



Malaysia-US IGA

Guidance Notes

15 March 2015

Compliance Requirements for Malaysia-US
Intergovernmental Agreement on Foreign Account
Tax Compliance Act (FATCA)

DRAFT

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1. Objective

1.1. The purpose of this Guidance Notes is to provide guidance to:

- Malaysia-based Financial Institutions (“MYFIs”) in meeting their due diligence and reporting obligations under the Foreign Account Tax Compliance Act (FATCA) enacted by the United States of America (“US”); and
- Other businesses, entities and persons in Malaysia affected by FATCA.

2. Background

2.1. FATCA, which affects Financial Institutions (“FIs”) worldwide, aims at reducing tax evasion by US persons. It requires Financial Institutions outside the US to provide information regarding their customers who are US persons to the US Inland Revenue Service (“US IRS”). A 30% withholding tax is imposed on the US source income of any FI that fails to comply with this requirement.

2.2. On 30-06-2014, Malaysia reached an agreement on a Model 1 Intergovernmental Agreement (“IGA”) with the US to implement FATCA. Accordingly, Malaysia has been included in the US Treasury’s list of jurisdictions that are treated as having an IGA in effect with the US.

2.3. Under the terms of the Malaysia-US IGA (“Agreement”), Reporting MYFIs will provide Inland Revenue Board of Malaysia (IRBM) with the required account information of US persons. IRBM will then exchange that information with the US IRS.

3. Scope of This Guidance Notes

3.1. This Guidance Notes covers the following main aspects for implementation of the Agreement:

- The key implementation milestones;
- The FIs that are required to report;
- The Financial Accounts to be reported;
- Exempt FIs, Account Holders and Financial Accounts;
- The required procedures for identification of US Reportable Accounts;
- The information to be reported; and

- The timeline for reporting and how to submit the information.

4. Key Implementation Milestones

| Deadlines | Milestones |
|--------------|---|
| 1 July 2014 | FATCA withholding of US source payments commences. As Malaysia has been included in the US Treasury's list of jurisdictions that are treated as having an IGA in effect with the US, MYFIs will not be subject to FATCA-related withholding. |
| 31 Dec 2014 | Final deadline for Reporting MYFIs to register with US IRS and obtain their Global Intermediary Identification Number (GIIN) for inclusion in the US IRS FFI List by 1 January 2015. Registration is done via the US IRS Online FATCA Registration Portal. MYFIs are encouraged to register as early as possible. |
| 30 June 2015 | <ul style="list-style-type: none"> • Reporting MYFIs submit FATCA information to IRBM relating to Reporting Year 2014 (Section 10.5.1) • As part of due diligence requirements under the Agreement, Reporting MYFIs complete due diligence procedures for Preexisting High Value Individual Accounts with balance or value exceeding US\$1,000,000 as of 30 June 2014 (Section 9.6). |
| 30 June 2016 | <ul style="list-style-type: none"> • As part of due diligence requirements under the Agreement, Reporting MYFIs complete due diligence procedures for: <ul style="list-style-type: none"> ○ Preexisting Entity Accounts with balance or value exceeding US\$250,000 as of 30 June 2014 (Section 9.14); and ○ All Preexisting Individual Accounts with balance or value between US\$50,000 and US\$1,000,000 as of 30 June 2014 (Section |

| | |
|-----------------------------|---|
| | <p>9.5).</p> <ul style="list-style-type: none"> • Reporting MYFIs submit FATCA information to IRBM relating to Reporting Year 2015 |
| 30 June of subsequent years | Reporting MYFIs submit FATCA information to IRBM relating to the immediate preceding year. |

5. Financial Institutions

5.1. Overview

- 5.1.1. For the purpose of this Agreement, the first step to be undertaken by an entity or its representative is to establish whether it is a FI. This will determine the extent of the obligations and requirements that need to be fulfilled.
- 5.1.2. Under the Agreement, Malaysian entities are regarded as MYFIs if they fall within any of, or more than one of, the following categories:
- a) Custodial Institution (Section 5.5)
 - b) Depository Institution (Section 5.6)
 - c) Investment Entity (Section 5.7)
 - d) Specified Insurance Company (Section 5.11)
- 5.1.3. Each category of FIs is determined by a set of criteria which must be met. Where an entity does not meet the definition of a FI then the entity will be regarded as a Non-Financial Foreign Entity (NFFE). Refer to Section 6 for more details on NFFE.
- 5.1.4. Under the Agreement, MYFIs will be classified either as a Reporting MYFI or a Non-Reporting MYFI (Section 7). Reporting MYFIs must comply with the due diligence procedures and reporting requirements under this Agreement. Non-Reporting MYFIs are as described in Annex II of the Agreement.
- 5.1.5. In case of significant non-compliance with applicable obligations under the Agreement, a Reporting MYFI can be subsequently treated as a Non-participating Foreign Financial Institution (NPFFI) by the US IRS.

5.2. Malaysia-based Financial Institutions (MYFIs)

5.2.1. Under the Agreement, a MYFI is

- a) Any FI that is a tax resident¹ in Malaysia, but exclude any branch of the FI located outside Malaysia; or
- b) Any branch of a FI that is not tax resident, including a US FI, if the branch is located in Malaysia; or
- c) Any FI that is a tax resident in Malaysia and also in another country

5.3. Overseas Subsidiaries and Branches of MYFIs

5.3.1. Subsidiaries and branches of MYFIs that are not located in Malaysia are excluded from the scope of the Agreement and will not be regarded as MYFIs. These entities will be subject to either:

- a) The relevant US Treasury Regulations; or
- b) The respective IGAs between the jurisdictions where they are located and the US.

5.4. Related Entities Groups

5.4.1. An entity is a “Related Entity” of another Entity if either entity controls the other entity, or the two entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50% of the vote or value in an entity.

5.4.2. An entity that is a member of a Related Entity Group will not be an MYFI, 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

¹ Tax residency status is determined according to Income Tax Act 1967.

- 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 FI, including a member of its Related Entity Group.
- 5.4.3. Related Entities are relevant in the context of the obligations placed on MYFIs, in respect of any Related Entities that are NPFFI.
- 5.4.4. Where a MYFI has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the MYFI must treat the Related Entity as an NPFFI and fulfill obligations in respect of that NPFFI as set out in Article 4 of the Agreement. Further guidance on these obligations is set out in Section 10.4.

5.5. Custodial Institutions

- 5.5.1. Custodial Institutions, in relation to a client of a holder of Capital Markets Services Licence, refer to persons listed under section 121 of the Capital Markets & Services Act 2007 ("CMSA").

5.6. Depository Institutions

- 5.6.1. A Depository Institution is an entity which accepts deposits in the ordinary course of banking or similar business. Ordinary course of business, in this case, refers to one or more of the following activities:
- Accepting deposits on current account, deposit account, savings account or other similar account;
 - Paying or collecting cheques drawn by or paid in by customers;
 - Provision of finance; or
 - Accepting money under an investment account.
- 5.6.2. Entities that fall within this scope of institutions includes financial institutions regulated in Malaysia under the:
- Financial Services Act 2013
 - Islamic Financial Services Act 2013
 - Development Financial Institutions Act 2002
 - Labuan Financial Services and Securities Act 2010
 - Labuan Islamic Financial Services and Securities Act 2010

5.7. Investment Entities

5.7.1. In general, for the purpose of the Agreement, an entity is an Investment Entity if the entity primarily conducts as a business one or more of the following activities or operations, for or on behalf of a customer:

- a) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.), foreign exchange, exchange, interest rate and index instruments, transferable securities, or commodity futures trading.
- b) Individual and collective portfolio management.
 - An entity whose assets consist only of non-debt, direct interests in non-financial assets (such as real property or land), even if managed by another Investment Entity will not be an Investment Entity. However, an entity whose assets consist of indirect interests in non-financial assets (e.g. Real Estate Investment Trusts (“REITs”) which hold the underlying real property via holding companies or special purpose vehicles) will be considered an Investment Entity, and hence a MYFI.
- c) Otherwise investing, administering, or managing funds or money on behalf of other persons.

5.7.2. The types of Investment Entities include:

- Collective Investment Schemes (Section 5.8)
- Fund Distributors (Section 5.9)
- Advisory-only Distributors (Section 5.10)

5.7.3. Investment entities also include the following:

- a) Fund Manager and/or Fund Administrator licensed pursuant to Part III of the Labuan Financial Services and Securities Act 2010.
- b) Securities Licensee licensed pursuant to Part IV of the Labuan Financial Services and Securities Act 2010.
- c) Islamic Fund Manager and Fund Administrator licensed pursuant to Part IV of the Labuan Islamic Financial Services and Securities Act 2010.
- d) Islamic Securities Licensee licensed pursuant to Part V of the Labuan Islamic Financial Services and Securities Act 2010.

- e) A holder of Capital Markets Services Licence under section 58(1) of the CMSA for any of the following regulated activities listed in Schedule 2 of CMSA:
- Dealing in securities;
 - Dealing in Derivatives; or
 - Fund management
- f) Depending on how a CIS is structured, various entities (management company, fund management company, fund manager, fund administrator, transfer agent, depository, trustee, custodial institutions, platforms, nominees etc.) may fall within the definition of Investment Entity. For a CIS the manager or operator of that CIS (as the case may be) has the obligation to determine which entity carries out account due diligence and reporting obligations under this Agreement by reference to its own governance structure and contractual arrangements.

5.8. Collective Investment Schemes (CIS)

5.8.1. The account due diligence and reporting obligation on the Account Holders lies with MYFIs.

5.8.2. For the purpose of the Agreement, any Investment entity other than:

- A CIS; or
- A manager or operator for the CIS that is not constituted as an entity;

will not have any reporting responsibilities in relation to the interests in the CIS.

5.8.3. CIS include the following:

- a) Mutual Fund registered pursuant to Part III of the Labuan Financial Services and Securities Act 2010.
- b) Issuance of Securities approved pursuant to Part II of the Labuan Financial Services and Securities Act 2010.
- c) Islamic Mutual Fund registered pursuant to Part IV of the Labuan Islamic Financial Services and Securities Act 2010.
- d) Issuance of Securities approved pursuant to Part III of the Labuan Islamic Financial Services and Securities Act 2010.

e) Unit trusts schemes and prescribed investment schemes that are approved, authorised or recognised by the SC under the Capital Markets and Services Act 2007. In this regard, collective investment schemes means, any arrangement where:

- it is made for the purpose, or having the effect of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, derivatives or any other property (hereinafter referred to as scheme's assets or sums paid out of such profits or income;
- the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and
- the scheme's assets are managed by an entity who is responsible for the management of the scheme's assets and is approved, authorised or licensed by a securities regulator to conduct fund management activities.

5.9. Fund Distributors

5.9.1. Under this Agreement, Fund distributors fall within the definition of Investment Entity because of the role in distributing a CIS.

5.9.2. Fund distributors include:

- Financial advisers;
- Institutional Unit Trust Adviser ("IUTA") registered with Federation of Investment Managers Malaysia ("FIMM"); and
- Corporate Unit Trust Adviser ("CUTA") registered with FIMM.

5.9.3. There are two types of fund distributors:

- Those that act as an intermediary in holding the legal title to the CIS (such as a nominee); and
- Those that act on an advisory only basis.

5.9.4. Where a unit holder appears on a CIS's register, the responsibility to report on that unit holder lies with the MYFIs. Where a fund distributor appears on a CIS's register on behalf of their unit holder as nominees, the fund distributor will be responsible for reporting on its Financial Account. For example, if a customer invests in a fund via a fund platform, the responsibility to report the customer lies with the platform.

- 5.9.5. A fund distributor may have a “mixed business” i.e. it acts as an adviser or “pure intermediary” between the investor and the underlying CIS, on behalf of some unit holder. In addition, it also holds legal title to interests on behalf of other customers. In the case where legal title is held, the fund distributor will be a MYFI, with a reporting obligation in respect of those interests.

5.10. Advisory-only Distributors

- 5.10.1. Financial advisers are those providing services limited to investment advice to their customers, acting as intermediary between a CIS, fund platform and customers. They do not hold legal title to the assets and therefore are not in the chain of ownership of a CIS and will not be regarded as the FIs that maintain the Financial Accounts of their customers. Such financial advisers may nevertheless be asked by FIs to provide assistance in identifying Account Holders and obtaining self-certifications.
- 5.10.2. The reason for FIs to depend on financial advisers is that such financial advisers often have the most in-depth knowledge of and direct access to the customer thus rendering them a good source for self-certification. However, because such financial advisers may not be FIs, they will only have obligations pursuant to contractual agreements with those FIs for which the financial advisers act as a third party service provider in relations to those Financial Accounts.

5.11. Specified Insurance Companies

- 5.11.1. A licensed insurer under the Financial Services Act 2013 (FSA) or the Labuan Financial Services and Securities Act 2010 or a licensed takaful operator under the Islamic Financial Services Act 2013 (IFSA) or the Labuan Islamic Financial Services and Securities Act 2010 or a holding company of a licensed insurer or of a takaful operator would be treated as a Specified Insurance Company under Income Tax Act/Malaysia Regulations if it issues, or is obligated to make payments with respect to the following Insurance Contracts:
- a) A Cash Value Insurance Contract (means an Insurance Contract, other than an Indemnity Reinsurance Contract between two insurance companies and a Term Life Insurance Contract); or
 - b) An Annuity Contract.

5.11.2. Insurance Brokers are normally part of the payment chain and therefore should not be classified as a Specified Insurance Company. However, this will not be the case if they have obligation to make payment under the terms of the Insurance or Annuity Contract. A general insurer or general takaful operator is not generally treated as a financial institution under the Agreement. It is instead classified as a NFFE unless it has financial accounts.

5.11.3. Any reference to insurance contract includes takaful contract.

6. Non-Financial Foreign Entities (NFFEs)

6.1. Overview

6.1.1. An NFFE is any non-US entity that is not a Foreign Financial Institution (FFI). There are two categories of NFFEs:

- a) Active NFFEs; and
- b) Passive NFFEs

6.1.2. NFFE has no registration and reporting obligations to IRBM or US IRS. However, it must determine its FATCA/IGA classification and, where necessary, self-certify its classification to the Reporting MYFI that maintains its Financial Accounts.

6.1.3. A Passive NFFE may be required to obtain self-certification from a Controlling Person of that NFFE.

6.1.4. Under this Agreement, a Reporting MYFI must report Financial Accounts that are held by Passive NFFEs with Controlling Persons that are US persons or residents.

6.2. Active NFFEs

6.2.1. An Active NFFE is defined as any NFFE that meets any ONE of the following criteria:

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

- b) The share of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an entity, the share of which is regularly traded on an established securities market (Section 8.11.6);
- c) The NFFE is incorporated in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- d) The NFFE is a non-US government, a political subdivision of such non-US government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a US Territory, an international organisation, a non-US Central Bank of issue, or an entity wholly-owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding share of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a FI, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- 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 FI, provided that such a NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial incorporation of the NFFE;
- g) The NFFE was not a FI in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a FI;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a FI;
- i) The NFFE is an “Excepted NFFE” as described in the US Treasury Regulations; or

j) The NFFE meets all of the following requirements:

- It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
- 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 charity's jurisdiction of residence or the charity's formation documents do not permit any income or assets of the charity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the charity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the charity has purchased; and
- The applicable laws of the charity's jurisdiction of residence or the charity's formation documents require that upon the charity's liquidation or dissolution, all of its assets be distributed to a government entity or other non-profit organisation, or escheat to the government of the charity's jurisdiction of residence or any political subdivision thereof.

6.3. Passive Income

6.3.1. Passive income means non-trading income and would include:

- a) Dividend;
- b) Interest;
- c) Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amount received depends in whole or part upon the performance of the pool;

- d) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;
- e) Annuities;
- f) Net gains from the sale or exchange of property that gives rise to passive income described under the above items;
- g) Foreign currency gains.

6.3.2. Passive income does not include any income from interest, dividends, rents or royalties received or accrued from a related person to the extent such amount is properly derived from income of that related person that is not passive income. For purposes of the Agreement, a person is a related person with respect to the NFFE if:

- a) Such a person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the NFFE; or
- b) Such a person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the NFFE

6.4. Passive NFFEs

6.4.1. A Passive NFFE is any NFFE that is not:

- a) An Active NFFE; or
- b) A withholding foreign partnership or withholding foreign trust

6.4.2. Only the accounts of Passive NFFEs need to be assessed when undertaking the due diligence procedures under the Agreement to identify Controlling Persons who are US citizens or residents and US Reportable Accounts.

7. Non-Reporting Malaysia Financial Institutions

7.1. Overview

7.1.1. Annex II of the Agreement contains provisions for entities to be exempted from FATCA reporting obligations.

7.1.2. For the purpose of the Agreement, entities exempted from FATCA reporting obligations are regarded as Non-Reporting MYFIs, provided

that they do not derive payments from commercial activities similar to those undertaken by MYFIs.

7.1.3. Non-Reporting MYFIs, as described in Annex II of the Agreement, will fall under the following categories:

- a) Exempt Beneficial Owner; or
- b) Deemed-Compliant FFI (DCFFI)

7.1.4. A Non-Reporting MYFI is not required to undertake the following obligations:

- a) Register with the US IRS to obtain a Global Intermediary Identification Number (GIIN), except for Registered DCFFI; and
- b) Carry out due diligence procedures and reporting obligations under the Agreement.

7.2. Exempt Beneficial Owners

7.2.1. Entities that are Exempt Beneficial Owners do not have any reporting or registration requirements in relation to any Financial Accounts that they maintain, provided that they do not derive payments from commercial activities similar to those undertaken by MYFIs.

7.2.2. Exempt Beneficial Owners will not need to register for GIIN.

7.2.3. Additionally, Reporting MYFIs are not required to review or report on accounts held by Exempt Beneficial Owners.

7.2.4. Exempt Beneficial Owners are entities that fall within the following categories:

- Government and Government-Linked Entities
- Central Bank
- International Organisations
- Qualifying Funds
- Investment Entity wholly-owned by Exempt Beneficial Owners

7.3. Government and Government-Linked Entities

7.3.1. Malaysia Government and Government-Linked entities include but are not limited to the following:

- a) All Malaysia Ministries and their wholly owned and controlled entities, whether held directly or indirectly.
- b) All Statutory Boards and their wholly owned and controlled entities, whether held directly or indirectly.
- c) All State Government Authorities and their wholly owned and controlled entities, whether held directly or indirectly.
- d) All Local Authorities including District, Municipal, City and Town Councils and their wholly owned and controlled entities, whether held directly or indirectly.
- e) All Organs of Government.

7.4. Central Bank

- 7.4.1. This refers to Bank Negara Malaysia established under the Central Bank of Malaysia Act 2009 and all its wholly-owned subsidiaries and International Representative Offices.

7.5. International Organisations

- 7.5.1. This comprises any Malaysian office of any international organisations and any wholly owned agency or instrumentality thereof, as provided under the International Organisations (Privileges And Immunities) Act 1992 and also include the following entities:

- International Islamic Liquidity Management Corporation established under the International Islamic Liquidity Management Act 2011;
- Islamic Finance Services Board established under the Islamic Finance Services Board Act 2002;
- Islamic Development Bank Kuala Lumpur Regional Office (IDB); and
- ASEAN Infrastructure Fund Ltd.

7.6. Qualifying Funds

- 7.6.1. This category covers Broad Participation Retirement Funds and Pension Funds of an Exempt Beneficial Owner.

Broad Participation Retirement Fund

7.6.2. A fund established in Malaysia to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

- a) Does not have a single beneficiary with a right to more than 5% of the fund's assets;
- b) Is regulated and provides annual information reporting about its beneficiaries to IRBM; and
- c) Satisfies at least one of the following requirements:
 - The fund is generally exempt from tax in Malaysia on investment income due to its status as a retirement or pension plan;
 - The fund receives at least 50% of its total contributions (other than transfers of assets from other plans described as Broad Participation Retirement Funds, Narrow Participation Retirement Funds or Pension Funds of an Exempt Beneficial Owner or Retirement and Pension Accounts described under (Section 8.12 of this guide) from the sponsoring employers;
 - Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described as Broad Participation Retirement Funds, Narrow Participation Retirement Funds or Pension Funds of an Exempt Beneficial Owner or Retirement and Pension Accounts described under Section 8.12 of this guide), or penalties apply to distributions or withdrawals made before such specified events; or
 - Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed US\$50,000 annually, applying the rules for account aggregation and currency translation.

Pension Fund of an Exempt Beneficial Owner

7.6.3. A fund established in Malaysia by an Exempt Beneficial Owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees, if the benefits

provided to such beneficiaries or participants are in consideration of personal services performed for the Exempt Beneficial Owner.

7.7. Investment Entities Wholly-Owned by Exempt Beneficial Owners

- 7.7.1. An Entity that is a Malaysian Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

7.8. Deemed-Compliant FFIs (DCFFIs)

- 7.8.1. MYFIs qualifying as DCFFIs under Annex II of the Agreement are categorised in Section 1471 (FATCA) of the US Treasury Code into the following:
- a) Registered DCFFIs; or
 - b) Certified DCFFIs
- 7.8.2. Only a Registered DCFFI is required to register with the US IRS.
- 7.8.3. Sponsoring entities are responsible for undertaking diligence procedures and reporting requirements under the Agreement on behalf of sponsored entities.

7.9. Registered DCFFIs

- 7.9.1. Registered DCFFIs include:
- MYFIs with a local client base
 - Sponsored Investment entities
 - Controlled Foreign Corporation
 - Qualified Credit Card Issuers
- 7.9.2. A MYFI that qualifies as a Registered DCFFI will need to obtain a GIIN from the US IRS and also to submit annual returns to IRBM.

7.10. MYFIs with a Local Client Base

7.10.1. MYFIs with a Local Client Base must meet the following conditions:

- a) The MYFI must be licensed or regulated under the laws of Malaysia (e.g. a Financial institutions licensed and regulated under the Financial Services Act 2013, Islamic Financial Services Act 2013 or the Development Financial Institutions Act 2002, Labuan Financial Services and Securities Act 2010, Labuan Islamic Financial Services and Securities Act 2010 and CMSA);
- b) The MYFI must have no fixed place of business outside Malaysia. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the MYFI performs solely administrative support functions;
- c) The MYFI must not solicit potential Financial Account Holders outside Malaysia. For this purpose, a MYFI shall not be considered to have solicited such customers outside Malaysia merely because it operates a website, provided that the website does not specifically indicate that the MYFI provides accounts or services to non-Malaysia citizens or otherwise target or solicit US customers. The MYFI will also not be considered to have solicited potential Financial Account holders outside Malaysia if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside Malaysia, as long as the advertisement does not specifically indicate that the MYFI provides services to non-residents, and does not otherwise target or solicit US customers or account holders;
- d) The MYFI must be required under Malaysia's tax laws to identify whether account holders are Malaysia citizens for purposes of either:
 - Information reporting or withholding of tax with respect to Financial Accounts held by residents; or
 - Satisfying Malaysia's Anti Money Laundering and Counter Financing of Terrorism (AML/CFT) customer due diligence (CDD) requirements.
- e) At least 98% of the accounts by value maintained by the MYFI must be held by Malaysia citizens. The 98% threshold can include the accounts of US Persons (both Individual and entity Accounts) if they are Malaysia citizens. A MYFI will need to assess whether it meets this criteria annually. The measurement can be taken at any

point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year;

- f) Beginning on or before 1 July 2014, the MYFI must have policies and procedures, consistent with those set forth in Annex I of the Agreement, to prevent provision of Financial Accounts to:
- Any Specified US Person who is not a Malaysia citizen (including a US Person that was Malaysia citizen when the account was opened, but subsequently ceases to be one);
 - Any NPFFI; or
 - Any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not Malaysia citizens.
- g) Such policies and procedures must also provide that if any of such Financial Account mentioned above is discovered, the MYFI must either:
- Report that account as though the MYFI were a Reporting MYFI (which includes following the applicable registration requirements on the US IRS Online FATCA Registration website); or
 - Close the account.
- h) With respect to a Preexisting Account which is held by a non-Malaysia citizen or by an entity, and that is opened prior to the date that the MYFI implements the policies and procedures described in subparagraph (g) above, the MYFI must review those accounts in accordance with the procedures applicable to Preexisting Accounts (as described in Annex I of the Agreement), to identify any US Reportable Account or Financial Account held by an NPFFI. If any such Financial Account is discovered, the MYFI must either:
- Report that account as though the MYFI were a Reporting MYFI (which includes following the applicable registration requirements on the US IRS Online FATCA Registration website); or
 - Close the account.
- i) Each Related Entity of the MYFI, where the Related Entity is itself a FI:

- Must be incorporated or organised/established in Malaysia; and
- Must also meet the requirements for a MYFI with a Local Client Base,

with the exception of any Related Entity that is a retirement fund described in Paragraph(II)(B)-(D) of the Agreement, satisfy the requirements set forth in Paragraph(III)(A) of the Agreement.

- j) The MYFI must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are Malaysia citizens.

7.11. Sponsored Investment Entities and Controlled Foreign Corporations

7.11.1. A FI is a Sponsored Investment Entity if:

- It is an Investment Entity established in Malaysia (MYFI) that is not a qualified intermediary ("QI"), withholding foreign partnership, or withholding foreign trust; and
- If an entity has agreed with the MYFI to act as a sponsoring entity for the MYFI.

7.11.2. A FI is a Sponsored Controlled Foreign Corporation if the FI is a Controlled Foreign Corporation organised under the laws of Malaysia that:

- is not a QI, withholding foreign partnership, or withholding foreign trust;
- is wholly-owned (directly or indirectly) by a Reporting USFI that agrees to act, or requires an affiliate of the FI to act, as a sponsoring entity for the FI; and
- shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account and customer information.

7.11.3. The sponsoring entity has to comply with the following requirements:

- The sponsoring entity is authorised to act on behalf of the MYFI (which in this case will be known as the sponsored entity) to fulfill applicable registration requirements on the US IRS Online FATCA Registration website;

- b) The sponsoring entity has registered as a sponsoring entity with the US IRS;
- c) If the sponsoring entity identifies any US Reportable Accounts with respect to the sponsored entity, the sponsoring entity registers the sponsored entity on or before the later of December 31, 2015 and the date that is 90 days after such a US Reportable Account is first identified;
- d) The sponsoring entity agrees to perform, on behalf of the sponsored entity, all due diligence and reporting requirements under the Agreement that the sponsored entity would have been required to perform if it were a Reporting MYFI;
- e) The sponsoring entity identifies the sponsored entity and includes the GIIN of the sponsored entity (obtained after registering with the US IRS) in all reporting completed on the sponsored entity's behalf; and
- f) The sponsoring entity has not had its status as a sponsor revoked.

7.12. Qualified Credit Card Issuers

7.12.1. A Qualified Credit Card Issuer can register as a DCFFI if it meets the following requirements:

- a) It is a MYFI solely because it is an issuer of credit cards that accepts deposits only when the customer makes a payment in excess of a balance due with respect to the credit card account and overpayment is not immediately returned to the customer; and
- b) It implements policies and procedures (by the later of 30 June 2014 or the date it registers as a DCFFI) either to prevent a customer deposit in excess of US\$50,000 or to ensure that any customer deposit in excess of US\$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

7.13. Certified DCFFIs

7.13.1. Certified DCFFIs include:

- Local Bank
- MYFIs with only Low Value Accounts
- Sponsored Closely Held Investment Vehicles
- Investment Advisers and Investment Managers

7.13.2. A MYFI that qualifies to be a Certified DCFFI is not required to register for a GIIN or undertake any obligations under the Agreement.

7.14. Local Bank

7.14.1. A MYFI will be deemed as a Local Bank if:

- a) It operates solely as (and is licensed and regulated under the laws of Malaysia) a bank or similar cooperative credit organisation that is operated without profit; or
- b) Its business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organisation, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organisation.

7.14.2. There is also a limit on the total assets that can be held of US\$175 million in assets for single entity and US\$500 million total for a group of Related Entities.

7.14.3. Any Related Entities of the non-registering Local Bank must also satisfy these requirements.

7.14.4. More information can be found in Section III Paragraph B from Annex II of the Agreement. For the avoidance of doubt, all credit cooperatives registered under the Co-operative Societies Act 1993, and which meet the conditions under Annex II, Section III (B), will not be subject to the reporting requirements under the Agreement and FATCA-related withholding.

7.15. MYFIs with only Low Value Accounts

7.15.1. A MYFI is treated as having only Low Value Accounts, if:

- The MYFI is not an Investment Entity;

- No Financial Account maintained by the MYFI or any Related Entity has a balance or value exceeding US\$50,000 (applying the rules in Annex I of the Agreement for account aggregation and currency translation); and
- The MYFI, together with any Related Entities, has no more than US\$50 million in assets on their combined balance sheet.

7.16. Sponsored Closely Held Investment Vehicles

7.16.1. This category of DCFFI is very similar to a Sponsored Investment Entity under the Registered DCFFI category. The requirements to qualify are as follows:

- a) The MYFI must be an Investment Entity that is not a US QI, withholding foreign partnership or withholding foreign trust;
- b) The MYFI is required to have a contractual arrangement with a sponsoring entity that is a Participating FFI, Reporting Model 1 FI or USFI that is authorised to manage the MYFI and enter into contracts on its behalf under which the sponsoring entity agrees to perform all due diligence, withholding and reporting responsibilities that the MYFI would have if it were a Reporting MYFI;
- c) The sponsored vehicle does not hold itself out as an investment vehicle for unrelated parties; and
- d) The sponsored vehicle has 20 or fewer individuals that own all of its Debt and Equity Interests (disregarding interests owned by Participating FFIs, DCFFIs and equity interests owned by an entity if that entity owns 100% of the equity interest in the FFI and is itself a Sponsored Closely Held Investment Vehicle).

7.16.2. The sponsoring entity will have to register with the US IRS as a sponsoring entity (it does not need to register the sponsored entities) and perform the duties of a Participating or Reporting Model 1 FI with respect to the sponsored entities.

7.17. Investment Advisers and Investment Managers

7.17.1. Where an investment adviser or investment manager falls under the category of an Investment Entity, it would be considered a Non-Reporting MYFI if it is established in Malaysia and its sole activity is to:

- a) Render investment advice to, and act on behalf of, or
- b) Manage portfolios for, and act on behalf of,

a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a FI other than a NPFFI.

- 7.17.2. It will be considered a Certified DCFFI, and is not required to register for a GIIN or undertake any obligations under the Agreement.
- 7.17.3. For the purpose of the above, the investment manager's activity must not include managing or administering its own collective investment schemes, and its customers' investments are held with FIs that are not NPFFIs.

8. Financial Accounts

8.1. Overview

8.1.1. Financial Account means an account maintained by a MYFI.

8.1.2. The 5 categories of Financial Accounts are:

- Depository Accounts;
- Custodial Accounts;
- Cash Value Insurance Contracts;
- Annuity Contracts; and
- Equity and Debt Interests in a Financial Institution.

8.1.3. Financial Accounts excluded from due diligence and reporting under the Agreement include:

- Accounts excluded from the definition of Financial Accounts as contained in Annex II of the Agreement ;
- Accounts held solely by one or more Exempt Beneficial Owners; or
- Accounts held by NPFFIs that hold the Financial Accounts as intermediaries solely on behalf of one or more such owners.

8.1.4. A reporting MYFI or a third party acting on behalf of a MYFI must follow the due diligence procedures under the Agreement, to identify:

- Whether it maintains any Financial Accounts;
- The type of Finance Accounts held; and
- Whether the Financial Accounts are US Reportable Accounts.

8.2. US Reportable Accounts

- 8.2.1. A Financial Account is a US Reportable Account where it is held by one or more Specified US Persons, or by a Passive NFFE, with one or more Controlling Persons who are Specified US Persons.
- 8.2.2. Reporting MYFI must follow due diligence procedures under the Agreement in order to identify US Reportable Accounts.
- 8.2.3. Where a MYFI engages a third party to carry out its due diligence and reporting, the obligations remain with the MYFI.
- 8.2.4. Reporting MYFIs with no Reportable Accounts will be required to make a nil return to IRBM on an annual basis.

8.3. Account Holders

- 8.3.1. An Account Holder is a person listed or identified as the holder or owner of the account with the MYFI that maintains the account. For example:
 - Where an individual is listed as the holder of a Financial Account, the individual is the Account Holder.
 - Where a Partnership is listed as the holder of a Financial Account, the Partnership is the Account Holder, rather than the partners in the Partnership.
 - Where a Trust is listed as the holder of a Financial Account, the Trust is the Account Holder, rather than its owners or beneficiaries.
- 8.3.2. For avoidance of doubt, “person” for the purpose of the Agreement means an individual, or an entity, that means a partnership or a corporation.

8.4. Account Held by Non-FI Agents

- 8.4.1. A person, other than a FI, that holds a Financial Account for the benefit or account of another person, as agent, custodian, nominee, signatory, investment adviser or intermediary, is not treated as an Account Holder for the purpose of the Agreement.

8.5. Joint Accounts

- 8.5.1. Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to each joint holder of the account, for both aggregation and reporting purposes.
- 8.5.2. Where a Financial Account is jointly held, and if at least one of the joint holders is identified as a Specified US Person, the account is treated as a US Account.
- 8.5.3. Where a Financial Account is jointly held by an individual and an entity, the FI will need to apply separately both the individual and entity due diligence requirements under the Agreement in relation to that account.

8.6. Account Holders for Cash Value Insurance and Annuity Contracts

- 8.6.1. The Account Holder of an Insurance or Annuity Contract is the person entitled to access the contract's value (for example through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.
- 8.6.2. Where no person can access the contract's value or change a beneficiary, the Account Holders are:
- Any person named in the contract as a policy owner or takaful participant; and
 - Any person who is entitled to receive a future payment under the terms of the contract.
- 8.6.3. When an obligation to pay an amount under the contract becomes due, each person that is entitled to receive a payment is an Account Holder.

8.7. Depository Accounts

- 8.7.1. A Depository Account is any commercial, current, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, investment certificate, certificate of indebtedness, or other similar instrument by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed

investment contract or similar agreement to pay or credit interest thereon.

8.7.2. The account does not have to be an interest bearing account. A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card company engaged in banking or similar business. However, credit cards will not be considered to be Depository Accounts where the issuer meets the requirements to be deemed as a “Qualified Credit Card Issuer” thus a Registered DCFFI (Section 7.12).

8.7.3. A credit card account or revolving credit facility does not need to be reviewed, identified, or reported, provided that the Reporting MYFI maintaining the account implements policies and procedures to prevent the account balance owed to the Account Holder to exceed US\$50,000.

8.7.4. Please refer to Section 9 for the relevant due diligence procedures under the Agreement for Depository Accounts that are required to be reviewed, identified or reported as US Reportable Accounts.

8.7.5. In relation to Insurance Contracts;

- A Depository Account includes an amount that an insurance company holds under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon.
- A Depository Account does not include an advance premium or premium deposit received by an insurance company provided the prepayment or deposit relates to an Insurance Contract for which the premium is payable annually and the amount of the prepayment or deposit does not exceed the annual premium for the contract. Such amounts are also excluded from Cash Value for purposes of determining whether a contract is a Cash Value Insurance Contract.

8.8. Custodial Accounts

8.8.1. A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment. Financial instruments/contracts which can be held in such accounts can include, but are not limited to:

- A share in a corporation;

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

8.9. Cash Value Insurance Contract

8.9.1. For the purpose of the Agreement, a Cash Value Insurance Contract means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies and a term life insurance contract) that has an aggregate cash value greater than US\$50,000.

Cash Value

8.9.2. The term “Cash Value” means any amount (determined without reduction for any charge or policy loan) that:

- The amount that the policyholder is entitled to receive upon surrender, termination, cancellation, or withdrawal (determined without reduction for any surrender charge or policy loan); or
- The amount the policy holder can borrow under or with regard to the contract (for example, by pledging as collateral).

8.9.3. “Cash Value” does not include an amount payable:

- Solely by reason of the death of the individual insured;
- As a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- As 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 a Life Insurance or Annuity Contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract,

or arising from the correction of a posting or similar error with regard to the premium for the contract;

- As a policyholder dividend (other than a termination dividend) related to certain Insurance Contracts; or
- 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 in question does not exceed the next annual premium that will be payable under the contract. If the amount should exceed the next annual premium, the MYFI should report the full value of the advance premium paid.

8.10. Annuity Contract

8.10.1. An Annuity Contract is 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; or
- Is considered to be an annuity contract in accordance with the law, regulation or practice of Malaysia in which the contract was issued and under which the issuer agrees to make payments for a term of years.

8.10.2. Reinsurance of Annuity Contracts between two Insurance Companies is excluded from this definition.

8.11. An Equity or Debt Interest in a Financial Institution

8.11.1. Any debt or equity interest in an entity that is a MYFI solely because it is an Investment Entity will constitute a Financial Account under the Agreement.

8.11.2. With regard to Depository Institutions, Custodial Institutions and Specified Insurance Companies, debt or equity interests may constitute Financial Accounts if:

- The value of such interests is determined primarily by reference to assets that give rise to US Source Withholdable Payments; and
- The class of interest was established for the avoidance of reporting under the Agreement.

- 8.11.3. Where an Investment Entity is an asset manager, investment adviser or other similar entity, the debt and equity interests issued in such Investment Entity are excluded from being a Financial Account. This mirrors the treatment of debt and equity interests in entities that are solely Depository or Custodial Institutions.
- 8.11.4. In the case of a Partnership that is a MYFI, the term Equity Interest means either a capital or profits interest in the Partnership.
- 8.11.5. In the case of a unit trust that is a MYFI, an Equity Interest means an interest held by:
- A settlor of the trust;
 - A beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the trust; or
 - A beneficiary that receives a discretionary distribution (either directly or indirectly) from the trust in the calendar year.

Debt or Equity Interests Regularly Traded on an Established Securities Market

- 8.11.6. The Agreement excludes debt or equity interests that are “regularly traded on an established securities market” because such interests are typically held through other FIs, so there would be no reporting obligations by the issuing entity. An interest will be regarded as “regularly traded” if there is a meaningful volume of trading on a continuous basis.
- a) The term “established securities market” would mean an exchange that is approved or recognised and supervised by an authority in which the market is located.
 - b) MYFIs may determine if there is a “meaningful volume of trading on a continuous basis” of an interest or that an exchange has a “meaningful annual volume of shares traded” based on historical trading volumes.
 - c) An interest can be considered as “regularly traded on an established securities market” if the interest has been admitted to quotation for trading on an Approved Exchange, Registered Electronic Facilities, or Recognised Securities Exchange; all within the meaning of the CMSA.
 - d) An interest that is “regularly traded on an established securities market” will not constitute a Financial Account provided that above-mentioned conditions (a) to (c) are met. However, the

exclusion of these interests does not affect the obligation of a Custodial Institution to report on Custodial Accounts in which interests that qualify for the exclusion may be held.

- e) Under the Agreement, the term “regularly traded on an established securities market” is also relevant to a Reporting MYFI in determining the status of its Entity Account Holders, in the following manners:
- An Entity Account Holder that is a US corporation, whose share is “regularly traded on an established securities market”, is excluded from the definition of Specified US Person.
 - A non-US Entity Account Holder whose share is “regularly traded on an established securities market” will be considered an Active NFFE, if it meets the relevant conditions to qualify as an Active NFFE. Financial Accounts held by Active NFFEs are not subject to reporting requirements under the Agreement or FATCA-related withholding.
- f) To establish the status in the above scenarios, a Reporting MYFI can rely on:
- Self-certification provided by the Account Holder in question; or
 - Information the responsible MYFI has in possession or that is publicly available.
- g) However, if there is evidence of deliberate efforts or practices to avoid reporting obligations under the Agreement or facilitate tax evasion, such a debt or equity interest will be treated as a Financial Account.

Holder of Interest is Registered on the Books of an Investment Entity

- 8.11.7. An interest is not considered “regularly traded on an established securities market” if the holder of the interest (not including a MYFI acting as an intermediary) is registered on the books of an Investment Entity. This is a necessary safeguard to ensure that reporting still occurs where persons who hold interests that are “regularly traded on an established securities market” hold such interests directly on the books of an Investment Entity, rather than through a Reporting MYFI via a custodian or nominee arrangement. Without this safeguard, investors could avoid reporting of their Financial Account if such interests were not acquired or held through a Reporting MYFI (i.e. in an inter-broke

arrangement, where interests could be acquired with the assistance of a non-reporting execution-only broker and be held directly by the investor).

a) In recognition of practical compliance issues, the Agreement provides for relief and a transitional period to allow affected entities (e.g. Investment Entities, brokers, share registries) to make arrangements that will enable Investment Entities to meet their reporting obligations with respect to such interests. Under the Agreement,

- For such interests that are first registered on the books of such MYFI prior to 1 July 2014, they will not be regarded as Financial Accounts.
- For such interests that are first registered on the books of such MYFI on or after 1 July 2014, they will not be regarded as Financial Accounts before 1 January 2016.

8.12. Accounts or Products Exempt from being Financial Accounts

8.12.1. Annex II of the Agreement sets out certain accounts that have been agreed as low risk of tax evasion and which are exempted from the definition of Financial Accounts.

8.12.2. The Agreement also makes provisions for Annex II to be updated, either to allow for low risk products to be added or to remove products that are no longer deemed low risk.

8.12.3. These exempt Accounts are summarised in the Sections 8.13 to 8.18 that follows.

8.13. Certain Other Tax Favoured Accounts or Products

8.13.1. This category covers:

- Retirement and Pension Accounts
- Non- Retirement Savings Accounts

8.13.2. These accounts are excluded from the definition of Financial Accounts pursuant to Annex II of the Agreement and need not be subject to due diligence or reporting requirements under the Agreement.

Retirement and Pension Accounts

8.13.3. This refers to a retirement or pension account maintained in Malaysia that satisfies the following requirements under the laws of Malaysia:

- a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- b) The account is tax-favoured (*i.e.*, contributions to the account that would otherwise be subject to tax in Malaysia under the laws of Malaysia, are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) Annual information reporting is required to IRBM with respect to the account;
- d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- e) Either (i) annual contributions are limited to US\$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of US\$1,000,000 or less, in each case applying the rules set forth in Annex I for account aggregation and currency translation.

Non-Retirement Savings Account

8.13.4. This refers to an account maintained in Malaysia (other than an Insurance or Annuity Contract) that satisfies the following requirements under the laws of Malaysia:

- a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
- b) The account is tax-favoured (*i.e.*, contributions to the account that would otherwise be subject to tax in Malaysia are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate) or state-subsidised;
- c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of

educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

- d) Annual contributions are limited to US\$50,000 or less or do not exceed US\$50,000, applying the rules set forth in Annex I for account aggregation and currency translation.

8.14. Accounts of Deceased Persons/ Estates

- 8.14.1. Accounts of deceased persons will not be Financial Accounts where the MYFI that maintains them has received and is in possession of a formal notification of the Account Holder's death (for example a copy of the deceased's death certificate). Such an account will not be reportable in the year of the Account Holder's death or in subsequent years.

8.15. Intermediary Accounts (Escrow Accounts)

- 8.15.1. Accounts that meet the conditions below will not be considered as Financial Accounts.

- 8.15.2. Accounts held by a MYFI for a non-Financial Intermediary (such as a firm of solicitors or estate agents) and established for the purposes of:

- a) a court order, judgment or other legal matter on which the non-Financial Intermediary is acting on behalf of their underlying client; or
- b) a sale, exchange, or lease of real or personal property where it also meets the following conditions:
 - The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction;
 - The account is established and used solely to secure the obligation of the parties to the transaction;
 - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed;

- The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
 - The account is not associated with a credit card account.
- 8.15.3. Accounts provided by a non-Financial Intermediary as an Intermediary (such as non-legal Escrow type accounts) that meet the conditions above will also not be Financial Accounts.

8.16. Dormant Accounts

8.16.1. A Dormant Account is an account (other than a Cash Value Insurance Contract or Annuity Contract) that is dormant or inactive under:

- Applicable laws or regulations; or
- The normal operating procedures of the Reporting MYFI applied for all accounts maintained.

8.16.2. Generally, an account is considered dormant when an account does not have any transaction (withdrawal or deposit) for a continuous period of at least 12 months.

8.16.3. The MYFI should classify the account based upon existing documentation for the Account Holder. Where this review determines that the dormant account is reportable, the MYFI should make the appropriate report notwithstanding that there has been no contact with the Account Holder. Where the MYFI has closed the account and transferred the customer's account balances to a pooled 'unclaimed balances account', however described, maintained by the bank there will be no customer account to report.

End of Dormancy

8.16.4. An account will no longer be dormant when:

- The Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the MYFI;
- The Account Holder has communicated with the MYFI that maintains such account regarding the account or any other account held by the Account Holder with the MYFI; or
- The account ceases to be a dormant account under applicable laws or regulations or the MYFI's normal operating procedures.

- 8.16.5. For such account, the responsible MYFI would then have to establish the Account Holders' status as if the account were a New Account and to carry out the necessary due diligence procedures and reporting obligation under the Agreement.

8.17. Rollovers

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

8.18. Syndicated Loans

- 8.18.1. In relation to syndicated loan activities, an entity acting as a lead manager/ fronting bank/agent ("Agent") of a syndicated Invoice Finance facility would not be an Investment Entity or Custodian Institution provided no other business activities would bring the entity into these classifications.
- 8.18.2. Where a borrower requires a large or sophisticated facility, or multiple types of facility, this is commonly provided by a group of lenders, known as a syndicate, under a syndicated loan agreement.
- 8.18.3. To facilitate the process of administering the loan on a daily basis, one bank from the syndicate is typically appointed as Agent. The Agent's role is to act as the agent for the lenders, (i.e. not of the borrower) and to coordinate and administer all aspects of the loan once the loan agreement has been executed, including acting as a point of contact between the borrower and the lenders in the syndicate and monitoring the compliance of the borrower with certain terms of the facility.
- 8.18.4. In essence, the Agent performs exclusively operational functions. For example, the borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Agent and the Agent then passes these monies back to the lenders to which they are due. Similarly, the lenders advance funds to the borrower through the Agent. The terms of a syndicated loan agreement usually entitle the Agent to undertake the roles described above in return for a fee.

- 8.18.5. In these circumstances the participation of a lender in a syndicated loan, where an Agent acts for and on behalf of a syndicate of lenders which includes that lender, does not lead to the creation of a "Custodial Account" held by the Agent.
- 8.18.6. The lenders hold their interests in a loan directly rather than through the Agent and, therefore, the participation of a lender does not amount to a "Custodial Account" held by an Agent.

9. Due Diligence Procedures under the Agreement

9.1. Overview

- 9.1.1. Under the Agreement, Reporting MYFIs are responsible for the identification and reporting of US Reportable Accounts and payments to certain NPFFIs.
- 9.1.2. A Reporting MYFI can rely on a third party service provider to fulfill its FATCA obligations but the responsibility remains with the MYFI and any failure will be regarded as the failure on the part of the MYFI.
- 9.1.3. For the purpose of the Agreement:
- Preexisting Accounts are Financial Accounts maintained by MYFI as of 30 June 2014.
 - New Accounts are Financial Accounts opened on or after 1 July 2014.
- 9.1.4. The Agreement provides for *de minimis* thresholds for Accounts not required to be reviewed, identified, or reported as follows:

| Accounts | Individual | Entity |
|--------------------|--|---------------------|
| Preexisting | Financial, Depository, Custodial: US\$50,000 or less Cash Value Insurance Contract: US\$250,000 or less | US\$250,000 or less |

| | | |
|------------|--|--------------|
| New | Depository Account: US\$50,000 or less Cash Value Insurance Contract: US\$50,000 or less | No threshold |
|------------|--|--------------|

9.2. Preexisting Individual Accounts

9.2.1. A Preexisting Individual Account is a Financial Account maintained by a Reporting MYFI as of 30 June 2014.

9.3. Preexisting Individual Accounts Not required to be Reviewed, Identified, or Reported

9.3.1. The following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as US Reportable Accounts:

- a) Preexisting Individual Account with a balance or value that does not exceed US\$50,000 as of 30 June 2014.
- b) Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of US\$250,000 or less as of 30 June 2014.
- c) A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract where Malaysia laws effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to US residents.
- d) A Depository Account with a balance of US\$50,000 or less.

9.4. Review Procedures for Preexisting Lower Value Accounts

9.4.1. Lower Value Account is an account with a balance or value as of 30 June 2014, that exceeds US\$50,000 (US\$250,000 for a Cash Value Insurance Contract or Annuity Contract), but does not exceed US\$1,000,000.

9.4.2. Reporting MYFIs are required to review electronically searchable data maintained for any of the following US indicia:

- Identification of the Account Holder as a US citizen or resident;
- Unambiguous indication of a US place of birth;
- Current US mailing or residence address (including a US post office box);
- Current US telephone number;
- Standing instructions to transfer funds to an account maintained in the US;
- Currently effective power of attorney or signatory authority granted to a person with a US address; or
- An “in-care-of” or “hold mail” address that is the **sole** address the Reporting MYFI has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the US or “hold mail” address shall not be treated as US indicia.

9.4.3. If none of the US indicia listed above is discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more US indicia being associated with the account, or the account becomes a High Value Account (Section 9.6).

9.4.4. If any of the US indicia listed are discovered in the electronic search, or if there is a change in circumstances that results in one or more US indicia being associated with the account, then the MYFI must treat the account as a US Reportable Account.

Exceptions to Reporting

9.4.5. The following circumstances are the exceptions to reporting if US indicia are discovered:

- a) The Account Holder information unambiguously indicates a US place of birth and the MYFI obtains, or has previously reviewed and maintains a record of:
 - i. A self-certification that the Account Holder is neither a US citizen nor a US resident for tax purposes (which may be on an IRS Form W-8);

- ii. A non-US passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than US; **and**
 - iii. A copy of the Account Holder's Certificate of Loss of Nationality of the US or a reasonable explanation of:
 - The reason the Account Holder does not have such a certificate despite relinquishing US citizenship; **or**
 - The reason the Account Holder did not obtain US citizenship at birth.
- b) Where the Account Holder information contains a current US mailing or residence address, or one or more US telephone numbers that are the only telephone numbers associated with the account, and the Reporting MYFI obtains, or has previously reviewed and maintains a record of:
- i. A self-certification that the Account Holder is neither a US citizen nor a US resident for tax purposes (which may be on an IRS Form W-8); **and**
 - ii. Documentary evidence, as defined in Section 9.24 of this Guide, establishing the Account Holder's non-US status.
- c) Where the Account Holder information contains standing instructions to transfer funds to an account maintained in the US, and the Reporting MYFI obtains, or has previously reviewed and maintains a record of:
- i. A self-certification that the Account Holder is neither a US citizen nor a US resident for tax purposes (which may be on an IRS Form W-8); **and**
 - ii. Documentary evidence, as defined in Section 9.24 of this Guide, establishing the Account Holder's non-US status.
- d) Where the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with a US address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more US telephone numbers (if a non-US telephone number is also associated with the account), and the Reporting MYFI obtains, or has previously reviewed and maintains a record of:

- i. A self-certification that the Account Holder is neither a US citizen nor a US resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); **or**
- ii. Documentary evidence, as defined in Section 9.24 of this Guide, establishing the Account Holder's non-US status.

9.5. Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts

- 9.5.1. The review of Preexisting Individual Accounts that are Lower Value Accounts for US indicia must be completed by 30 June 2016.

Example

The due diligence procedures under the Agreement are carried out on a Lower Value Account and the account is determined as reportable in April 2016. The Reporting MYFI is only required to report on the account information for the Reporting Year 2016 and subsequent years.

- 9.5.2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more US indicia described being associated with the account, then the Reporting MYFI must treat the account as a US Reportable Account.
- 9.5.3. Except for Depository Accounts under the value of US\$50,000 any Preexisting Individual Account that has been identified as a US Reportable Account shall be treated as a US Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified US Person.

9.6. Enhanced Review Procedures for Preexisting Individual High Value Accounts

- 9.6.1. High Value accounts are accounts which have a balance or value that exceeds US\$1,000,000 as of 30 June 2014, or 31 December 2015 or at the end of any subsequent year.
- 9.6.2. Reporting MYFIs are required to review electronically searchable data maintained for any US indicia. Under the review procedures, a paper search would also be required for US indicia unless the electronically searchable information includes the following:

- The Account Holder's nationality or residence status;
- The Account Holder's residence address and mailing address currently on file with the Reporting MYFI;
- The Account Holder's telephone number(s) currently on file, if any, with the Reporting MYFI;
- Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting MYFI or another FI);
- Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; **and**
- Whether there is any power of attorney or signatory authority for the account.

9.6.3. If the electronic databases do not capture the above, a **Paper Record Search** to capture the above information with respect to a High Value Account is required. The Reporting MYFI must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting MYFI **within the last five years** for any of the US indicia:

- The most recent documentary evidence collected with respect to the account;
- The most recent account opening contract or documentation;
- The most recent documentation obtained by the Reporting MYFI pursuant to AML/CFT CDD Procedures or for other regulatory purposes;
- Any power of attorney or signature authority forms currently in effect; and
- Any standing instructions to transfer funds currently in effect.

9.6.4. In addition to the electronic and paper record searches described above, the Reporting MYFI must perform a **Relationship Manager Inquiry for Actual Knowledge** for any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) to determine if the account is held by a Specified US Person.

9.6.5. If none of the US indicia are discovered in the enhanced review of High Value Accounts and the account is not identified as held by a Specified US Person no further action is required until there is a change

in circumstances that results in one or more US indicia being associated with the account.

- 9.6.6. If any of the US indicia are discovered in the enhanced review of High Value Accounts described, or if there is a subsequent change in circumstances that results in one or more US indicia being associated with the account, then the Reporting MYFI must treat the account as a US Reportable Account unless the exceptions to reporting described in Section 9.4.5 above apply.
- 9.6.7. Except for Depository Accounts with balance less than US\$50,000, any Preexisting Individual Account that has been identified as a US Reportable Account under this section shall be treated as a US Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified US Person.

9.7. Additional Procedures Applicable to Preexisting Individual High Value Accounts

- 9.7.1. If a Preexisting Individual Account is a High Value Account as of 30 June 2014, the Reporting MYFI must complete the enhanced review procedures by **30 June 2015**. If based on this review such account is identified as a US Reportable Account on or before 31 December 2014, the Reporting MYFI must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a US Reportable Account after 31 December 2014 and on or before 30 June 2015, the Reporting MYFI is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

Example

The due diligence procedures under the Agreement are carried out on a High Value Individual and the account is determined as reportable in April 2015. The Reporting MYFI is only required to report on the account for Reporting Year 2015 and subsequent years.

- 9.7.2. If a Preexisting Individual Account is not a High Value Account as of 30 June 2014, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting MYFI must complete the enhanced review procedures with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such

account is identified as a US Reportable Account, the Reporting MYFI must report the required information about such account with respect to the year in which it is identified as a US Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified US Person.

Example

An Individual Account has a balance of US\$650,000 as at 30 June 2014. Upon review of the account on 31 December 2015, the balance on a the Individual Account is found to be in excess of \$1,000,000. The Reporting MYFI is required to undertake enhanced review of the account by June 2016 and only required to report on the account for Reporting Year 2016 and subsequent years.

- 9.7.3. Once a Reporting MYFI applies the enhanced review procedures to a High Value Account, the Reporting MYFI is not required to re-apply such procedures, other than the relationship manager inquiry to the same High Value Account in any subsequent year. A Reporting MYFI 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 Reporting MYFI is required to treat the new address as a change in circumstances and required to obtain the appropriate documentation from the Account Holder.
- 9.7.4. If there is a change of circumstances with respect to a High Value Account that results in one or more US indicia being associated with the account, then the Reporting MYFI must treat the account as a US Reportable Account unless the exceptions to reporting described in Section 9.4.5 apply.

9.8. Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes

- 9.8.1. A Reporting MYFI that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a US citizen nor a US resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the US IRS, or to fulfil its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the electronic record search for Lower Value Account or the electronic and paper record search for High Value Accounts.

9.9. New Individual Accounts

- 9.9.1. A New Individual Account is a Financial Account held by an individual and opened on or after 1 July 2014.

9.10. New Individual Accounts Not Required to Be Reviewed, Identified, of Reported

- 9.10.1. The following New Individual Accounts are not required to be reviewed, identified, or reported as US Reportable Accounts:

- a) A Depository Account unless the account balance exceeds US\$50,000 at the end of any calendar year or other appropriate reporting period; and
- b) A Cash Value Insurance Contract unless the cash value exceeds US\$50,000 at the end of any calendar year or other appropriate reporting period.

9.11. Review Procedures for New Individual Accounts

- 9.11.1. With respect to New Individual Accounts that do not meet the criteria set out for Section 9.10 for non-reporting, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to meet the above criteria), the Reporting MYFI must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting MYFI to determine whether the Account Holder is resident in the US for tax purposes (for this purpose, a US citizen is considered to be resident in the US for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting MYFI in connection with the opening of the account, including any documentation collected pursuant to AML/CFT CDD Procedures. If the Reporting MYFI is unable to obtain a valid self-certification, the Reporting MYFI must treat the account as a US Reportable Account.
- 9.11.2. If the self-certification establishes that the Account Holder is resident in the US for tax purposes, the Reporting MYFI must treat the account as a US Reportable Account and obtain a self-certification that includes

the Account Holder's US TIN (which may be an IRS Form W-9 or other similar agree form).

- 9.11.3. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting MYFI to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting MYFI cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a US citizen or resident for US tax purposes. If the Reporting MYFI is unable to obtain a valid self-certification, the Reporting MYFI must treat the account as a US Reportable Account.

9.12. Preexisting Entity Accounts

- 9.12.1. The following rules and procedures set out under Sections 9.12 to 9.17 apply for purposes of identifying US Reportable Accounts and accounts held by NPFFIs among Preexisting Accounts held by entities ("Preexisting Entity Accounts").

9.13. Preexisting Entity Accounts Not Required to be Reviewed, Identified or Reported

- 9.13.1. Preexisting Entity Account with an account balance or value that does not exceed US\$250,000 as of 30 June 2014, is not required to be reviewed, identified, or reported as a US Reportable Account until the account balance or value exceeds US\$1,000,000.

9.14. Preexisting Entity Accounts Subject to Review

- 9.14.1. A Preexisting Entity Account that has an account balance or value that exceeds US\$250,000 as of 30 June 2014, and a Preexisting Entity Account that does not exceed US\$250,000 as of June 30, 2014 but the account balance or value of which exceeds US\$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in Section 9.16.

9.15. Preexisting Entity Accounts with respect to which Reporting is Required

- 9.15.1. With respect to Preexisting Entity Accounts subject to review, only accounts that are held by one or more entities that are Specified US Persons, or by Passive NFFEs (Section 6) with one or more Controlling Persons who are US citizens or residents, shall be treated as US Reportable Accounts. In addition, accounts held by NPFFIs shall be treated as accounts for which aggregate payments (Section 10.4) are reported to IRBM.

9.16. Review Procedures for Identifying Preexisting Entity Accounts with respect to which Reporting is Required

- 9.16.1. For Preexisting Entity Accounts subject to review, the Reporting MYFI must apply the following review procedures to determine whether the account is held by one or more Specified US Persons, by Passive NFFEs with one or more Controlling Persons who are US citizens or residents, or by NPFFIs.

9.16.2. Determine whether the entity is a Specified US Person

- a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/CFT CDD Procedures) to determine whether the information indicates that the Account Holder is a US Person. For this purpose, information indicating that the Account Holder is a US Person includes a US place of incorporation or organisation, or a US address.
- b) If the information indicates that the Account Holder is a US Person, the Reporting MYFI must treat the account as a US Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified US Person.

9.16.3. Determine Whether a Non-US Entity Is a FI

- a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/CFT CDD Procedures) to determine whether the information indicates that the Account Holder is a FI.

- b) If the information indicates that the Account Holder is a FI, or the Reporting MYFI verifies the Account Holder's GIIN on the published US IRS FFI List, then the account is not a US Reportable Account.

9.16.4. Determine Whether a FI Is a NPFFI Payments to Which Are Subject to Aggregate Reporting

- a) A Reporting MYFI may determine that the Account Holder is a MYFI or other Partner Jurisdiction FI if the Reporting MYFI reasonably determines that the Account Holder has such status on the basis of the Account Holder's GIIN on the published US IRS FFI List or other information that is publicly available or in the possession of the Reporting MYFI, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.
- b) If the Account Holder is a MYFI or other Partner Jurisdiction FI treated by the US IRS as a NPFFI, then the account is not a US Reportable Account.
- c) If the Account Holder is not a MYFI or other Partner Jurisdiction FI, then the Reporting MYFI must treat the Account Holder as a NPFFI. Each MYFI shall be treated as complying with, and not subject to US FATCA-related withholding for 2015 and 2016 if the name of each NPFFI to which it has made payments and the aggregate amount of such payments are reported unless the Reporting MYFI:
 - i. Obtains a self-certification (which may be on an IRS Form W 8) from the Account Holder that it is a Certified Deemed-Compliant FFI, or an Exempt Beneficial Owner; **or**
 - ii. In the case of a Participating FFI or Registered DCFFI, verifies the Account Holder's GIIN on the published US IRS FFI List.

9.16.5. Determine Whether an Account Held by an NFFE is a US Reportable Account

- a) With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a US Person or a FI, the Reporting MYFI must identify:
 - i. Whether the Account Holder has Controlling Persons;
 - ii. Whether the Account Holder is a Passive NFFE, and

- iii. Whether any of the Controlling Persons of the Account Holder is a US citizen or resident.
- b) In making these determinations the Reporting MYFI must follow the guidance below:-
- i. For purposes of determining the Controlling Persons of an Account Holder, a Reporting MYFI may rely on information collected and maintained pursuant to AML/CFT CDD Procedures which stipulates a 25% threshold for the purpose of determining Controlling Persons.
- ii. For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting MYFI must obtain a self-certification (which may be on an IRS Form W-8 or W-9) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.
- iii. For purposes of determining whether a Controlling Person of a Passive NFFE is a US citizen or resident for tax purposes, a Reporting MYFI may rely on:
- Information collected and maintained pursuant to AML/CFT CDD Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed US\$1,000,000; **or**
 - A self-certification (which may be on an IRS Form W-8 or W-9) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds US\$1,000,000.
 - If any controlling Person of a Passive NFFE is a US citizen or resident, the account shall be treated as a US Reportable Account.

9.17. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts

- 9.17.1. Review of Preexisting Entity Accounts with an account balance or value that exceeds US\$250,000 as of 30 June 2014 must be completed by 30 June 2016.

- 9.17.2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed US\$250,000 as of 30 June 2014, but exceeds US\$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds US\$1,000,000.
- 9.17.3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting MYFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting MYFI must re-determine the status of the account in accordance with the procedures set forth in Section 9.16.

9.18. New Entity Accounts

- 9.18.1. The rules and procedures set out under Sections 9.18 to 9.20 apply for purposes of identifying US Reportable Accounts and accounts held by NPFFIs among Financial Accounts held by entities and opened on or after 1 July 2014 (“New Entity Accounts”).

9.19. New Entity Accounts Not Required to Be Reviewed, Identified or Reported

- 9.19.1. A credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, if the Reporting MYFI maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds US\$50,000.

9.20. Review Procedures for New Entity Accounts

- 9.20.1. Other than accounts described under Section 9.19, the Reporting MYFI must determine whether the Account Holder is:
- A Specified US Person;
 - A MYFI or other Partner Jurisdiction FI;
 - A Participating FFI, a DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations; or
 - An Active NFFE or Passive NFFE.

- 9.20.2. A Reporting MYFI may determine that the Account Holder is an Active NFFE, a MYFI, or other Partner Jurisdiction FI if the Reporting MYFI reasonably determines that the Account Holder has such status on the basis of the Account Holder's GIIN or other information that is publicly available or in the possession of the Reporting MYFI, as applicable.
- 9.20.3. Where the Account Holder is a MYFI or other Partner Jurisdiction FI treated by the US IRS as a NPFFI, the account is not a US Reportable Account. The name of each NPFFI to which the Reporting MYFI has made payments to and the aggregate amount of such payments have to be reported.
- 9.20.4. In all other cases, a Reporting MYFI must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:
- a) If the Account Holder is a **Specified US Person**, the Reporting MYFI must treat the account as a US Reportable Account.
 - b) If the Account Holder is a **Passive NFFE**, the Reporting MYFI must identify the Controlling Persons as determined under AML/CFT CDD Procedures, and must determine whether any such person is a US citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a US citizen or resident, the Reporting MYFI must treat the account as a US Reportable Account.
 - c) If the Account Holder is **not**: (i) a US Person that is a Specified US Person; (ii) subject to subparagraph (d) of this section, a MYFI or other Partner Jurisdiction FI; (iii) a Participating FFI, a DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE with Controlling Persons of which is a US citizen or resident, then the account is not a US Reportable Account, and no reporting is required with respect to the account.
 - d) If the Account Holder is a NPFFI (including a MYFI or other Partner Jurisdiction FI treated by the US IRS as a NPFFI), then the account is not a US Reportable Account. The name of each NPFFI to which the Reporting MYFI has made payments to and the aggregate amount of such payments has to be reported (Section 10.4).

9.21. Special Rules and Definitions

- 9.21.1. The following additional rules and definitions in Sections 9.22 to 9.28 apply in implementing the due diligence procedures under the Agreement.

9.22. Reliance on Self-Certifications and Documentary Evidence

- 9.22.1. A Reporting MYFI may not rely on a self-certification or documentary evidence if the Reporting MYFI knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

9.23. Account Balance Aggregation and Currency Translation Rule

Aggregation of Individual Accounts

- 9.23.1. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting MYFI is required to aggregate all Financial Accounts maintained by the Reporting MYFI, or by a Related Entity, but only to the extent that the Reporting MYFI's 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. Each holder of a jointly held Financial Account shall be attributable to the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described.

Aggregation of Entity Accounts

- 9.23.2. For purposes of determining the aggregate balance or value of Financial Accounts held by an entity, a Reporting MYFI is required to take into account all Financial Accounts that are maintained by the Reporting MYFI, or by a Related Entity, but only to the extent that the Reporting MYFI's computerised 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.

Special Aggregation Rule Applicable to Relationship Managers

- 9.23.3. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting MYFI is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

Currency Translation Rule

- 9.23.4. For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the US dollar, a Reporting MYFI must convert the US dollar threshold amounts described using a published spot rate by Bank Negara Malaysia² determined as of the last day of the calendar year preceding the year in which the Reporting MYFI is determining the balance or value.

9.24. Documentary Evidence

- 9.24.1. Acceptable documentary evidence includes any of the following:

- a) A certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
- b) With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
- c) With respect to an entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the entity and either the address of its principal office in the jurisdiction (or US Territory) in which it claims to be a resident or the jurisdiction (or US Territory) in which the entity was incorporated or organised.
- d) With respect to a Financial Account maintained under Malaysia AML rules that have been approved by the US IRS in connection with a QI Agreement which include:

² Please refer to the Bank Negara Malaysia Exchange Rates (<http://www.bnm.gov.my>)

- i. For natural persons
 - Passport
 - Identity card
 - Military identity card
 - Driving license
 - ii. For legal persons
 - Partnership Agreement
 - Certificate of Incorporation
 - Trust deed and any subsidiary deed showing the appointment of powers of trustees
 - Foundation Charter
- e) Any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

9.25. Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract

9.25.1. A Reporting MYFI may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified US Person and may treat such Financial Account as other than a US Reportable Account unless the Reporting MYFI has actual knowledge, or reason to know, that the beneficiary is a Specified US Person. A Reporting MYFI has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified US Person if the information collected by the Reporting MYFI and associated with the beneficiary contains US indicia as described in Section 9.4.2. If a Reporting MYFI has actual knowledge, or reason to know, that the beneficiary is a Specified US Person, the Reporting MYFI must follow the procedures in Section 9.4.4 where there is a change in circumstances of one or more US indicia being associated with the account.

9.26. Alternative Procedures for New Accounts opened between 1 July 2014 and [Date TBA]

- 9.26.1. By 31 May next following the date that is one year after [Date TBA] MYFIs must:
- a. with respect to New Individual Accounts opened between 1 July 2014 and [Date TBA], request the self-certification specified and, if

provided, confirm the reasonableness of such self-certification consistent with the procedures described in Sections 9.10 and 9.11.

- b. with respect to New Entity Accounts opened between 1 July 2014 and [Date TBA], perform the due diligence procedures and request information as necessary to document the account, including any self-certification required as required by Sections 9.19 and 9.20 .

9.26.2. MYFIs must report to IRAS on any New Account that is opened between 1 July 2014 and [Date TBA] by 31 May of the year next following the date when the account is identified as a US Reportable Account or as an account held by a NPFFI. The information to be reported with respect to such a New Account is any information that would have been reportable as of the date the account was opened.

Example

A new account is opened on 5 Sep 2014. The Reporting MYFI applies the alternative procedures in this section. The due diligence procedures are carried out and the account is determined as reportable on 8 May 2015 (i.e. within 1 year from [Date TBA]). The Reporting MYFI is only required to report on the information required as of 31 Dec 2014 and 31 Dec 2015 for the account to IRBM by 31 May 2016.

9.26.3. By the date that is one year after [Date TBA], Reporting MYFIs must close any New Account opened between 1 July 2014 and [Date TBA] for which it was unable to collect the required self-certification or other documentation pursuant to the due diligence procedures. In addition, by [Date TBA], a Reporting MYFI must:

- a) with respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified; or
- b) with respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified.

9.26.4. The Reporting MYFI must report to IRBM on any closed account that is described in Section 9.26.3 by 31 May of the year next following the date when the account is identified as a US Reportable Account or as an account held by a NPFFI. The information to be reported with respect to such a closed account is any information that would have been reportable as of the date the account was opened.

9.27. Alternative Procedures for New Entity Accounts opened on or after 1 July 2014, and before 1 January 2015

- 9.27.1. For New Entity Accounts opened on or after 1 July 2014, and before 1 January 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, MYFI may treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures related to Preexisting Entity Accounts specified in section 9.12 to 9.17 in lieu of the due diligence procedures specified in section 9.18 to 9.20. In this case, the due diligence procedures of Section 9.12 to 9.17 must be applied without regard to the account balance or value threshold specified in section 9.13.

| | Alternative Procedures (Section 9.26) | Alternative Procedures (Section 9.27) |
|-----------|---|---|
| Account | Individual and Entity Accounts | Entity Accounts only |
| Dates | 1 July 2014 till [Date TBA] (beyond 31 Dec 2014) | 1 July 2014 to 31 December 2014 |
| Treatment | FI's have 1 year from [Date TBA] to perform the relevant due diligence review for Individual (Sections 9.10 and 9.11) and Entity (Sections 9.19 and 9.20) Accounts. If the Reporting MYFI is unable to obtain a valid self-certification, the Reporting MYFI must close the account. | Entity Accounts to follow "Pre-existing Account" due diligence procedures. Accounts to be closed if required self-certification cannot be obtained. |

9.28. Reliance on Third Parties

- 9.28.1. Reporting MYFIs can rely on due diligence procedures performed by third parties, but the obligations remain the responsibility for the MYFI and any due diligence failures will be the responsibility of the MYFI.

10. Reporting

10.1. Overview

10.1.1. Once a MYFI has applied the due diligence procedures under the Agreement in respect of the accounts it holds and has identified US Reportable Accounts, it must report certain information regarding those accounts to IRBM in accordance with the timetable in Section 10.5.

10.1.2. A Reporting MYFI with no US Reportable Accounts is required to make a nil return annually to IRBM.

10.2. Information to be Reported

10.2.1. In relation to:

- a) Each Specified US Person that is the holder of a Reportable Account; and
- b) Each Non-US Entity (i.e. Passive NFFE) that is identified as having one or more Controlling Persons that is a Specified US Person,

the information to be reported is:

- i. Name
- ii. Address
- iii. US Taxpayer Identification Number (TIN) where applicable
- iv. The account number or the functional equivalent of an account number where applicable
- v. The name and identifying number (i.e. GIIN) of the Reporting MYFI
- vi. The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value) as of the end of the calendar year or other appropriate reporting period where an account is closed during a year, the amount reportable is the amount in the account immediately before the date of closure.

10.2.2. In addition to elements (i) to (vi) above, the following information in relation to the calendar year or other appropriate reporting period must also be reported:

- a) In the case of any Custodial Account

- i. The total gross amount of interest paid or credited to the account;
- ii. The total gross amount of dividends paid or credited to the account;
- iii. The total gross amount of other income paid or credited to the account; and
- iv. The total gross proceeds from the sale or redemption of property paid or credited to the account.

b) In the case of any Depository Account

- i. The total gross amount of interest paid or credited to the account.

c) In the case of any account other than a Custodial Account or a Depository Account

- i. The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the Account Holder.

10.3. Explanation of information required

Address

10.3.1. The address to be reported with respect to an account held by a Specified US Person is the residence address recorded by the Reporting MYFI for the Account Holder or, if no residence address is associated with the Account Holder, the address for the account used for mailing or other purposes by the Reporting MYFI.

10.3.2. In the case of an account held by an entity that is identified as having one or more Controlling Persons that is a US Reportable Person, the address to be reported is the address of the entity and the address of each Controlling Person of such entity that is a US Reportable Person.

Taxpayer Identification Numbers (“TINs”)

10.3.3. This refers to a US federal taxpayer identifying number. Where it has been established that an Account Holder is a US Person, a Reporting MYFI is required to obtain a US TIN in the circumstances outlined below.

- a. For Preexisting US Reportable Accounts that are reportable as of 30 June 2014:

- i. In respect of Reporting Years 2014 to 2016, the US TIN need only be reported if it exists in the records of the Reporting MYFI. If the Account Holder is an individual, the Reporting MYFI should provide the date of birth (if it is available) in the absence of a record of the US TIN.
 - ii. In respect of Reporting Year 2017 and onwards, the US TIN has to be reported.
- b. With respect to New Entity Accounts opened between 1 July 2014 and 31 December 2014 and where the Reporting MYFI has applied the due diligence procedures provided for in Section 9.27, a Reporting MYFI may regard such accounts as Preexisting Entity Accounts and the provision of the US TIN is only mandatory in respect of Reporting Year 2017 and onwards.

10.3.4. A Reporting MYFI will not be held accountable where information supplied by an individual proves to be inaccurate and the Reporting MYFI has no basis to believe that it is inaccurate.

Account Number

10.3.5. This is the identifying number, code or description that is sufficient for the Reporting MYFI to identify the US Reportable Account held by the named Account Holder.

Account Balance or Value

10.3.6. The Reporting MYFI must report the balance or value of the account as of the end of the calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account (Section 10.3.6 d)). In the case of an account that is a Cash Value Insurance or Annuity Contract, the Reporting MYFI must report the cash value or surrender value of the account.

a) General

- i. An account with a balance or value that is negative must be reported as having an account balance or value equal to zero.
- ii. The account balance or value of an account may be reported in US dollars or in the currency in which the account is denominated.

b) Valuation

- i. In arriving at the balance or value the Reporting MYFI will use the valuation methods that it applies in the normal course of its business. Any valuation method adopted must be consistent and verifiable.
- ii. Where it is not possible to, or usual to value an account at 31 December, a Reporting MYFI should use the normal valuation point for the account that is nearest to 31 December.

Example

When a Specified Insurance Company has chosen to use the anniversary date of a policy for valuation purposes where if for example, the policy was opened on 1 September 2013, it will be valued on 31 August 2014. It is this 31 August 2014 value that will be reported for the year ending 31 December 2014, if it exceeds the reporting threshold. This will be reported as the account balance to IRBM in 2015.

- iii. Where the 31 December falls on a weekend or non-working day, the date to be used is the last working day before that 31 December.
 - iv. The balance or value of an Equity Interest is the value calculated by the Reporting MYFI for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.
 - v. The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges for which the Account Holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.
- c) Joint Accounts
- i. Where a Financial Account is jointly held, the balance or value to be reported in respect of the Specified US Person is the entire balance or value of the account. The entire balance or value should be attributed to each holder of the account.

Example

For example where a jointly held account has a balance or value of \$100,000 and one of the Account Holders is a

Specified US Person then the amount to be attributed to that person would be \$100,000.

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

- ii. The same applies for an account held by:
 - A Passive NFFE with more than one Controlling Person that is a US Reportable Person, where each Controlling Person is attributed the entire balance or value of the account held by the Passive NFFE; or
 - A Passive NFFE that is a US Reportable Person with a Controlling Person that is a US Reportable Person, where the entire balance or value of the account held by the Passive NFFE must be reported with respect to both the Passive NFFE and the Controlling Person.

d) Account closures and transfers

- i. Where an account was closed during the year, the account balance or value to be reported is the balance or value immediately before the account was closed.
- ii. In the case of a Cash Value Insurance Contract and Annuity Contract that has been fully surrendered during the calendar year the Specified Insurance Company will need to report the total amount paid out to the Account Holder or nominated person at the close of the account. This will include any amount of interest following maturity where the amount is awaiting payment.

10.4. Information to be Reported with respect to Payments to NPFFIs

10.4.1. A Reporting MYFI that makes payments to an NPFFI is required to report the:

- Name
- Aggregate amount of payments

made to **each** NPFFI for the reporting years 2015 and 2016 to IRBM.

- 10.4.2. A Reporting MYFI shall report all payments made to NPFFIs without the need to distinguish nature of payments and whether they are US or non-US sourced.
- 10.4.3. In addition to the aforementioned reporting obligation, Article 4(1)(e) of the Agreement provides that, in the case of a Reporting MYFI (i) that is not acting as a QI that has elected to assume primary withholding responsibility and (ii) that makes a payment of, or acts as an intermediary with respect to, a US Source Withholdable Payment to any NPFFI, the Reporting MYFI is to provide to any immediate payor of such payment the information required for withholding and reporting to occur respect to such payment. The applicable format for the transmission of the relevant information should be agreed upon by the Reporting MYFI with the immediate payor of the payment.

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10.5. Timetable for reporting to IRBM

10.5.1. All information for the relevant reporting year is to be submitted to IRBM by 30 June of the year following the end of the reporting year. For example, a Reporting MYFI will submit information for Reporting Year 2014 to IRBM by 30 June 2015.

| Reporting Year | In Respect of | Information to be Reported | Reporting Date to IRBM |
|----------------|---|--|------------------------|
| 2014 | Each Specified US Person either | <ul style="list-style-type: none"> Name Address US TIN (where applicable or DoB for Preexisting Individual Account) Account Number or functional equivalent Name and GIIN of Reporting FI Account balance or value (in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or the surrender value) | 30 June 2015 |
| | <ul style="list-style-type: none"> holding a Reportable Account Or as a Controlling Person of an Entity Account | | |
| 2015 | <ul style="list-style-type: none"> Custodial Accounts | <ul style="list-style-type: none"> Total gross amount of interest Total gross amount of dividends Total gross amount of other income paid or credited to the account | 30 June 2016 |
| | <ul style="list-style-type: none"> Depository Accounts | <ul style="list-style-type: none"> Total amount of gross interest paid or credited to the account in the calendar year of other reporting period | |
| | <ul style="list-style-type: none"> Other Accounts | <ul style="list-style-type: none"> Total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period | |
| 2016 | <ul style="list-style-type: none"> Custodial | <ul style="list-style-type: none"> Total gross proceeds from the sale or redemption of property paid or credited to the account | 30 June 2017 |
| 2017 | | <ul style="list-style-type: none"> All of the above | |

10.6. Format for Reporting to IRBM

- 10.6.1. The format in which reporting will be required is the Intergovernmental FATCA XML Schema (Version 1.1) ("XML Schema") as published on IRBM website³.
- 10.6.2. Reporting MYFIs are required to develop their system application to collate the required data in accordance to the XML Schema. Returns in any other format will not be accepted.

10.7. Transmission

- 10.7.1. Reporting MYFIs shall submit the information to be reported to IRBM via the International Data Exchange Service ("IDES"). Reporting MYFIs' reporting obligations under the Agreement are fulfilled once the data transmission to IRBM, via the IDES, is successful. IRBM will then authorise the onward transmission of FATCA data held at the IDES to the US IRS.
- 10.7.2. The IDES is able to accept both Browser-Based and Scheduled Bulk Data Transfer. Reporting MYFIs will be able to decide on the data transmission method to adopt.
- 10.7.3. More information on the technical requirements to transmit FATCA data to the IDES will be released at a later date.

11. Compliance

11.1. Minor Errors

- 11.1.1. If the US IRS has questions or concerns in respect of minor or administrative errors that have led to an incorrect or incomplete information reporting or resulted in other infringements of the Agreement, it will contact IRBM to resolve the issue. If necessary, IRBM will contact the Reporting MYFI to request for the error to be corrected.
- 11.1.2. Examples of minor errors could include:
 - Data fields missing or incomplete;
 - Data that has been corrupted;
 - Use of an incompatible format.

³ www.hasil.gov.my

- 11.1.3. Where this leads to the information having to be resubmitted, the revised return shall be submitted to IRBM via the IDES. The Reporting MYFI concerned shall rectify the error(s) and resubmit the data to IDES within 30 days or by an appropriate date as directed by IRBM.
- 11.1.4. IRBM may update the US IRS on the progress of its discussions with the Reporting MYFI to correct the error. IRBM will inform the US IRS when the error is resolved.
- 11.1.5. Penalties may be imposed by the IRBM if the error is considered to contravene MY Legislations.
- 11.1.6. Continual and repeated administrative or minor errors could be considered as significant non-compliance where they repeatedly disrupt and prevent transfer of the information.

11.2. Significant Non-Compliance

- 11.2.1. The US IRS is entitled to notify IRBM if it has determined significant non-compliance with the obligations under the Agreement by a Reporting MYFI. IRBM will contact the Reporting MYFI to request for the non-compliance to be addressed.
- 11.2.2. The following are examples of what would be regarded as significant non-compliance:
- Repeated failure to file a return or repeated late filing.
 - On-going or repeated failure to supply accurate information or establish appropriate governance or due diligence processes.
 - The intentional provision of substantially incorrect information.
 - The deliberate or negligent omission of required information.
 - Otherwise actively assisting Specified US Persons in avoiding the reporting obligations.
- 11.2.3. IRBM may engage with the Reporting MYFI to:
- Discuss the areas of non-compliance.
 - Discuss remedies/solution to prevent future non-compliance.
 - Agree on measures and a timetable to resolve its significant non-compliance.
- 11.2.4. MYFIs are expected to provide representation on the remedial actions to be taken to prevent future non-compliance.

- 11.2.5. Where this leads to the information having to be resubmitted, the revised return will have to be submitted to IRBM via the IDES.
- 11.2.6. IRBM may update the US IRS on the progress of its discussions with the Reporting MYFI to correct the error. IRBM will inform the US IRS when the error is resolved.
- 11.2.7. Penalties may be imposed by IRBM if the error is considered to contravene MY Legislations.
- 11.2.8. In the event that the issues remain unresolved after a period of 18 months of the US IRS' notification of the issues, the IRS will treat the Reporting MYFI as a NPFFI.

11.3. Anti-Avoidance

- 11.3.1. IRBM may disregard any arrangements entered or actions taken by any person or MYFI to avoid its due diligence and reporting requirements under the Agreement. The identified anti-avoidance arrangement may also be reported to the US authorities.

11.4. Penalties

- 11.4.1. Reporting MYFIs are responsible for providing the correct information in the correct format and on a timely basis to IRBM.
- 11.4.2. There are penalties for:
 - a. Failure to provide IRBM with information in the form, manner and frequency as prescribed in the MY Regulations.
 - b. Failure to comply with the due diligence and other obligations as prescribed in the MY Regulations.
 - c. Reporting of false information to IRBM.

11.5. Others

- 11.5.1. Notwithstanding the provisions under this Guidance Notes, MYFIs are still required to comply with any existing laws of Malaysia.

12. Registration

- 12.1.1. Effective from 30-06-2014, Malaysia is treated as having an IGA in effect with the US. Reporting MYFIs should register themselves at the US IRS Online FATCA Registration Portal as FIs within a Model 1 IGA jurisdiction and obtain a GIIN by 31 December 2014 to be included on the US IRS FFI List by 1 January 2015.

13. Contact information

For enquiries on this Guidance Notes, please contact:

Department of International Taxation
Inland Revenue Board of Malaysia
Menara Hasil
Persiaran Rimba Permai
Cyber 8
63000 Cyberjaya
Selangor

Fax: 03-83137848
E-mail: fatca@hasil.gov.my