



# **Malaysia-US IGA**

## **Guidance Notes**

11 September 2015

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

# DRAFT

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## Glossary

The following terms and acronyms are used throughout this Guidance Notes.

<b>Term / Acronyms</b>	<b>Description</b>
Agreement	This refers to the Malaysia-US Intergovernmental Agreement on FATCA.
Controlling Person	The natural person who exercises control over an Entity as defined under Article 1(hh) of the Agreement.
Entity	A legal person or a legal arrangement such as a trust.
FATCA	Foreign Account Tax Compliance Act  A reporting regime for Financial Institutions with respect to certain accounts. The underlying policy goal of FATCA is to improve tax compliance.
FFI	Foreign Financial Institution  This refers to any Non-US Entity which is a Financial Institution.
FI	Financial Institution  A Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company.
Financial Account	A Depository Account, Custodial Account, any equity or debt interest in an FI (other than interests that are regularly traded on an established securities market), or Cash Value Insurance Contract and Annuity Contract.
GIIN	Global Intermediary Identification Number  The GIIN may be used by an FFI to identify itself to withholding agents and to tax authorities for FATCA reporting.
IDES	International Data Exchange Service  A data exchange service to allow Financial Institutions and Tax Administrations of Partner Jurisdictions to automatically exchange FATCA data with the US IRS.
IRBM	Inland Revenue Board of Malaysia

Model 1 IGA	<p>Model 1 Intergovernmental Agreement</p> <p>An arrangement between the US or the US Treasury Department and a non-US government or one or more agencies thereof to implement FATCA through reporting by FFIs to such non-US government or agency thereof, followed by automatic exchange of such reported information with the US IRS. In Malaysia’s case, this would refer to the Malaysia-US IGA (“Agreement”).</p>
MY	Malaysia
MYFI	<p>Malaysia-based Financial Institution</p> <p>MYFI has the same meaning as the term “Malaysian Financial Institution” set out in Article 1(l) of the Agreement.</p>
NFFE	<p>Non-Financial Foreign Entity</p> <p>A NFFE is a Non-US Entity that does not meet the definition of a FFI.</p>
Non-Reporting MYFI	<p>Non-Reporting Malaysia-based Financial Institution</p> <p>Any MYFI, or other entity resident in Malaysia, that is described in Annex II of the Agreement as a Non-Reporting MYFI or that otherwise qualifies as a Deemed-Compliant FFI or an Exempt Beneficial Owner under relevant US Treasury Regulations.</p>
Non-US Entity	An entity that is not a US Person.
NPFFI	<p>Nonparticipating Financial Institution</p> <p>A FFI that does not enter into an agreement with the US IRS and is not deemed compliant, but does not include an MYFI or other Partner Jurisdiction FI other than an MYFI treated as an NPFFI pursuant to subparagraph 3(b) of Article 5 of the Agreement or the corresponding provision in an agreement between the US and a Partner Jurisdiction.</p>
Partner Jurisdiction	A jurisdiction that has in effect an agreement with the US to facilitate the implementation of FATCA.
Preexisting Account	A Financial Account maintained by a Reporting MYFI as of 30 June 2014.
QI	Qualified Intermediary

Reporting MYFI	Reporting Malaysia-based Financial Institution  Any MYFI that is not a Non-Reporting MYFI.
Self-certification	<p>A self-certification is the process by which:</p> <ul style="list-style-type: none"> <li>- Individual financial account holders or Controlling Persons of a Passive NFFE certify whether they are US citizens or US tax residents; or</li> <li>- Entity financial account holders certify their FATCA status</li> </ul> <p>Reporting MYFIs that maintain an account will be able to rely on the account holder's self-certification indefinitely for FATCA purposes, unless they know or have reason to know that such a self-certification is incorrect or unreliable.</p> <p>Reporting MYFIs can rely on an US IRS W-8 or W-9 form or other similar form as may be prepared by the MYFI to obtain self-certification from their account holders. An overview of the various FATCA related forms and instructions can be found at the webpage:  <a href="http://www.irs.gov/Businesses/Corporations/FATCA-Related-Forms">http://www.irs.gov/Businesses/Corporations/FATCA-Related-Forms</a>.</p>
Specified US Person	The term Specified US Person means any US Person other than those specifically excluded under Article 1(bb) of the Agreement.
US	United States
US IRS	US Internal Revenue Service
US Person	A US citizen or resident individual, a partnership or corporation organized in the US or under the laws of the US or any State thereof, a trust if (i) a court within the US would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more US persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the US.

<p>US Reportable Account</p>	<p>A Financial Account maintained by a Reporting MYFI and held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person.</p> <p>An account shall not be treated as a US Reportable Account if such account is not identified as a US Reportable Account after application of the due diligence procedures in Annex I of the Agreement.</p>
<p>US Source Withholdable Payment</p>	<p>Any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the US.</p> <p>However, a US Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant US Treasury Regulations.</p>

## **1. Objective**

- 1.1. The purpose of this Guidance Notes is to provide guidance to:
- a) MYFIs in meeting their due diligence and reporting obligations under the FATCA enacted by the US; and
  - b) Other businesses, entities and persons in Malaysia affected by FATCA.

## **2. Background**

- 2.1. FATCA, which affects 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 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 June 2014, Malaysia reached an agreement in substance on a Model 1 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. Following the agreement in substance, the Agreement was signed on [Date TBA ("to be announced")].
- 2.4. Under the terms of the Agreement, Reporting MYFIs will provide 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:
- a) The key implementation milestones;
  - b) The FIs that are required to report;
  - c) The Financial Accounts to be reported;
  - d) Exempt FIs, Account Holders and Financial Accounts;
  - e) The required procedures for identification of US Reportable Accounts;
  - f) The information to be reported; and
  - g) The timeline for reporting and how to submit the information.

#### 4. Key Implementation Milestones

Deadlines	Milestones
<p>30 June 2015</p> <p>Submission date to IRBM has been deferred to <b>30 June 2016</b></p>	<ul style="list-style-type: none"> <li>• As part of due diligence requirements under the Agreement, Reporting MYFIs complete due diligence procedures for Preexisting Individual High Value Accounts with balance or value exceeding US\$1,000,000 as of 30 June 2014 (Section 10.6).</li> <li>• Reporting MYFIs submit FATCA information to IRBM relating to Reporting Year 2014 (Section 11.5.1)</li> </ul>
<p>30 June 2016</p>	<ul style="list-style-type: none"> <li>• Reporting MYFIs submit FATCA information to IRBM relating to Reporting Year 2015.</li> <li>• As part of due diligence requirements under the Agreement, Reporting MYFIs complete due diligence procedures for:               <ul style="list-style-type: none"> <li>i. Preexisting Entity Accounts with balance or value exceeding US\$250,000 as of 30 June 2014 (Section 10.14); and</li> <li>ii. All Preexisting Individual Lower Value Accounts with balance or value exceeding US\$50,000 but not exceeding US\$1,000,000 as of 30 June 2014 (Section 10.4).</li> </ul> </li> </ul>
<p>30 June of subsequent years</p>	<p>Reporting MYFIs submit FATCA information to IRBM relating to the immediate preceding year.</p>

## **5. Registration**

- 5.1.** 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.

## **6. Financial Institutions**

### **6.1. Overview**

- 6.1.1. For the purpose of the implementation of the 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.
- 6.1.2. 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 6.5);
  - b) Depository Institution (Section 6.6);
  - c) Investment Entity (Section 6.7); and
  - d) Specified Insurance Company (Section 6.11).
- 6.1.3. 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 NFFE. Refer to Section 7 for more details on NFFE.
- 6.1.4. Under the Agreement, MYFIs will be classified either as a Reporting MYFI or a Non-Reporting MYFI (Section 8). 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.
- 6.1.5. 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.

## **6.2. Malaysia-based Financial Institutions (MYFIs)**

6.2.1. Under the Agreement, a MYFI is

- a) Any FI that is a tax resident<sup>1</sup> 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.

## **6.3. Overseas Subsidiaries and Branches of MYFIs**

6.3.1. 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.

## **6.4. Related Entities Groups**

6.4.1. 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.

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

- a) The entity does not maintain Financial Accounts (other than accounts maintained for members of its Related Entity Group);
- b) 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;

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<sup>1</sup> Tax residency status is determined according to Income Tax Act 1967.

- c) 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
  - d) 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.
- 6.4.3. Related Entities are relevant in the context of the obligations placed on MYFIs, in respect of any Related Entities that are NPFFI.
- 6.4.4. 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 11.4.

## **6.5. Custodial Institutions**

- 6.5.1. A Custodial Institution is an entity that holds financial assets for the account of others as a substantial portion of its business. A substantial portion means if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of:
- a) The three year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
  - b) The period since the entity commenced business.
- 6.5.2. Related financial services are any ancillary services directly related to the holding of financial assets by the entity on behalf of others and include:
- a) Custody, account maintenance and transfer fees;
  - b) Execution and pricing commission and fees from securities transactions;
  - c) Income earned from extending credit to customers;
  - d) Income earned from contracts for differences and on the bid-ask spread of financial assets; and
  - e) Fees for providing financial advice, clearance and settlement services (an entity could qualify as a Custodial Institution even if the entity's sole business is to provide financial advice to clients, and it does not conduct any activities as a custodian or broker).

- 6.5.3. Such entity could include brokers (trading or clearing), custodian banks, trust companies and nominees. Insurance brokers that do not hold assets on behalf of clients do not fall within the scope of this provision.
- 6.5.4. In relation to a client of a holder of Capital Markets Services Licence, “Custodial Institutions” refer to “custodian” as defined under section 121 of the Capital Markets & Services Act 2007 (“CMSA”).

## **6.6. Depository Institutions**

- 6.6.1. 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:
- a) Accepting deposits on current account, deposit account, savings account or other similar account;
  - b) Paying or collecting cheques drawn by or paid in by customers;
  - c) Provision of finance; or
  - d) Accepting money under an investment account.
- 6.6.2. Entities that fall within this scope of institutions includes financial institutions regulated in Malaysia under the:
- a) Financial Services Act 2013;
  - b) Islamic Financial Services Act 2013;
  - c) Development Financial Institutions Act 2002;
  - d) Labuan Financial Services and Securities Act 2010; and
  - e) Labuan Islamic Financial Services and Securities Act 2010.

## **6.7. Investment Entities**

- 6.7.1. For the purpose of the Agreement, Investment Entity refers to entity that conducts as a business (or is managed by an entity that 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; or

- c) Otherwise investing, administering, or managing funds or money on behalf of other persons.

6.7.2. The types of Investment Entities include:

- a) Collective Investment Schemes (Section 6.8);
- b) Fund Distributors (Section 6.9); and
- c) Advisory-only Distributors (Section 6.10).

6.7.3. 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; and
- 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:
  - i. Dealing in securities;
  - ii. Dealing in derivatives; or
  - iii. Fund management.

## **6.8. Collective Investment Schemes (CIS)**

6.8.1. The account due diligence and reporting obligation on the Account Holders for CIS constituted in Malaysia lies with MYFIs. CIS constituted outside Malaysia will not be subject to the due diligence and reporting obligations under the Agreement.

6.8.2. A CIS constituted in Malaysia means:

- a) Where the CIS is incorporated as a company, a Malaysian-incorporated company;
- b) Where the CIS is constituted under a trust structure, a CIS whose trust deed is subject to Malaysian laws and whose trustee is located and registered in Malaysia; or

- c) Where the CIS is established under a custodial structure, a CIS whose custodian agreement is subject to Malaysian laws.

6.8.3. 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; and
- 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:
  - i. 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;
  - ii. the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and
  - iii. 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.

6.8.4. For the purpose of the Agreement, any Investment Entity other than:

- a) A CIS; or
- b) 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.

6.8.5. Section 6.8.6 applies to a CIS which is not sponsored by a sponsoring entity. For a CIS which is sponsored by a sponsoring entity, please refer to Section 8.11 on Sponsored Investment Entities for more details.

- 6.8.6. For unlisted CIS, the manager of that CIS will be responsible to carry out account due diligence and reporting obligations under the Agreement. The manager may appoint a third party service provider to fulfill the account identification and reporting requirements, but the manager remains responsible in ensuring that these requirements are fulfilled.
- 6.8.7. Account identification and reporting obligations apply only to direct Account Holders under the manager. For indirect individual accounts held through an intermediary MYFI (e.g. on a nominee basis or platform), the obligation of the manager is to identify the direct Account Holder (i.e. the intermediary MYFI) only. In turn, the intermediary MYFI has its own obligation to identify and report on its Account Holders under the Agreement.

## **6.9. Fund Distributors**

- 6.9.1. Under this Agreement, Fund distributors fall within the definition of Investment Entity because of the role in distributing a CIS.
- 6.9.2. Fund distributors include:
- a) Financial advisers;
  - b) Institutional Unit Trust Adviser (“IUTA”) registered with Federation of Investment Managers Malaysia (“FIMM”); and
  - c) Corporate Unit Trust Adviser (“CUTA”) registered with FIMM.
- 6.9.3. There are two types of fund distributors:
- a) Those that act as an intermediary in holding the legal title to the CIS (such as a nominee); and
  - b) Those that act on an advisory only basis.
- 6.9.4. 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.
- 6.9.5. 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.

## **6.10. Advisory-only Distributors**

- 6.10.1. 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.
- 6.10.2. 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.

## **6.11. Specified Insurance Companies**

- 6.11.1. 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.
- 6.11.2. 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.
- 6.11.3. Any reference to insurance contract includes takaful contract.

## **7. Non-Financial Foreign Entities (NFFEs)**

### **7.1. Overview**

- 7.1.1. An NFFE is any non-US entity that is not a Foreign Financial Institution (FFI). There are two categories of NFFEs:
- a) Active NFFEs (Section 7.2); and
  - b) Passive NFFEs (Section 7.4).
- 7.1.2. 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.
- 7.1.3. A Passive NFFE may be required to obtain self-certification from a Controlling Person of that NFFE.
- 7.1.4. 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.

### **7.2. Active NFFEs**

- 7.2.1. 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 7.3 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 9.11.6);
  - 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:
  - i. 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;
  - ii. It is exempt from income tax in its jurisdiction of residence;
  - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

- iv. 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
- v. 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.

### **7.3. Passive Income**

7.3.1. 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; and
- g) Foreign currency gains.

7.3.2. 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

#### **7.4. Passive NFFEs**

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

- a) An Active NFFE; or
- b) A withholding foreign partnership<sup>2</sup> or withholding foreign trust<sup>3</sup>.

7.4.2. 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.

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<sup>2</sup> A withholding foreign partnership means a foreign partnership that has entered into a withholding foreign partnership agreement with the US IRS.

<sup>3</sup> A withholding foreign trust means a foreign trust that has entered into a withholding foreign trust agreement with the US IRS.

## **8. Non-Reporting Malaysian Financial Institutions**

### **8.1. Overview**

- 8.1.1. Annex II of the Agreement contains provisions for entities to be exempted from FATCA reporting obligations.
- 8.1.2. For the purpose of the Agreement, entities exempted from FATCA reporting obligations are regarded as Non-Reporting MYFIs.
- 8.1.3. Non-Reporting MYFIs, as described in Annex II of the Agreement, will fall under the following categories:
  - a) Exempt Beneficial Owner (Section 8.2); or
  - b) Deemed-Compliant FFI (DCFFI) (Section 8.8).
- 8.1.4. A Non-Reporting MYFI is not required to undertake the following obligations:
  - a) Register with the US IRS to obtain a GIIN, except for Registered DCFFI; and
  - b) Carry out due diligence procedures and reporting obligations under the Agreement, except for Registered DCFFI.

### **8.2. Exempt Beneficial Owners**

- 8.2.1. 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.
- 8.2.2. Exempt Beneficial Owners will not need to register for GIIN.
- 8.2.3. Additionally, Reporting MYFIs are not required to review or report on accounts held by Exempt Beneficial Owners.
- 8.2.4. Exempt Beneficial Owners are entities that fall within the following categories:
  - a) Government and Government-Linked Entities (Section 8.3);
  - b) Central Bank (Section 8.4);
  - c) International Organisations (Section 8.5);
  - d) Qualifying Funds (Section 8.6); or
  - e) Investment Entity wholly-owned by Exempt Beneficial Owners (Section 8.7).

### **8.3. Government and Government-Linked Entities**

8.3.1. Malaysian Government and Government-Linked entities include but are not limited to the following:

- a) All Malaysian Ministries and their wholly owned and controlled entities, whether held directly or indirectly;
- b) All Statutory Bodies 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 City, Municipal and District Councils and their wholly owned and controlled entities, whether held directly or indirectly; and
- e) All Organs of Government.

### **8.4. Central Bank**

8.4.1. 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.

### **8.5. International Organisations**

8.5.1. 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:

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

## **8.6. Qualifying Funds**

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

### **Broad Participation Retirement Fund**

8.6.2. 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 the relevant authorities in Malaysia; and
- c) Satisfies at least one of the following requirements:
  - i. The fund is generally exempt from tax in Malaysia on investment income due to its status as a retirement or pension plan;
  - ii. 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 9.13 of this guide from the sponsoring employers;
  - iii. 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 9.13 of this guide), or penalties apply to distributions or withdrawals made before such specified events;
  - iv. 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**

- 8.6.3. 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.

## **8.7. Investment Entities Wholly-Owned by Exempt Beneficial Owners**

- 8.7.1. 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.

## **8.8. Deemed-Compliant FFIs (DCFFIs)**

- 8.8.1. 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 (Section 8.9); or
  - b) Certified DCFFIs (Section 8.13).
- 8.8.2. Only a Registered DCFFI is required to register with the US IRS.
- 8.8.3. Sponsoring entities are responsible for undertaking diligence procedures and reporting requirements under the Agreement on behalf of sponsored entities.

## **8.9. Registered DCFFIs**

- 8.9.1. Registered DCFFIs include:
- a) MYFIs with a local client base (Section 8.10);
  - b) Sponsored Investment entities (Section 8.11); and
  - c) Qualified Credit Card Issuers (Section 8.12).
- 8.9.2. A MYFI that qualifies as a Registered DCFFI will need to obtain a GIIN from the US IRS and submit to IRBM:
- a) annual information report if US Reportable Account is discovered; or
  - b) nil return if there is no US Reportable Account.

## **8.10. MYFIs with a Local Client Base**

8.10.1. 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-residents 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 residents<sup>4</sup> for purposes of either:
  - i. Information reporting or withholding of tax with respect to Financial Accounts held by residents; or
  - ii. 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 residents. The 98% threshold can include the accounts of US Persons (both Individual and entity Accounts) if they are Malaysia residents. A MYFI will need to assess whether it meets this criteria annually. The measurement can be taken at any point of the

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<sup>4</sup> Malaysia residents are persons who are either Malaysia Citizens or Malaysia Permanent Residents.

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:
  - i. Any Specified US Person who is not a Malaysian resident (including a US Person that was Malaysia resident when the account was opened, but subsequently ceases to be one);
  - ii. Any NPFFI; or
  - iii. Any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not Malaysia residents.
- g) Such policies and procedures must also provide that if any of such Financial Account mentioned above is discovered, the MYFI must either:
  - i. 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
  - ii. Close the account<sup>5</sup>.
- h) With respect to a Preexisting Account which is held by a non- Malaysia resident or by an entity, and that is opened prior to the date that the MYFI implements the policies and procedures described in subparagraph (f) 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:
  - i. 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
  - ii. Close the account<sup>6</sup>.
- i) Each Related Entity of the MYFI, where the Related Entity is itself a FI:
  - i. Must be incorporated or organised/established in Malaysia; and

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<sup>5</sup> That account need not be reported.

<sup>6</sup> That account need not be reported.

- ii. 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 (B)-(D) of Section (II), Annex II of the Agreement, satisfy the requirements set forth in Paragraph (A) of Section (III), Annex II of the Agreement; and
- 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 residents.

## **8.11. Sponsored Investment Entities**

8.11.1. A MYFI is a Sponsored Investment Entity if:

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

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

- a) 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 31 December 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.
- 8.11.3. While a sponsoring entity is required to register its sponsored entities to obtain GIINs, for payments prior to 1 January 2016, a sponsored entity is permitted to provide the GIIN of its sponsoring entity on withholding certificates if it has not yet obtained a GIIN. A sponsored entity does not need to provide its own GIIN until 1 January 2016, and is not required to register before that date.
- 8.11.4. Where the sponsoring entity acts on behalf of a range of sponsored entities (e.g. CIS), the classification of an account as a New Account or a Preexisting Account can be done by reference to whether the account is new to the sponsoring entity and not the sponsored entity (see Section 8.11.6 on reporting of Sponsored Offshore Funds and Section 8.11.7 on Multiple Service Providers). This prevents the sponsoring entity from having to seek FATCA documentation from the same account holder repeatedly, where that account holder is invested in more than one of the sponsored entities. Where the sponsoring entity is able to link accounts in this manner, the accounts will need to be aggregated for the purpose of determining whether the accounts exceed the de minimis for reporting (see Section 10.23 for more details on Account Balance Aggregation).
- 8.11.5. The sponsoring entity will report to IRBM on all the account holders of the sponsored entities (e.g. CIS) it manages. Please refer to Section 6.7 on Investment Entities for guidance.

### **Reporting of Sponsored Offshore Funds**

- 8.11.6. In relation to a CIS, the manager (as sponsoring entity) may act for CIS (as sponsored entities) located in a number of jurisdictions. The manager will need to act on behalf of the CIS independently, with respect to each tax authority in which the CIS is domiciled. The manager need not report to IRBM in respect to CIS which is not constituted in Malaysia.

#### ***Example***

*A Malaysian manager manages CIS in Malaysia, another Model 1 IGA country and a non-IGA country. The Malaysian manager can register as the sponsoring entity for all or some of the CIS in each of the countries. The sponsoring entity would:*

- i. Report to IRBM on behalf of the CIS constituted in Malaysia;*
- ii. Report to the relevant authority in Model 1 IGA country on behalf of the CIS domiciled there (subject to the laws of that country); and*

- iii. *Report directly to the US IRS on behalf of the CIS domiciled in non-IGA country (subject to the laws of that country).*

### **Multiple Service Providers**

- 8.11.7. Similarly, in relation to a CIS, the manager may use different transfer agents for different CIS within the same country. In such cases, the manager itself cannot know whether a Preexisting Account Holder in one of the CIS opens a New Account in the other CIS. This in itself should not preclude the same manager from acting as a sponsor for both CIS. It does mean that the full benefits of sponsoring (such as not re-documenting Preexisting Account Holders when they make new investments) might not be realised where different service providers are used.

### **8.12. Qualified Credit Card Issuers**

- 8.12.1. 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.

### **8.13. Certified DCFFIs**

- 8.13.1. Certified DCFFIs include:
  - a) Local Bank (Section 8.14);
  - b) MYFIs with only Low Value Accounts (Section 8.15);
  - c) Sponsored Closely Held Investment Vehicles (Section 8.16); and
  - d) Investment Advisers and Investment Managers (Section 8.17).
- 8.13.2. A MYFI that qualifies to be a Certified DCFFI is not required to register for a GIIN or undertake any obligations under the Agreement.

## **8.14. Local Bank**

8.14.1. 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.

8.14.2. 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.

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

8.14.4. All credit cooperatives registered under the Co-operative Societies Act 1993, and which meet the conditions under Section III (B), Annex II of the Agreement, will not be subject to the reporting requirements under the Agreement and FATCA-related withholding.

## **8.15. MYFIs with only Low Value Accounts**

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

- a) The MYFI is not an Investment Entity;
- b) 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
- c) The MYFI, together with any Related Entities, has no more than US\$50 million in assets on their combined balance sheet.

## **8.16. Sponsored Closely Held Investment Vehicles**

8.16.1. 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 US FI 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).
- 8.16.2. 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.

## **8.17. Investment Advisers and Investment Managers**

- 8.17.1. 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.
- 8.17.2. It will be considered a Certified DCFFI, and is not required to register for a GIIN or undertake any obligations under the Agreement.
- 8.17.3. 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.

## **9. Financial Accounts**

### **9.1. Overview**

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

9.1.2. The 5 categories of Financial Accounts are:

- a) Depository Accounts (Section 9.7);
- b) Custodial Accounts (Section 9.8);
- c) Cash Value Insurance Contracts (Section 9.9);
- d) Annuity Contracts (Section 9.10); and
- e) Equity and Debt Interests in a Financial Institution (Section 9.11).

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

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

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

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

### **9.2. US Reportable Accounts**

9.2.1. 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.

9.2.2. Reporting MYFI must follow due diligence procedures under the Agreement in order to identify US Reportable Accounts.

9.2.3. Where a MYFI engages a third party to carry out its due diligence and reporting, the obligations remain with the MYFI.

9.2.4. Reporting MYFIs with no Reportable Accounts will be required to make a nil return to IRBM on an annual basis.

### **9.3. Account Holders**

- 9.3.1. 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:
- a) Where an individual is listed as the holder of a Financial Account, the individual is the Account Holder.
  - b) 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.
  - c) Where a Trust is listed as the holder of a Financial Account, the Trust is the Account Holder, rather than its owners or beneficiaries.
- 9.3.2. For avoidance of doubt, “person” for the purpose of the Agreement means an individual, or an entity, that means a partnership or a corporation.

### **9.4. Account Held by Non-FI Agents**

- 9.4.1. 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.

### **9.5. Joint Accounts**

- 9.5.1. 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. The due diligence requirements under the Agreement should be applied separately to each of the joint account holder in relation to that account.
- 9.5.2. 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.

### **9.6. Account Holders for Cash Value Insurance and Annuity Contracts**

- 9.6.1. 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.

9.6.2. Where no person can access the contract's value or change a beneficiary, the Account Holders are:

- a) Any person named in the contract as a policy owner or takaful participant; and
- b) Any person who is entitled to receive a future payment under the terms of the contract.

9.6.3. 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.

## **9.7. Depository Accounts**

9.7.1. 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.

9.7.2. 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 8.12).

9.7.3. 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.

9.7.4. Please refer to Section 10 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.

9.7.5. In relation to Insurance Contracts;

- a) 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.
- b) 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.

**9.8. Custodial Accounts**

9.8.1. 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.

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

- a) A share in a corporation;
- b) A note, bond, debenture, or other evidence of indebtedness;
- c) A currency or commodity transaction;
- d) A credit default swap;
- e) A swap based upon a non-financial index;
- f) 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);
- g) An Insurance Contract or Annuity Contract; and
- h) Any option or other derivative instrument for the benefit of another person.

9.8.3. Insurance Contract or Annuity Contract is not considered to be a Custodial Account. However, such contracts could be assets held in a Custodial Account. Where such contracts are held as assets in a Custodial Account, the insurer will only need to provide the Reporting MYFI with the cash value or surrender value of the Cash Value Insurance Contract.

## **9.9. Cash Value Insurance Contract**

- 9.9.1. An Insurance Contract is a contract, other than an Annuity Contract, under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- 9.9.2. For the purpose of the Agreement, a Cash Value Insurance Contract means an Insurance Contract which includes takaful 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**

- 9.9.3. The term “Cash Value” means the amount:
- a) That the policyholder is entitled to receive upon surrender, termination, cancellation, or withdrawal (determined without reduction for any surrender charge or policy loan); or
  - b) The policyholder can borrow under or with regard to the contract (for example, by pledging as collateral)
- whichever is greater.
- 9.9.4. “Cash Value” does not include an amount payable:
- a) 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;
  - b) 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; or
  - c) As a policyholder dividend (other than a termination dividend) related to certain Insurance Contracts.

## **9.10. Annuity Contract**

9.10.1. An Annuity Contract is a contract:

- a) 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
- b) That 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.

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

## **9.11. An Equity or Debt Interest in a Financial Institution**

9.11.1. Any debt or equity interest (other than interests that are regularly traded on an established securities market) in an entity that is a MYFI solely because it is an Investment Entity will constitute a Financial Account under the Agreement.

9.11.2. With regard to Depository Institutions, Custodial Institutions and Specified Insurance Companies, debt or equity interests (other than interests that are regularly traded on an established securities market) may constitute Financial Accounts if:

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

9.11.3. Where an Investment Entity is only classed as such because it is an asset manager, investment adviser or other similar entity, its debt and equity interests 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.

9.11.4. In the case of a Partnership that is a MYFI, the term Equity Interest means either a capital or profits interest in the Partnership.

9.11.5. In the case of a trust that is a MYFI, an Equity Interest means an interest held by:

- a) A settlor of the trust;
- b) A beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the trust; or
- c) 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**

9.11.6. 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.

- a) The term “established securities market” means an exchange that is approved or recognised and supervised by an authority in which the market is located and has a meaningful annual value of shares traded on the exchange.
- b) Interests are regarded as “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis.
- 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 falls under (c) above will be regarded as an interest that is “regularly traded” on an “established securities market” and will not constitute a Financial Account. However, the exclusion of these interests does not affect the obligation of a Custodial Institution to report on Custodial Accounts in which such excluded interests are 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:
  - i. 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.
  - ii. 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:
  - i. Self-certification provided by the Account Holder in question; or
  - ii. 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**

9.11.7. 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,
  - i. 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.
  - ii. 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.

## **9.12. Accounts or Products Exempt from being Financial Accounts**

- 9.12.1. 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.
- 9.12.2. 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.
- 9.12.3. These exempt Accounts are summarised in Sections 9.13 to 9.18 that follows.

## **9.13. Certain Other Tax Favoured Accounts or Products**

- 9.13.1. This category covers:

- a) Retirement and Pension Accounts; and
- b) Non- Retirement Savings Accounts

- 9.13.2. 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**

- 9.13.3. 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 relevant authorities 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**

9.13.4. 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.

### **9.14. Accounts of Deceased Persons/ Estates**

9.14.1. 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.

### **9.15. Intermediary Accounts (Escrow Accounts)**

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

9.15.2. 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:
  - i. 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;
  - ii. The account is established and used solely to secure the obligation of the parties to the transaction;
  - iii. 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;
  - iv. The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - v. The account is not associated with a credit card account.

9.15.3. 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.

## **9.16. Dormant Accounts**

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

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

9.16.2. 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.

9.16.3. 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**

9.16.4. An account will no longer be dormant when:

- a) The Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the MYFI;
- b) 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
- c) The account ceases to be a dormant account under applicable laws or regulations or the MYFI's normal operating procedures.

9.16.5. 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.

## **9.17. Rollovers**

9.17.1. 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.

## **9.18. Syndicated Loans**

9.18.1. 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 Custodial Institution provided no other business activities would bring the entity into these classifications.

- 9.18.2. 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.
- 9.18.3. 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.
- 9.18.4. 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.
- 9.18.5. 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.
- 9.18.6. 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.

## 10. Due Diligence Procedures under the Agreement

### 10.1. Overview

10.1.1. Under the Agreement, Reporting MYFIs are responsible for the identification and reporting of US Reportable Accounts and payments to certain NPFFIs.

10.1.2. 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.

10.1.3. For the purpose of the Agreement:

a) Preexisting Accounts are Financial Accounts maintained by MYFI as of 30 June 2014.

b) New Accounts are Financial Accounts opened on or after 1 July 2014.

10.1.4. 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	US\$250,000 or less
	Cash Value Insurance Contract: US\$250,000 or less	
New	Depository Account: US\$50,000 or less	No threshold
	Cash Value Insurance Contract: US\$50,000 or less	

## **10.2. Preexisting Individual Accounts**

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

## **10.3. Preexisting Individual Accounts Not required to be Reviewed, Identified, or Reported**

10.3.1. 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; and
- d) A Depository Account with a balance of US\$50,000 or less.

## **10.4. Review Procedures for Preexisting Individual Lower Value Accounts**

10.4.1. 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.

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

- a) Identification of the Account Holder as a US citizen or resident;
- b) Unambiguous indication of a US place of birth;
- c) Current US mailing or residence address (including a US post office box);
- d) Current US telephone number;
- e) Standing instructions to transfer funds to an account maintained in the US;

- f) Currently effective power of attorney or signatory authority granted to a person with a US address; or
  - g) 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.
- 10.4.3. 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 10.6).
- 10.4.4. 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 unless it elects to apply one of the exceptions to reporting described in Section 10.4.5.

#### **Exceptions to Reporting**

- 10.4.5. 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 or other similar form as may be prepared by the MYFI);
    - 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 or other similar form as may be prepared by the MYFI); **and**
  - ii. Documentary evidence, as defined in Section 10.24 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 or other similar form as may be prepared by the MYFI); **and**
  - ii. Documentary evidence, as defined in Section 10.24 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 form as may be prepared by the MYFI); **or**
  - ii. Documentary evidence, as defined in Section 10.24 of this Guide, establishing the Account Holder’s non-US status.

## **10.5. Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts**

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

- 10.5.2. Preexisting Individual Lower Value Accounts that are identified as reportable are only reportable from the year in which they are identified as such.
- 10.5.3. 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.
- 10.5.4. 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.

#### **10.6. Enhanced Review Procedures for Preexisting Individual High Value Accounts**

- 10.6.1. 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.
- 10.6.2. 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:
  - a) The Account Holder's nationality or residence status;
  - b) The Account Holder's residence address and mailing address currently on file with the Reporting MYFI;
  - c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting MYFI;
  - d) 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);
  - e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; **and**
  - f) Whether there is any power of attorney or signatory authority for the account.
- 10.6.3. 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:

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

- 10.6.4. 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.
- 10.6.5. 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.
- 10.6.6. 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 10.4.5 above apply.
- 10.6.7. 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 paragraph shall be treated as a US Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified US Person.

## **10.7. Additional Procedures Applicable to Preexisting Individual High Value Accounts**

- 10.7.1. 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.
- 10.7.2. 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 the Individual Account is found to be in excess of US\$1,000,000. The Reporting MYFI is required to undertake enhanced review of the account by June 2016 and required to report the US Reportable Account for Reporting Year 2016 and subsequent years, unless the Account Holder ceases to be a Specified US Person.*

- 10.7.3. 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.

10.7.4. 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 10.4.5 apply.

#### **10.8. Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes**

10.8.1. 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.

#### **10.9. New Individual Accounts**

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

#### **10.10. New Individual Accounts Not Required to Be Reviewed, Identified, or Reported**

10.10.1. 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.

#### **10.11. Review Procedures for New Individual Accounts**

10.11.1. With respect to New Individual Accounts that do not meet the criteria set out for Section 10.10 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.

10.11.2. 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 form as may be prepared by the MYFI).

10.11.3. 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.

## **10.12. Preexisting Entity Accounts**

10.12.1. The following rules and procedures set out under Sections 10.12 to 10.17 apply for purposes of identifying US Reportable Accounts and accounts held by NPFIs among Preexisting Accounts held by entities ("Preexisting Entity Accounts").

## **10.13. Preexisting Entity Accounts Not Required to be Reviewed, Identified or Reported**

10.13.1. 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.

#### **10.14. Preexisting Entity Accounts Subject to Review**

10.14.1. 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 10.16.

#### **10.15. Preexisting Entity Accounts with respect to which Reporting is Required**

10.15.1. 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 7) 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 11.4) are reported to IRBM.

#### **10.16. Review Procedures for Identifying Preexisting Entity Accounts with respect to which Reporting is Required**

10.16.1. 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.

10.16.2. 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 other similar form as may be prepared

by the MYFI), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified US Person.

10.16.3. 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.

10.16.4. 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 or other similar form as may be prepared by the MYFI) 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.

#### 10.16.5. 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 or other similar form as may be prepared by the MYFI) 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 or other similar form as may be prepared by the MYFI) 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.

#### **10.17. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts**

10.17.1. 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**.

10.17.2. 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.

10.17.3. 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 10.16.

#### **10.18. New Entity Accounts**

10.18.1. The rules and procedures set out under Sections 10.18 to 10.20 apply for purposes of identifying US Reportable Accounts and accounts held by NPFIs among Financial Accounts held by entities and opened on or after 1 July 2014 (“New Entity Accounts”).

#### **10.19. New Entity Accounts Not Required to Be Reviewed, Identified or Reported**

10.19.1. 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.

## 10.20. Review Procedures for New Entity Accounts

10.20.1. Other than accounts described under Section 10.19, the Reporting MYFI must determine whether the Account Holder is:

- a) A Specified US Person;
- b) A MYFI or other Partner Jurisdiction FI;
- c) A Participating FFI, a DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations; or
- d) An Active NFFE or Passive NFFE.

10.20.2. 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.

10.20.3. 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 (Section 11.4).

10.20.4. 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:
  - i. A US person who is not a specified US person;
  - ii. An account holder which is subject to subparagraph (d) of this section;
  - iii. A participating FFI, a deemed-compliant FFI, or an Exempt Beneficial Owner, as those terms are defined in relevant U.S. Treasury Regulations;
  - iv. an Active NFFE; or

v. a Passive NFFE none of which the Controlling Persons is a U.S. citizen or resident.

then the account is not a US Reportable 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. However, 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 to IRBM (Section 11.4).

## **10.21. Special Rules and Definitions**

10.21.1. The following additional rules and definitions in Sections 10.22 to 10.28 apply in implementing the due diligence procedures under the Agreement.

## **10.22. Reliance on Self-Certifications and Documentary Evidence**

10.22.1. 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.

## **10.23. Account Balance Aggregation and Currency Translation Rule**

### **Aggregation of Individual Accounts**

10.23.1. 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**

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**

10.23.2. 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**

10.23.3. For purposes of determining whether the balance or value of Financial Accounts denominated in a currency other than US dollar is subject to FATCA reporting, a Reporting MYFI shall convert the account balance or value into US dollar as follows:

- a) For ringgit denominated balance or value, the published spot rate by Bank Negara Malaysia;
- b) For other currencies, an acceptable published spot rate such as by Reuters or Bloomberg.

This should be done using the published spot rate for the 31 December of the year being reported or in the case of an insurance contract or annuity contract, the date of the most recent contract valuation.

## **10.24. Documentary Evidence**

10.24.1. 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 in a jurisdiction with AML rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
- e) Any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

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

10.25.1. 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 10.4.2. 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 10.4.4 where there is a change in circumstances of one or more US indicia being associated with the account.

#### **10.26. Alternative Procedures for New Accounts opened between 1 July 2014 to TBA (IGA come into force)**

10.26.1. By (Date TBA) next following the date that is one year after TBA (IGA come into force) MYFIs must:

- a) with respect to New Individual Accounts opened between 1 July 2014 to TBA (IGA come into force), request the self-certification specified and, if provided, confirm the reasonableness of such self-certification consistent with the procedures described in Sections 10.10 and 10.11.

- b) with respect to New Entity Accounts opened between 1 July 2014 to TBA (IGA come into force), perform the due diligence procedures and request information as necessary to document the account, including any self-certification required as required by Sections 10.19 and 10.20.

10.26.2. MYFIs must report to IRBM on any New Account that is identified pursuant to Section 10.26.1 as a US Reportable Account or as an account held by a NPFFI, as applicable, by the date is later of:

- a) 30 June next following the date that the account is identified as a US Reportable Account or as an account held by a NPFFI, as applicable, or
- b) 90 days after the account is identified as a US Reportable Account or as an account held by a NPFFI, as applicable.

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.

10.26.3. By the date that is one year after TBA (IGA come into force), Reporting MYFIs must close any New Account opened between 1 July 2014 to TBA (IGA come into force) for which it was unable to collect the required self-certification or other documentation pursuant to the due diligence procedures. In addition, by TBA (IGA come into force), 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.

10.26.4. The Reporting MYFI must report to IRBM on any closed account that is described in Paragraph 10.26.3 by 30 June 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.

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

10.27.1. 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 Sections 10.12 to 10.17 in lieu of the due diligence procedures specified in Sections 10.18 to 10.20.4 In this case, the due diligence procedures of Sections 10.12 to 10.17 must be applied without regard to the account balance or value threshold specified in Section 10.13.

## **10.28. Reliance on Third Parties**

10.28.1. 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.

## **11. Reporting**

### **11.1. Overview**

- 11.1.1. 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 11.5.
- 11.1.2. A Reporting MYFI with no US Reportable Accounts is required to make a nil return annually to IRBM.

### **11.2. Information to be Reported**

11.2.1. 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; and
- 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.

The information (i) to (iii) above must also be reported in respect of each Controlling Person of each entity under (b) above.

- 11.2.2. In addition to information (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.

### **11.3. Explanation of information required**

#### **Address**

- 11.3.1. 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.
- 11.3.2. 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”)**

- 11.3.3. 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 10.27, 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.
- 11.3.4. 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**

- 11.3.5. 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**

- 11.3.6. 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 (Paragraph 11.3.3 (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.

**Example:**

*For all US reportable accounts, the different scenarios in which the accounts reported could be in USD or in the currency in which the account is denominated are as follows:*

- *Scenario 1: Account A which is held by an individual has a balance of US\$100,000. The MYFI maintaining account A to report its balance of US\$100,000 to IRBM.*
- *Scenario 2: Account B which is held by an individual has a balance of RM350,000 and meets the threshold for reportable accounts based on the currency translation rules. The MYFI maintaining Account B to report its balance of RM350,000 (no need for conversion) or the equivalent in USD to IRBM.*
- *Scenario 3: Account C which is held by an individual has a balance of AUD400,000 and meets the threshold for reportable accounts based on the currency translation rules. The MYFI maintaining Account C to report its balance of AUD400,000 (no need for conversion) or the equivalent in USD to IRBM.*

*The same principles apply for any account held by an entity.*

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.
- 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 US\$100,000 and one of the Account Holders is a Specified US Person then the amount to be attributed to that person would be US\$100,000.*

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

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.

**11.4. Information to be Reported with respect to Payments to NPFFIs**

- 11.4.1. A Reporting MYFI that makes payments to an NPFFI is required to report the:
- a) Name; and
  - b) Aggregate amount of payments

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

- 11.4.2. 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.
- 11.4.3. 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 with 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.

## 11.5. Timetable for reporting to IRBM

11.5.1. 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. (This date has been deferred to 30 June 2016)

Reporting Year	In Respect of	Information to be Reported	Reporting Date to IRBM
2014	<ul style="list-style-type: none"> <li>• Each Specified US Person either:               <ul style="list-style-type: none"> <li>i. holding a Reportable Account or</li> <li>ii. as a Controlling Person of an Entity Account (only name, address and US TIN must be reported)</li> </ul> </li> <li>• Each Non-US Entity (i.e. Passive NFFE) that is identified as having one or more Controlling Persons that is a Specified US Person.</li> </ul>	<ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• US TIN (where applicable or DoB for Preexisting Individual Account)</li> <li>• Account Number or functional equivalent</li> <li>• Name and GIIN of Reporting FI</li> <li>• Account balance or value (in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or the surrender value)</li> </ul>	30 June 2015 (This date has been deferred to 30 June 2016)
	<ul style="list-style-type: none"> <li>• Custodial Accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Total gross amount of interest</li> <li>• Total gross amount of dividends</li> <li>• Total gross amount of other income paid or credited to the account</li> </ul>	
2015 As 2014, plus the following	<ul style="list-style-type: none"> <li>• Depository Accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Total amount of gross interest paid or credited to the account in the calendar year of other reporting period</li> </ul>	30 June 2016
	<ul style="list-style-type: none"> <li>• Other Accounts</li> </ul>	<ul style="list-style-type: none"> <li>• 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</li> </ul>	
	<ul style="list-style-type: none"> <li>• Payments to the financial account of each NPFFI</li> </ul>	<ul style="list-style-type: none"> <li>• Name and address</li> <li>• Aggregate amount of payments</li> </ul>	

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2016 As 2015, plus the following	<ul style="list-style-type: none"> <li>• Custodial Accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Total gross proceeds from the sale or redemption of property paid or credited to the account</li> </ul>	30 June 2017
2017 Onwards		<ul style="list-style-type: none"> <li>• All of the above except information relating to the financial account of each NPFFI</li> </ul>	30 June every year

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## **11.6. Format for Reporting to IRBM**

- 11.6.1. The format in which reporting will be required is the Intergovernmental FATCA XML Schema (Version 1.1) (“XML Schema”) as published on IRBM website<sup>7</sup>.
- 11.6.2. 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.

## **11.7. Transmission**

- 11.7.1. Reporting MYFIs shall submit the information to be reported to IRBM via the 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.
- 11.7.2. 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.

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<sup>7</sup> [www.hasil.gov.my](http://www.hasil.gov.my)

## **12. Compliance**

### **12.1. Minor Errors**

- 12.1.1. 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.
- 12.1.2. Examples of minor errors could include:
- a) Data fields missing or incomplete;
  - b) Data that has been corrupted; and
  - c) Use of an incompatible format.
- 12.1.3. 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 7 days or by an appropriate date as directed by IRBM.
- 12.1.4. 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.
- 12.1.5. Penalties may be imposed by the IRBM if the error is considered to contravene MY Legislations.
- 12.1.6. Continual and repeated administrative or minor errors could be considered as significant non-compliance where they repeatedly disrupt and prevent transfer of the information.

### **12.2. Significant Non-Compliance**

- 12.2.1. 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.
- 12.2.2. The following are examples of what would be regarded as significant non-compliance:
- a) Repeated failure to file a return or repeated late filing.
  - b) On-going or repeated failure to supply accurate information or establish appropriate governance or due diligence processes.

- c) The intentional provision of substantially incorrect information.
- d) The deliberate or negligent omission of required information.
- e) Otherwise actively assisting Specified US Persons in avoiding the reporting obligations.

12.2.3. IRBM may engage with the Reporting MYFI to:

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

12.2.4. MYFIs are expected to provide representation on the remedial actions to be taken to prevent future non-compliance.

12.2.5. Where this leads to the information having to be resubmitted, the revised return will have to be submitted to IRBM via the IDES.

12.2.6. 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.

12.2.7. Penalties may be imposed by IRBM if the error is considered to contravene MY Legislations.

12.2.8. 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 NPPFI.

### **12.3. Anti-Avoidance**

12.3.1. 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.

### **12.4. Penalties**

12.4.1. Reporting MYFIs are responsible for providing the correct information in the correct format and on a timely basis to IRBM.

12.4.2. 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.

## **12.5. Others**

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

## **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](mailto:fatca@hasil.gov.my)