than Non-Reporting Financial Institutions). The obligations applying to Non-Reporting Financial Institutions are much more limited in scope.

A. Reporting Financial Institutions

The concept of a “Reporting Financial Institution” is designed to identify Financial Institutions that must identify, and report on, certain of their accounts and account holders (those that have a relevant connection to the US).

A Financial Institution is a “UAE Reporting Financial Institution” if it does not fall within any of the exceptions in Section B below, which deals with “Non-Reporting Financial Institutions”.

In other words, Financial Institutions are Reporting Financial Institutions by default, UNLESS they qualify for an exemption which makes them a Non-Reporting Financial Institution.

UAE Reporting Financial Institutions will generally have to register with the IRS for a GINN.

B. Non-Reporting Financial Institutions

The concept of a “Non-Reporting Financial Institution” is designed to identify Financial Institutions that do not have the characteristics, or hold the accounts with which FATCA and the implementing IGAs are most concerned. Consequently, most Non-Reporting Financial Institutions will have no, or will have few, obligations under the Agreement.

Non-Reporting Financial Institutions are either Financial Institutions, or certain other legal persons or legal arrangements that are resident in the UAE, that fall into one of two categories:

- “Annex II Non-Reporting Financial Institutions” - those that are listed in Annex II of the Agreement;;
or
- “US Treasury Regulations Non-Reporting Financial Institutions” - those that meet certain criteria under the US Treasury Regulations.

A Non-Reporting UAE Financial Institution is any UAE Financial Institution that falls within the exemptions of Annex II of the Agreement or of the US Treasury Regulations or one which otherwise qualifies as:

- (a) An Exempt Beneficial Owner;
- (b) A Deemed Compliant Financial Institution; or
- (c) An Owner Documented Financial Institution.

Exempt Beneficial Owners and most Non-Reporting UAE Financial Institutions will not need to register with the IRS or obtain a GIIN (save for certain limited exceptions listed herein). They will need to provide certain documentation to withholding agents to certify their status.

Some Non-Reporting UAE Financial Institutions, referred to as Registered Deemed Compliant, will be obliged to register with the IRS and obtain a GIIN. Please refer to Part 4.3, Registration, for further details.

(a) Exempt Beneficial Owners

This category includes Non-Fund and Fund Exempt Beneficial Owners

(i) Non-Funds (see Annex II, Article I)

- The UAE Government - at a national, state or local level or any of its wholly owned agencies including “integral parts” “controlled entities” (in certain circumstances), and political subdivisions of the UAE);
- Certain international organizations and intergovernmental organizations; and
- The UAE Central Bank.

These types of Exempt Beneficial Owners will not be treated as such with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

(ii) Funds (see Annex II, Article II)

- UAE retirement funds that are established to provide retirement, disability or death benefits to employees, and that meet specified participation, contribution, regulatory and tax requirements in the UAE;
- Certain pension funds established in the UAE by an Exempt Beneficial Owner; and
- Investment Entities wholly owned by Exempt Beneficial Owners: Investment Entities are Exempt Beneficial Owners in circumstances in which each direct holder of an equity interest is an Exempt Beneficial Owner and each direct holder of a debt interest is either a Depository Institution or an Exempt Beneficial Owner (see Section 4.2.2 below, for the meaning of equity and debt interests).

(b) Deemed-Compliant Financial Institutions

This Category includes certain small or limited scope Financial Institutions and certain Investment Entities.

(i) Certain Small or Limited Scope Financial Institutions

i. Financial Institutions with a Local Client Base

These are Financial Institutions that are based and regulated in the UAE, that generally do not solicit non-UAE clients and, with effect from 1 July 2014, have procedures in place, consistent with those

outlined in Annex I of the Agreement, to identify various accounts that must be reported or disclosed under the Agreement.

Annex II lists the classification criteria for Local Client Base Financial Institutions in detail. The criteria are lengthy and complex; any institution that may think it falls within the criteria should seek specific professional advice. See UAE Annex II, Article III(A) for specific requirements.

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

ii. Local UAE regulated banks

These are Local UAE regulated banks that do not hold more than \$175 million in assets on their balance sheets (or more than \$500 million on consolidated balance sheets with related entities) and that generally do not solicit non-UAE clients. See UAE Annex II Article III(B) for specific requirements;

iii. Certain UAE Financial Institutions that have only low-value accounts

In order to qualify, the Financial Institution must satisfy three requirements:

- it must not be an Investment Entity;
- no Financial Account maintained by the Financial Institution or any related entity has a balance or value in excess of \$50,000, applying certain rules for aggregating account values and translating currencies; and
- the Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any related entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

iv. Companies that would otherwise be “Specified Insurance Companies”

These may qualify for this exception if they satisfy the three requirements listed above.

When calculating account balances, an Annuity Contract should be treated as a Financial Account unless it is one of certain noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit. See Section 4.2 for more details on Financial Accounts.

v. Qualified Credit Card Issuer

Certain UAE Financial Institutions that are Financial Institutions solely because they issue credit cards (and such institutions implement policies and procedures to prevent a customer deposit in excess of \$50,000 or to ensure any amount in excess of \$50,000 is returned to the customer within 60 days).

(ii) Certain Investment Entities (see Annex II Article IV)

In addition, there are further special rules that apply to certain Financial Institutions that are Investment Entities. In general terms, an Investment Entity may be treated as Deemed-Compliant as follows:

*i. **Trustee-Documented Trust***

The Entity has a trustee that registers with the IRS to carry out all necessary obligations under the US Treasury Regulations or the Agreement on behalf of the Entity.

*ii. **Sponsored Investment Entity and Controlled Foreign Corporation***

The Entity has a sponsor, or parent company that registers with the IRS to carry out all necessary obligations under the US Treasury Regulations or the Agreement on behalf of the Entity.

A Sponsored Investment Entity must be registered by its sponsor if it has Reportable Accounts.

*iii. **Sponsored Closely Held Investment Vehicle***

The Entity has a sponsor that registers with the IRS to carry out all necessary obligations under the US Treasury Regulations or the Agreement on behalf of the Entity

*iv. **Investment Advisors and Investment Managers***

The entity only provides investment advisory services, or investment management services, to customers, for the purposes of their investments deposited with other qualifying Financial Institutions (which would themselves be expected to comply with the US Treasury Regulations and the Agreement). An Investment Entity will qualify if it (1) renders investment advice to, or on behalf, or (2) 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 Nonparticipating Financial Institution.

*v. **Collective Investment Vehicle***

Certain UAE-regulated collective investment schemes established in the UAE that are regulated as collective investment vehicles, and that are held by certain classes of owners.

These rules, particularly those relating to collective investment schemes, are detailed and complex. Any Investment Entity that believes it may qualify under the rules, as a Deemed-Compliant Financial Institution, should seek specific professional advice.

(iii) Registered and Certified Deemed Compliant Financial Institutions

*i. **Registered Deemed Compliant***

The “Registered Deemed Compliant” categories noted in this Section are inserted from the US Treasury Regulations:

- Non-reporting members of Participating FFI groups - See US Treasury Regulations § 1.1471-5(f)(1)(i)(B)
- Qualified Collective Investment Vehicles - See US Treasury Regulations § 1.1471-5(f)(1)(i)(C))
- Restricted Funds - See US Treasury Regulations § 1.1471-5(f)(1)(i)(D)
- Qualified credit card issuers - See US Treasury Regulations § 1.1471-5(f)(1)(i)(E)
- Sponsored Investment Entities - See US Treasury Regulations § 1.1471-5(f)(1)(i)(F)

ii. Certified Deemed Compliant

The “Certified Deemed Compliant” categories noted in this Section are inserted from the US Treasury Regulations:

- E.g. Limited life debt investment entities - See US Treasury Regulations § 1.1471-5(f)(2)(iv).

(c) Owner Documented Financial Institutions

This category is intended to reduce the burden of meeting the obligations under FATCA for closely held passive investment vehicles that fall within the definition of Investment Entity. It is not, however, restricted to those cases. See US Treasury Regulations § 1.1471-5(f)(3)).

In order to qualify as an “Owner Documented Financial Institution”, 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.

See **Flowchart 1** for assessing the obligations of Financial Institutions

See **Checklist 1A** for compliance procedures of Financial Institutions

4.1.4 Defining a Non-Financial Foreign Entity

Any UAE entity which is neither a US entity nor a Financial Institution is by default considered a “Non-Financial Foreign Entity” (**NFFE**).

As noted above, most of the obligations under the Agreement fall on Financial Institutions that are "Reporting Financial Institutions" (see Section 4.1.3 A above). However, an NFFE may still have certain limited

obligations under the Agreement depending on the nature of its activities. A distinction is drawn here between "Passive NFFEs" and "Active NFFEs".

Entities that are not actively trading, hold mostly passive income (such as dividends, interest, rents) and are controlled by US persons will usually fall within the definition of "Passive" NFFEs and may have reporting obligations if they are controlled by US persons.

NFFEs that are not "Passive" are generally "Active", not engaged in banking or investment activities or earning mostly passive income, and therefore carry fewer obligations under the US Treasury Regulations and the Agreement.

4.1.4.1 **Active NFFEs**

An "Active NFFE" is an NFFE that:

- is not engaged in banking or investment activities;
- is not earning largely passive income; and
- does not largely hold passive assets.

Passive income generally includes dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort. FATCA provides that amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts are passive income, and such income should also be treated as passive income under the Agreement. Passive assets include assets that produce or are held for the production of passive income.

A NFFE will be "Active" if it meets any of the following criteria:

- a) Less than 50 % of its gross income for the preceding year is passive **and** less than 50 % of its assets during the preceding year are assets that produce passive income. (As noted in Annex I, Art. VI(B)(4)(a), the term "preceding year" refers to the preceding calendar year or other appropriate reporting period (e.g., a fiscal year));
- b) The stock of the NFFE (or a Related Entity) is regularly traded on an established securities market;
- c) The NFFE is organized in a US territory (which means certain territories connected to the US, such as American Samoa, Guam, the Commonwealth of Puerto Rico and the US Virgin Islands) and all of the owners of the payee are residents of that territory;
- d) The NFFE is a non-US government organization (at national, state, or local level), a public body performing governmental tasks, a government of a US territory, an international organization, a central bank, or an entity wholly owned by any of them;
- e) Substantially all the activities of the NFFE consist of holding shares in, or providing financing services to, subsidiaries engaged in trade or businesses, other than the business of a Financial Institution. (The entity must not function as, or hold itself out as, an investment fund or investment holding structure however, which holds interests in companies as investments, as it will then become conceptually similar to a Financial Institution);

- 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 (this criterion will not apply after the first 2 years of the initial organization of the NFFE);
- g) The NFFE was not a Financial Institution in the past 5 years and is in the process of liquidating its assets, or reorganizing its business, with the intent of continuing/recommencing operations in a business other than that of a Financial Institution;
- h) The NFFE primarily engages in financing or hedging transactions with certain Related Entities that are not Financial Institutions and does not provide such services to entities that are not Related Entities - as long as the overall group does not carry on the business of a Financial Institution;
- i) The NFFE is an "excepted" NFFE under the US Treasury Regulations (which broadly includes publicly-traded companies, certain US territory entities, certain non-financial holding companies, start-up companies, non-financial entities that are liquidating, the hedging or financing centers of non-financial groups and certain not-for-profit organizations); or
- j) The NFFE meets all of the following requirements:
 - It is established and operated in its jurisdiction of residence exclusively for specified non-profit purposes (such as religious or charitable organizations, chambers of commerce, or civic leagues);
 - It is exempt from income tax in its jurisdiction of residence;
 - It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, do not permit any income or assets to be applied for the benefit of a private person or non-charitable entity (with some exceptions, such as payments that are reasonable compensation for services rendered, or property purchased); and
 - The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, require that, upon liquidation, all its assets are distributed to governmental entities, or other non-profit organizations.

Please see Annex I of the Agreement for the specific requirements of each of the "Active NFFE" requirements.

4.1.4.2 **Passive NFFEs**

As noted above, FATCA and the Agreement are mostly concerned about requiring Financial Institutions to report on accounts held by persons with a relevant connection to the US. The rules are generally less concerned about NFFEs, which are, broadly, non-US entities that are not Financial Institutions. However, where an NFFE is "Passive", rather than "Active", accounts held by it will need to be reported to payors or other withholding agents in certain circumstances.

The object of the rules is, broadly, to identify NFFEs that earn largely passive income (such as dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort) and

that have Controlling Persons (as determined under the rules) who are Specified US persons. Accounts held by Passive NFFEs that are controlled by US persons are reportable in certain circumstances.

A "Passive NFFE" is an NFFE that is NOT:

- an Active NFFE;
- a "withholding foreign partnership" or a "withholding foreign trust" under the US Treasury Regulations.*

**These partnerships and trusts are, broadly, entities that have entered into withholding agreements with the IRS, which require them to withhold US tax on certain payments made to foreign persons from the US.*

4.1.4.3 Direct Reporting NFFEs

In Notice 2013-69 and subsequent changes to the US Treasury Regulations, a new category of Passive NFFE was introduced - a "Direct Reporting NFFE".

A Direct Reporting NFFE is described at FATCA Regulation §1.1472-1T(c)(3) 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 UAE Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain a GIIN.

The US Treasury 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.

See **Flowchart 2** for assessing the obligations of NFFEs

See **Checklist 1B** for compliance procedures of NFFEs

4.2 Financial Accounts

4.2.1 Does the Financial Institution maintain Financial Accounts?

The concept of "**Financial Accounts**" is broadly defined and may include products or obligations that would not normally be regarded as an "account" under UAE law or in everyday commercial use, but which could act a substitute for an "account". The definition is designed to require Financial Institutions to monitor their customer accounts.

A Financial Institution, unless otherwise exempt, must identify:

- Whether it maintains any Financial Accounts;
- The Type of Financial Accounts 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.

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

Where accounts are held by persons that have a relevant connection to the US at any point during the reportable period, Financial Institutions will be obliged to report them.

If a Financial Institution:

- does not maintain any Financial Accounts; or
- only maintains accounts that are "Exempt Accounts" under Annex II of the Agreement;

then, once it has obtained a GIIN, it will generally have minimal further compliance obligations under the US Treasury Regulations or the Agreement (see Checklist 1 for details on compliance requirements and procedures); however, Nil Reporting is required (i.e., a Financial Institution will be required to report that it does not maintain any Financial Accounts or only maintains Exempt Accounts).

4.2.2 Defining Financial Accounts

"Financial Accounts" are generally any accounts maintained by a Financial Institution.

The type of Financial Institution may determine the type of Financial Account:

- I. **"Depository Accounts"** broadly include commercial or savings accounts, or other debts, maintained by a Financial Institution in the ordinary course of its business;
- II. **"Custodial Accounts"** broadly include accounts that hold, for the benefit of another person, financial instruments, such as shares, loan notes, bonds, options and derivative instruments, and may include other arrangements pursuant to which an obligation exists to return cash or assets to another;
- III. Financial Accounts, for Financial Institutions that are **Investment Entities**, will include "equity or debt interests" - generally shares or debt interests - in the Financial Institution, other than interests that are regularly traded on certain established security markets. An interest is **"regularly traded"** if there is a meaningful volume of trading with respect to that interest on an ongoing basis. Any interest treated as "regularly traded" pursuant to US Treasury Regulations §1.1471-5(b)(3) (iv) shall be treated as regularly traded for purposes of the Agreement.
- IV. In the case of **Partnerships**, "equity interest" means either a capital or profits interest in the partnership.
- V. In the case of **Trusts**, "equity interest" means certain interests held by persons over some, or all, of the trusts, or by persons controlling the trusts. (For Financial Institutions that are not Investment Entities, equity or debt interests in the Financial Institutions will only be Financial Accounts in certain limited circumstances.)
- VI. Financial Accounts, for Financial Institutions that are **Specified Insurance Companies**, will generally include **Cash Value Insurance Contracts** (in short, insurance contracts that have a cash value greater than \$50,000) and **Annuity Contracts** (in short, contracts under which payments are made, over a period of time, based on the life expectancy of specified persons). However, a non-investment linked, nontransferable immediate life annuity that is issued to an individual and

monetizes a pension or disability benefit provided under an account that is excluded under Annex II is not considered a financial account:

"Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000. The term **"Cash Value"** generally means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract.

Notwithstanding the foregoing, the term **Cash Value** does not include an amount payable under an Insurance Contract as:

- a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- a refund to the policyholder of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error;
- Solely by reason of the death of an individual insured under a life insurance contract;
- As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph 1 above;
- As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;
- Death benefits are excluded from cash value; and

Once a policy becomes subject to a claim, it does not become a New Account.

The term **"Annuity Contract"** means a contract under which the issuer 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 also includes a contract that is considered to be an Annuity Contract 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. Pension annuities, immediate needs annuities, periodic payment orders and reinsurance of annuity contracts between two insurance companies are excluded from this definition.

4.2.3 Exempt Accounts

Certain types of accounts are exempt, under Annex II of the Agreement, from the definition of Financial Accounts. If the accounts are exempt under Annex II, the Financial Institution will need to report that it only maintains Exempt Accounts.

"Exempt Accounts" include:

- I- **Certain savings accounts** maintained in the UAE, including savings, retirement and pension accounts, that all meet specified regulatory and tax conditions;

Consideration should be given to the criteria set out in Annex II of the Agreement in relation to savings, retirement and pension accounts. There are currently no tax favored accounts or products identified as being exempt. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this Section.

- II- **Certain term life insurance contracts** maintained in the UAE;

More specifically, Exempt Accounts include a life insurance contract maintained in the UAE with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

- A. periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- B. the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- C. the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- D. the contract is not held by a transferee for value.

- III- **Accounts** maintained in the UAE that are **held solely by an estate**, if the documentation for the account includes a copy of a will or death certificate;

- IV- **Certain escrow accounts** maintained in the UAE, established in connection with any of the following:

- A. a court order or judgment;
- B. a sale, exchange or lease of real or personal property, provided that the account satisfies the following requirements:
 - 1. The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

2. The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 3. The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 4. The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
 5. The account is not associated with a credit card account.
- C. 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. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- D. Certain accounts, maintained in the UAE, that are excluded from the definition of Financial Account, under an agreement between the US and another country to implement the US Treasury Regulations in that country, and that meet certain further conditions.

This exception is meant to capture accounts or products that are excluded under another country's IGA and for which the UAE has internal regulations that provide equal assurance that the account or product presents a low-risk of tax evasion. There are currently no accounts or products identified by the UAE as being exempt under this exception. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this Section.

4.2.4 Are The Financial Accounts US Reportable Accounts?

Under the Agreement, a Financial Institution needs to report Financial Accounts that are "US Reportable Accounts". These are broadly, accounts held by persons that have a relevant connection with the US.

A "US Reportable Account" is a Financial Account maintained by a Reporting Financial Institution and held by:

- (a) One or more "Specified US Persons";
- (b) A "Non-US Entity" that is controlled by one or more Specified US Persons; or
- (c) Accounts with US indicia discovered after due diligence.

(a) Financial Accounts held by Specified US Persons

The term "Specified US Person" is broad and will essentially cover any "US Person".

A “**US Person**” is defined in the Agreement to mean:

- US citizen or resident individual;
- partnership or corporation organized in the US, or under the laws of the US (or any of its States); or
- trust, if, in general terms:
 - (i) a US court has jurisdiction over it; and
 - (ii) it is controlled by one or more US persons.

Accounts held by any one or more “US Person” will generally be reportable.

Certain persons are specifically excluded from being “Specified US Persons”, so accounts held by them will not be reportable.

“**Specified US Persons**” are defined in the Agreement to mean a US Person, other than:

- Companies whose stock is regularly traded on an established securities market and, in general terms, members of their corporate groups;
- the US, or any of its States or specified US Territories, or wholly owned governmental agencies or organizations;
- certain:
 - tax exempt organizations;
 - retirement plans;
 - banks, real estate trusts, regulated investment companies, tax exempt trusts and common trust funds; and
 - securities, commodities or derivatives dealers or brokers;

as defined under relevant provisions of the Code and US Treasury Regulations, and as set forth in the Agreement.

- (b) Accounts held by a Non-US Entity **where one or more Controlling Persons are Specified US Persons**

The objective behind these provisions is to identify Financial Accounts that are controlled by US Persons, even if they are actually held by Non-US persons. If so, they will generally be reportable.

A “**Non-US Entity**” is defined in the Agreement as an Entity (being any legal person, such as an individual, or corporation), or legal arrangement (such as a trust), that is not a US Person.

A “**Controlling Person**” is defined in the Agreement to mean the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the term “beneficial owner” as described in Recommendation 10 and the Interpretive Note on Recommendation 10 of

the Financial Action Task Force Recommendations (as adopted in February 2012) (which provide that a controlling ownership interest depends on the ownership structure of the company). It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 %). Accordingly, if a non-US Financial Account has a Controlling Person who is a US natural person, it will generally be reportable.

(c) Accounts with US indicia discovered after Due Diligence

A Financial Institution must carry out necessary due diligence procedures on its accounts. Details of the due diligence procedures required in relation to the size and date of creation of various accounts are set out in Section 4.3.1 below, Flowcharts 4 and 5 provide a summary for assessing Due Diligence obligations, while Checklists 2 (A and B) outline a summary of these requirements.

If, after carrying out relevant due diligence into an account, the Financial Institution discovers any US indicia, it may need to (depending on the size and date of creation of the account) report the account.

Any of the following US indicia may make the account reportable:

- Identity of the account holder as a US citizen or resident;
- Unambiguous indication of a US place of birth;
- Indication of incorporation or organization in the US with respect to entities;
- A current US mailing or residence address, including a US post office box;
- A current US telephone number;
- Standing instructions to transfer funds to an account maintained in the US;
- A currently effective power of attorney or signatory granted to a person with a US address; or
- A US “in care of”, or “hold mail” address, that is the sole address that the Reporting Financial Institution has on file for the Account Holder.

The effect of the use of these US indicia is to considerably broaden the ambit of the US Treasury Regulations and the Agreement, so that they can apply even if account holders have fairly loose or historic connections with the US. Even if an Account Holder is not specifically a US citizen or resident individual, the account may be reportable if any of these US indicia are found and not cured.

Documentary Evidence

Financial Institutions may need to request documentary evidence from account holders where any US indicia are present. Acceptable documentary evidence includes:

- i. a certificate of residence issued by an authorized government body of the jurisdiction in which the account holder claims to be a resident;
- ii. with respect to an individual, any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes;
- iii. with respect to an entity, any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which the entity was incorporated or organized; and
- iv. any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

Documentation is required to support the status of each Financial Account held. However, documentation obtained by a Financial Institution may be used in relation to more than one Financial Account in certain circumstances. For example, documentation furnished by a customer may be relied on for another account if both accounts are held at the same branch location and both accounts are treated as a single account or obligation.

A Financial Institution may also rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or 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 or as held by the same account holder 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 systematically retrieve all other accounts of the customer.

Lastly, a Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the expanded affiliated group of the Financial Institution if the Financial Institution treats all accounts that share documentation as consolidated accounts or as held by the same account holder and the Financial Institution and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, as described in the US Treasury Regulations.

Aggregation and Currency Translation

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.

A Financial Institution is required to aggregate all Financial Accounts, belonging to an individual or entity, maintained by it or a Related Entity, but only to the extent that the Financial Institution's current computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. If an individual, who holds an account in his or her own name, is also a Controlling Person of an entity, then the accounts of the individual and the entity for which they are a Controlling Person should not be aggregated.

An inquiry should also be made to the account holder's relationship manager, if applicable, to determine if the relationship manager knows, or has to reason to know, of other Financial Accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person. In such cases and for the purposes of determining a High Value Account all such accounts should be aggregated.

For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the US dollar, Financial Institutions must convert the US dollar threshold amounts described below into such currency using a published spot rate determined as of the last of the calendar year preceding the year in which the Financial Institution is determining the balance or value.

4.3 OBLIGATIONS

4.3.1 Registration Requirements

A. Registration with the IRS

(a) Entities Required to Register

The following will have to register and obtain a GIIN:

- i. Reporting Financial Institutions
- ii. Registered Deemed Compliant Financial Institutions
- iii. Sponsors of Sponsored Investment Vehicles or Sponsored Closely Held Investment Vehicles.
- iv. The trustee of a Trustee Documented Trust.

(b) Entities Not Required to Register

The following entities will not need to register and obtain a GIIN:


1. Exempt Beneficial Owners
2. Non-Reporting Financial Institutions
3. Active or Passive NFFE (excluding direct reporting NFFEs)
4. Deemed Compliant Financial Institution, except for:
 - i. Registered Deemed Compliant Financial Institutions
 - ii. Financial Institutions with a Local Client Base that has Reportable Accounts
 - iii. Sponsored Investment Entities with Reportable Accounts
5. Owner Document FFIs

(c) IRS Registration Walkthrough

FATCA Registration should be undertaken via the IRS online registration portal. The registration system can be accessed here: www.irs.gov/fatca-registration. The following is intended only to provide an overview of the registration process. For more detailed assistance on registration, an online user guide can be found at the following link: <http://www.irs.gov/pub/irspdf/p51118.pdf>.

The preceding link provides access to IRS Publication 5118, User Guide: Foreign Account Tax Compliance Act (FATCA). You will then be taken to an account set up page.

Financial Institution Account User Login

Financial Institution Types (Select "help" icon for further definition) 

- Single
- Lead of an Expanded Affiliated Group
- Member (not Lead) of an Expanded Affiliated Group
- Sponsoring Entity

| | | |
|---|----|---|
| <p>Existing User Login for Single, Lead, Member, or Sponsoring Entity</p> <p>FATCA ID <input type="text"/></p> <p>Access Code <input type="text"/></p> <p><input type="button" value="Login"/></p> | OR | <p>Create New Account for Single, Lead, or Sponsoring Entity</p> <p><input checked="" type="checkbox"/> By checking this box, I declare that I have been authorized by the FI to create a registration account on their behalf.</p> <p><input type="button" value="Create Account"/></p> |
|---|----|---|

[Forgot FATCA ID or Access Code?](#)

[IRS Privacy Policy](#)
version 10-14 4 10 23

There are 4 key steps to registration:

Step 1: Create Account

The user may register either as:

- A **Single Financial Institution**- broadly this is a Financial Institution that does not have any other group member Financial Institutions that it is registering for or on behalf of.
- A **Lead Financial Institution**- broadly this is a Financial Institution that fulfils the requirements to be so and will initiate the FATCA Registration for any other group Financial Institutions that authorize it to do so.
- A **Member Financial Institution**- broadly this is a Financial Institution that is registering as a member of a group for the FATCA registration process. A Member Financial Institution will need to obtain its FATCA ID from its Lead Financial Institution. Note that the FATCA ID is used to identify the Member Financial Institution for purposes of registration and is not the same number as the GIIN.
- A **Sponsoring Entity**- broadly this is an entity that will perform the due diligence, withholding, and reporting obligations of one or more Sponsored Investment Entities or Controlled Foreign Institutions (see 'Special FATCA Considerations for Insurance Companies')

The user will be asked to create two challenge questions for extra security and an access code for future log-

Financial Institution Account - Lead/Single/Sponsor Account Confirmation

You have successfully created your Financial Institution Account.

FATCA ID: GX3Q51

Do not forget the FATCA ID. The FATCA ID and Access Code are required for future access to your account.

After recording your FATCA ID and Access Code, select the "Next" button to continue to Financial Institution registration process.

Next

[IRS Privacy Policy](#)
version rup-14.4 10.23

*this is an example only

Step 2: Complete Registration Form

There are 4 parts to the application form which ask a series of short questions about the Financial Institution.

- Part 1: This must be completed by all Financial Institutions providing basic identifying information.
- Part 2: This should be completed only by a "Lead Financial Institution" who will identify each Member Financial Institution for which it is acting for as a Lead Financial Institution.
- Part 3: This should be completed only by a Financial Institution acting as a Qualifying Intermediary, withholding foreign partnerships, or withholding foreign partnership that is currently using an issued Employer Identification Number (EIN) to establish its applicable status. More information about Qualifying Intermediaries and other such agreements can be found at www.irs.gov/fatca and the in the FATCA User Guide (IRS Publication 5178).
- Part 4: This must be completed by all Financial Institutions and requires a Financial Institution to certify that the information provided in the FATCA Registration form is accurate and complete and to agree and confirm that it will comply with its FATCA obligations.

A paper version of what will be required during the online registration process can be viewed in advance here: <http://www.irs.gov/pub/irs-pdf/f8957.pdf>

Step 3: Submission

Once satisfied that the information provided is accurate and complete, the form can be submitted through the on line account.

Step 4: Approval

Once approved, the user will be issued with a Global Intermediary Identification Number (GIIN).

4.3.2 Due Diligence

Annex I of the Agreement lists the Due Diligence obligations of Financial Institutions.

The broad purpose is to ensure that Financial Institutions identify Financial Accounts that are US Reportable Accounts that are held by persons that have a relevant connection to the US, in order to be able to report on them where necessary.

The due diligence obligations fall into two (2) main categories:

- (a) Due Diligence Procedures for Individual Accounts (accounts held by human persons); and
- (b) Due Diligence Procedures for Entity Accounts (accounts held by legal persons).

The due diligence processes for identification of Account Holders require one or more of these three processes to be carried out by Financial Institutions with respect to its accounts:

- Indicia search: searching for relevant indicia by reference to documentation or information held or collected in accordance with opening or maintaining an account - for details, see Section 3.2.4(c).
- Self-certification or documentary evidence: requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable.
- Publicly available information (for entities only).

The information in this Section is a general summary only. The due diligence procedures are very significant and very detailed, and Financial Institutions should seek specific professional advice on how the rules will apply to them.

A. Due Diligence Procedures for Individual Accounts

The due diligence procedures for individual accounts aim to identify accounts that are held by human persons with a relevant connection to the US - for details, see Section 4.2.4 above.

To carry out the due diligence correctly, a Financial Institution will need to group its individual accounts into 2 general categories:

- (i) "Pre-existing Individual Accounts", which are accounts held by individuals as of 30 June; and
- (ii) "New Individual Accounts", which are accounts opened by individuals on or after 1 July 2014.

(i) Pre-existing Individual Accounts

Pre-existing Individual Accounts can be divided into 3 categories:

1. **"Small Accounts"**, which have a balance or value of \$50,000 or less (or \$250,000 or less, in the case of cash value insurance contracts or annuity contracts) as of 30 June 2014.

These do not need to be reviewed, identified or reported, unless the accounts later become High Value Accounts.

2. **"Lower Value Accounts"**, which have a balance or value that exceeds \$50,000 (or \$250,000, in the case of cash value insurance contracts or annuity contracts) and that does not exceed \$1,000,000 as of 30 June 2014.

On these accounts, a Financial Institution must carry out, by 30 June 2016, an electronic record search, to identify US indicia. If no US indicia are found after the electronic record search, no further action is required (unless the account becomes a High Value Account or is later associated with one or more US indicia). If any one of the US indicia is discovered, then the account is, in principle, reportable and self-certification should be requested from the account holder.

Even so, the Financial Institution may elect not to report the account, if the account holder provides various documents, certificates and evidence (i.e., self-certification, which may be on an IRS Form W-8 or W-9) about his/her status, essentially to prove that he/she is in fact not a US citizen or US resident for tax purposes. The Agreement contains detailed rules on the evidence that the Financial Institution must require from the account holder.

3. **"High Value Accounts"**, which are accounts with a balance or value that exceeds \$1,000,000 on 30 June 2014, or on 31 December of any subsequent year.

On these accounts, a Financial Institution must carry out an electronic records search to find any of the US indicia listed above. If the Financial Institution's electronic search does not capture all of the required information, the Financial Institution must also review specified historic paper records, for the previous 5 years (including Anti-Money Laundering and "Know Your Client Information"). 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 five years: (i) the most recent documentary evidence collected with respect to the account, (ii) the most recent account opening contract or documentation, (iii) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes, (iv) any power of attorney or signature authority forms currently in effect, and (v) any standing instruction to transfer funds currently in effect.

These should be reviewed for any US indicia.

The Financial Institution must also find out, from the account holder's relationship manager, whether the relationship manager actually knows that the account holder is a US person as actual knowledge by the relationship manager will override the results of any inconclusive electronic/paper search. Records of electronic searches, requests made and responses to the relationship manager inquiries should be retained for six years following the end of the year in which the due diligence was undertaken.

If no US indicia are found, following all of these searches, then the Financial Institution will not need to report the account (unless the account is later associated with one or more US indicia).

If US indicia are found, the account will be a US Reportable Account unless the Financial Institution requests and receives specified evidence from the account holder that he/she is not a US citizen or US tax resident. Where the indicia 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: (i) a self-certification showing that the account holder is neither a US citizen nor a US resident for US tax purposes, (ii) 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 (iii) 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 includes a current US mailing or residence address, or one or more US telephone numbers that are the only telephone numbers associated with the account, then the account must be reported unless the Financial Institution obtains or currently maintains a record of: (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes and (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

Where the indicia found contains standing instructions to transfer funds to an account maintained in the United States (but has a non-US telephone number also associated with the account), the account must be reported unless the Financial Institution obtains or currently maintains a record of (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes or (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

The review of High Value Accounts must have been carried out by 30 June 2015, unless the accounts later became High Value Accounts, in which case, the accounts must be reviewed, broadly, within 6 months after the end of the calendar year in which they became High Value.

(ii) New Individual Accounts

Unless a Financial Institution elects to do so, it will not generally need to perform a due diligence review with respect to New Individual Accounts with a value of \$50,000 or less at the end of any calendar year, or other appropriate reporting period. Accounts below this threshold should not be reported.

For all other New Individual Accounts, the Financial Institution must, on opening the account, obtain self-certification from the account holder, to determine whether the individual is US tax resident. The Financial Institution must also confirm the reasonableness of the self-certification.

If the self-certification establishes that the account holder is a US tax resident, then the Financial Institution must report the account. If, as a result of a change of circumstances, the Financial Institution knows, or has reason to know, that the original self-certification has become inadequate, or unreliable, the Financial Institution must seek further self-certification. If it is then unavailable, the Financial Institution must report the account.

See **Flowchart 4** for Assessing Due Diligence obligations for Individual Accounts

See **Checklist 2 A** for Due Diligence Procedures for Individual Accounts

B. Due Diligence Procedures for Entity Accounts

The due diligence procedures for entity accounts (those held by legal persons such as companies and partnerships) are more complex than the procedures for accounts held by individuals. In particular, the Agreement creates several categories of entities, based on definitions in the US Treasury Regulations.

In general terms, to carry out the due diligence correctly, a Financial Institution will need to group its entity accounts into two categories:

(i) "Pre-existing Entity Accounts", which are accounts held by entities as of 30 June 2014 (or 31 December 2014, with certain conditions); and

(ii) "New Entity Accounts", which are accounts opened by entities on or after 1 July 2014.

(i) Pre-Existing Entity Accounts

Pre-existing Entity Accounts can be divided into the two categories below. (For these purposes, Annex I and Notice 2014-33 allow an Entity Account that is issued, opened or executed on or after 1 July 2014, and before 1 January 2015, to be treated as a pre-existing account (with certain conditions), at the discretion of the Financial Institution).

- **Small accounts**, which have a balance or value of \$250,000 or less, as of 30 June 2014. These do not need to be reviewed until the account balance exceeds \$1,000,000, at 31 December of any subsequent calendar year.
- **All other Entity Accounts**, which must be reviewed. These will consist of accounts –
 - with a balance or value that exceeds \$250,000 as of 30 June 2014 – which must have been reviewed by 30 June 2016; or
 - with a balance or value that does not exceed \$250,000 as of 30 June 2014 but that does exceed \$1,000,000 at 31 December of any subsequent calendar year - which must be reviewed within 6 months after the end of the calendar year in which the account exceeded \$1,000,000.

The specified review procedures differ from those specified for individual accounts. For pre-existing entity accounts, the Financial Institution must, for example, review information maintained for regulatory or customer relationship purposes (including Anti-Money Laundering or "Know Your Client" information). Beyond that, the review procedures will vary, depending on the account holder, so Financial Institutions should seek specific professional advice on the exact review procedures they must follow.

The objective of the review is to identify a number of different types of account holders - once they are identified, specified procedural steps may need to follow:

1. Accounts held by Specified US Persons (as outlined in Section 4.2.4(a) above).

If the review suggests that the account holder is a Specified US person, the Financial Institution must report the account, unless the account holder self-certifies that the account holder is not a Specified US person, or the Financial Institution reasonably determines (based on information in its possession or publicly available information) that the account holder is not a Specified US person.

2. Accounts held by Financial Institutions

If the review indicates that the account holder is a Financial Institution, and details of its GIIN are confirmed, the account will not need to be reported.

3. Accounts held by Nonparticipating Financial institutions

The definition of "Nonparticipating Financial Institution" is detailed and refers to the US Treasury Regulations. Essentially, such an institution is "nonparticipating", because it has failed to comply with FATCA requirements.

If the review indicates that an account holder is a Financial Institution treated by the IRS as a UAE Nonparticipating Financial Institution, the Reporting FI will need to annually report on payments made to it. If the review indicates that an account holder is a Financial Institution, but not a UAE Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then it should be treated as a "nonparticipating", unless the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner, or unless the 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.

This is to allow the IRS to monitor institutions that are not complying with FATCA and to watch the payments being made to them.

4. Accounts held by NFFEs

If the review indicates that an account holder is a Passive NFFE, the Financial Institution must investigate the persons that control it to determine if there are any Controlling Persons who are Specified US Persons (as determined under the procedures specified in the Agreement, which generally requires direct or indirect control of 25 % of the entity). If those persons are US persons, the account must be reported. Active NFFE accounts are not generally reportable.

(ii) New Entity Accounts

There are several categories of New Entity Accounts, some of which are defined in the US Treasury Regulations. Any Financial Institution opening New Entity Accounts must take specific professional advice on its due diligence obligations.

In general, New Entity Accounts will be:

- **Small accounts**, which are certain credit card or revolving credit facility accounts with a balance or value of \$50,000 or less (and that cannot exceed \$50,000). These accounts do not need to be reviewed.
- **All other New Entity Accounts**, which must be reviewed.

The objective of the review is to identify a number of different types of Account Holders; once they are identified, specified procedural steps may need to follow:

1. Accounts held by Specified US Persons (as outlined in Section 4.2.4(a) above). These accounts are reportable.
2. Accounts held by UAE Financial Institutions, or Financial Institutions of other countries that have an IGA with the US to implement FATCA. These are generally not reportable (as the Financial Institutions will themselves be complying with FATCA pursuant to an IGA).
3. Accounts held by "Participating" or "Deemed-Compliant Foreign Financial Institutions", or "Exempt Beneficial Owners". These terms are defined in the Agreement or the US Treasury Regulations, as applicable. Essentially, they describe institutions that are complying with the US Treasury Regulations or the Agreement. The accounts are not reportable.
4. Accounts held by Active or Passive NFFEs. Active and Passive NFFEs are defined in detail at Section 4.1.4 above. Active NFFE accounts are not generally reportable. Passive NFFE accounts are only generally reportable if they are controlled (as determined under the procedures specified herein) by US persons.
5. Accounts held by "Nonparticipating Financial Institutions". As noted above, "Nonparticipating Financial Institutions" are institutions that are "nonparticipating", because they have consistently failed to comply with the US Treasury Regulations. If the review indicates that a New Entity Account holder is a UAE Nonparticipating Financial Institution, the account will not specifically be reportable. However, the Financial Institution will need to annually report on payments made to it.

See **Flowchart 5** for Assessing Due Diligence Obligations for Entity Accounts

See **Checklist 2B** for Due Diligence Requirements for Entity Accounts

4.3.3 Self-Certification

Article 5(2) of the FATCA Resolution requires each Reporting UAE Financial Institution to collect and validate a Self-Certification Form for each New Individual Account and New Entity Account.

A Self-Certification Form must be signed and dated by the Account Holder and solicit the following information:

- i. name;
- ii. residence address for tax purposes;

- iii. jurisdiction(s) of residence for tax purposes (note that a US citizen is considered a US tax resident even if the person is also a tax resident of another jurisdiction);
- iv. taxpaying identification number ("TIN") (if taxpayer has a US TIN and a non-US TIN, the US TIN must be provided, and the non-US TIN may be provided);
- v. in the case of an entity, the entity's FATCA status; and
- vi. in the case of a Passive NFFE, the name, residence address for tax purposes, and TIN with respect to a Controlling Person that is a Specified US person.

The Self-Certification Form can include other information required for other purposes, such as AML due diligence, and can be in paper or electronic format. The Regulatory Authorities, in coordination with the Competent Authority, will issue the Self-Certification Form required to be collected and validated pursuant to Article 5(2) of the FATCA Resolution.

Self-Certification Forms and other documentary evidence provided by Account Holders to Financial Institutions should be retained for (6) six years following the end of the year in which the Account Holder's tax status was established.

A Self-Certification Form 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. A Financial Institution receiving a Self-Certification Form must consider other information it has obtained concerning the Account Holder, including any documentation collected pursuant to AML/KYC procedures, to check whether the Self-Certification Form is reliable. In instances where there is an apparent conflict, the Financial Institution is required to make further inquiries.

Change in Circumstances

If there is a change in circumstances with respect to a Financial Account that causes the Financial Institution to know, or have reason to know, that the Self-Certification or other documentation associated with an account is incorrect or unreliable, the Financial Institution must re-determine the status of the account in accordance with the due diligence procedures described in this Section.

A change in circumstance includes any change to or addition of information in relation to the account holder's account (including the addition, substitution or other change of account holder) or any change to or addition of information to any account associated with such account. Associated accounts are those accounts that are associated through the aggregation rules or where a new account is treated as a pre-existing obligation. If a Financial Institution does not report Financial Accounts where US indicia is present but are subsequently "cured", then the Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the US, the Financial Institution is required to treat the new address as a change in circumstances and is required to obtain the appropriate documentation from the account holder.

4.3.4 Reporting Obligations

A. Annual Reports

Each Reporting UAE Financial Institution must file an Annual Report in each calendar year setting out:

(a) The information required pursuant to Article 2(2) of the Agreement, in relation to every U.S. Reportable Account that is maintained by the institution, including:

- Details of the account holder:
 - i. Where an account is held by a Specified US Person, the name, address and US Taxpayer Identification Number ("**TIN**") of the Specified US Person;
 - ii. Where an account is held by a Non-US Entity that is controlled by a Specified US Person, the name, address and US TIN (if any) of the Non-US Entity and each Specified US Person; and
 - iii. If the Financial Institution has no TIN on record for any particular individual, it can provide a date of birth instead, for accounts maintained as of June 30, 2014 (subject to further limitations provided in the Agreement).
- The account number;
- The name and identifying number of the Reporting Financial Institution;
- The account balance or value at the end of the relevant calendar year (or certain other specified time periods). The account balance or value includes, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value;
- For an Insurance Contract or an Annuity Contract, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting, including the aggregate amount of any redemption payments made to the policy holder

(b) The information required pursuant to Article 4(1)(b) of the Agreement (in respect of payments to Non-Participating Financial Institutions);

(c) Any other information that may be requested by the Regulatory Authority or the FTA.

B. Nil Reports

If the Reporting UAE Financial Institution maintains no US Reportable Accounts during the calendar year in question, the Reporting UAE Financial Institution shall file a Nil Report in respect of that year.

Each Reporting UAE Financial Institution shall file the Annual Report or the Nil Report directly to the Competent Authority or indirectly to the Regulatory Authority, in accordance with the reporting system, on the date and in the form and manner prescribed by the Competent Authority.

Please also consult <https://fatcacrs.mof.gov.ae/#/> for additional details on reporting, including:

- what account holder details are required;
- what account information is required;
- what information is required on US persons;
- how to report on joint accounts;
- how to report on payments to non-participating financial institutions;

- how to report on recalcitrant accounts;
- the data format;
- how to transmit data;
- and the deadline for filing.

4.3.5 Systems and Procedures

(a) Record Keeping

Each Financial Institution shall retain all records and information collected and maintained pursuant to the FATCA Resolution, the Agreement, and any Decisions issued by the Minister for a period of at least six (6) years from the date of reporting the required information to the relevant Regulatory Authority.

(b) Records of arrangements, steps and measures

Each Reporting UAE Financial Institution shall –

- (a) establish and maintain arrangements designed to identify US Reportable Accounts and accounts held by Nonparticipating Financial Institutions for the purposes of compliance with the requirements of the FATCA Resolution, the Agreement, and any Decisions issued by the Minister; and
- (b) retain records of the steps and measures undertaken and any evidence relied upon for the performance of the due diligence procedures undertaken in accordance with Annex I for a period of at least six (6) years, beginning with the end of the year in which such measures applied to any Financial Account.

4.3.6 Use of Third Parties

A Reporting UAE Financial Institution may use a third party for the purpose of complying with the FATCA Resolution, the Agreement, and any Decisions issued by the Minister, but compliance with all such requirements remains the responsibility of the Reporting UAE Financial Institution.

5. ACCOUNT HOLDERS/ CONTROLLING PERSONS

In order to identify the person or entity that is the Account Holder or Controlling Person under the terms of the Agreement, each Reporting UAE Financial Institution is required to collect and validate a Self-Certification Form in respect of New Individual Accounts and New Entity Accounts.

5.1 Requirements on Account Holders/Controlling Persons

(a) Self-Certification

Each new Account Holder or Controlling Person, as the case may be, is required to complete the Self-Certification Form and provide this, and any supporting documents, to the Reporting UAE Financial Institution.

(b) Information, Documentation and Assistance

Each Account Holder or Controlling Person, as the case may be, is required to provide the Relevant Regulatory Authority, the FTA or the Competent Authority (as applicable) such information, documentation, or assistance as records, and any supporting documentation as may be necessary for the purpose of for the purpose of any administrative investigation to ensure compliance with any provision of the FATCA Resolution, the Agreement and any Decisions issued by the Competent Authority.

6. COMPLIANCE

6.1 Non Compliance with the Agreement

Reporting Financial Institutions must comply with the reporting requirements of the Agreement.

The Agreement contains provisions for managing non-compliance and has separate procedures for "minor and administrative errors" and "significant non-compliance".

(a) Administrative or Minor Errors

Under Article 5(2) of the Agreement, administrative and other minor errors include incorrect or incomplete reporting of information described under Articles 2(2) and 4(1)(b) of the Agreement or other errors that result in infringements of the Agreement. The IRS shall notify the Competent Authority in the event that there are administrative or other minor errors that may have led to incorrect or incomplete information reporting or resulted in other infringements of the Agreement.

Examples of minor errors could include:

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

The Competent Authority would then apply its domestic law (including applicable penalties) to obtain complete and correct information or to resolve other minor or administrative infringements of the Agreement and exchange such information with the US Competent Authority.

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. Where necessary, compliance measures and penalties may be applied in accordance with Article ## of the FATCA Resolution.

(b) Significant Non-Compliance

Significant non-compliance may be determined by the Competent Authority, or by the IRS. Under Article 5(3) of the Agreement, the IRS shall notify the Competent Authority when the IRS has determined there is significant non-compliance with the obligations under the Agreement with respect to a Reporting UAE Financial Institution.

After such notification from the IRS, there is an 18-months period for the Competent Authority to exercise such domestic compliance measures and/or penalties as may be necessary to address any such non-compliance. The Competent Authorities may consult with the IRS on the steps needed to address such non-

compliance. The 18-months period begins on the date on which notification was provided to and received by the Competent Authority (per Paragraph 3.3.4 of the Arrangement).

On receipt of such notification, the Competent Authority, through the relevant Regulatory Authority, will engage with the Reporting UAE Financial Institution, to:

- Discuss the areas of non-compliance;
- Discuss remedies/solution to prevent future non-compliance; and
- Agree measures and a timetable to resolve its significant non-compliance.

The Competent Authority will in turn inform the IRS of the outcome of these discussions.

The following are examples of what would be regarded as significant noncompliance:

- 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; or
- The deliberate or negligent omission of required information.

In the event that the issues remain unresolved after a period of 18 months, the IRS shall treat the Reporting UAE Financial Institution as a Nonparticipating Financial Institution pursuant to Article 5(3)(b) of the Agreement.

6.2 Compliance, Monitoring and Enforcement under the FATCA Resolution

The Competent Authority is responsible for –

- the overall implementation of the Agreement in the UAE;
- obtaining the information in respect of each US Reportable Account; and
- annually exchanging this information with the US Competent Authority.

In addition, the Competent Authority will liaise with the IRS and engage in such consultation as may be necessary, as contemplated pursuant to Paragraph 7 of the Arrangement.

The UAE Financial Institutions have been issued instructions to implement and comply with the requirements of the Agreement following the release of the Guidance Notes on the requirements of the Agreement (superseded by this Decision) in June 2015.

Article 5 of the FATCA Resolution sets out the obligations imposed on Financial Institutions, which include:

- Due Diligence Requirements
- Self-Certification Obligations
- Reporting Obligations
- Systems and Procedures in relation to arrangements and record keeping
- Use of third parties

Each of the Regulatory Authorities and the FTA will enforce the collection of data and facilitate the transmission of reportable information from the Reporting UAE Financial Institutions to the Competent Authority.

6.3 Violations and Penalties

Article 7 of the FATCA Resolution prescribes Administrative Violations and Penalties for failing to meet any of the FATCA obligations.

If the Regulatory Authority or the FTA determines that any of these administrative violations were committed, and imposes the relevant penalties or sanctions, it will notify the violator in writing.

Any person upon whom the penalty or sanction is imposed may file a grievance against it before the Regulatory Authority / the FTA that issued that penalty, within twenty (20) business days of receiving the notification in accordance with Article 9 of the FATCA Resolution, on any of the following grounds:

- the grievant did not commit the violation attributed to it;
- the administrative penalty imposed exceeds the limits prescribed under the FATCA Resolution;
- the administrative sanction imposed pursuant to Article 7(7) of the FATCA Resolution is not proportionate to the violation in the circumstances.

If the Regulatory Authority or the FTA accepts the grievance, it may decide:

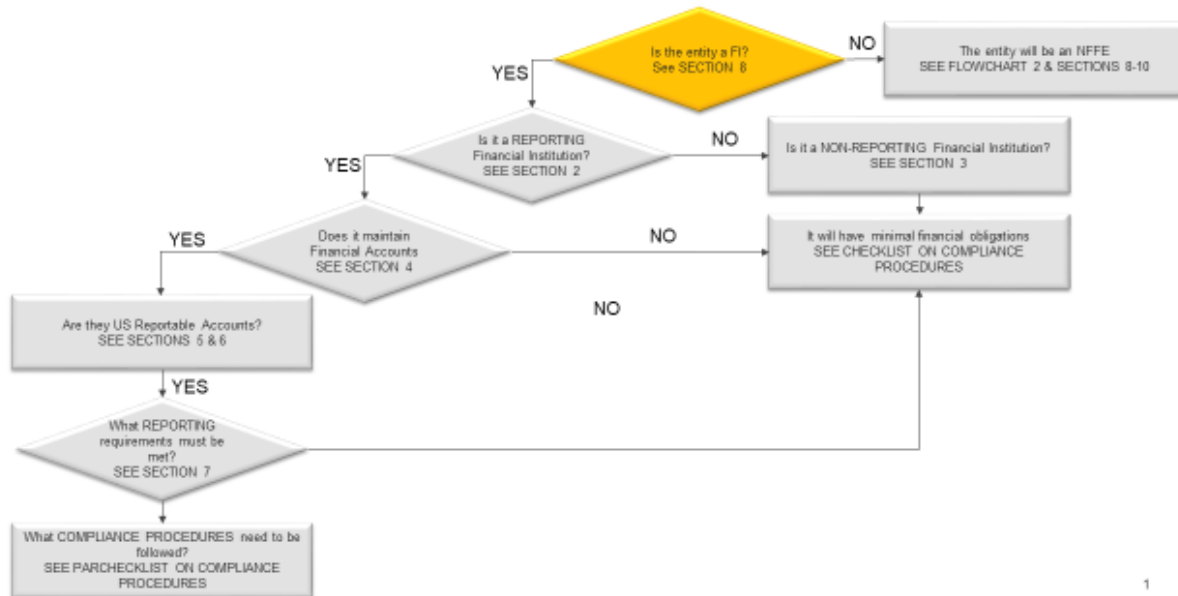
- (a) that the grievant did not commit the violation attributed to him, in which case it shall cancel the relevant fine and any administrative sanction, and inform the grievant of this decision in writing;
- (b) that the fine or the administrative sanction imposed is not appropriate to the violation, in which case it shall issue a decision specifying the amount of fine and administrative sanction appropriate to the violation; or
- (c) that the fine imposed exceeds the limit prescribed for the administrative violation attributed to the grievant, in which case it shall issue a decision to reduce the fine as appropriate to the violation.

The grievant may object to the decision of the Regulatory Authority or the FTA issued under Article 9 of the FATCA Resolution before the competent court within thirty (30) business days from the date of being notified of such decision.

FLOWCHARTS

FLOWCHART 1 – ASSESSING OBLIGATIONS OF FIs

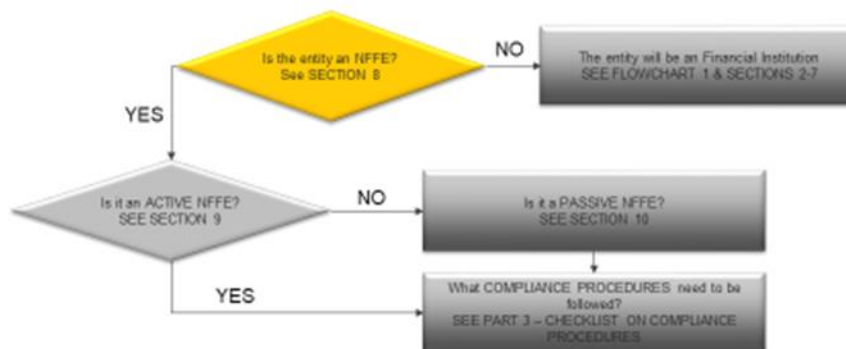
Flowchart 1 - For Assessing the Obligations of Financial Institutions



1

FLOWCHART 2 – ASSESSING OBLIGATIONS OF NFFE's

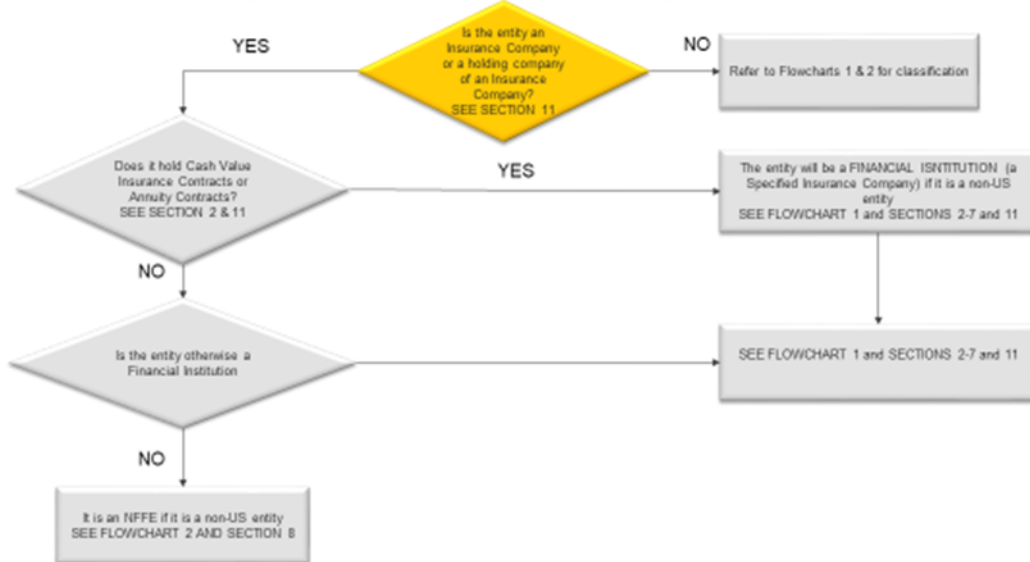
Flowchart 2 - For Assessing the Obligations of NFFE's



2

FLOWCHART 3 – ASSESSING WHETHER AN INSURANCE COMPANY IS A FI

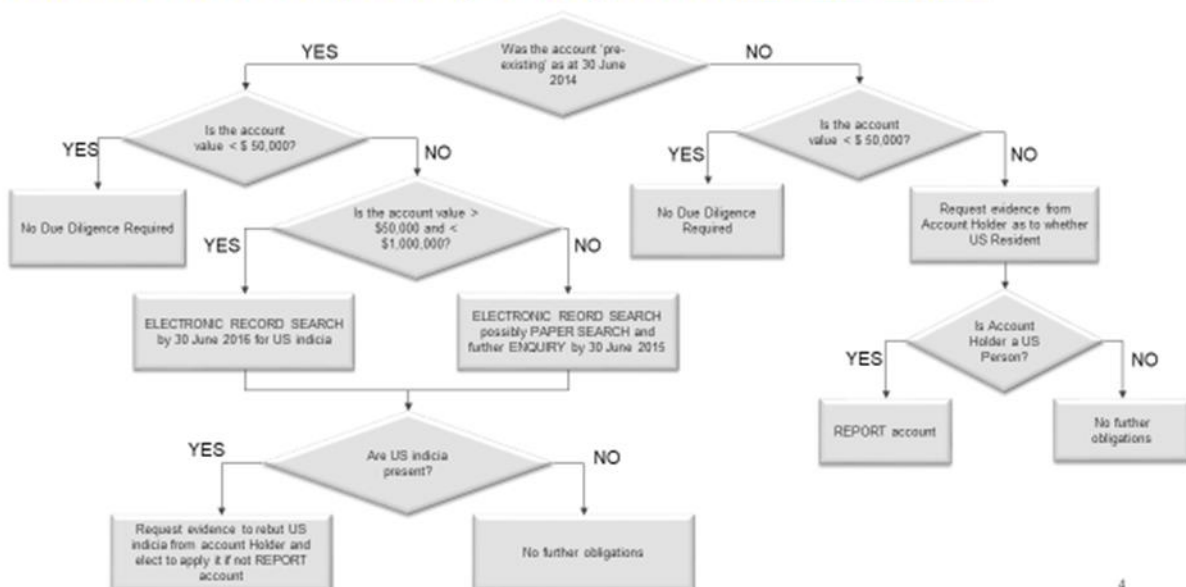
Flowchart 3 - For Assessing whether an Insurance Company is a Financial Institution



3

FLOWCHART 4 – ASSESSING DUE DILIGENCE OBLIGATIONS FOR INDIVIDUAL ACCOUNTS

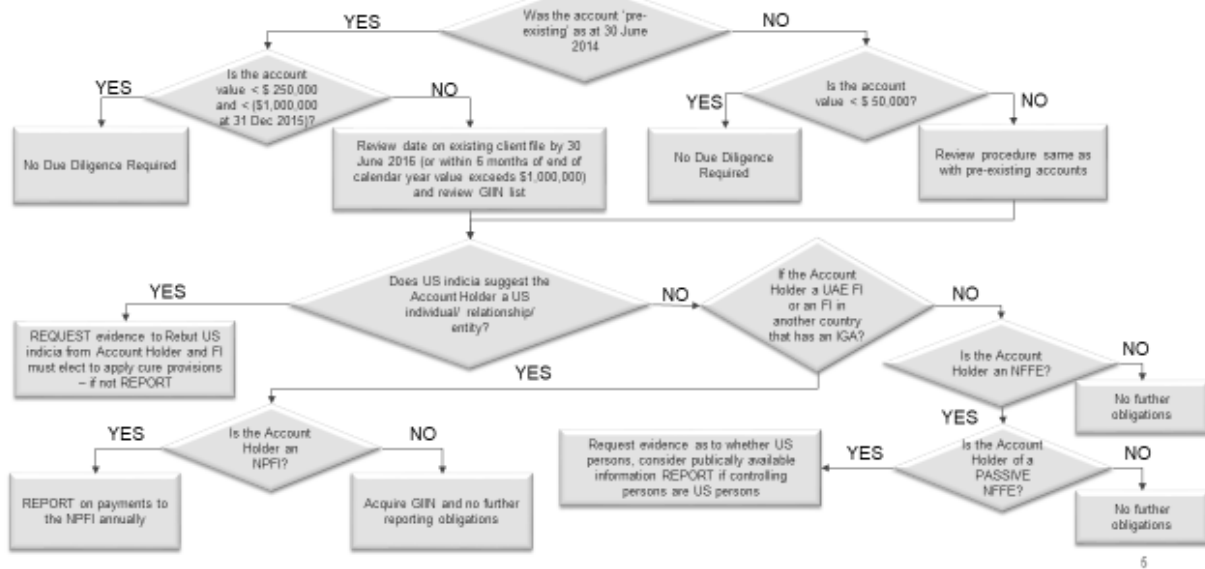
Flowchart 4 - For Assessing Due Diligence Obligations for Individual Accounts



4

FLOWCHART 5 – ASSESSING DUE DILIGENCE OBLIGATIONS FOR ENTITY ACCOUNTS

Flowchart 5 - For Assessing Due Diligence Obligations for Entity Accounts



CHECKLISTS

This Part provides general checklists of the steps necessary for an entity to comply with FATCA and the due diligence and reporting deadlines that may need to be met with respect to its Financial Accounts.

Please note that these checklist present a simplified analysis for illustrative purposes only. They should be used in conjunction with the Agreement and the detailed explanations contained herein. Entities that are required to register with the IRS under FATCA can do so by visiting: www.irs.gov/fatca-registration

CHECKLIST 1 - CHECKLIST OF COMPLIANCE PROCEDURES

A. Obligations of Financial Institutions

| TYPE OF FI | OBLIGATIONS |
|---|---|
| Non-Reporting FI | "Registered deemed compliant FFIs" must register on the IRS website; all other Non-Reporting Financial Institutions general do not need to register under FA TCA |
| Reporting FI that DOES NOT maintain Financial Accounts | <ul style="list-style-type: none"> Register on the IRS website Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). |

| | |
|---|--|
| Reporting FI that maintains Financial Accounts | <ul style="list-style-type: none"> • Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Perform due diligence procedures described in Section 4.3.1 1 to determine if such Financial Accounts are "US Reportable Accounts" that must be reported to the Competent Authority as described in Section 4.3.2.2 • Due diligence with respect to high value preexisting individual accounts must be completed by 30 June 2015; note, however that US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Due diligence on low value pre-existing individual accounts and entity accounts must be completed by 30 June 2016 and US Reportable Accounts must be reported to the relevant Regulatory Authority by date prescribed by the Competent Authority (and annually thereafter). • New individual and entity accounts must be subject to new account procedures in accordance with the due diligence requirements of Annex I and US Reportable Accounts must be reported to the relevant regulator annually. • Report to the relevant Regulatory Authority by the date prescribed by the Competent Authority (and annually thereafter). • Nil reporting required |
|---|--|

B. Obligations of NFFES

| TYPE OF NFFE | OBLIGATIONS |
|--|---|
| Active NFFE or Passive NFFE | <ul style="list-style-type: none"> • No requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request |
| Direct Reporting NFFE | <ul style="list-style-type: none"> • Requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • <i>Generally subject to same obligations as a Reporting Financial Institution</i> |

CHECKLIST 2 - DUE DILIGENCE CHECKLIST

A. Due Diligence Checklist - Individual Accounts

| TYPE OF ACCOUNT | OBLIGATIONS |
|---|--|
| <i>Pre-Existing Accounts – see Section 4.3.1A(a)</i> | |
| - Value < \$50,000 - | - No Due Diligence required |
| - Value > \$50,000 < \$1,000,000 | - Electronic Record Search for US indicia |
| - Value > \$1,000,000 | - Electronic Record Search - Paper record search and enquire of Relationship Manager where required |
| <i>New Accounts – see Section 4.3.1A(b)</i> | |
| - Value < \$50,000 - | - No Due Diligence required |
| - Value > \$50,000 - | - Request evidence (such as W-8) from account holder as to residence status |

B. Due Diligence Checklist – Entity Accounts

| Entity Accounts | |
|---|--|
| <i>Pre-Existing Accounts – see Section 4.3.1B(a)</i> | |
| - Value < \$250,000 | - No Due Diligence required |
| - Value > \$250,000 | - Review Anti Money Laundering/Know Your Client documents for US indicia |
| <i>New Accounts – see Section 4.3.1B(b)</i> | |
| - Value < \$50,000 - | - No Due Diligence required |
| - Value > \$50,000 - | - Review Anti Money Laundering/Know Your Client documents for US indicia |

ANNEXURE 2 – SECTOR SPECIFIC GUIDANCE

PART 1. – BANKING SECTOR

This Part outlines how certain types of banking entities may be classified under the Agreement. However, the classification of each entity is a fact-specific test and this outline is not conclusive of any such classification. Consequently, any likely classification should be interpreted only as a guide.

| Summary | |
|---|---|
| e.g. 1- Bank | Reporting FI (Depository Institution) ➔ If maintains US Reportable Accounts, will need to adhere to DD and reporting requirements |
| e.g. 2 - Financial Institution with a Local Client Base | An FI that meets the 10 criteria of Annex II to be regarded as a Non-Reporting FI (FI with a Local Client Base) ➔ No reporting obligations, but will still need to undertake the necessary DD Will still need to assess whether maintains US Reportable Accounts |
| e.g. 3 - Local Bank | An FI that meets the exempted requirements for a Local Bank under Annex II, and is therefore regarded as Deemed Compliant FFI - a Non-Reporting FI ➔ Must periodically review whether it continues to qualify as a Local Bank / must provide self-certification forms to withholding agents upon request |

e.g. 1 – BANK

Bank is regulated in the UAE as a commercial bank and is established under UAE law. It has both local and non-local customers and in the course of its ordinary business receives funds from the public in the form of demand, under notice, or time deposits. More than 5 % of Bank's deposits (by value) are held by non-residents of the UAE and Bank has more than \$500 million in total assets.

ANALYSIS:

i. Is Bank a Depository Institution?

Because Bank accepts deposits from customers in the ordinary course of a banking or similar business, it determines that it is a "Depository Institution".

ii. Is Bank a Financial Institution?

The definition of Financial Institution includes a "Depository Institution". Because Bank is a Depository Institution, it is a Financial Institution.

iii. Is Bank a Reporting or Non-Reporting Financial Institution?

Since Bank determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. Since Bank does not have a purely local client base and has assets in excess of \$500 million, and does not otherwise qualify for an exemption, it is a Reporting Financial Institution.

iv. Does Bank maintain Financial Accounts?

Financial Accounts specifically include a "Depository Account", which includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. Because Bank determines that it holds Depository Accounts, it holds Financial Accounts.

v. Does Bank maintain US Reportable Accounts?

A Financial Account will be a reportable account where it is held by a Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. Bank must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance in order to identify Account Holders and US Reportable Accounts.

vi. What Compliance Procedures does Bank need to follow?

- Register on the IRS registration portal and obtain a GIIN.
- Undertake the necessary due diligence and make annual reports to the UAE CB (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE CB by the date announced by the CB.

e.g. 2 - FINANCIAL INSTITUTION WITH A LOCAL CLIENT BASE

Financial Institution with a Local Client Base ("FILCB") is regulated in the UAE as a bank, and in the course of its ordinary business receives funds from the public in the form of demand, under notice, or time deposits. FILCB is

- (i) licensed and regulated as a financial institution in the UAE;
- (ii) has no fixed place of business outside the UAE;
- (iii) does not solicit customers outside the UAE (and does not have a website that indicates nonresidents may open accounts and does not conduct advertising that is primarily targeted outside the UAE);
- (iv) is required under UAE law to comply with UAE AML due diligence requirements;
- (v) at least 98 % of its financial accounts (by value) are held by UAE residents;
- (vi) has policies and procedures to prevent and monitor for financial accounts of Nonparticipating FIs, Specified US Persons not resident in the UAE, and Passive NFFEs with Controlling Persons who are US residents or US citizens that are not UAE residents;
- (vii) has policies and procedures to either report such accounts or to close them;
- (viii) to determine whether any preexisting account is held is a US reportable account and to either report or close such accounts;
- (ix) is incorporated or organized in the UAE; and
- (x) does not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified US persons and residents of the UAE.

ANALYSIS:

i. Is FILCB a Depository Institution?

Because FILCB accept deposits from customers in the ordinary course of a banking or similar business, it determines that it is a "Depository Institution".

ii. Is FILCB a Financial Institution?

The definition of Financial Institution includes a "Depository Institution". Because FILCB determined it is a Depository Institution, it is a Financial Institution.

iii. Is FILCB a Reporting or Non-Reporting Financial Institution?

Since FILCB determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. After reviewing the ten specific requirements of Annex II of the Agreement for a Financial Institution with a Local Client Base, FILCB determines that it so qualifies; and if FILCB further determines that it has no reporting obligations as outlined therein (e.g., with respect to an account held by a Specified US Person who is not a resident of the UAE); then FILCB is a non-Reporting Financial Institution.

iv. Does FILCB maintain Financial Accounts?

Financial Accounts specifically include a "Depository Account", which includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. Because FILCB determines that it holds Depository Accounts, it holds Financial Accounts.

v. Does FILCB maintain US Reportable Accounts?

A Financial Account will be a reportable account where it is held by a Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. FILCB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify Account Holders and US Reportable Accounts and must also satisfy the requirement set out in Annex II of the Agreement with respect to a Financial Institution with a Local Client Base.

vi. What Compliance Procedures does FILCB need to follow?

- FILCB may need to register on the IRS registration portal and obtain a GIIN in certain circumstances. Registration may be required if the FILCB determines that it maintains a Financial Account for a US person not resident in the UAE or if the FILCB identifies any Financial Accounts held by a Non-Participating Financial Institution during its pre-existing account review and such accounts are not closed.
- FILCB will have to undertake the necessary due diligence, and will be required to maintain the policies and procedures required of a Financial Institution with a Local Client Base under Annex II of the Agreement.

If reporting is required, FILCB must make annual reports to the UAE CB (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE CB by the date announced by the CB.

e.g. 3 - LOCAL BANK

Local Bank ("LB") is established under UAE law. LB

- operates solely as a bank, and is so licensed and regulated in the UAE;
- LB's business consists primarily of receiving deposits from and making loans to unrelated retail customers;

- LB (a) does not have a fixed place of business outside the UAE, and (b) does not solicit customers outside the UAE (and does not have a website that indicates nonresidents may open accounts; does not have a website that permits the opening of a Financial Account; and does not conduct advertising that is primarily targeted outside the UAE);
- LB does not have more than \$175 million of assets on its balance sheet; and
- does not have any Related Entities.

ANALYSIS:

i. Is LB a Depository Institution?

Because LB accept deposits from customers in the ordinary course of a banking or similar business, LB determines that it is a "Depository Institution".

ii. Is LB a Financial Institution?

The definition of Financial Institution includes a "Depository Institution". Because LB determined that it is a Depository Institution, it is a Financial Institution.

iii. Is LB a Reporting or Non-Reporting Financial Institution?

Since LB determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. After review of the requirements in Annex II of the Agreement, LB determines that it meets the requirements for a Local Bank, and is thus a "Deemed Compliant FFI" and a Non-Reporting UAE Financial Institution.

iv. What Compliance Procedures does LB need to follow?

LB must periodically review whether it qualifies as a Local Bank; and must provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request.

A. SPECIAL FATCA CONSIDERATION FOR INSURANCE COMPANIES

Insurance Company

The term "Insurance Company" has the meaning given to it under the Agreement. Accordingly, one should not determine that an entity is (or is not) an insurance company merely based upon whether or not that entity is regulated as an insurance company in the UAE. The US Treasury Regulations define an entity as an "Insurance Company" if it meets any of three conditions:

- a) It is regulated as an insurance company under local (i.e., UAE law);
- b) Its gross income from insurance, reinsurance, and annuity contracts for the preceding year exceeds 50 % of its income for that year; or
- c) The value of assets associated with insurance, reinsurance and annuity contracts exceeds 50 % of its assets at any time during the previous year.

Entities that are not regulated as insurance companies in the UAE but perform functions that fall within the definition above should closely examine how they are characterized under the Agreement.

Specified Insurance Company

When reviewing the definitions of Cash Value, Cash Value Insurance Contract and Annuity Contract, it helps to recall the underlying policy purposes of FATCA. The US enacted FATCA to discover financial accounts held by US citizens abroad that were not being reported to the US government and for which US taxes were not being paid. Because individuals may use some insurance products as a substitute for a financial account, certain insurance policies are treated as US Reportable Accounts.

However, the definitions intentionally exclude the types of policies for which there is no substantial risk of tax evasion by US persons. Thus, for example, indemnity reinsurance contracts between insurance companies are not considered financial accounts. Similarly, the term Cash Value excludes certain payments made in cash (e.g., payments on claims made for personal injury or sickness, refunds of certain premiums, and certain payments made to adjust for underwriting experience).

As previously noted, the term "Specified Insurance Company" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract. This means that the holding company of a Specified Insurance Company that actively conducts one of the specified types of insurance businesses will also be considered a Specified Insurance Company.

Financial Institution vs. NFFE

When an Insurance Company seeks to determine its FATCA status under the Agreement, it should keep certain points in mind:

- First, Insurances Companies can be a Financial Institution even if they are not a "Specified Insurance Company." As explained in Section 4.1.1, there are four principal ways that an entity can be a Financial

Institution. If an Insurance Company determines that it is not a "Specified Insurance Company" it could still be a Financial Institution under one of the three other Financial Institution categories (Depository Institution, Custodial Institution, and Investment Entity).

- An Insurance Company will normally hold investments as part of its reserving activities. The US Treasury Regulations clarify that the "reserving activities of an insurance company will not cause the company to be a Financial Institution." Although the term "reserving activities" is not defined under the Agreement or the FA TCA Regulations, the IRS has in other contexts stated that:
[t]he business of an insurance company necessarily includes substantial investment activities. Both life and non life insurance companies routinely invest their capital and the amounts they receive as premiums. The investment earnings are then used to pay claims, support writing more business or to fund distributions to the company's owners. The presence of investment earnings does not, in itself, suggest that an entity does not qualify as an insurance company.
- However, if an Insurance Company holds investments for purposes other than reserving activities, a determination should be made as to what effect those investments have on its FATCA classification under the Agreement
- Conversely, Insurance Companies may be NFFEs. If an Insurance Company is an NFFE, it is likely to be a Passive NFFE unless it is publicly traded. An Insurance Company may be an NFFE if it issues no cash value insurance contracts or annuity contracts (for example, a pure reinsurance company or casualty insurance company).
- Many Insurance Companies are unlikely to qualify as an Active NFFE under the "and" test that requires 50 % of assets and 50 % of income to be "active" because under the US Treasury Regulations, income from reserve activities is treated as passive income. The same rule will apply under the Agreement in determining whether income is passive or active.

Joint Accounts

For joint accounts held by individuals, each Account Holder should be treated as holding the entire Cash Value of a policy. Thus, if the Cash Value of a policy is \$90,000, but only one account holder is a US person, the Cash Value would be greater than the \$50,000 exclusion.

Insurance Brokers

Insurance Brokers likely will be treated as Active NFFEs because they do not hold accounts for others.

Property and Casualty Insurers

Property and Casualty Insurers will likely be treated as Passive NFFEs because most policies will not have Cash Value.

Products

Based upon the guidance and definitions provided elsewhere in this Guidance Note, the following chart provides specific examples of products and their likely classification:

| GENERAL CATEGORY | FINANCIAL ACCOUNT | NOT A FINANCIAL ACCOUNT |
|------------------|--|---|
| Individual Life | Whole life Interest Sensitive Whole Life Universal Life | Cash Value < \$50,000 Certain Term Life policies |

| | | |
|-------------------|--|---|
| | Variable Life Endowment | |
| Accident & Health | Refundable policies, where amounts payable upon termination exceed the total premiums paid | Policies without Cash Value, which generally are: <ul style="list-style-type: none"> - Critical Illness - Personal Accident (incl. AD&D) - Individual Medical - Short-term Disability - Credit Life - Refundable policies, where amounts payable upon termination do not exceed the total premiums paid |
| Reinsurance | Reinsurance arrangements involving cash value insurance contracts under which the company becomes solely liable for payment of future benefits under the contracts assumed or has assumed all administration of the underlying contracts | An indemnity reinsurance contract between two insurance companies |
| Retirement | Fixed Annuities Variable Annuities Immediate Annuities | Immediate life annuities that monetizes certain pension or disability benefits, if it is non- investment linked, nontransferable, and issued to an individual Retirement products that meet certain exemptions |
| Group | Group Universal Life Group Term Life when amounts payable upon termination or surrender of contract exceed total premiums paid | Insurance Contracts with Cash Value< \$50,000 |

Definitions

For purposes of the table above, please see the general definitions provided below.

- **"Credit Life"** means a policy designed to pay off a borrower's debt if that borrower dies.
- **"Endowment"** insurance means a policy which provides for the payment to a person other than the person whose life is insured if death occurs within a specific period of time, after which point the policy becomes payable to the person whose life is insured.
- **"Group Universal Life"** means Universal Life that is offered on a group basis.
- **"Group Term Life"** means term life insurance that is offered on a group basis.
- **"Fixed Annuities"** are annuities that provide for a fixed payment, and do not provide protection against inflation.
- **"Immediate Annuity"** means an annuity in which payments start within 12 months of the date of purchase, which is purchased with a single premium, and which makes payments at least annually.
- **"Interest Sensitive Whole Life" or "ISWL"** is a Whole Life Policy where changes to prevailing interest rates change the rate at which the investment component accrues value.

- **"Universal Life"** is a Whole Life policy where, subject limits, premiums are placed into the investment component of the policy and deductions are periodically made to pay the mortality deduction charge based on current mortality expenses.
- **"Variable Annuities"** mean annuities for which payments change depending upon the performance of an underlying investment.
- **"Variable Life" or "VUL" is a life insurance policy with an investment component where the policy value and cash value are expressed in terms of units that increase or decrease in value depending upon the performance of underlying investments.**
- **"Whole Life" is a life insurance contract with level premiums that has both an insurance and an investment component.**

Procedures

The Agreement may also require that Insurance Companies revise their procedures. Although Insurance Companies often have contact with clients at a certain time (for instance, when policies are written, upon a change of circumstance, or upon a claim), the Agreement generally requires reporting on an annual basis. Furthermore, because the Agreement requires that withholding certificates are generally only valid for three years, Insurance Companies may need to revise existing procedures to ensure that required information is timely collected and reported.

B. APPLICATION OF FATCA TO INSURANCE ENTITIES

OUTLINE OF THIS PART

Pursuant to Decretal Federal Law No. (25) of 2020 whereby the merger of the Insurance Authority into the Central Bank of the UAE (**CBUAE**) was decided, the CBUAE has assumed the supervisory and regulatory responsibility of the insurance sector.

This Part offers guidance with respect to how certain types of insurance entities may be classified under the Agreement. However, the classification of each insurance entity is a fact-specific test. This guidance is not conclusive of any such classification and should be interpreted only as a guide.

| Summary | |
|--|--|
| e.g. 1 - Life Insurance Company | <ul style="list-style-type: none"> • Insurance Co that is Specified Insurance Co (has Cash Value Insurance K) → is therefore a FI (a category of which includes Specified Insurance Cos). • Will be a Reporting FI unless it meets one of the exemptions in Annex II → here does not have a purely local client base and does not meet any other exemptions – hence a Reporting FI • Does it maintain Financial Accounts → FAs include Cash Value Insurance Ks [whole life insurance policies do not fall within the exception for Term Life Insurance Ks) → hence maintains FAs • US Reportable Accounts? → must follow DD to identify Account Holders and US Reportable Accounts • PLUS register on IRS and obtain a GIIN |
| e.g. 2 - Property and Casualty Insurance Company | <ul style="list-style-type: none"> • Insurance Co that is NOT a Specified Insurance Co – policies do not have any cash value and are therefore not Cash Value Insurance Ks nor Annuities |

| | |
|------------------------------|---|
| | <ul style="list-style-type: none"> Is it a FI? → Not a Specified Insurance Co, and does not fall within any other categories of FIS (Custodial, Depository, Investment) → hence, not a FI Since not a FI, must be an NFFE Active or Passive? – active derives less than 50% of gross income from passive income and holds less than 50% of its assets for production of passive income → here must be a Passive NFFE (more than 50%...) <p>Compliance requirements</p> <ul style="list-style-type: none"> no need to register with IRS or obtain a GIIN will need to evidence status as Passive NFFE (IRS Form or self certification) may also need to consider FATCA obligations in respect of premiums referring US based risk (these may be considered a US source payment) |
| e.g. 3 - Reinsurance Company | <ul style="list-style-type: none"> Insurance Co that is NOT a Specified Insurance Co –does not offer annuities, nor Cash Value Insurance Contracts (indemnity reinsurance is by definition excluded) Is it a FI? → Not a Specified Insurance Co, and does not fall within any other categories of FIs (Custodial, Depository, Investment) → hence, not a FI Since not a FI, must be an NFFE Active or Passive? – Passive NFFE, since more than 50% of its assets are held to provide passive income <p>Compliance requirements</p> <ul style="list-style-type: none"> no need to register with IRS or obtain a GIIN will need to evidence status as Passive NFFE (IRS Form or self certification) may also need to consider FATCA obligations in respect of premiums referring US based risk (these may be considered a US source payment) |
| e.g. 4 - Insurance Broker | <ul style="list-style-type: none"> Is it an Insurance Company? Unlikely, since the only Activity – mediation (brokerage) in insurance and reinsurance transactions → not issuing policies or making payments in respect of policies Is it a FI? → Not a Specified Insurance Co (since not an Insurance Co), and does not fall within any other categories of FIs (Custodial, Depository, Investment Entity) → hence, not a FI Since not a FI, must be an NFFE Active or Passive? – active derives less than 50% of gross income from passive income and holds less than 50% of its assets for production of passive income → here must be an Active NFFE (more than 50% of income and assets are active – derived from brokerage fees) <p>Compliance requirements</p> <ul style="list-style-type: none"> no need to register with IRS or obtain a GIIN will need to evidence status as Active NFFE (IRS Form or self certification) if requested <p>May also be asked–</p> <ul style="list-style-type: none"> to collect or forward evidence of an insurance company's FATCA status to US Person/US withholding agent |

| | |
|--|--|
| | - by an insurance company to collect or forward evidence of the FATCA status of a person who controls or may benefit from an insurance policy, or to furnish a withholding allocation statement. |
|--|--|

e.g. 1 - LIFE INSURANCE COMPANY

Life Insurance Company is regulated in the UAE as an insurance company and is established under UAE law, It has both local and non-local customers and offers "whole life" insurance policies (i.e., with no fixed term) where the named beneficiary of the policy holder is entitled to receive at the policy holder's death the full value in the policy holder's account. This account value is determined based on the amount of premiums paid over time by the policy holder and reflects the return upon investments made with the premiums. Depending on the performance of the investments, the account value may exceed the cumulative amount of premiums paid, and at least one such account has a value exceeding \$50,000. At the election of the policy holder, the policy may be cancelled and the policy holder will receive in cash the account value.

ANALYSIS:

i. Is Life Insurance Company an Insurance Company?

Because Life Insurance Company is regulated as an insurance company under UAE law and is in the business of offering insurance products, it is an Insurance Company.

ii. Is Life Insurance Company a Specified Insurance Company?

Because the policy holder may surrender his or her policy in exchange for cash it has "**Cash Value.**" **It is not necessary to determine whether the cash value exceeds** the amount of premiums previously paid because the insurance policy is a life insurance contract (and thus the second exception to Cash Value that may apply upon cancellation or termination does not apply). For each account where the Cash Value exceeds \$50,000, there is a Cash Value Insurance Contract. Thus, the Insurance Company is a Specified Insurance Company.

iii. Is Life Insurance Company a Financial Institution?

The definition of Financial Institution includes a "**Specified Insurance Company,**" (which, as explained above, is a category which includes an insurance company that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract). Because Insurance Company issues Cash Value Insurance Contracts, Insurance Company is a Specified Insurance Company. Therefore, Life Insurance Company is a Financial Institution.

iv. Is Life Insurance Company a Reporting or Non-Reporting Financial Institution?

Since Life Insurance Company determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities. Since Life Insurance Company does not have a purely local client base and does not otherwise qualify for an exemption, it is a Reporting Financial Institution.

v. Does Life Insurance Company maintain Financial Accounts?

Financial accounts specifically include "**Cash Value Insurance Contracts**". Because the whole life insurance policies do not fall within the exception for Term Life Insurance Contracts and may be surrendered for cash, they are Cash Value Insurance Contracts, so Life Insurance Company determines that it holds Financial Accounts.

vi. Does Life Insurance Company maintain US Reportable Accounts?

A Financial Account will be a reportable account where it is held by a US Person or an NFFE controlled by US persons. Life Insurance Company must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify Account Holders and US Reportable accounts.

vii. What Compliance Procedures does Life Insurance Company need to follow?

- Register on the IRS registration portal and obtain a GIIN.
- Undertake the necessary due diligence and make annual reports to the UAE IA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE IA by date announced by the IA.

e.g. 2 - PROPERTY AND CASUALTY INSURER:

Property and Casualty Insurance Company "PCI" is regulated in the UAE as an insurance company and is established under UAE law. It has both local and non-local customers and offers property insurance policies where the named beneficiary may make claims if property covered by the insurance policy is stolen or damaged. PCI does not offer life insurance or annuities. On a periodic basis, PCI evaluates the risk exposure of its insureds and makes refunds to policy holders if the risk exposure decreases. Over 50 % of PCI's assets are investments it holds for reserve activities and over 50 % of its income arises from reserve activities.

ANALYSIS:

i. Is PCI an Insurance Company?

Because PCI is regulated as an insurance company and is in the business of offering insurance products, it is an Insurance Company.

ii. Is PCI a Specified Insurance Company?

The policies offered by PCI only make payments to insureds if (7) the insured suffers an economic loss or (2) if there is a decrease in risk exposure during the period of the insurance contract. Thus, any cash received by the insured falls within an exception to "**Cash Value.**" **Because the policies do not have any Cash Value, they are not Cash Value Insurance Contracts.** They are also not Annuity Contracts because the company does not offer annuities. Therefore, PCI is not a Specified Insurance Company.

iii. Is PCI a Financial Institution?

On the facts presented, PCI is not a Specified Insurance Company and also does not fall within any of the other categories of Financial Institution (Custodial Institution, Depository Institution, or Investment Entity). PCI is not a custodial institution because it does not hold financial assets for the account of others, it is not a Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as a business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iv. Is PCI an NFFE?

PCI determines that it is not a Financial Institution, so it must be an NFFE.

v. Is PCI an ACTIVE NFFE or PASSIVE NFFE?

- An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes income from reserve activities.
- PCI is a Passive NFFE because more than 50 % of its assets are held to produce passive income.

vi. What Compliance Procedures does PCI need to follow?

- PCI will not need to register with the IRS or obtain a GIIN.
- PCI will need to be able to evidence its status as a Passive NFFE through an IRS Form W-8BEN-E or other self-certification, if requested, and certify that none of its controlling shareholders are Specified US Persons.
- PCI may also need to consider its FATCA obligations for premiums referring US based risk, because such premiums may be considered a US source payment in whole or in part.

e.g. 3 - REINSURANCE COMPANY

Reinsurance Company "RC" is regulated in the UAE as an insurance company and is established under UAE law. It has both local and non-local customers, all of whom are insurance companies. The only product that RC offers is an indemnity reinsurance contract. Over 50 % of RC's assets are investments it holds for reserve activities and over 50 % of its income arises from reserve activities.

ANALYSIS:

i. Is RC an Insurance Company?

Because RC is regulated as an insurance company and is in the business of offering insurance products, it is an Insurance Company.

ii. IS RC a Specified Insurance Company?

Because RC does not offer annuities, it can only be a Specified Insurance Company if it offers Cash Value Insurance Contracts. The only product offered by RC is an indemnity reinsurance contract, which is by definition excluded from the term Cash Value Insurance Contract. Therefore, RC is not a Specified Insurance Company.

iii. Is RC a Financial Institution?

Although RC is not a Specified Insurance Company, it may still be a Financial Institution if it falls within one of the other categories of Financial Institution. RC is not a Financial Institution because it does not offer products or perform a business that would make it a Custodial Institution, Depository Institution, or an Investment Entity. It is not a Custodial Institution because it does not hold financial assets for the account of others, it is not a Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as a business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iv. is RC an NFFE?

RC determines that it is not a Financial Institution, so it must be an NFFE.

v. Is RC an ACTIVE NFFE or PASSIVE NFFE?

An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes income from reserve activities. RC is a Passive NFFE because more than 50 % of its assets are held to produce passive income.

vi. What Compliance Procedures does RC need to follow?

- RC will not need to register with the IRS or obtain a GIIN.
- RC will need to be able to evidence its status as a Passive NFFE through an IRS Form W8BEN-E or other self-certification, if requested, and certify that none of its controlling shareholders are Specified US Persons.
- RC may also need to consider its FA TCA obligations for premiums referring US based risk, because such premiums may be considered a US source payment in whole or in part.

e.g. 4 - INSURANCE BROKER

Insurance Broker "IB" is regulated in the UAE as an insurance broker and is established under UAE law. The only activity that IB conducts is mediation (brokerage) in insurance and reinsurance transactions between insurance companies and clients in return for a commission. Over 50 % of IB's assets are active assets.

ANALYSIS:

i. Is IB an Insurance Company?

IB likely is not an Insurance Company. Although it is regulated by the IA, it is not regulated as an insurance company, it does not issue insurance policies, and it is not obligated to make payments with respect to an insurance policy.

ii. Is IB a Financial Institution?

If IB is not an Insurance Company, it is not a Specified Insurance Company. However, it may still be a Financial Institution if it falls within one of the other categories of Financial Institution. IB is not a Financial Institution because it does not offer products or perform a business that would make it a Custodial Institution, Depository Institution, or an Investment Entity. It is not a Custodial Institution because it does not hold financial assets for the account of others, it is not a Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iii. Is IB an NFFE?

IB determines that it is not a Financial Institution, so it must be an NFFE. iv. Is IB an Active NFFE or Passive NFFE? An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc. IB determines that its income is active because its income is derived from fees paid from brokerage fees. Because over 50 % of its income and assets are active income and active assets, IB is an Active NFFE.

iv. What Compliance Procedures does IB need to follow?

- IB does not need to register with the IRS or obtain a GIIN.

- IB will need to be able to evidence its status as an Active NFFE through an IRS Form WBBEN- E or other self-certification, if requested.
- IB also may be asked to collect or forward evidence of an insurance company's FATCA status to a US person or US withholding agent, and may be asked by an insurance company to collect or forward evidence of the FATCA status of a person who controls or may benefit from an insurance policy, or to furnish a withholding allocation statement.

Part 3 – FINANCIAL SERVICES SECTOR

This Part outlines how certain types of entities regulated by SCA may be classified under the Agreement. However, the classification is a fact specific test and this outline is not conclusive of any such classification. Consequently, any likely classification noted in this Part should be interpreted only as a guide.

e.g. 1 - Exchange

e.g. 2 - Securities Broker

e.g. 3 - Commodities Broker Firm

e.g. 4 - Securities Custodian

e.g. 5 - Investment Manager

e.g. 6 - Financial Consultation and Financial Analysis Firm

e.g. 7 - Fund Administrator

| Summary | |
|----------------------------|---|
| e.g. 1 - Exchange | <p>(1) Is Exchange a Financial Institution?</p> <ul style="list-style-type: none"> - The definition of a Financial Institution includes "Investment Entities", which in turn includes an entity that "conducts as a business" the investing, administering or managing of funds or money on behalf of other persons. - Exchange does not invest, administer or manage funds or money on behalf of other persons. Instead, Exchange serves as an intermediary for brokers and investors to buy and sell stocks, bonds and other securities. - Exchange determines it does not fall within the definition of any other category of Financial Institution. <p>(2) Is Exchange an NFFE?</p> <p>If Exchange determines is not a Financial Institution, it must be an NFFE.</p> <p>(3) Is Exchange an ACTIVE NFFE or a PASSIVE NFFE?</p> <p>An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.</p> <p>Exchange determines it is an Active NFFE as its income is derived from the receipt of fees based on a percentage of each trade executed on the exchange.</p> <p>(4) What Compliance Procedures does Exchange need to follow?</p> <p>As an Active NFFE, Exchange would not need to register with the IRS or obtain a GIIN. Exchange will be required to evidence its status as an Active NFFE through an IRS Form W-8BEN-E or other self-certification, if requested.</p> |
| e.g. 2 - Securities Broker | <p>vii. Is the Securities Broker a Financial Institution?</p> <ul style="list-style-type: none"> - FIs include Custodial Institutions (an entity that holds, as a "substantial portion of its business", "financial assets" for the accounts of others) - substantial portion of its business - if the entity's gross income attributable to holding of financial asset /related financial services equals or exceeds 20 % of its gross income - SB acts as Trading & Clearing Member - classified as Custodial Institution. <p>viii. Is SB a Reporting or Non-Reporting Financial Institution?</p> |

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| | <ul style="list-style-type: none"> - Reporting FI, unless it meets conditions of one of the Annex II non-reporting entities or under the US Treasury Regulations (see Section 4.1.3 B). - SB does <u>not</u> fall under any Non-reporting categories <p><i>ix. Does SB maintain Financial Accounts?</i></p> <ul style="list-style-type: none"> - Financial Accounts specifically include "Custodial Accounts". - "Financial Instrument" includes shares and loan/debentures stock - Hence, SB does hold Financial Accounts. - If any of such Financial Accounts are "Exempt Accounts", SB would not have to perform any due diligence with respect to those accounts. <p><i>x. Does SB maintain US Reportable Accounts?</i></p> <ul style="list-style-type: none"> - A Financial Account will be a Reportable Account if held by Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. - SB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts. <p><i>xi. What Compliance Procedures does SB need to follow?</i></p> <ul style="list-style-type: none"> - Register on the IRS registration portal and obtain a GIIN. - Undertake the necessary due diligence and make annual reports to the Regulatory Authority |
| e.g. 3 - Commodities Broker Firm | <ul style="list-style-type: none"> • Financial Institution? - Classified as a Custodial Institution; • RFI? - Reporting FI, unless it meets conditions of one of the Annex II non-reporting entities or under the US Treasury Regulations (see Section 4.1.3 B) – none are applicable on the facts; • Does it maintain Financial Accounts? - Financial Accounts specifically include "Custodial Accounts" – held for the benefit of another person. Hence, SB maintains Accounts. If the Accounts are 'Exempt Accounts' (see Section 3.2.3), would not have to perform any Due Diligence in respect of these. • Are they US Reportable Financial Accounts? – yes if held by Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. <p>Conclusion:</p> <ul style="list-style-type: none"> • DD - SB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts. • <i>Compliance Procedures</i> - <ul style="list-style-type: none"> (i) Register on the IRS registration portal and obtain a GIIN. (ii) Undertake the necessary due diligence and make annual reports to the Regulatory Authority |
| e.g. 4 - Securities Custodian | <ul style="list-style-type: none"> • FI? – Fis includes a "Custodial Institution" – defined as an entity that holds, as a "substantial portion of its business", "financial assets", for the account others. It therefore covers a nominee arrangement. An entity holds financial assets for the account of others as a 'substantial portion of its business' if its gross income attributable to the holding of financial assets equals or exceeds 20 % of its gross income during the shorter of: (i) 3- |

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|---|---|
| | <p>year period; or (ii) the period during which the entity has been in existence. Therefore, classified as a Custodial Institution.</p> <ul style="list-style-type: none"> • RFI? - Reporting FI, unless it meets conditions of one of the Annex II non-reporting entities or under the US Treasury Regulations (see Section 4.1.3 B) – none are applicable on the facts; • Does it maintain Financial Accounts? – Yes, since Financial Accounts include "Custodial Accounts" • Are they US Reportable Financial Accounts? – Yes if held by Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. <p>Conclusion:</p> <ul style="list-style-type: none"> • DD - SB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts. • <i>Compliance Procedures</i> - <ul style="list-style-type: none"> (i) Register on the IRS registration portal and obtain a GIIN. (ii) Undertake the necessary due diligence and make annual reports to the Regulatory Authority |
| e.g. 5 - Investment Manager | <ul style="list-style-type: none"> • FI? – Yes. Financial Institution includes "Investment Entities". – i.e. an entity that "conducts as a business" individual and collective portfolio management or otherwise investing, administering or managing of funds or money on behalf of other persons. IM manages the funds it holds on behalf of other persons and will be regarded as conducting these activities "as a business" if at least 50 % of its gross income is attributable to such activities - broadly, over a 3 year period (or since IM's existence, whichever is shorter). Here, IM meets these criteria. • RFI? - Reporting FI, unless it meets conditions of one of the Annex II non-reporting entities or under the US Treasury Regulations (see Section 4.1.3 B) – none are applicable on the facts; • Does it maintain Financial Accounts? - Financial Accounts include "Custodial Accounts". If the Accounts are 'Exempt Accounts' (see Section 3.2.3), would not have to perform any Due Diligence in respect of these. • Are they US Reportable Financial Accounts? – yes if held by Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. <p>Conclusion:</p> <ul style="list-style-type: none"> • DD - SB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 3.3.1 of this Guidance Note in order to identify US Reportable Accounts. • <i>Compliance Procedures</i> - <ul style="list-style-type: none"> (i) Register on the IRS registration portal and obtain a GIIN. (ii) Undertake the necessary due diligence and make annual reports to the Regulatory Authority |
| e.g. 6 - Financial Consultation and Financial Analysis Firm | <ul style="list-style-type: none"> • FI? – No, a pure advisory firm that does not undertake investment services, maintain Financial Accounts or manage funds • Since not an FI, must be an NFFE • Active or Passive? – Active, since income is derived from advisory fees and at least 50% of its assets are non-passive assets |

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| | <p>Conclusion</p> <ul style="list-style-type: none"> • FCAF will not need to register with the IRS or obtain a GIIN. • FCAF will need to be able to evidence its status as an Active NFFE through an IRS Form W-8B EN-E or other self-certification, if requested. |
| Section 7 - Fund Administrator | <ul style="list-style-type: none"> • FI? – Yes, Financial Institution includes "Investment Entities", which includes an entity that "conducts as a business" one or more of certain activities or operations for or on behalf of a customer, including (a) "individual and collective portfolio management" and (b) "otherwise investing, administering, or managing funds or money on behalf of other persons." • RFI or Non-Reporting? – Here, a Non-Reporting FI, as Deemed Compliant per Annex II, Art. IV(F) because: <ul style="list-style-type: none"> a. Financial Accounts for which it provides services are Financial Accounts in a Collective Investment Vehicle that is deemed compliant pursuant to Annex II, Art. IV(E), and b. no interests in the Collective Investment Vehicle are held through it. <p>Further, it is an Investment Entity <u>solely</u> because it manages portfolios for a customer for the purpose of investing, managing, or administering funds with a FI other than a Non-Participating Financial Institution; and FA determines that it will be treated as a deemed compliant Financial Institution pursuant to Annex II of the Agreement (Investment Advisors and Investment Managers).</p> <p>Conclusion</p> <ul style="list-style-type: none"> - FA does <u>not</u> need to register with the IRS or obtain a GIIN. - FA will need to be able to evidence its status as a Non-reporting Agreement FFI through an IRS Form W-8B EN-E or other self-certification, if requested. |

e.g. 1 - EXCHANGE

Exchange was established under local law the provisions of which vest Exchange with independent legal personality, independent finance and management, and give Exchange the necessary supervisory and executive powers to exercise its functions. Exchange provides services for stock brokers and traders to buy or sell stocks, bonds, and other securities. Exchange's income is comprised of fees received from stock brokers and traders based on a percentage of each trade executed on Exchange.

ANALYSIS:

i. Is Exchange a Financial Institution?

- The definition of a Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" the investing, administering or managing of funds or money on behalf of other persons.
- Exchange does not invest, administer or manage funds or money on behalf of other persons. Instead, Exchange serves as an intermediary for brokers and investors to buy and sell stocks, bonds and other securities.
- Exchange determines it does not fall within the definition of any other category of Financial Institution.

ii. Is Exchange an NFFE?

Assuming Exchange determines it is not a Financial Institution, it must be an NFFE.

iii. Is Exchange an ACTIVE NFFE or a PASSIVE NFFE?

An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.

Exchange determines it is an Active NFFE as its income is derived from the receipt of fees based on a percentage of each trade executed on the exchange.

iv. What Compliance Procedures does Exchange need to follow?

As an Active NFFE, Exchange would not need to register with the IRS or obtain a GIIN. Exchange will be required to evidence its status as an Active NFFE through an IRS Form W-8BEN-E or other self-certification, if requested.

e.g. 2 - SECURITIES BROKER

Securities Broker ("SB") is a corporate person licensed by SCA in accordance with Board Decision No. 27 of 2014 ("Decision 27") to purchase or sell securities in the market in the name and for the account of a third party or in its own name and for its own account. Under Decision 27, a securities broker may act as a Trading Member or a Trading and Clearing Member, a Trading Member will never deal in client funds or operate segregated bank accounts on behalf of its clients.

SB, a Trading and Clearing Member, holds segregated accounts on behalf of its clients and its clientele includes both local and non-UAE persons. SB's gross income attributable to the holding of financial assets and related financial services exceeds 20 % of SB's gross income on an annual basis.

ANALYSIS:

i. Is SB a Financial Institution?

The definition of Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets" for the accounts of others.

The Agreement provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 % of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Therefore, because SB acts as a Trading and Clearing Member, it determines that it is classified as a Custodial Institution.

ii. Is SB a Reporting or Non-Reporting Financial Institution?

Since SB determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II non-reporting entities or under the FATCA Regulations (see Section 4.1.3 B. Since SB does not have a purely local client base, it did not determine that it fell within one of the Annex II exempt entity categories.

iii. Does SB maintain Financial Accounts?

Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets). SB determined that it does hold Financial Accounts. If any of such Financial Accounts are "Exempt Accounts" (see Section 4.2.3), SB would not have to perform any due diligence with respect to those accounts.

iv. Does SB maintain US Reportable Accounts?

A Financial Account will be a 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 is a Specified US Person. SB must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts.

v. What Compliance Procedures does SB need to follow?

- Register on the IRS registration portal and obtain a GIIN.
- Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation begins on 30 September 2015.

e.g. 3 - COMMODITIES BROKER FIRM

ANALYSIS:

i. Is CBF a Financial Institution?

- The definition of Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets" for the accounts of others.
- The Agreement provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 % of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- Therefore, CBF determines that it is classified as a Custodial Institution.

ii. Is CBF a Reporting or Non-Reporting Financial Institution?

- Since CBF determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or under the US Treasury Regulations (see Section 4.1.3 B).
- Since CBF does not have a purely local client base, it did not determine that it fell within one of the Annex II exempt entity categories.

iii. Does CBF maintain Financial Accounts?

- Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets).
- CBF determined that it does hold Financial Accounts.
- If any of such Financial Accounts are "Exempt Accounts" (see Section 4.2.3),CBF would not have to perform any due diligence with respect to those accounts.

iv. Does CBF maintain US Reportable Accounts?

A Financial Account will be a 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 is a Specified US Person. CBF must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable accounts.

v. What Compliance Procedures does CBF need to follow?

- Register on the IRS registration portal and obtain a GIIN.
- Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance).

e.g. 4 - SECURITIES CUSTODIAN

ANALYSIS:

i. Is SC a Financial Institution?

- The definition of a Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets", for the account of others. It therefore covers a nominee arrangement.
- The Agreement provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 % of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- Therefore, SC determines that it is classified as a Custodial Institution.

ii. Is SC a Reporting or Non-Reporting Financial Institution?

SC determines it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or under the US Treasury Regulations (see Section 4.1.3). Since SC does not have a purely local client base, it does not determine that it falls within one of the Annex II exempt entity categories.

iii. Does SC maintain Financial Accounts?

- Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets).
- SC determines that it does hold Financial Accounts.

iv. Does SC maintain US Reportable Accounts?

A Financial Account will be a 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 is a Specified US Person. SC must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts.

v. What Compliance Procedures does SC need to follow?

- Register on the IRS registration portal and obtain a GIIN.

- Undertake the necessary due diligence and make annual reports to the relevant Regulatory Authority (SCA) or directly to the Competent Authority. The first reporting obligation for the UAE Ministry of Finance begins on 30 September 2015.

e.g. 5 - INVESTMENT MANAGER

ANALYSIS:

i. Is IM a Financial Institution?

- The definition of a Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" individual and collective portfolio management or otherwise investing, administering or managing of funds or money on behalf of other persons.
- IM manages the funds it holds on behalf of other persons. IM will be regarded as conducting these activities "as a business" if at least 50 % of its gross income is attributable to such activities - broadly, over a 3 year period (or since IM's existence, whichever is shorter).
- IM determines that it meets these conditions and thus will be classified as an Investment Entity and therefore a Financial Institution.

ii. Is IM a Reporting or Non-Reporting Financial Institution?

IM determines that it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise a non-reporting financial institution (see Section 4.1.3). Since IM does not have a purely local client base, it did not determine that it falls within one of the Annex II exempt entity categories.

iii. Does IM maintain Financial Accounts?

- Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debenture stock (together with a wide range of other financial assets).
- IM determines that it does hold "Custodial Accounts".
- If any of such Financial Accounts are "Exempt Accounts" (see Section 4.2.3), IM would not have to perform any due diligence with respect to those accounts.

iv. Does IM maintain US Reportable Accounts?

A Financial Account will be a 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 is a Specified US Person. IM must follow the due diligence procedures set out in Annex I of the Agreement and detailed in Section 4.3.1 of this Guidance Note in order to identify US Reportable Accounts.

v. What Reporting Requirements must IM meet?

- Register on the IRS registration portal and obtain a GIIN.
- Undertake the necessary due diligence and make annual reports to the relevant Regulatory Authority (SCA).

e.g. 6 - FINANCIAL CONSULTATION AND FINANCIAL ANALYSIS FIRM

Financial Consultation and Financial Analysis Firms ("FCAF") provides opinions and recommendations based on economic and financial research, studies and analyses concerning the feasibility studies and determining

the anticipated current or future values of the securities, commodities, commodity contracts and companies to clients or published to the public in any of the various means of publication and communication.
FCAF is a pure advisory company and does not otherwise invest or manage funds on behalf of its customers.

ANALYSIS:

i. Is FCAF a Financial Institution?

- The definition of Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity established in the UAE that is a Financial Institution solely because it administers or manages funds or money on behalf of other persons.
- However, FCAF solely renders investment advice. FCAF does not otherwise undertake investment services or maintain financial accounts, and does not otherwise administer, manage funds or money or in any other way fall within the definition of an Investment Entity.
- FCAF determines that it will not fall within the definition of any other Financial Institution category and thus will not be treated as a Financial Institution.

ii. Is FCAF a NFFE?

FCAF determines that it is not a Financial Institution, so it must be a NFFE.

iii. Is FCAF an ACTIVE NFFE or PASSIVE NFFE?

- An Active NFFE is one which derives less than 50 % of its gross income for the preceding year from passive income and less than 50 % of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.
- FCAF determines it is classified as an Active NFFE as its income is derived from fees for its advisory services and at least 50 % of its assets are non-passive assets.

iv. What Compliance Procedures does FCAF need to follow?

- FCAF will not need to register with the IRS or obtain a GIIN.
- FCAF will need to be able to evidence its status as an Active NFFE through an IRS Form W-8B EN-E or other self-certification, if requested.

e.g. 7 - FUND ADMINISTRATOR

Fund Administrator's ("FA") sole responsibilities are to (i) maintain the register of the shareholders or members of a collective investment vehicles and processing the issuance and transfer of interests in such collective investment vehicles, (ii) disseminate the net asset value of a collective investment vehicle's interests in accordance with the governing documents, (iii) process requests for redemption of interests, (iv) keep books and records of a collective investment vehicle and (v) perform other services necessary in connection with the administration of a collective investment vehicle.

The FA acts for a collective investment vehicle established in the UAE that satisfies the requirements for a "Collective Investment Vehicle" as described in Annex II, Art. IV(E) of the Agreement, essentially, one that is regulated as a collective investment vehicle where all interests are held by or through one or more exempt beneficial owners, Active NFFEs, US Persons other than Specified US Persons, or Financial Institutions other than Nonparticipating Financial Institutions.

FA provides the services listed above for UAE and non-UAE clients. FA's income is comprised of fees received for its administrative services.

ANALYSIS:

i. Is FA a Financial Institution?

- The definition of Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" one or more of certain activities or operations for or on behalf of a customer, including (a) "individual and collective portfolio management" and (b) "otherwise investing, administering, or managing funds or money on behalf of other persons."
- FA determines that it is a Financial Institution.

ii. Is FA a Reporting or Non-Reporting Financial Institution?

After review of the Agreement, FA determines that its reporting obligations are deemed fulfilled pursuant to Annex II, Art. IV(F) because:

- a. the Financial Accounts for which FA provides services are Financial Accounts in a Collective Investment Vehicle that is deemed compliant pursuant to Annex II, Art. IV(E) of the Agreement, and
- b. no interests in the Collective Investment Vehicle are held through FA.

Furthermore, FA determines that it is an Investment Entity solely because it manages portfolios for, and acts on behalf of a customer for the purpose of investing, managing, or administering funds deposited in the name of a customer with a Financial Institution other than a Non-Participating Financial Institution; and FA determines that it will be treated as a deemed compliant Financial Institution pursuant to Annex II of the Agreement (Investment Advisors and Investment Managers).

iii. What Compliance Procedures does FA need to follow?

- FA does not need to register with the IRS or obtain a GIIN.
- FA will need to be able to evidence its status as a Non-reporting Agreement FFI through an IRS Form W-8B EN-E or other self-certification, if requested.