

# THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2021

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## MODULE 3.05 – BANKING OPTION

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### ADVANCED INTERNATIONAL TAXATION (THEMATIC)

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TIME ALLOWED – 3¼ HOURS

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This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

#### Further instructions

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks are specifically allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

For your information this paper includes:

**Hong Kong. Cap 117, Stamp Ordinance (Hong Kong, 2018), ss.2, 19, 27, 45, Eighth Schedule**

**OECD Common Reporting Standard; Commentaries on the CRS, Commentary on Section I concerning General Reporting Requirements**

**OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information**

**US FATCA Model 1A IGA Reciprocal, Pre-existing TIEA or DTC**

**US Treasury Regulations, s.1.1441-7(a)(1); s.1.1471-4(d)(iv)(B) and (E); s.1.1471-5(b)(4)(i); s.1.1471-4(f)(3)(iv); s.1.1471-4(g)**

## **PART A**

**You are required to answer BOTH questions from this Part.**

1. Goal Bank GmbH is a bank incorporated under Swiss law and headquartered in Geneva. The bank has branches in several jurisdictions, including Germany and the United Kingdom.

The UK branch consists of five employees, whose functions are restricted to attracting and on-boarding clients for Goal Bank GmbH; acting as an initial point of contact for UK-based customers; and providing administrative services. The branch also attracts and on-boards a number of London-based clients for Goal Bank GmbH, including Mark, who has German tax liabilities.

The employees of the UK branch attract the clients in good faith, trusting that Goal Bank GmbH is providing routine financial services to its clients. Once the clients have been attracted, all financial services are provided either by the bank's headquarters in Geneva or, in some circumstances, by employees in the bank's German branch.

Employees of the German branch have deliberately and dishonestly helped Mark to evade his German tax liabilities. They advised Mark on structures that allow him to hide his assets and income from the German tax authorities; provided false certification to hide the true owners of accounts; and deliberately failed to comply with the applicable anti-money laundering regulations.

Mark has committed an offence under section 370 of the German Fiscal Code. He was directly assisted by a Goal Bank GmbH employee who is based in Germany.

The facilitating acts of the staff of the German branch would constitute criminal facilitation of tax evasion if carried out in Germany, under sections 26 and 27 of the German Criminal Tax Act.

**You are required to advise on the following matters:**

- 1) **Discuss the concept of 'dual criminality' within the context of the CCO, and its applicability in the Goal Bank GmbH case.** (7)
- 2) **Explain the extent to which Goal Bank GmbH is liable for failing to prevent the criminal facilitation of tax evasion.** (3)

On 25 May 2018, the Economic and Financial Affairs Council (ECOFIN) formally adopted "Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements", commonly known as "DAC6".

**You are required to answer the following questions:**

- 3) **Define what is meant by an 'intermediary', within the context of DAC6. Who is required to disclose information to tax authorities, and under what timeline? What information is required to be disclosed under the reporting regime?** (10)
- 4) **Describe the differences between generic and specific hallmarks, using examples where applicable.** (5)

Total (25)

2. The Internal Audit team at Bank Alpha has completed a review of prior-year Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) returns made by the Bank.

In the examination of FATCA and CRS returns submitted in 2020 for the 2019 calendar year, Internal Audit have noted:

*Amounts reported include dividend and income credited to clients' accounts, net of any applicable withholding taxes.*

Internal Audit's recommendations include seeking clarification of this position's compliance with the relevant regulatory obligations, and confirmation of any mitigating actions.

Bank Alpha has subsidiaries which are obliged to report under CRS and FATCA (Model 1 and Model 2 jurisdictions). The Bank has consistently followed the same approach to FATCA and CRS reporting since the respective regulations were implemented.

The Bank issues account holder statements generated at the end-of-day on 31 December each year, which are calculated on the same basis as the FATCA and CRS returns.

In all instances Bank Alpha is a sub-custodian. The Bank credits the amount confirmed by the custodian to the account holder balance, net of withholding tax, while recording the notified tax withheld in other information fields in the banking systems.

As the head of operational tax, you are responsible for advising Bank Alpha on the interpretation of applicable regulations.

**You are required to prepare a response to Internal Audit, explaining:**

- 1) **The application of the regulations, concluding on any recommended mitigating actions.** (21)
- 2) **Whether or not the approach qualifies as, or results in, a 'material failure' when considering a Responsible Officers certification of compliance.** (4)

Total (25)

**PART B**

**You are required to answer ONE questions from this Part.**

3. SafeBank Ltd has a Tier 1 equity capital of £7,700 million. Its risk weighted assets (RWA) are £47,000 million, while its overseas permanent establishment (PE) in the country of Utopia has RWA of £6,100 million.

Comparable independent banks in Utopia have a Tier 1 ratio of 14%. The regulator in Utopia imposes a regulatory minimum of 9%.

SafeBank Ltd balance sheet

|                      | (£mn)         |                | (£mn)         |
|----------------------|---------------|----------------|---------------|
| Risk weighted assets | 47,000        | Tier 1 Capital | 7,700         |
| Other assets         | 7,000         | Debt           | 46,300        |
|                      | <u>54,000</u> |                | <u>54,000</u> |

**You are required to:**

- 1) **Apply each of the BIS ratio capital allocation, thin capitalisation, and regulatory minimum capital approaches to SafeBank Ltd. How does the capital attribution impact upon the interest expense of a PE?** (6)
- 2) **Discuss the principles used to attribute profits to a bank PE, making specific reference to functional and factual analysis, attribution of assets and risks, the attribution of capital, and recognition of internal dealing under the OECD authorised approach.** (14)

Total (20)

4. Bank Beta is a banking corporation headquartered in the United Kingdom, with a branch in Korea.

The Korean branch receives US Treasuries (USTs) as collateral for a securities lending arrangement with a third-party entity; the USTs are then transferred to the UK entity, which lends them under a securities lending arrangement to a UK financial institution (FI). Subsequent interest income received by the FI from the US Treasury on the USTs is paid to Beta Bank, and the Korean branch pays an equivalent amount to the third party.

Bank Beta is not a US Qualified Intermediary.

**You are required to consider the withholding and reporting obligations to the IRS of Bank Beta and its branch, relating to the USTs.** (20)

## PART C

**You are required to answer TWO questions from this Part.**

5. **Using the guidance in the OECD’s Base Erosion and Profit Shifting (BEPS) Actions 8-10, discuss the key tax considerations that a multinational financial institution must consider for its cash pooling structures.** (15)
  
6. In its 2017 report “The conditions for establishment of subsidiaries and branches in the provision of banking services by non-resident financial institutions”, the OECD recognised that a large number of jurisdictions have adopted measures that affect branches of non-resident banking institutions in comparison to subsidiaries of non-resident banking institutions, in most cases following the 2008 global financial crisis.
  - 1) **Using country examples, discuss the general requirements for establishing a branch as a non-resident bank within the OECD’s report.** (7)
  - 2) **Using country examples, discuss the governance requirements for branches of non-resident banks contained within the OECD’s report, and the scope of permitted retail banking operations for branches of non-resident banks and credit institutions as highlighted by the OECD.** (8)

Total (15)

7. Bank Delta is a Swiss private bank, resident in Zurich. It holds client securities in nominee accounts in its capacity as a sub-custodian.

The bank has recently transferred a number of over the counter (OTC), Hong Kong listed securities between account holders. The transfers were as follows:

- HK listed equities on the appointment of a new trustee;
- HK listed exchange traded funds (ETFs) as a distribution by a trustee to a beneficiary;
- HK listed equities between associated entities;
- HK listed equities between two non-related parties, one of which is resident in Hong Kong; and
- HK listed depositary receipts, where the depositary register is maintained in Hong Kong but the underlying securities are US common stock.

**For each transfer, you are required to consider if Hong Kong Stamp Duty is payable, explaining the basis on which the tax applies with reference to the relevant section(s) of the Hong Kong Stamp Duty Ordinance.** (15)

8. **You are required to explain the application of Italian Substitute Interest to a non-resident holder of an Italian bond, including consideration of the exemptions and any obligations to ensure gross payment.** (15)

## HONG KONG CAP 117 STAMP DUTY ORDINANCE

### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

**adhesive stamp** (黏貼印花) has the meaning assigned to it by section 5(3);

**adjudication fee** (裁定費) means the adjudication fee prescribed in the Fifth Schedule; (*Added 5 of 2000 s. 2*)

**agreement for sale** (買賣協議) has the meaning given by section 29A(1); (*Added 2 of 2018 s. 3*)

**assessment** (評稅) means an assessment made by the Collector under section 13 or 47L as to the amount of stamp duty chargeable on an instrument, and assessed (評定) has the corresponding meaning; (*Amended 10 of 2013 s. 24*)

**authorized ATS provider** (認可自動化交易服務提供者) means a person authorized under Part III of the Securities and Futures Ordinance (Cap. 571) to provide automated trading services within the meaning of Part 2 of Schedule 5 to that Ordinance; (*Added 5 of 2002 s. 407*)

**bearer instrument** (不記名文書) means any instrument to bearer by delivery of which any stock can be transferred, but does not include an instrument relating to stock which consists of a loan expressed in terms other than in the currency of Hong Kong except to the extent that the loan is repayable, or may at the option of any person be repaid, in the currency of Hong Kong; (*Amended 77 of 1981 s. 2*)

**bond** (債券) is to be construed having regard to section 47E(b); (*Added 10 of 2013 s. 24*)

**buyer's stamp duty** (買家印花稅) means buyer's stamp duty chargeable under head 1(1AAB) or (1C) in the First Schedule; (*Added 2 of 2014 s. 3*)

**chargeable** (可予徵收、徵收) means chargeable under this Ordinance;

**Collector** (署長) means the Collector of Stamp Revenue appointed under section 3;

**contract note** (成交單據) means a contract note required to be made and executed under section 19(1);

**conveyance** (轉易契) means every instrument (including a surrender) and every decree or order of any court whereby any immovable property is transferred to or vested in any person;

**conveyance on sale** (售賣轉易契) means every conveyance whereby any immovable property, upon the sale thereof, is transferred to or vested in a purchaser or any other person on his behalf or by his direction, and includes a foreclosure order;

**duly stamped** (加蓋適當印花), in relation to an instrument, means duly stamped under this Ordinance in respect of the stamp duty chargeable on such instrument;

**exchange participant** (交易所參與者) means an exchange participant within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 12 of 2000 s. 23. Amended 5 of 2002 s. 407*)

**executed and execution** (簽立), in relation to an instrument not under seal, mean signed and signature respectively;

**foreclosure order** (止贖令) means every order or decree for, or having the effect of an order for, foreclosure;

**Hong Kong bearer instrument** (香港不記名文書) means a bearer instrument issued—

- (a) in Hong Kong; or
- (b) elsewhere by or on behalf of a body corporate formed, or an unincorporated body of persons established, in Hong Kong;

**Hong Kong stock** (香港證券) means stock the transfer of which is required to be registered in Hong Kong;

**instrument** (文書) includes every written document;

**instrument of transfer** (轉讓文書) means an instrument by means of which any Hong Kong stock is transferred, and includes a letter of renunciation;

**Japanese House Registration Office** (日本房屋登錄所) means the office in which during the Japanese occupation of Hong Kong were kept the registers or records of houses and buildings and documents relating thereto;

**jobbing business** (證券經銷業務) means any business carried on by an exchange participant which is specified as jobbing business by regulations made under section 63; (*Amended 12 of 2000 s. 23*)

**lease** (租約) does not include mortgage by demise;

**loan capital** (借貸資本) means any debenture, debenture stock, corporation stock or funded debt (by whatever name known) issued by any body, whether corporate or unincorporate, or any capital raised by any such

body, being capital which is borrowed or has the character of borrowed money, but does not include any such investment which—

- (a) carries a right of conversion into stock or to the acquisition of any stock; or
- (b) carries or has carried a right to interest the amount of which—
  - (i) exceeds a reasonable commercial return on the nominal amount of the capital; or
  - (ii) falls or has fallen to be determined to any extent by reference to the results of, or of any part of, a business or to the value of any property; or
- (c) carries a right on repayment to an amount which exceeds the nominal amount of the capital and is not reasonably comparable with what is generally repayable in respect of a similar nominal amount of capital under the terms of issue of loan capital listed on a recognized stock market; (*Amended 77 of 1981 s. 2; 67 of 1989 s. 2; 5 of 2002 s. 407*)

**recognized exchange company** (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market; (*Added 5 of 2002 s. 407*)

**recognized stock market** (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 5 of 2002 s. 407*)

**relevant Ordinance** (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date# of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

**special stamp duty** (額外印花稅) means special stamp duty chargeable under head 1(1AA) or (1B) in the First Schedule; (*Added 14 of 2011 s. 3*)

**stamp** (印花) means any of the following—

- (a) an adhesive stamp;
- (b) a stamp (other than an adhesive stamp) used or intended for use for denoting the payment or remission of stamp duty, or the payment or remission of any penalty, or the payment of an adjudication fee, payable under this Ordinance or the fact that any instrument has been presented for adjudication or that it is not chargeable with stamp duty or is duly stamped; (*Amended 5 of 2000 s. 2*)
- (c) any mark made or indication given by a stamp referred to in paragraph (b);
- (d) an imprint on a contract note to which an agreement under section 5A relates of the amount of the stamp duty chargeable thereon together with an imprint made under section 5(2A)(b) on such note; (*Added 85 of 1991 s. 2. Amended L.N. 90 of 1999 and 44 of 1999 s. 13*)

**stamp certificate** (印花證明書) means a certificate issued by the Collector under Part IIA; (*Added 21 of 2003 s. 2*)

**stamp duty** (印花稅) means stamp duty chargeable under this Ordinance and includes additional stamp duty chargeable under section 13(10) or 47L(7), buyer's stamp duty and special stamp duty; (*Amended 14 of 2011 s. 3; 10 of 2013 s. 24; 2 of 2014 s. 3*)

**stamped** (加蓋印花、加蓋), in relation to an instrument, means—

- (a) the instrument has been stamped by means of a stamp under this Ordinance; or
- (b) a stamp certificate has been issued in respect of the instrument by the Collector under Part IIA, in so far as the stamp certificate has not been cancelled under that Part; (*Replaced 21 of 2003 s. 2*)

**stock** (證券) means any of the following investments—

- (a) any shares, stocks, debentures, loan stocks, funds, bonds or notes of or issued by any body, whether corporate or unincorporate, or any government or local government authority, or any other similar investment of any description;
- (b) any units under a unit trust scheme;
- (c) any right, option or interest in or in respect of any stock referred to in paragraph (a) or (b), other than any such right, option or interest under an employees' share purchase or share option scheme, (*Replaced 36 of 1992 s. 2*)

but, except for the purposes of section 22, does not include any loan capital, or any bill of exchange or promissory note, or any certificate of deposit within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112) or any Exchange Fund debt instrument or Hong Kong dollar denominated multilateral agency debt instrument within the meaning of that Ordinance, or any bond issued under the Loans Ordinance (Cap. 61), or any debentures, loan stocks, funds, bonds or notes denominated otherwise than in the currency of Hong Kong except to the extent that the same shall be redeemable,

or may at the option of any person be redeemed, in the currency of Hong Kong; (Amended 77 of 1981 s. 2; 29 of 1984 s. 2; 10 of 1990 s. 2; 43 of 1991 s. 2; 49 of 1991 s. 2; 18 of 1992 s. 2)

**time for stamping** (加蓋印花期限), in relation to an instrument, has the meaning assigned to it by section 4(2); **unit** (單位) and unit trust scheme (單位信託計劃) have the meanings assigned thereto respectively by section 30.

(Amended 67 of 1989 s. 2; 12 of 2000 s. 23; 5 of 2002 s. 407)

- (2) Where it is provided in any other Ordinance that stamp duty shall not be payable in respect of any instrument, such instrument shall not be chargeable with stamp duty under this Ordinance.
- (3) Where it is provided in this Ordinance that an instrument shall not be duly stamped unless any condition specified in that provision is fulfilled, the fulfilment of that condition shall not affect the application to that instrument of any other such provision of this Ordinance whereby any other condition is required to be fulfilled in respect of that instrument.
- (4) Until Part IV comes into operation, the definition of stock (證券) in subsection (1) shall be construed as if paragraph (b) and references thereto in that definition were omitted.
- (5) If this Ordinance provides for a penalty for a contravention of this Ordinance or an act by reference to a level, the penalty applicable for the contravention or the act is the amount equal to the amount of fine shown for that level in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221). (Added 10 of 2013 s. 24)
- (6) For the purposes of this Ordinance—
  - (a) a conveyance on sale is executed in conformity with an agreement for sale only if it is executed as provided in section 29D(6)(c); and
  - (b) a conveyance on sale is executed in pursuance of an agreement for sale only if it is executed as provided in section 29D(6)(d). (Added 2 of 2018 s. 3)

Note (with no legislative effect)—

For the meaning of an agreement for sale, an unwritten sale agreement (as defined by section 29A(1)) or a conveyance on sale being made on the same terms as a previous agreement—see section 29A(4). (Added L.N. 231 of 2020 and 2 of 2021 s. 3)

## 2A. Instruments affected by Land Titles Ordinance

(Addition not yet in operation—see 26 of 2004 s. 40)

## 19. Contract notes, etc. in respect of sale and purchase of Hong Kong stock

- (1) Subject to this section, any person who effects any sale or purchase of Hong Kong stock as principal or agent shall— (Amended 77 of 1981 s. 5)
  - (a) forthwith make and execute a contract note;
  - (b) cause the note to be stamped under head 2(1) or (2) in the First Schedule or, in the case of a note to which section 45 or 47F applies, under section 13(2)— (Amended 43 of 1991 s. 5; 10 of 2013 s. 29)
    - (i) in the case of a sale or purchase effected in Hong Kong, not later than 2 days thereafter;
    - (ii) in any other case, not later than 30 days thereafter;
  - (c) if he is the agent, transmit the stamped note to his principal; (Amended 43 of 1991 s. 5)
    - (d) cause an endorsement to be made on the instrument of transfer of the stock, or cause a stamp certificate to be issued in respect of the instrument, to the effect that— (Amended 21 of 2003 s. 11)
      - (i) stamp duty has been paid on the contract note under head 2(1) or (2) in the First Schedule; or
      - (ii) in the case of a contract note to which section 45 or 47F applies, the contract note has been stamped under section 13(2). (Replaced 43 of 1991 s. 5. Amended 10 of 2013 s. 29)
- (1A) Subsection (1) shall not apply to a sale or purchase of a unit under a unit trust scheme—
  - (a) where the sale or purchase is effected by extinguishing such unit; or
  - (b) where the sale or purchase of the unit is effected by the managers under the unit trust scheme and their power to effect such sale or purchase arises—
    - (i) from the transfer to them of that or some other unit within the immediately preceding 2 months; or
    - (ii) otherwise than from a previous transfer to them of that or some other unit. (Added 77 of 1981 s. 5)



- (1B) It shall not be obligatory for an endorsement to be made under subsection (1)(d) where, at the time of the sale or purchase of Hong Kong stock—
- (a) the instrument of transfer of such stock is in the custody of a recognized clearing house in accordance with the rules of the clearing house; or
  - (b) the Hong Kong stock is registered in the name of a recognized clearing house or its nominee. *(Added 40 of 1992 s. 2)*
- (1C) Subsection (1) shall not apply to a sale or purchase of Hong Kong stock effected under a market contract. *(Added 68 of 1992 s. 20)*
- (1D) (a) Subsection (1) shall not apply to any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule.
- (b) Any transfer made for the purpose of effectuating any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule shall not be chargeable with stamp duty under head 2(4) in the First Schedule. *(Added 33 of 1998 s. 6)*
- (1DA) Subsection (1) does not apply to a transaction specified in Part 2 of Schedule 8, Part 2 of Schedule 9 or Part 2 of Schedule 10. *(Added 4 of 2015 s. 3. Amended 12 of 2016 s. 24; 16 of 2016 s. 27)*
- (1E) (a) Subject to paragraph (c), in the case of a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, where the transaction—
- (i) is not effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, but is effectuated by any other means, whether by electronic means or by means of an entry in any recording or book-keeping system or otherwise; and
  - (ii) is effectuated whether under or through a recognized clearing house or any other person or organization,
- the transaction shall, for the purposes of this Ordinance, be deemed to be a sale and purchase of Hong Kong stock.
- (b) For the purposes of this section and head 2(1) in the First Schedule, in a transaction which is deemed to be a sale and purchase of Hong Kong stock under paragraph (a)—
- (i) the person disposing of the stock in the transaction shall be deemed to be the person effecting the sale in the sale and purchase;
  - (ii) the person acquiring the stock in the transaction shall be deemed to be the person effecting the purchase in the sale and purchase;
  - (iii) where the person maintaining the record of the transaction is not the principal effecting the sale and purchase, the person shall, save in the case of a recognized clearing house, be deemed to be the agent effecting the sale and purchase; and
  - (iv) the value of the stock in the transaction shall be deemed to be the amount or value of the consideration for the sale and purchase.
- (c) Paragraph (a) shall not apply to a transaction of the kind referred to in that paragraph where the transaction would, if it were effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, be a transfer of the kind referred to in section 27(5). *(Added 33 of 1998 s. 6)*
- (1F) For the purposes of subsection (1), where—
- (a) any sale or purchase of Hong Kong stock is effected by an exchange participant, whether as principal or agent;
  - (b) the contract note required to be made under subsection (1) in respect of the sale or purchase is one to which an agreement under section 5A relates; and
  - (c) the contract note is made by the exchange participant,
- the contract note shall, whether or not it has been executed by the exchange participant, be regarded as having been so executed. *(Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 12 of 2000 s. 23)*
- (2) A contract note required to be made under subsection (1) shall state the following—
- (a) whether the person effecting the sale or purchase of the Hong Kong stock is acting as principal or agent and, if as agent, the name of his principal;
  - (b) the date of the transaction and of the making of the contract note;
  - (c) the quantity and description of such Hong Kong stock;
  - (d) the price per unit of such Hong Kong stock and the amount of the consideration or, in the case of an exchange, particulars of the property for which such Hong Kong stock is exchanged; and
  - (e) the date of settlement.
- (3) No agent or other person shall have any legal claim to any charge for brokerage, commission or agency with reference to the sale or purchase of any Hong Kong stock if he fails to comply with the provisions of this section.

- (4) The stamp duty paid in respect of a contract note may be added to any charge for brokerage or agency and shall be recoverable as part of such charge.
- (5) Where a contract note relates to the sale or purchase of more than one description of Hong Kong stock, the note shall be deemed to be as many contract notes as there are descriptions of Hong Kong stock sold or purchased.
- (6) If in the case of a sale or purchase of any Hong Kong stock effected by a person who is not resident in Hong Kong, the stamp duty specified in head 2(1) in the First Schedule is not paid, there shall be charged on the instrument of transfer, in addition to the stamp duty otherwise chargeable thereon, stamp duty equal to the amount of the stamp duty so payable in respect of such sale or purchase; and in respect of stamp duty charged on an instrument of transfer under this subsection, the transferee shall be the person liable for stamping such instrument and the time for stamping it shall be 30 days after execution thereof.
- (7) Where any instrument of transfer is stamped under subsection (6), the Collector shall endorse the instrument, or issue a stamp certificate in respect of the instrument, to that effect in such manner as he may think fit. (*Amended 21 of 2003 s. 11*)
- (8) An instrument of transfer of any Hong Kong stock shall not be duly stamped unless—
  - (a) it is endorsed under subsection (1)(d) or (7) in respect of both sale and purchase; (*Amended 40 of 1992 s. 2*)
  - (b) it is endorsed by the Collector in such manner as he may think fit to the effect that—
    - (i) stamp duty has been paid in respect thereof under head 2(3) in the First Schedule; or
    - (ii) no stamp duty is chargeable thereon under subsection (6) or head 2(1) or 2(3) in the First Schedule; or (*Amended 43 of 1991 s. 5; 40 of 1992 s. 2*)
  - (c) the Hong Kong stock is transferred to a recognized clearing house, or its nominee, in accordance with the rules of the clearing house. (*Added 40 of 1992 s. 2*)
- (9) An endorsement under subsection (1) in respect of stamp duty paid—
  - (a) under head 2(1) in the First Schedule may be made by the Collector or any person authorized by the Collector in that behalf;
  - (b) under head 2(2) in the First Schedule shall be made by the Collector, in such manner as the Collector may think fit.
- (9A) An endorsement under subsection (1)(d)(ii) shall be made by the Collector in such manner as he thinks fit. (*Added 43 of 1991 s. 5*)
- (10) Any person who makes an endorsement for the purposes of subsection (1)(d) which is false in a material particular commits an offence.
- (10A) In relation to a sale or purchase of a unit under a unit trust scheme other than a sale or purchase referred to in subsection (1A), the obligations imposed by this section (other than subsection (1)(c)) and head 2(1) in the First Schedule on any person other than the managers under the unit trust scheme shall be carried out by the managers in addition to any obligation so imposed on them, and for that purpose subsection (2)(a) shall not apply. (*Added 77 of 1981 s. 5*)
- (11) Subject to subsections (12), (12A) and (13), nothing in this section shall apply to—
  - (a) a stock borrowing; or
  - (b) a stock return. (*Replaced 67 of 1989 s. 3*)
- (12) Where, in respect of a stock borrowing—
  - (a) the borrower ceases to be required to make a stock return in accordance with the stock borrowing and lending agreement to which the stock borrowing relates, in respect of the borrowed stock or part thereof or its reasonable equivalent (other than that which is the subject of the stock return referred to in paragraph (c)), pursuant to the stock borrowing and lending agreement or to any other agreement reached with the lender of the borrowed stock (whether by settlement or otherwise); (*Replaced L.N. 90 of 1999 and 44 of 1999 s. 17*)
  - (b) the borrowed stock or part thereof or its reasonable equivalent was used for a purpose other than a specified purpose; or (*Amended L.N. 90 of 1999 and 44 of 1999 s. 17*)
  - (c) the borrower fails to comply with any demand made by the lender of the borrowed stock under the stock borrowing and lending agreement to which the stock borrowing relates to make a stock return in respect of the borrowed stock or part thereof or its reasonable equivalent, (*Amended L.N. 90 of 1999 and 44 of 1999 s. 17*)such stock borrowing shall, for the purposes of this Ordinance, be deemed to be a sale and a purchase of—
  - (i) where paragraph (a) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return the borrower ceases to be required to make as described in that paragraph;

- (ii) where paragraph (b) applies, the borrowed stock or part thereof which, or the borrowed stock or part thereof the reasonable equivalent of which, was used for a purpose other than a specified purpose as described in that paragraph; or
  - (iii) where paragraph (c) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return referred to in that paragraph. (*Amended L.N. 90 of 1999 and 44 of 1999 s. 17*)
- (12AA) This Ordinance, except subsection (1)(d), shall apply to the sale and purchase referred to in subsection (12) as if that sale and purchase were effected in Hong Kong—
- (a) by the borrower who obtained the relevant borrowed stock;
  - (b) on the specified day; and
  - (c) for a consideration calculated at the previous closing price of Hong Kong stock of the same description as the stock which is the subject of the sale and purchase or, if there is more than one description of the stock, at their respective previous closing prices as quoted on the relevant recognized stock market. (*Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 5 of 2002 s. 407*)
- (12A) Subsection (11) shall not apply to any stock borrowing or stock return, unless—
- (a) an executed copy of the stock borrowing and lending agreement under which the stock borrowing and stock return are provided for, or a copy of the stock borrowing and lending agreement which is shown to the satisfaction of the Collector as a true copy thereof;
  - (b) such fee as may be specified by the Financial Secretary for the purposes of this subsection by notice in the Gazette; and
  - (c) such other documents, and such particulars and information as the Collector may require, are provided by the borrower to the Collector at any time after the stock borrowing and lending agreement is executed but before the expiry of 30 days after the stock borrowing is effected. (*Replaced L.N. 90 of 1999 and 44 of 1999 s. 17*)
- (13) A borrower who has effected any stock borrowings under a stock borrowing and lending agreement, an executed copy of which has been provided to the Collector in accordance with subsection (12A), shall— (*Amended 33 of 1998 s. 6*)
- (a) keep a book in such form;
  - (b) enter in such book, in respect of such stock borrowings and any stock returns made in respect of such stock borrowings, such particulars; and
  - (c) furnish to the Collector a return—
    - (i) in such form;
    - (ii) containing such particulars in respect of such book; and
    - (iii) at such times,
 as the Collector may require. (*Added 67 of 1989 s. 3*)
- (14) A borrower who, with intent to defraud the Government of any stamp duty, causes or allows—
- (a) an entry to be made in a book kept under subsection (13)(a); or
  - (b) any particular to be furnished in a return made to the Collector under subsection (13)(c),
- which he knows or has reasonable grounds for believing to be false or misleading in a material respect commits an offence. (*Replaced 70 of 1994 s. 4*)
- (15) A borrower who fails to comply with the requirements of subsection (13) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (*Replaced 70 of 1994 s. 4. Amended L.N. 338 of 1995; 12 of 1999 s. 3*)
- (16) In this section—
- allotment** (分配), in relation to units under a unit trust scheme, means the issue of such units;
- borrowed stock** (被借用證券), in relation to a stock borrowing, means any Hong Kong stock obtained by a borrower under such stock borrowing; (*Replaced 70 of 1994 s. 4*)
- borrower** (借用人), means a person who is eligible to obtain Hong Kong stock under a stock borrowing and lending agreement; (*Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6*)
- lender** (借出人) means a person who is eligible to lend Hong Kong stock under a stock borrowing and lending agreement; (*Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6*)
- market contract** (市場合約) means a market contract within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407*)

- previous closing price** (先前收市價格), in relation to Hong Kong stock, means the previous closing price of such Hong Kong stock as determined in accordance with the rules and practices of the recognized exchange company that operates the relevant stock market; (*Amended 5 of 2002 s. 407*)
- reasonable equivalent** (合理對等項目), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement**, means any stock or monies which, in the opinion of the Collector, can, as a result of the occurrence of a relevant event, be reasonably and fairly be regarded as the equivalent of the stock so obtained; (*Added L.N. 90 of 1999 and 44 of 1999 s. 17*)
- recognized clearing house** (認可結算所) means a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Replaced 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407*)
- relevant event** (有關事件), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement**, means—
- (a) the exercise of any of the powers conferred by section 53(1)(a) to (d) of the relevant Ordinance; (*Replaced 28 of 2012 ss. 912 & 920*)
  - (ab) the exercise of any of the powers conferred by section 170(2)(a) to (e) and 174(1) of the Companies Ordinance (Cap. 622); or (*Added 28 of 2012 ss. 912 & 920*)
  - (b) any other event,
- which, in the opinion of the Collector, makes any requirement to return stock of the same quantity and description as the stock so obtained either impracticable or inappropriate; (*Added L.N. 90 of 1999 and 44 of 1999 s. 17*)
- rules** (規章), in relation to a recognized clearing house and a recognized exchange company, has the same meaning as it has in relation to those bodies in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
- sale or purchase** (售賣或購買) includes any disposal or acquisition (other than an allotment) for valuable consideration, and exchange, and any transaction in respect of which an instrument is deemed by virtue of section 30(3), (4) or (5) to be a transfer by way of sale, and any reference to **sale** (售賣) or **purchase** (購買) shall be construed accordingly;
- specified day** (指明日期), in relation to a stock borrowing, means—
- (a) where subsection (12)(a) applies, the day on which the borrower ceases to be required to make a stock return as described in that subsection;
  - (b) where subsection (12)(b) applies, the day on which the borrowed stock referred to in that subsection was obtained under the stock borrowing and lending agreement to which the stock borrowing relates; or
  - (c) where subsection (12)(c) applies, the day on which the borrower fails to comply with any demand as described in that subsection; (*Replaced L.N. 90 of 1999 and 44 of 1999 s. 17*)
- specified payment** (指明付款), in relation to any stock, means a payment of an amount equivalent to the amount of any dividend, interest and other distribution payable in respect of the stock or its reasonable equivalent or both by the issuer of the stock or its reasonable equivalent or by any other person to the holder of the stock or its reasonable equivalent during the period after the stock is obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement** and before a return or delivery is required to be made in accordance with the provisions referred to in paragraph (a)(i)(B) or (b)(i)(B) of that definition; (*Added L.N. 90 of 1999 and 44 of 1999 s. 17*)
- specified purpose** (指明用途), in relation to the borrowing of stock by any person, means—
- (a) the settling of a sale of Hong Kong stock wherever effected, whether by the person himself or another person;
  - (b) the settling of a future sale of Hong Kong stock, whether agreed or not when such borrowing is effected and whether by the person himself or another person;
  - (c) the replacement, in whole or in part, of Hong Kong stock obtained by the person under another stock borrowing;
  - (d) the on-lending of the stock borrowed to another person who effects a stock borrowing in respect of such stock on-lent; or
  - (e) such other purpose as the Collector may, in writing, allow either generally or in any particular case; (*Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6*)
- stock borrowing** (證券借用) means the obtaining by a borrower from a lender, under a stock borrowing and lending agreement, of Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and practices of the recognized exchange company that operates the relevant stock market,

whether the Hong Kong stock is so obtained— (*Amended L.N. 90 of 1999 and 44 of 1999 s. 17; 5 of 2002 s. 407*)

- (a) directly from the lender; or
- (b) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (*Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6*)

**stock borrowing and lending agreement** (證券借用及借出協議) means—

- (a) an agreement which—
  - (i) contains—
    - (A) provisions providing for the obtaining of any stock by a person from any other person;
    - (B) provisions requiring—
      - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
      - (II) the delivery of the reasonable equivalent of the stock so obtained; and
    - (C) provisions which—
      - (I) require a specified payment to be made by the person by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the person from whom the stock is obtained pursuant to the provisions; or
      - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment; and
  - (ii) does not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); or (*Replaced L.N. 90 of 1999 and 44 of 1999 s. 17*)
- (b) the rules of a recognized clearing house which—
  - (i) contain the following provisions approved by the Collector—
    - (A) provisions providing for the obtaining of any stock by a participant of the clearing system of the recognized clearing house from any other participant of such clearing system;
    - (B) provisions requiring—
      - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
      - (II) the delivery of the reasonable equivalent of the stock so obtained; and
    - (C) provisions which—
      - (I) require a specified payment to be made by the participant by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the participant from whom the stock is obtained pursuant to the provisions; or
      - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment;
  - (ii) do not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); and
  - (iii) are subscribed to by participants of the clearing system of the recognized clearing house as a precondition for their obtaining of any stock within the meaning of subparagraph (i)(A); (*Replaced L.N. 90 of 1999 and 44 of 1999 s. 17*)

**stock return** (證券交還), in relation to a stock borrowing, means a transaction by which a borrower, in accordance with the stock borrowing and lending agreement to which the stock borrowing relates—

- (a) returns any stock which is of the same description as the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)); or
- (b) delivers any reasonable equivalent of the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)),

whether or not the return or delivery is made— (*Amended L.N. 90 of 1999 and 44 of 1999 s. 17*)

- (i) directly to the lender; or
- (ii) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (*Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6*)

**transaction** (交易), in relation to a stock return, includes the return by a borrower to a lender of a lesser quantity of stock than that obtained by him on the day that the borrowed stock was so obtained. (*Added 70 of 1994 s. 4*)

(*Amended 70 of 1994 s. 4*)

#### 19A. Refund of stamp duty in respect of sale and purchase of units under unit trust schemes

- (1) Where stamp duty is paid under head 2(1) in the First Schedule in respect of a sale or purchase of a unit under a unit trust scheme effected by the managers under such scheme, the stamp duty shall be refunded to the managers upon application to the Collector under subsection (2) if the managers and trustees under such scheme, before the expiration of 2 months from the date on which the sale or purchase is effected, jointly certify that—
  - (a) the certificate, if any, in respect of the unit has been cancelled;
  - (b) as a consequence of the sale or purchase, a proportionate part of the trust property has been realized, and the trust property diminished accordingly; and
  - (c) the unit is extinguished and the managers have no power to transfer any other unit in lieu thereof.
- (2) On an application for a refund of stamp duty under this section, the applicant shall produce to the Collector the contract notes in respect of which the stamp duty was paid or, where applicable, the stamp certificates issued in respect of the contract notes, and the joint certificate of the managers and trustees referred to in subsection (1). (*Amended 21 of 2003 s. 12*)
- (3) In this section **trust property** (信託財產) has the meaning assigned to it by section 30.

(*Added 77 of 1981 s. 6*)

#### 27. Voluntary dispositions

- (1) Any conveyance of immovable property operating as a voluntary disposition inter vivos shall be chargeable with stamp duty as a conveyance on sale, with the substitution of the value of the property conveyed for the amount or value of the consideration for the sale.
- (2) In the case of an instrument of transfer operating as a voluntary disposition inter vivos of Hong Kong stock, or an instrument referred to in section 28(1) which so operates by virtue of that section, any stamp duty paid in respect of contract notes made under section 19(1) in respect of the amount or value of any consideration given by the transferee for such Hong Kong stock shall be set off against the stamp duty chargeable on such instrument of transfer.
- (3) A conveyance or transfer operating as a voluntary disposition inter vivos shall not be duly stamped unless the Collector has stamped the instrument of conveyance or transfer under section 13(3)(b).
- (4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall for the purposes of this Ordinance be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Collector is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.
- (5) Nothing in this section shall apply to a conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, and this subsection shall have effect only if the circumstances exempting the conveyance or transfer from charge under this section are set forth in the conveyance or transfer. (*Amended 33 of 1998 s. 7*)
- (6) In this section **conveyance** (轉易契) includes any agreement for a lease or any release or renunciation of immovable property.

#### 45. Relief in case of conveyance from one associated body corporate to another

- (1) Stamp duty under head 1(1), (1AA) or (1AAB) or 2(1) or (3) in the First Schedule shall not be chargeable on an instrument to which this section applies. (*Amended 14 of 2011 s. 13; 2 of 2014 s. 16*)
- (2) Subject to subsections (4), (5), (5A) and (6), this section applies to any instrument as respects which it is shown to the satisfaction of the Collector that the effect thereof is to convey a beneficial interest in immovable property, or to transfer a beneficial interest in Hong Kong stock, from one associated body corporate to another, and also applies to any instrument that is a contract note in respect of a sale or purchase of Hong Kong stock made between one associated body corporate and another, where in each case the bodies are associated, that is to say, one is beneficial owner of not less than 90 per cent

- of the issued share capital of the other, or a third such body is beneficial owner of not less than 90 per cent of the issued share capital of each.
- (3) An instrument to which this section applies and that conveys a beneficial interest in immovable property or is a contract note shall not be duly stamped unless it is stamped with the stamp duty with which it would, but for this section, be chargeable or it has, in accordance with section 13, been stamped with a particular stamp or by way of a stamp certificate, denoting either that it is not chargeable with any stamp duty or that it is duly stamped. (*Amended 21 of 2003 s. 18*)
  - (4) This section shall not apply to any instrument unless it is also shown to the satisfaction of the Collector that the instrument was not executed, or the sale or purchase of the Hong Kong stock was not made, in pursuance of or in connexion with an arrangement under which—
    - (a) the consideration, or any part of the consideration, for the conveyance, transfer, sale or purchase was to be provided or received, directly or indirectly by a person other than a body corporate which at the time of the sale or purchase, or of the execution of the conveyance or transfer, was associated within the meaning of subsection (2) with either the transferor or the transferee (meaning respectively, the body corporate from whom and the body corporate to whom the beneficial interest was conveyed or transferred, or the Hong Kong stock was purchased or sold);
    - (b) the said interest was previously conveyed, transferred, purchased or sold, directly or indirectly, by such a person; or
    - (c) the transferor and the transferee were to cease to be associated within the meaning of subsection (2) by reason of a change in the percentage of the issued share capital of the transferee in the beneficial ownership of the transferor or a third body corporate.
  - (5) Without prejudice to the generality of paragraph (a) of subsection (4), an arrangement shall be treated as within that paragraph if it is one under which the transferor or the transferee, or a body corporate associated with either as there mentioned, was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a body corporate so associated.
  - (5A) Where a transferor and transferee, as described in subsection (4), cease to be associated as described in subsection (4)(c) within 2 years after the date of execution of the instrument or, in the case of contract note, within 2 years after the date on which the note was required to have been made and executed under section 19, and relief from stamp duty has been claimed under this section—
    - (a) the transferor and transferee shall notify the Collector of that fact and of the date of the cessation within 30 days after the date of the cessation;
    - (b) (*Repealed 10 of 2013 s. 30*)
    - (c) if any relief from stamp duty has been granted by the Collector under this section, the relief is deemed to be withdrawn subject to section 13(6) and the transferor and transferee are liable or jointly and severally liable, as the case may be, to pay to the Collector, within 30 days after the date of the cessation, by way of stamp duty an amount equal to the stamp duty which would have been chargeable on the instrument had relief not been granted under this section; (*Amended 10 of 2013 s. 30*)
    - (d) if the amount referred to in paragraph (c) is not paid within the 30 days—
      - (i) the transferor and transferee are liable or jointly and severally liable (as the case requires) to a penalty; and
      - (ii) the amount of the penalty payable after a lapse of a period of time after the 30 days is the same as that calculated under section 9 for an instrument chargeable with stamp duty of the amount referred to in paragraph (c) that—
        - (A) is not stamped before or within the time for stamping it; and
        - (B) is stamped after the lapse of the same period of time after the time for stamping it; and (*Replaced 10 of 2013 s. 30*)
    - (e) the Collector may remit the whole or any part of any penalty payable under paragraph (d). (*Added 10 of 2013 s. 30*)
  - (6) The ownership referred to in subsections (2) and (4) is ownership either directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, and the Third Schedule shall apply accordingly for the purposes of this section.
  - (7) A person who fails to comply with subsection (5A)(a) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (*Added 43 of 1991 s. 6. Amended 70 of 1994 s. 6; L.N. 338 of 1995; 12 of 1999 s. 3*)

(*Amended 43 of 1991 s. 6*)

## Schedule 8

[ss. 19 & 63 & 1st Sch. & Sch. 10]  
(Amended 16 of 2016 s. 32)

### Transactions and Transfers Relating to Exchange Traded Funds

#### Part 1 Interpretation

1. In this Schedule—

**allotment** (分配), in relation to a share or unit of an exchange traded fund, means an issue of the share or unit, where—

- (a) the issue arises from market making or liquidity providing activities in respect of the shares or units of the fund; and
- (b) those activities are conducted through, or recorded on, the trading system of the Stock Exchange Company; (*Added L.N. 74 of 2020*)

**allotment period** (分配時段), in relation to the allotment of a share or unit of an exchange traded fund, means the period between the following 2 days (both days inclusive)—

- (a) the day on which the order for the allotment is placed by a market maker of the fund;
- (b) the day on which the allotment is settled; (*Added L.N. 74 of 2020*)

**collective investment scheme** (集體投資計劃) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

**constitutive documents** (組成文件), in relation to a collective investment scheme, means the principal documents governing the establishment of the scheme;

**exchange traded fund** (交易所買賣基金) means an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market;

**market maker** (莊家), in relation to an exchange traded fund, means a person approved by or registered with the Stock Exchange Company for performing, in accordance with rules made by the Stock Exchange Company, market making or liquidity providing activities in respect of the shares or units of the fund; (*Added L.N. 74 of 2020*)

**offering document** (要約文件), in relation to a collective investment scheme, means a document—

- (a) inviting participation in the scheme by prospective shareholders or prospective unit holders of the scheme; and
- (b) containing information relating to the establishment or administration of the scheme;

**open-ended collective investment scheme** (開放式集體投資計劃) means a collective investment scheme the shares or units of which may be repurchased or redeemed at the request of any of its shareholders or unit holders—

- (a) at a price calculated wholly or mainly by reference to the net asset value of the scheme; and
- (b) in accordance with the frequency for repurchase or redemption, requirements and procedures set out in the offering document or constitutive documents of the scheme;

**participating dealer** (參與證券商), in relation to an exchange traded fund, means a person who is authorized by the trustee or manager of the fund to accept orders for the allotment and redemption of shares or units of the fund; (*Added L.N. 74 of 2020*)

**purchase** (購買), **sale** (售賣) and **sale or purchase** (售賣或購買) have the meaning given by section 19(16); (*Amended L.N. 74 of 2020*)

**redemption** (贖回), in relation to a share or unit of an exchange traded fund, means a cancellation of the share or an extinguishment of the unit, after the share or unit is eventually transferred to the fund, where—

- (a) the cancellation or extinguishment arises from market making or liquidity providing activities in respect of the shares or units of the fund; and
- (b) those activities are conducted through, or recorded on, the trading system of the Stock Exchange Company; (*Added L.N. 74 of 2020*)

**redemption period** (贖回時段), in relation to the redemption of a share or unit of an exchange traded fund, means the period between the following 2 days (both days inclusive)—

- (a) the day on which the order for the redemption is placed by a market maker of the fund;



- (b) the trading day immediately after the day on which the relevant Hong Kong stock is delivered to the market maker for the redemption; (*Added L.N. 74 of 2020*)

**Stock Exchange Company** (聯交所) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571). (*Added L.N. 74 of 2020*)

## **Part 2**

### **Transactions to which Section 19(1) does not Apply**

1. A sale or purchase of a share or unit of an exchange traded fund.
2. A transaction that is deemed under section 19(1E)(a) or (12) to be a sale and purchase of Hong Kong stock where the stock involved is a share or unit of an exchange traded fund.
3. Each of the following transactions that is made for the allotment of a share or unit of an exchange traded fund—
  - (a) a purchase of Hong Kong stock, made by a market maker of the fund, that is settled within the allotment period;
  - (b) both the sale and purchase of a transaction of Hong Kong stock (if any) that satisfies both of the following conditions—
    - (i) the sale is made by a market maker of the fund and the purchase is made by a participating dealer of the fund;
    - (ii) the transaction is settled within the allotment period.
4. Each of the following transactions that is made for the redemption of a share or unit of an exchange traded fund—
  - (a) both the sale and purchase of a transaction of Hong Kong stock (if any) that satisfies both of the following conditions—
    - (i) the sale is made by a participating dealer of the fund and the purchase is made by a market maker of the fund;
    - (ii) the transaction is effected within the redemption period;
  - (b) a sale of Hong Kong stock, made by a market maker of the fund, that is effected within the redemption period.

(*Added L.N. 74 of 2020*)

(*Added L.N. 74 of 2020*)

## **Part 3**

### **Transfers on which Stamp Duty under Head 2(3) in First Schedule is not Payable**

1. A transfer executed for a transaction by which the beneficial interest in a share or unit of an exchange traded fund passes otherwise than on sale and purchase.
2. An instrument that is deemed under section 30(3) to be a transfer operating as a voluntary disposition inter vivos under section 27(4) where the unit trust scheme involved is an exchange traded fund.

## **Part 4**

### **Transfers on which Stamp Duty under Head 2(4) in First Schedule is not Payable**

1. A transfer executed for a transaction by which a share or unit of an exchange traded fund is transferred.
2. An instrument that is deemed under section 30(3), (4) or (5) to be a transfer falling within head 2(4) in the First Schedule where the unit trust scheme involved is an exchange traded fund.

(*Schedule 8 added 4 of 2015 s. 6*)

## **B. Common Reporting Standard**

### **COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION**

#### **Section I: General Reporting Requirements**

- A. Subject to paragraphs C through F, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:
  1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
  2. the account number (or functional equivalent in the absence of an account number);
  3. the name and identifying number (if any) of the Reporting Financial Institution;
  4. 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 relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
  5. in the case of any Custodial Account:
    - a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding subparagraph A(I), with respect to each Reportable Account that is a Preexisting Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.
- D. Notwithstanding subparagraph A(I), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.
- E. Notwithstanding subparagraph A(I), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.
- F. Notwithstanding paragraph A, the information to be reported with respect to [xxxx] is the information described in such paragraph, except for gross proceeds described in subparagraph A(5)(b).

#### **Section II: General Due Diligence Requirements**

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

- C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- D. Each Jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but these obligations shall remain the responsibility of the Reporting Financial Institutions.
- E. Each Jurisdiction may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Jurisdiction allows New Account due diligence procedures to be used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

### Section III: Due Diligence for Preexisting Individual Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Individual Accounts.

- A. **Accounts Not Required to be Reviewed, Identified, or Reported.** A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.
- B. **Lower Value Accounts.** The following procedures apply with respect to Lower Value Accounts.
  - 1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.
  - 2. **Electronic Record Search.** If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) through (6):
    - a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
    - b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
    - c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
    - d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
    - e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
    - f) a "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
  - 3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
  - 4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
  - 5. If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account.
  - 6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if:
    - a) the Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction, one or more telephone numbers in the Reportable Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account

maintained in a Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

- i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and
  - ii) Documentary Evidence establishing the Account Holder's non-reportable status.
- b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
- i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or
  - ii) Documentary Evidence establishing the Account Holder's non-reportable status.

**C. Enhanced Review Procedures for High Value Accounts.** The following enhanced review procedures apply with respect to High Value Accounts.

1. **Electronic Record Search.** With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).
2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution 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 Financial Institution within the last five years for any of the indicia described in subparagraph B(2):
  - 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 Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
  - d) any power of attorney or signature authority forms currently in effect; and
  - e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. **Exception To The Extent Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
  - a) the Account Holder's residence status;
  - b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
  - c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
  - d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
  - e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
  - f) whether there is any power of attorney or signatory authority for the account.
4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
5. **Effect of Finding Indicia.**
  - a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Reportable Person in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
  - b) If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply

subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.

- c) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
- 6. If a Preexisting Individual Account is not a High Value Account as of 31 December [xxxx], but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
- 7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
- 8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
- 9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Preexisting Individual Accounts must be completed by [xx/xx/xxxx].
- E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

#### Section IV: Due Diligence for New Individual Accounts

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

#### Section V: Due Diligence for Preexisting Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Entity Accounts.

- A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250,000 as of 31 December [xxxx], is not required to be reviewed, identified,

or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250,000 as of the last day of any subsequent calendar year.

- B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250,000 as of 31 December [xxxx], and a Preexisting Entity Account that does not exceed USD 250,000 as of 31 December [xxxx] but the aggregate account balance or value of which exceeds USD 250,000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
  1. **Determine Whether the Entity Is a Reportable Person.**
    - a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.
    - b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
  2. **Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons.** With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(2)(a) through (c) in the order most appropriate under the circumstances.
    - a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
    - b) **Determining the Controlling Persons of an Account Holder.** For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
    - c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
      - i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1,000,000; or
      - ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes.
- E. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**
  1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250,000 as of 31 December [xxxx] must be completed by 31 December [xxxx].
  2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250,000 as of 31 December [xxxx], but exceeds USD 250,000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250,000.
  3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution

must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

## Section VI: Due Diligence for New Entity Accounts

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

- A. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
  1. **Determine Whether the Entity Is a Reportable Person.**
    - a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
    - b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.
  2. **Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons.** With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.
    - a) **Determining whether the Account Holder is a Passive NFE.** For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
    - b) **Determining the Controlling Persons of an Account Holder.** For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
    - c) **Determining whether a Controlling Person of a Passive NFE is a Reportable Person.** For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## Section VII: Special Due Diligence Rules

The following additional rules apply in implementing the due diligence procedures described above:

- A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract.** A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.
- C. **Account Balance Aggregation and Currency Rules.**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. **Special Aggregation Rule Applicable to Relationship Managers.** 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 Financial Institution 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.
4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.

## Section VIII: Defined Terms

The following terms have the meanings set forth below:

### A. Reporting Financial Institution

1. The term "Reporting Financial Institution" means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.
2. The term "Participating Jurisdiction Financial Institution" means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term "Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term "Depository Institution" means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term "Investment Entity" means any Entity:
  - a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
    - i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
    - ii) individual and collective portfolio management; or
    - iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
  - b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or



trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

7. The term "Financial Asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.
8. The term "Specified Insurance Company" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

## B. Non-Reporting Financial Institution

1. The term "Non-Reporting Financial Institution" means any Financial Institution that is:
  - a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
  - b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
  - c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(I)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;
  - d) an Exempt Collective Investment Vehicle; or
  - e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term "Governmental Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a "Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.
  - a) An "integral part" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  - b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
    - i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
    - ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
    - iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
  - c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct

a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term "International Organisation" means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.
4. The term "Central Bank" means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.
5. The term "Broad Participation Retirement Fund" means a fund established 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 five per cent of the fund's assets;
  - b) is subject to government regulation and provides information reporting to the tax authorities; and
  - c) satisfies at least one of the following requirements:
    - i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, 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 in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) 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 in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
    - 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 USD 50,000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
6. The term "Narrow Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits 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:
  - a) the fund has fewer than 50 participants;
  - b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
  - c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
  - d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets; and
  - e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term "Pension Fund of a Governmental Entity, International Organisation or Central Bank" means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees,) or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
8. The term "Qualified Credit Card Issuer" means a Financial Institution satisfying the following requirements:
  - a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
  - b) beginning on or before [xx/xx/xxxx], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer

to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term "Exempt Collective Investment Vehicle" means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after [xx/xx/xxxx];
- b) the collective investment vehicle retires all such shares upon surrender;
- c) the collective investment vehicle performs the due diligence procedures set forth in Sections II through VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to [xx/xx/xxxx].

## C. Financial Account

1. The term "Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
  - a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
  - b) in the case of a Financial Institution not described in subparagraph C(I)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and
  - c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term "Financial Account" does not include any account that is an Excluded Account.

2. The term "Depository Account" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. 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.
3. The term "Custodial Account" means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person.
4. The term "Equity Interest" means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term "Insurance Contract" means 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.
6. The term "Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term "Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term "Cash Value" means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract:
  - a) solely by reason of the death of an individual insured under a life insurance contract;
  - b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked 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;
  - d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
  - e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term "Preexisting Account" means a Financial Account maintained by a Reporting Financial Institution as of [xx/xx/xxxx].
10. The term "New Account" means a Financial Account maintained by a Reporting Financial Institution opened on or after [xx/xx/xxxx].
11. The term "Preexisting Individual Account" means a Preexisting Account held by one or more individuals.
12. The term "New Individual Account" means a New Account held by one or more individuals.
13. The term "Preexisting Entity Account" means a Preexisting Account held by one or more Entities.
14. The term "Lower Value Account" means a Preexisting Individual Account with an aggregate balance or value as of 31 December [xxxx] that does not exceed USD 1,000,000.
15. The term "High Value Account" means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1,000,000 as of 31 December [xxxx] or 31 December of any subsequent year.
16. The term "New Entity Account" means a New Account held by one or more Entities.
17. The term "Excluded Account" means any of the following accounts:
  - a) a retirement or pension account that satisfies the following requirements:
    - i) 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);
    - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax 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);
    - iii) information reporting is required to the tax authorities with respect to the account;
    - iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
    - v) either (i) annual contributions are limited to USD 50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).
  - b) an account that satisfies the following requirements:
    - i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
    - ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax 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);

- iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- iv) annual contributions are limited to USD 50,000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).

- c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
  - i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
  - ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and iv) the contract is not held by a transferee for value.
- d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- e) an account established in connection with any of the following:
  - i) a court order or judgment.
  - ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - iii) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
    - 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 an account described in subparagraph C(17)(f).
  - iii) an obligation of a Financial Institution serv1c111g a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
  - iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- f) a Depository Account that satisfies the following requirements:
  - i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - ii) beginning on or before [xx/xx/xxxx], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

- g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is defined in domestic law as an Excluded Account, provided that the status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

#### **D. Reportable Account**

1. The term "Reportable Account" means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
2. The term "Reportable Person" means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term "Reportable Jurisdiction Person" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term "Reportable Jurisdiction" means a jurisdiction (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and (ii) which is identified in a published list.
5. The term "Participating Jurisdiction" means a jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and (ii) which is identified in a published list.
6. The term "Controlling Persons" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term "NFE" means any Entity that is not a Financial Institution.
8. The term "Passive NFE" means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term "Active NFE" means any NFE that meets any of the following criteria:
  - a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
  - d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this 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;
  - e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
  - f) the NFE was not a Financial Institution 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 Financial Institution;
  - g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
  - h) the NFE 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 NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE 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 NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
- v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

#### **E. Miscellaneous**

1. The term "Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
2. The term "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term "Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. 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 and value in an Entity.
5. The term "TIN" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term "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 in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
  - d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

#### **Section IX: Effective Implementation**

- A. A jurisdiction must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:
  1. rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;

2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;
3. administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
4. administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
5. effective enforcement provisions to address non-compliance.

### **Commentary on Section I concerning General Reporting Requirements**

1. Section I contains the general reporting requirements applicable to Reporting Financial Institutions. Paragraphs A and B specify the information to be reported as a general rule, while paragraphs C through F provide for a series of exceptions in connection with TIN, date of birth, place of birth and gross proceeds. Paragraph 1 of Section 2 of the Model Competent Authority Agreement makes clear that the information to be exchanged is the information required to be reported under the reporting and due diligence rules of the Common Reporting Standard, including the exceptions contained in paragraphs C through F of Section I.
2. Reporting Financial Institutions would often inform Account Holders (e.g. through a change to terms and conditions) that information relating to their accounts, if their accounts are Reportable Accounts, will be reported and may be exchanged with other jurisdictions. In some jurisdictions, Reporting Financial Institutions may be required to do so under their jurisdiction's privacy and disclosure rules. Reporting Financial Institutions would need to comply with such rules in this regard (e.g. by providing Account Holders, upon request, with a copy of the information reported).

#### **Paragraph A – Information to be reported**

3. Pursuant to paragraph A, each Reporting Financial Institution must report the following information with respect to each Reportable Account of such Reporting Financial Institution:
  - a) in the case of any individual that is an Account Holder and a Reportable Person: the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth;
  - b) in the case of any Entity that is an Account Holder and a Reportable Person: the name, address, jurisdiction(s) of residence and TIN(s);
  - c) in the case of any Entity that is an Account Holder and that is identified as having one or more Controlling Persons that is a Reportable Person:
    - (1) the name, address, jurisdiction(s) of residence and TIN(s) of the Entity; and
    - (2) the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Controlling Person that is a Reportable Person;
  - d) the account number (or functional equivalent in the absence of an account number);
  - e) the name and identifying number (if any) of the Reporting Financial Institution; and
  - f) 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 relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.
4. In addition, the following information must also be reported:
  - a) in the case of any Custodial Account:
    - (1) the total gross amount of interest paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;
    - (2) the total gross amount of dividends paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;
    - (3) the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - (4) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.



- b) in the case of any Depository Account: the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.
- c) in the case of any account other than a Custodial Account or a Depository Account: the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

#### *Subparagraph A(1) – Address*

5. The address to be reported with respect to an account is the address recorded by the Reporting Financial Institution for the Account Holder, pursuant to the due diligence procedures in Sections II through VII. Consequently, in the case of an account held by an individual that is a Reportable Person, the address to be reported is the current residence address of the individual (see paragraphs 8 and 22 of the Commentary on Section III) unless the Reporting Financial Institution does not have such address in its records where it would report the mailing address it has on file. In the case of an account held by an Entity that is identified as having one or more Controlling Persons that is a 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 Reportable Person.

#### *Subparagraph A(1) – Jurisdiction(s) of residence*

6. The jurisdiction of residence to be reported with respect to an account is the jurisdiction of residence identified by the Reporting Financial Institution for the Reportable Person with respect to the relevant calendar year or other appropriate reporting period, pursuant to the due diligence procedures in Sections II through VII. In the case of a Reportable Person that is identified as having more than one jurisdiction of residence, the jurisdictions of residence to be reported are all the jurisdictions of residence identified by the Reporting Financial Institution for the Reportable Person with respect to the relevant calendar year or other appropriate reporting period. The jurisdiction(s) of residence that are identified as a result of the due diligence procedures in Sections II through VII are without prejudice to any residence determination made by the Reporting Financial Institution for any other tax purposes.

#### *Subparagraph A(1) – TIN*

7. The TIN to be reported with respect to an account is the TIN assigned to the Account Holder by its jurisdiction of residence (i.e. not by a jurisdiction of source). In the case of a Reportable Person that is identified as having more than one jurisdiction of residence, the TIN to be reported is the Account Holder's TIN with respect to each Reportable Jurisdiction (subject to the application of paragraphs C and D). As defined in subparagraph E(5) of Section VIII, the term "TIN" includes a functional equivalent in the absence of a Taxpayer Identification Number (see paragraph 148 of the Commentary on Section VIII).

#### *Subparagraph A(2) – Account number*

8. The account number to be reported with respect to an account is the identifying number assigned by the Reporting Financial Institution for purposes other than to satisfy the reporting requirements of subparagraph A(1) or, if no such number is assigned to the account, a functional equivalent (i.e. a unique serial number or other number such Reporting Financial Institution assigns to the Financial Account that distinguishes the account from other accounts maintained by such institution). A contract or policy number would generally be considered functional equivalents of an account number.

#### *Subparagraph A(3) – Identifying number*

9. The Reporting Financial Institution must report its name and identifying number (if any). Identifying information on the Reporting Financial Institution is intended to allow Participating Jurisdictions to easily identify the source of the information reported and subsequently exchanged in order to, e.g. follow-up on an error that may have led to incorrect or incomplete information reporting. The "identifying number" of a Reporting Financial Institution is the number assigned to a Reporting Financial Institution for identification purposes. Normally this number is assigned to the Reporting Financial Institution by its jurisdiction of residence or location, but it could also be assigned globally. Examples of identifying numbers include a TIN, business/company registration code/number, Global Legal Entity Identifier (LEI), or Global Intermediary Identification Number (GIIN). Participating Jurisdictions are expected to provide their Reporting Financial Institutions with guidance with respect to any identifying number to be reported. If no such number is assigned to the Reporting Financial Institution, then only the name and address of the Reporting Financial Institution are required to be reported.

*Subparagraph A(4) – Account balance or value*

10. The Reporting Financial Institution 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 (see paragraph 14 below). An account with a balance or value that is negative must be reported as having an account balance or value equal to zero. In the case of an account that is a Cash Value Insurance or Annuity Contract, the Reporting Financial Institution must report the Cash Value or surrender value of the account.
11. Some jurisdictions, however, already require financial institutions to report the average balance or value of the account during the calendar year or other appropriate reporting period. These jurisdictions are free to maintain reporting of that information instead of requiring reporting of the balance or value of the account as of the end of the calendar year or other appropriate reporting period, which can be done by replacing subparagraph A(4) by the following provision:
  4. *the [highest] average [monthly] account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) during the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;*In such a case, subparagraph 2(d) of Section 2 of the Model Competent Authority Agreement should be modified accordingly (see paragraph 4 of the Commentary on Section 2 of the Model Competent Authority Agreement).
12. In general, the balance or value of a Financial Account is the balance or value calculated by the Financial Institution for purposes of reporting to the Account Holder. In the case of an equity or debt interest in a Financial Institution, the balance or value of an Equity Interest is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. The balance or value of an Insurance or Annuity Contract is the balance or value as of the end of either the calendar year or other appropriate reporting period (see paragraph 15 below). 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.
13. Each holder of a jointly held account is attributed the entire balance or value of the joint account, as well as the entire amounts paid or credited to the joint account (or with respect to the joint account). The same is applicable with respect to:
  - an account held by a Passive NFE with more than one Controlling Person that is a Reportable Person, where each Controlling Person is attributed the entire balance or value of the account held by the Passive NFE, as well as the entire amounts paid or credited to the account;
  - an account held by an Account Holder that is a Reportable Person and is identified as having more than one jurisdiction of residence, where the entire balance or value of the account, as well as the entire amount paid or credited to the account, must be reported with respect to each jurisdiction of residence of the Account Holder;
  - an account held by a Passive NFE with a Controlling Person that is a Reportable Person and is identified as having more than one jurisdiction of residence, where the entire balance or value of the account held by the Passive NFE, as well as the entire amount paid or credited to the account, must be reported with respect to each jurisdiction of residence of the Controlling Person; or
  - an account held by a Passive NFE that is a Reportable Person with a Controlling Person that is a Reportable Person, where the entire balance or value of the account held by the Passive NFE, as well as the entire amount paid or credited to the account, must be reported with respect to both the Passive NFE and the Controlling Person.
14. In the case of an account closure, the Reporting Financial Institution has no obligation to report the account balance or value before or at closure, but must report that the account was closed. In determining when an account is “closed”, reference must be made to the applicable law in a particular jurisdiction. If the applicable law does not address closure of accounts, an account will be considered to be closed according to the normal operating procedures of the Reporting Financial Institution that are consistently applied for all accounts maintained by such institution. For example, an equity or debt interest in a Financial Institution would generally be considered to be closed upon termination, transfer, surrender, redemption, cancellation, or liquidation. An account with a balance or value equal to zero or that is negative will not be a closed account solely by reason of such balance or value.

*Subparagraphs A(4) through (7) – Appropriate reporting period*

15. The information to be reported must be that as of the end of the relevant calendar year or other appropriate reporting period. In determining what is meant by “appropriate reporting period”, reference must be made to the meaning that the term has at that time under each jurisdiction’s reporting rules, which must be consistently applied for a reasonable number of years. The period between the most recent contract anniversary date and the previous contract anniversary date (e.g. in the case of a Cash Value Insurance Contract), and a fiscal year other than the calendar year, would generally be considered appropriate reporting periods.

*Subparagraph A(5)(a) – Other income*

16. The information to be reported, in the case of a Custodial Account, includes the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period. The term “other income” means any amount considered income under the laws of the jurisdiction where the account is maintained, other than any amount considered interest, dividends, or gross proceeds or capital gains from the sale or redemption of Financial Assets.

*Subparagraph A(5)(b) – Gross proceeds*

17. In the case of a Custodial Account, information to be reported includes the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder. The term “sale or redemption” means any sale or redemption of Financial Assets, determined without regard to whether the owner of such Financial Assets is subject to tax with respect to such sale or redemption.
18. A clearing or settlement organisation that maintains Reportable Accounts and settles sales and purchases of securities between members of such organisation on a net basis may not know the gross proceeds from sales or dispositions. Where the clearing or settlement organisation does not know the gross proceeds, gross proceeds are limited to the net amount paid or credited to a member’s account that is associated with sales or other dispositions of Financial Assets by such member as of the time that such transactions are settled under the settlement procedures of such organisation. The term “clearing or settlement organisation” means an entity that is in the business of clearing trades of securities for its member organisations and transferring, or instructing the transfer of, securities by credit or debit to the account of a member without the necessity of physical delivery of the securities.
19. With respect to a sale that is effected by a broker that results in a payment of gross proceeds, the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment.
20. The total gross proceeds from a sale or redemption means the total amount realised as a result of a sale or redemption of Financial Assets. In the case of a sale effected by a broker, the total gross proceeds from a sale or redemption means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans; the broker may (but is not required to) take commissions with respect to the sale into account in determining the total gross proceeds. In the case of a sale of an interest bearing debt obligation, gross proceeds includes any interest accrued between interest payment dates.

*Subparagraph A(7) – Gross amounts*

21. The information to be reported, in the case of any account other than a Custodial Account or a Depository Account, includes the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is a creditor or debtor. Such “gross amount” includes, for example, the aggregate amount of:
- any redemption payments made (in whole or part) to the Account Holder during the calendar year or other appropriate reporting period; and
  - any payments made to the Account Holder under a Cash Value Insurance Contract or an Annuity Contract during the calendar year or other appropriate reporting period, even if such payments are not considered Cash Value in accordance with subparagraph C(8) of Section VIII.

*CRS schema and user guide*

22. As provided in the Model Competent Authority Agreement, Competent Authorities will use the Common Reporting Standard schema for purposes of exchanging the information to be reported. The schema may also be used by Reporting Financial Institutions for purposes of reporting the information (as permitted by domestic law). Both the diagrammatic representation of the schema and its user guide may be found in Annex 3. The user guide may be particularly useful for Reporting Financial Institutions as it contains more detailed information on each data element and any attributes that apply to such data element. For example, the user guide describes the three data elements that apply specifically to the place of birth (i.e. CountryInfo, City and CitySubentity) and clarifies that, where the place of birth is required to be reported, the data elements CountryInfo (identified by country code or name) and City must both be reported and the data element CitySubentity is optional.

## **Paragraph B – Currency**

23. The information must be reported in the currency in which the account is denominated and the information reported must identify the currency in which each amount is denominated. In the case of an account denominated in more than one currency, the Reporting Financial Institution may elect to report the information in a currency in which the account is denominated and is required to identify the currency in which the account is reported.
24. If the balance or value of a financial account or other amount is denominated in a currency other than the currency used by a Participating Jurisdiction when implementing the Common Reporting Standard (for purposes of thresholds or limits), a Reporting Financial Institution must calculate the balance or value by applying a spot rate to translate such balance or value into the currency equivalent. For the purpose of a Reporting Financial Institution reporting an account, the spot rate must be determined as of the last day of the calendar year or other appropriate reporting period for which the account is being reported.

## **Paragraphs C through F – Exceptions**

### *TIN and date of birth*

25. Paragraph C contains an exception applicable to Preexisting Accounts: the TIN or date of birth is not required to be reported if (i) such TIN or date of birth is not in the records of the Reporting Financial Institution, and (ii) there is not otherwise a requirement for such TIN or date of birth to be collected by such Reporting Financial Institution under domestic law. Thus, the TIN or date of birth is required to be reported if either:
  - the TIN or date of birth is in the records of the Reporting Financial Institution (whether or not there is an obligation to have it in the records); or
  - the TIN or date of birth is not in the records of the Reporting Financial Institution, but it is otherwise required to be collected by such Reporting Financial Institution under domestic law (e.g. AML/KYC Procedures).
26. The “records” of a Reporting Financial Institution include the customer master file and electronically searchable information (see paragraph 34 below). A “customer master file” includes the primary files of a Reporting Financial Institution for maintaining account holder information, such as information used for contacting account holders and for satisfying AML/KYC Procedures. Reporting Financial Institutions would generally have a two-year period to complete the review procedures for identifying Reportable Accounts among Lower Value Accounts (see paragraph 51 of the Commentary on Section III) and, thus, could first review their electronic records (or obtain TIN or date of birth from the Account Holder) and then review their paper records.
27. In addition, even where a Reporting Financial Institution does not have the TIN or date of birth for a Preexisting Account in its records and is not otherwise required to collect such information under domestic law, the Reporting Financial Institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts, unless one of the exceptions in paragraph D applies with respect to the TIN and it is not required to be reported.
28. “Reasonable efforts” means genuine attempts to acquire the TIN and date of birth of the Account Holder of a Reportable Account. Such efforts must be made, at least once a year, during the period between the identification of the Preexisting Account as a Reportable Account and the end of the second calendar year following the year of that identification. Examples of reasonable efforts include contacting the Account Holder (e.g. by mail, in-person or by phone), including a request made as part of other documentation or electronically (e.g. by facsimile or by e-mail); and reviewing electronically searchable information maintained by a Related Entity of the Reporting Financial Institution, in accordance with the aggregation principles set forth in paragraph C of Section VII. However, reasonable efforts do not necessarily require closing, blocking, or transferring the account, nor conditioning or otherwise limiting its use. Notwithstanding the foregoing, reasonable efforts may continue to be made after the abovementioned period.
29. Paragraph D contains an exception applicable to both Preexisting and New Accounts. A TIN is not required to be reported if either:
  - a) a TIN is not issued by the relevant Reportable Jurisdiction; or
  - b) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.
30. A TIN is considered not to be issued by a Reportable Jurisdiction (i) where the jurisdiction does not issue a Taxpayer Identification Number nor a functional equivalent in the absence of a Taxpayer Identification Number (see paragraph 148 of the Commentary on Section VIII), or (ii) where the jurisdiction has not issued a TIN to a particular individual or Entity. As a consequence, a TIN is not required to be reported with respect to a Reportable Account held by a Reportable Person that is resident in such a Reportable Jurisdiction, or with respect to whom a TIN has not been issued. However, if and when a Reportable Jurisdiction starts issuing TINs and issues a TIN to a particular Reportable Person, the exception contained in paragraph D no longer applies and the Reportable Person’s TIN would be required to be reported if the Reporting Financial Institution obtains a self-certification that contains such TIN, or otherwise obtains such TIN.

31. The exception described in clause (ii) of paragraph D focuses on the domestic law of the Account Holder's jurisdiction. Where a Reportable Jurisdiction has issued a TIN to a Reportable Person that holds a Reportable Account and the collection of such TIN cannot be required under such jurisdiction's domestic law (e.g. because under such law the provision of the TIN by a taxpayer is on a voluntary basis), the Reporting Financial Institution that maintains such account is not required to obtain and report the TIN. However, the Reporting Financial Institution is not prevented from asking for, and collecting the Account Holder's TIN for reporting purposes if the Account Holder chooses to provide it. In this case, the Reporting Financial Institution must report the TIN. In practice, there may be only a few jurisdictions where this is the case (e.g. Australia).
32. Participating Jurisdictions are expected to provide Reporting Financial Institutions with information with respect to the issuance, collection and, to the extent possible and practical, structure and other specifications of taxpayer identification numbers. The OECD will endeavour to facilitate its dissemination.

#### *Place of birth*

33. Paragraph E contains an exception for both Preexisting and New Accounts: the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution. Thus, the place of birth is required to be reported if, with respect to the relevant Account Holder, both:
  - the Reporting Financial Institution is otherwise required to obtain the place of birth and report it under domestic law; and
  - the place of birth is available in the electronically searchable information maintained by the Reporting Financial Institution.
34. The term "electronically searchable information/data" means information that a Reporting Financial Institution maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents). "Reporting" for this purpose does not include information that is provided only upon request.

#### *Gross proceeds*

35. Paragraph F contains an exception with respect to the year the information is to be reported. It may be more difficult for Reporting Financial Institutions to implement procedures to obtain the total gross proceeds from the sale or redemption of Financial Assets. Thus, when implementing the Common Reporting Standard, jurisdictions may consider (if necessary) gradually introducing the reporting of such gross proceeds. In that case, the transitory provision would be drafted as paragraph F.

## **MULTILATERAL COMPETENT AUTHORITY AGREEMENT ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION**

Whereas, the jurisdictions of the signatories to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the “Agreement”) are Parties of, or territories covered by, the Convention on Mutual Administrative Assistance in Tax Matters or the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) or have signed or expressed their intention to sign the Convention and acknowledge that the Convention must be in force and in effect in relation to them before the first exchange of financial account information takes place;

Whereas, the jurisdictions intend to improve international tax compliance by further building on their relationship with respect to mutual assistance in tax matters;

Whereas, the Common Reporting Standard was developed by the OECD, with G20 countries, to tackle tax avoidance and evasion and improve tax compliance;

Whereas, a country that has signed or expressed its intention to sign the Convention will only become a Jurisdiction as defined in Section 1 of this Agreement once it has become a Party to the Convention;

Whereas, the laws of the respective Jurisdictions require or are expected to require financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Section 2 of this Agreement and the reporting and due diligence procedures set out in the Common Reporting Standard;

Whereas, it is expected that the laws of the Jurisdictions would be amended from time to time to reflect updates to the Common Reporting Standard and once such changes are enacted by a Jurisdiction the definition of Common Reporting Standard would be deemed to refer to the updated version in respect of that Jurisdiction;

Whereas, Chapter III of the Convention authorises the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of the Jurisdictions to agree the scope and modalities of such automatic exchanges;

Whereas, Article 6 of the Convention provides that two or more Parties can mutually agree to exchange information automatically, the exchange of the information will be on a bilateral basis between the Competent Authorities;

Whereas, the Jurisdictions have, or are expected to have, in place by the time the first exchange takes place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the Convention, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement);

Whereas, the Competent Authorities of the jurisdictions intend to conclude an agreement to improve international tax compliance based on automatic exchange pursuant to the Convention, without prejudice to national legislative procedures (if any), respecting EU law (if applicable), and subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged thereunder;

Now, therefore, the Competent Authorities have agreed as follows:

### **SECTION 1 Definitions**

1. For the purposes of this Agreement, the following terms have the following meanings:
  - a) the term “Jurisdiction” means a country or a territory in respect of which the Convention is in force and is in effect, either through signature and ratification in accordance with Article 28, or through territorial extension in accordance with Article 29, and which is a signatory to this Agreement;

- b) the term “Competent Authority” means, for each respective Jurisdiction, the persons and authorities listed in Annex B of the Convention;
  - c) the term “Jurisdiction Financial Institution” means, for each respective Jurisdiction, (i) any Financial Institution that is resident in the Jurisdiction, but excludes any branch of that Financial Institution that is located outside the Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in the Jurisdiction, if that branch is located in the Jurisdiction;
  - d) the term “Reporting Financial Institution” means any Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution;
  - e) the term “Reportable Account” means a Financial Account that is maintained by a Reporting Financial Institution and that, pursuant to due diligence procedures consistent with the Common Reporting Standard, has been identified as an account that is held by one or more persons that are Reportable Persons with respect to another Jurisdiction or by a Passive Non-Financial Entity with one or more Controlling Persons that are Reportable Persons with respect to another Jurisdiction;
  - f) the term “Common Reporting Standard” means the standard for automatic exchange of financial account information in tax matters (which includes the Commentaries), developed by the OECD, with G20 countries;
  - g) the term “Co-ordinating Body Secretariat” means the OECD Secretariat that, pursuant to paragraph 3 of Article 24 of the Convention, provides support to the coordinating body that is composed of representatives of the competent authorities of the Parties to the Convention;
  - h) the term “Agreement in effect” means, in respect of any two Competent Authorities, that both Competent Authorities have indicated their intention to automatically exchange information with each other and have satisfied the other conditions set out in subparagraph 2.1. of Section 7. The Competent Authorities for which this Agreement is in effect are listed in Annex E.
2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time under the law of the Jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Common Reporting Standard. Any term not otherwise defined in this Agreement or in the Common Reporting Standard will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Jurisdiction applying this Agreement, any meaning under the applicable tax laws of that Jurisdiction prevailing over a meaning given to the term under other laws of that Jurisdiction.

## SECTION 2

### Exchange of Information with Respect to Reportable Accounts

- 1.1. Pursuant to the provisions of Articles 6 and 22 of the Convention and subject to the applicable reporting and due diligence rules consistent with the Common Reporting Standard, each Competent Authority will annually exchange with the other Competent Authorities, with respect to which it has this Agreement in effect, on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.
  - 1.2. Notwithstanding the previous paragraph, the Competent Authorities of the Jurisdictions listed in Annex A will send, but not receive, the information specified in paragraph 2. Competent Authorities of Jurisdictions not listed in Annex A will always receive the information specified in paragraph 2. Competent Authorities will not send such information to Competent Authorities of the Jurisdictions listed in Annex A.
2. The information to be exchanged is, with respect to each Reportable Account of another Jurisdiction:
- a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
  - b) the account number (or functional equivalent in the absence of an account number);
  - c) the name and identifying number (if any) of the Reporting Financial Institution;
  - d) 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 relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
  - e) in the case of any Custodial Account:
    - (1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (2) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

### **SECTION 3**

#### **Time and Manner of Exchange of Information**

1. For the purposes of the exchange of information in Section 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the Jurisdiction exchanging the information.
2. For the purposes of the exchange of information in Section 2, the information exchanged will identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Section 2, and subject to the notification procedure set out in Section 7, including the dates specified therein, information is to be exchanged commencing from the years specified in Annex F within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing sentence, information is only required to be exchanged with respect to a calendar year if both Competent Authorities have this Agreement in effect and their respective Jurisdictions have in effect legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange provided for in Section 2 and the reporting and due diligence procedures contained in the Common Reporting Standard.
4. [deleted]
5. The Competent Authorities will automatically exchange the information described in Section 2 in the common reporting standard schema in Extensible Markup Language.
6. The Competent Authorities will work towards and agree on one or more methods for data transmission including encryption standards with a view to maximising standardisation and minimising complexities and costs and will specify those in Annex B.

### **SECTION 4**

#### **Collaboration on Compliance and Enforcement**

A Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Common Reporting Standard. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

### **SECTION 5**

#### **Confidentiality and Data Safeguards**

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Competent Authority as required under its domestic law and listed in Annex C.
2. A Competent Authority will notify the Co-ordinating Body Secretariat immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed. The Co-ordinating Body Secretariat will notify all Competent Authorities with respect to which this is an Agreement in effect with the first mentioned Competent Authority.



## SECTION 6

### Consultations and Amendments

1. If any difficulties in the implementation or interpretation of this Agreement arise, a Competent Authority may request consultations with one or more of the Competent Authorities to develop appropriate measures to ensure that this Agreement is fulfilled. The Competent Authority that requested the consultations shall ensure, as appropriate, that the Co-ordinating Body Secretariat is notified of any measures that were developed and the Co-ordinating Body Secretariat will notify all Competent Authorities, even those that did not participate in the consultations, of any measures that were developed.
2. This Agreement may be amended by consensus by written agreement of all of the Competent Authorities that have the Agreement in effect. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the last signature of such written agreement.

## SECTION 7

### Term of Agreement

1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible after its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard, a notification to the Co-ordinating Body Secretariat:
  - a) that its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard and specifying the relevant effective dates with respect to Preexisting Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures;
  - b) confirming whether the Jurisdiction is to be listed in Annex A;
  - c) specifying one or more methods for data transmission including encryption (Annex B);
  - d) specifying safeguards, if any, for the protection of personal data (Annex C);
  - e) that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met and attaching the completed confidentiality and data safeguard questionnaire, to be included in Annex D; and
  - f) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures (if any). Competent Authorities must notify the Co-ordinating Body Secretariat, promptly, of any subsequent change to be made to the above-mentioned Annexes.
- 2.1. This Agreement will come into effect between two Competent Authorities on the later of the following dates: (i) the date on which the second of the two Competent Authorities has provided notification to the Co-ordinating Body Secretariat under paragraph 1, including listing the other Competent Authority's Jurisdiction pursuant to subparagraph 1(f), and, if applicable, (ii) the date on which the Convention has entered into force and is in effect for both Jurisdictions.
- 2.2. The Co-ordinating Body Secretariat will maintain a list that will be published on the OECD website of the Competent Authorities that have signed the Agreement and between which Competent Authorities this is an Agreement in effect (Annex E).
- 2.3. The Co-ordinating Body Secretariat will publish on the OECD website the information provided by Competent Authorities pursuant to subparagraphs 1(a) and (b). The information provided pursuant to subparagraphs 1(c) through (f) will be made available to other signatories upon request in writing to the Co-ordinating Body Secretariat.
3. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the Convention, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.
4. A Competent Authority may terminate its participation in this Agreement, or with respect to a particular Competent Authority, by giving notice of termination in writing to the Coordinating Body Secretariat. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the Convention.

**SECTION 8**  
**Co-ordinating Body Secretariat**

1. Unless otherwise provided for in the Agreement, the Co-ordinating Body Secretariat will notify all Competent Authorities of any notifications that it has received under this Agreement and will provide a notice to all signatories of the Agreement when a new Competent Authority signs the Agreement.
2. All signatories to the Agreement will share equally, on an annual basis, the costs for the administration of the Agreement by the Co-ordinating Body Secretariat. Notwithstanding the previous sentence, qualifying countries will be exempt from sharing the costs in accordance with Article X of the Rules of Procedure of the Co-ordinating Body of the Convention.

**ANNEX F:**  
**INTENDED EXCHANGE DATES**

| <b>Accounts</b>             | <b>Intended to be defined as</b>   | <b>Intended dates to exchange information by</b> |                                      |                        |
|-----------------------------|--|--|--------------------------------------|------------------------|
| <b>New Accounts</b>         | A Financial Account maintained by a Reporting Financial Institution opened on or after [day] [month] [year]. | September [year]                                 |                                      |                        |
|                             |  | <b>Individual High-Value Accounts</b>            | <b>Individual Low-Value Accounts</b> | <b>Entity Accounts</b> |
| <b>Preexisting Accounts</b> | A Financial Account maintained by a Reporting Financial Institution as of [day] [month] [year].              | September [year]                                 | September [year]                     | September [year]       |

**Agreement between the Government of the United States of America and the  
Government of [FATCA Partner] to Improve International Tax Compliance and to  
Implement FATCA**

Whereas, the Government of the United States of America and the Government of [FATCA Partner] (each, a “Party,” and together, the “Parties”) desire to conclude an agreement to improve international tax compliance through mutual assistance in tax matters based on an effective infrastructure for the automatic exchange of information;

Whereas, [Article [ ] of the Income Tax Convention between the United States and [FATCA Partner]/[the Convention on Mutual Administrative Assistance in Tax Matters] (the “Convention”)/[Article [ ] of the Tax Information Exchange Agreement between the United States and [FATCA Partner] (the “TIEA”)], done at [ ] on [ ]<sup>1</sup> authorizes the exchange of information for tax purposes, including on an automatic basis;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of [FATCA Partner] is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that [FATCA Partner] financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, the Government of the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of [FATCA Partner] and is committed to exchanging such information with the Government of [FATCA Partner] and pursuing equivalent levels of exchange, provided that the appropriate safeguards and infrastructure for an effective exchange relationship are in place;

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for [FATCA Partner] financial institutions;

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the [Convention/TIEA], and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the [Convention/TIEA];

Now, therefore, the Parties have agreed as follows:

<sup>1</sup> [Select the appropriate instrument to serve a legal basis for the exchange of information. Instruments that are not in force generally cannot be referenced as the legal basis for the exchange of information. Note that only the Convention on Mutual Administrative Assistance in Tax Matters done at Strasbourg on 25 January 1988 is currently in force in the United States. The Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters done at Paris on May 27, 2010 is not yet in force in the United States and thus cannot serve a legal basis for the exchange of information.]

## Article 1

### Definitions

1. For purposes of this agreement and any annexes thereto ("Agreement"), the following terms shall have the meanings set forth below:
  - a) The term **"United States"** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a **"State"** of the United States includes the District of Columbia.
  - b) The term **"U.S. Territory"** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
  - c) The term **"IRS"** means the U.S. Internal Revenue Service.
  - d) The term **"[FATCA Partner]"** means [full name of FATCA Partner].
  - e) The term **"Partner Jurisdiction"** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
  - f) The term **"Competent Authority"** means:
    - (1) in the case of the United States, the Secretary of the Treasury or his delegate; and
    - (2) in the case of [FATCA Partner], [ ].
  - g) The term **"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
  - h) The term **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
  - i) The term **"Depository Institution"** means any Entity that accepts deposits in the ordinary course of a banking or similar business.
  - j) The term **"Investment Entity"** means any 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:
    - (1) 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;
    - (2) individual and collective portfolio management; or
    - (3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.
  - k) The term **"Specified Insurance Company"** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
  - l) The term **"[FATCA Partner] Financial Institution"** means (i) any Financial Institution [resident in]/[organized under the laws of] [FATCA Partner], but excluding any branch of such Financial Institution that is located outside [FATCA Partner], and (ii) any branch of a Financial Institution not [resident in]/[organized under the laws of] [FATCA Partner], if such branch is located in [FATCA Partner].
  - m) The term **"Partner Jurisdiction Financial Institution"** means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
  - n) The term **"Reporting Financial Institution"** means a Reporting [FATCA Partner] Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
  - o) The term **"Reporting [FATCA Partner] Financial Institution"** means any [FATCA Partner] Financial Institution that is not a Non-Reporting [FATCA Partner] Financial Institution.
  - p) The term **"Reporting U.S. Financial Institution"** means (i) any Financial Institution that is resident in the United States, but excluding any branch of such Financial Institution that is located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control,

receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.

- q) The term “**Non-Reporting [FATCA Partner] Financial Institution**” means any [FATCA Partner] Financial Institution, or other Entity resident in [FATCA Partner], that is described in Annex II as a Non-Reporting [FATCA Partner] Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations [in effect on the date of signature of this Agreement].
- r) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- s) The term “**Financial Account**” means an account maintained by a Financial Institution, and includes:
  - (1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;
  - (2) in the case of a Financial Institution not described in subparagraph 1(s)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and
  - (3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term “Financial Account” does not include any account that is excluded from the definition of Financial Account in Annex II. For purposes of this Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes of this subparagraph 1(s), an interest in a Financial Institution is not “regularly traded” and shall be treated as a Financial Account if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. The preceding sentence will not apply to interests first registered on the books of such Financial Institution prior to July 1, 2014, and with respect to interests first registered on the books of such Financial Institution on or after July 1, 2014, a Financial Institution is not required to apply the preceding sentence prior to January 1, 2016.

- t) The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. 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.
- u) The term “**Custodial Account**” means 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 (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).
- v) The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
- w) The term “**Insurance Contract**” means 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.
- x) The term “**Annuity Contract**” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more

individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

- y) The term **"Cash Value Insurance Contract"** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000.
- z) The term **"Cash Value"** means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract as:
  - (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
  - (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.
- aa) The term **"Reportable Account"** means a U.S. Reportable Account or a [FATCA Partner] Reportable Account, as the context requires.
- bb) The term **"[FATCA Partner] Reportable Account"** means a Financial Account maintained by a Reporting U.S. Financial Institution if: (i) in the case of a Depository Account, the account is held by an individual resident in [FATCA Partner] and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of [FATCA Partner], including an Entity that certifies that it is resident in [FATCA Partner] for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code is paid or credited.
- cc) The term **"U.S. Reportable Account"** means a Financial Account maintained by a Reporting [FATCA Partner] Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.
- dd) The term **"Account Holder"** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term "Financial Institution" does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- ee) The term **"U.S. Person"** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States 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 U.S. 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 United States. This subparagraph 1(ee) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- ff) The term **"Specified U.S. Person"** means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of

1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

- gg) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
  - hh) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.
  - ii) The term “**U.S. Source Withholdable Payment**” means 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 United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.
  - jj) 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 percent of the vote or value in an Entity. Notwithstanding the foregoing, [FATCA Partner] may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.
  - kk) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
  - ll) The term “**[FATCA Partner] TIN**” means a [FATCA Partner] taxpayer identifying number.
  - mm) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 2

### Obligations to Obtain and Exchange Information with Respect to Reportable Accounts

1. Subject to the provisions of Article 3 of this Agreement, each Party shall obtain the information specified in paragraph 2 of this Article with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Article [ ] of the [Convention/TIEA].
2. The information to be obtained and exchanged is:
  - a) In the case of [FATCA Partner] with respect to each U.S. Reportable Account of each Reporting [FATCA Partner] Financial Institution:
    - (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
    - (2) the account number (or functional equivalent in the absence of an account number);
    - (3) the name and identifying number of the Reporting [FATCA Partner] Financial Institution;
    - (4) 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 relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
    - (5) in the case of any Custodial Account:
      - (A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (B) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting [FATCA Partner] Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  - (6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  - (7) in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting [FATCA Partner] Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- b) In the case of the United States, with respect to each [FATCA Partner] Reportable Account of each Reporting U.S. Financial Institution:
- (1) the name, address, and [FATCA Partner] TIN of any person that is a resident of [FATCA Partner] and is an Account Holder of the account;
  - (2) the account number (or the functional equivalent in the absence of an account number);
  - (3) the name and identifying number of the Reporting U.S. Financial Institution;
  - (4) the gross amount of interest paid on a Depository Account;
  - (5) the gross amount of U.S. source dividends paid or credited to the account; and
  - (6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code.

### **Article 3**

#### **Time and Manner of Exchange of Information**

1. For purposes of the exchange obligation in Article 2 of this Agreement, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of the tax laws of [FATCA Partner], and the amount and characterization of payments made with respect to a [FATCA Partner] Reportable Account may be determined in accordance with principles of U.S. federal income tax law.
2. For purposes of the exchange obligation in Article 2 of this Agreement, the information exchanged shall identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2014 and all subsequent years, except that:
  - a) In the case of [FATCA Partner]:
    - (1) the information to be obtained and exchanged with respect to 2014 is only the information described in subparagraphs 2(a)(1) through 2(a)(4) of Article 2 of this Agreement;
    - (2) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement, except for gross proceeds described in subparagraph 2(a)(5)(B) of Article 2 of this Agreement; and
    - (3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement;
  - b) In the case of the United States, the information to be obtained and exchanged with respect to 2014 and subsequent years is all of the information identified in subparagraph 2(b) of Article 2 of this Agreement.
4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of the Determination Date, and subject to paragraph 4 of Article 6 of this Agreement, the Parties are not required to obtain and include in the exchanged information the [FATCA Partner] TIN or the U.S. TIN, as applicable, of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such a case, the Parties shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Financial Institution has such date of birth in its records.
5. Subject to paragraphs 3 and 4 of this Article, the information described in Article 2 of this Agreement shall be exchanged within nine months after the end of the calendar year to which the information relates.
6. The Competent Authorities of [FATCA Partner] and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article [ ] of the [Convention/TIEA], which shall:



- a) establish the procedures for the automatic exchange obligations described in Article 2 of this Agreement;
  - b) prescribe rules and procedures as may be necessary to implement Article 5 of this Agreement; and
  - c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4 of this Agreement.
7. All information exchanged shall be subject to the confidentiality and other protections provided for in the [Convention/TIEA], including the provisions limiting the use of the information exchanged.
  8. Following entry into force of this Agreement, each Competent Authority shall provide written notification to the other Competent Authority when it is satisfied that the jurisdiction of the other Competent Authority has in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement shall remain confidential and be used solely for tax purposes, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and demonstrated capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 5 of this Agreement). The Competent Authorities shall endeavor in good faith to meet, prior to September 2015, to establish that each jurisdiction has such safeguards and infrastructure in place.
  9. The obligations of the Parties to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the later of the written notifications described in paragraph 8 of this Article. Notwithstanding the foregoing, if the [FATCA Partner] Competent Authority is satisfied that the United States has the safeguards and infrastructure described in paragraph 8 of this Article in place, but additional time is necessary for the U.S. Competent Authority to establish that [FATCA Partner] has such safeguards and infrastructure in place, the obligation of [FATCA Partner] to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the written notification provided by the [FATCA Partner] Competent Authority to the U.S. Competent Authority pursuant to paragraph 8 of this Article.
  10. This Agreement shall terminate on September 30, 2015, if Article 2 of this Agreement is not in effect for either Party pursuant to paragraph 9 of this Article by that date.

#### Article 4

#### Application of FATCA to [FATCA Partner] Financial Institutions

1. **Treatment of Reporting [FATCA Partner] Financial Institutions.** Each Reporting [FATCA Partner] Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if [FATCA Partner] complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting [FATCA Partner] Financial Institution, and the Reporting [FATCA Partner] Financial Institution:
  - a) identifies U.S. Reportable Accounts and reports annually to the [FATCA Partner] Competent Authority the information required to be reported in subparagraph 2(a) of Article 2 of this Agreement in the time and manner described in Article 3 of this Agreement;
  - b) for each of 2015 and 2016, reports annually to the [FATCA Partner] Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
  - c) complies with the applicable registration requirements on the IRS FATCA registration website;
  - d) to the extent that a Reporting [FATCA Partner] Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and
  - e) in the case of a Reporting [FATCA Partner] Financial Institution that is not described in subparagraph 1(d) of this Article and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting [FATCA Partner] Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting [FATCA Partner] Financial Institution with respect to which the conditions of this paragraph 1 are not satisfied shall not be subject to withholding under section 1471 of the U.S. Internal Revenue Code unless such Reporting [FATCA Partner] Financial Institution is treated by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement.

2. **Suspension of Rules Relating to Recalcitrant Accounts.** The United States shall not require a Reporting [FATCA Partner] Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the

U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2 of this Agreement, subject to the provisions of Article 3 of this Agreement, with respect to such account.

3. **Specific Treatment of [FATCA Partner] Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, [FATCA Partner] retirement plans described in Annex II. For this purpose, a [FATCA Partner] retirement plan includes an Entity established or located in, and regulated by, [FATCA Partner], or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of [FATCA Partner] and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.
4. **Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting [FATCA Partner] Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.
5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a [FATCA Partner] Financial Institution, that otherwise meets the requirements described in paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such [FATCA Partner] Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:
  - a) the [FATCA Partner] Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
  - b) each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
  - c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the [FATCA Partner] Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.
6. **Coordination of Timing.** Notwithstanding paragraphs 3 and 5 of Article 3 of this Agreement:
  - a) [FATCA Partner] shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the calendar year with respect to which similar information is required to be reported to the IRS by participating FFIs pursuant to relevant U.S. Treasury Regulations;
  - b) [FATCA Partner] shall not be obligated to begin exchanging information prior to the date by which participating FFIs are required to report similar information to the IRS under relevant U.S. Treasury Regulations;
  - c) the United States shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the first calendar year with respect to which [FATCA Partner] is required to obtain and exchange information; and
  - d) the United States shall not be obligated to begin exchanging information prior to the date by which [FATCA Partner] is required to begin exchanging information.
7. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, [FATCA Partner] may use, and may permit [FATCA Partner] Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

## Article 5

### Collaboration on Compliance and Enforcement

1. **Minor and Administrative Errors.** A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements

of this Agreement. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

2. **Significant Non-Compliance.**

- a) A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.
- b) If, in the case of a Reporting [FATCA Partner] Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting [FATCA Partner] Financial Institution as a Nonparticipating Financial Institution pursuant to this subparagraph 2(b).

3. **Reliance on Third Party Service Providers.** Each Party may allow Reporting Financial Institutions to use third party service providers to fulfill the obligations imposed on such Reporting Financial Institutions by a Party, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

4. **Prevention of Avoidance.** The Parties shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

## **Article 6**

### **Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency**

1. **Reciprocity.** The Government of the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with [FATCA Partner]. The Government of the United States is committed to further improve transparency and enhance the exchange relationship with [FATCA Partner] by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic information exchange.
2. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.
3. **Documentation of Accounts Maintained as of the Determination Date.** With respect to Reportable Accounts maintained by a Reporting Financial Institution as of the Determination Date:
  - a) The United States commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting U.S. Financial Institutions to obtain and report the [FATCA Partner] TIN of each Account Holder of a [FATCA Partner] Reportable Account as required pursuant to subparagraph 2(b)(1) of Article 2 of this Agreement; and
  - b) [FATCA Partner] commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting [FATCA Partner] Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a)(1) of Article 2 of this Agreement.

## **Article 7**

### **Consistency in the Application of FATCA to Partner Jurisdictions**

1. [FATCA Partner] shall be granted the benefit of any more favorable terms under Article 4 or Annex I of this Agreement relating to the application of FATCA to [FATCA Partner] Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as [FATCA Partner] described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5 through 9 of this Agreement.
2. The United States shall notify [FATCA Partner] of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of signing of the agreement incorporating the more favorable terms, unless [FATCA Partner] declines in writing the application thereof.

**Article 8**  
**Consultations and Amendments**

1. In case any difficulties in the implementation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.
2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10 of this Agreement.

**Article 9**  
**Annexes**

The Annexes form an integral part of this Agreement.

**Article 10**  
**Term of Agreement**

1. This Agreement shall enter into force on the date of [FATCA Partner]'s written notification to the United States that [FATCA Partner] has completed its necessary internal procedures for entry into force of this Agreement.
2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.
3. The Parties shall, prior to December 31, 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6 of this Agreement.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at [\_\_\_\_], in duplicate, this [\_\_] day of [\_\_\_\_], 20[\_\_\_\_].

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
[FATCA PARTNER]:

## § 1.1441-7 General provisions relating to withholding agents

### (a) **Withholding agent defined -**

- (1) **In general.** For purposes of chapter 3 of the Internal Revenue Code and the regulations under such chapter, the term withholding agent means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in § 1.1441-1(e)(3)(i), a foreign partnership, or a U.S. branch described in § 1.1441-1(b)(2)(iv)(A) or (E). See §§ 1.1441-1(b)(2) and (3) and 1.1441-5(c), (d), and (e), for rules to determine whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461-1(a) and to make the returns prescribed by § 1.1461-1(b) and (c), except as otherwise may be required by a qualified intermediary withholding agreement, a withholding foreign partnership agreement, or a withholding foreign trust agreement. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1461-1. A person who, as a nominee described in § 1.6031(c)-1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)-1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

### § 1.1471-4(d)(iv)(B) & (E)

### (iv) **Payments made with respect to an account -**

- (B) **Custodial accounts.** The payments made during a calendar year with respect to a custodial account consist of -
- (1) The aggregate gross amount of dividends paid or credited to the account during the calendar year;
  - (2) The aggregate gross amount of interest paid or credited to the account during the calendar year;
  - (3) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and
  - (4) The aggregate gross amount of all other income paid or credited to the account during the calendar year.
- (E) **Amount and character of payments subject to reporting.** For purposes of reporting under paragraph (d)(3) of this section, the amount and character of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and character of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. federal income tax principles to determine such amounts.

### § 1.1471-5 Definitions applicable to section 1471

- (4) **Account balance or value.** This paragraph (b)(4) provides rules for determining the balance or value of a financial account for purposes of chapter 4. For example, the rules of this paragraph apply for purposes of determining whether an FFI meets the requirements of paragraph (f)(2)(i), (f)(2)(ii) or (f)(3) of this section to certify to a deemed-compliant FFI status. The rules of this paragraph also apply to a

participating FFI's due diligence and reporting obligations to the extent required under § 1.1471-4(c) or (d) and to a U.S. withholding agent's due diligence obligations to the extent required under § 1.1471-3.

- (i) ***In general.*** Except as otherwise provided in paragraph (b)(4)(ii) of this section with respect to immediate annuities, the balance or value of a financial account is the balance or value calculated by the financial institution for purposes of reporting to the account holder. In the case of an account described in paragraph (b)(1)(iii) of this section, the balance or value of an equity interest is the value calculated by the financial institution for the purpose that requires the most frequent determination of value, and the balance or value of a debt interest is its principal amount. Except as provided in paragraph (b)(3)(vii) of this section, the balance or value of an insurance or annuity contract is the balance or value as of either the calendar year end or the most recent contract anniversary date. 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. Each holder of a jointly held account is attributed the entire balance or value of the joint account. See § 1.1473-1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (b)(4)(i) to determine the value of trust interests that are financial accounts.

## 26 CFR § 1.1471-4 - FFI agreement

**(3)(iv) *Material failures defined.*** A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement if the failure was the result of a deliberate action on the part of one or more employees of the participating FFI (its agent, sponsor, or compliance FI) to avoid the requirements of the FFI agreement or was an error attributable to a failure of the participating FFI to implement internal controls sufficient for the participating FFI to meet the requirements of this section. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a participating FFI has not substantially complied with the requirements of an FFI agreement. Material failures include the following -

- (A) The deliberate or systemic failure of the participating FFI to report accounts that it was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld, or accurately report recalcitrant account holders or payees that are nonparticipating FFIs as required;
- (B) A criminal or civil penalty or sanction imposed on the participating FFI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over the participating FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures; and
- (C) A potential future tax liability related to the participating FFI's compliance (or lack thereof) with the FFI agreement for which the FFI establishes, for financial statement purposes, a tax reserve or provision.

## 26 CFR § 1.1471-4 - FFI agreement

### (g) ***Event of default -***

- (1) ***Defined.*** An event of default occurs if a participating FFI fails to perform material obligations required with respect to the due diligence, verification, withholding, or reporting requirements of the FFI agreement or if the IRS determines that the participating FFI has failed to substantially comply with the requirements of the FFI agreement. An event of default also includes the occurrence of the following -
  - (i) Failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under paragraph (d) of this section, valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under paragraph (i) of this section;
  - (ii) Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the participating FFI failing to comply with the due diligence procedures for the identification and documentation of account holders and payees, as set forth in paragraph (c) of this section;
  - (iii) Failure, in any case in which foreign law prevents or otherwise limits withholding to the extent required under paragraph (b) of this section, to fulfill the requirements of paragraph (i) of this section;

- (iv) Failure to establish or maintain a compliance program for fulfilling the requirements of the FFI agreement or to perform a periodic review of the participating FFI's compliance;
  - (v) Failure to take timely corrective actions to remedy a material failure described in paragraph (f)(3)(iv) of this section after making the qualified certification described in paragraph (f)(3)(iii) of this section;
  - (vi) Failure to make the initial certification required under paragraph (c)(7) of this section or to make the periodic certification required under paragraph (f)(3) of this section within the specified time period;
  - (vii) Making incorrect claims for refund under the collective refund procedures described in paragraph (h) of this section;
  - (viii) Failure to cooperate with an IRS request for additional information or making any fraudulent statement or misrepresentation of material fact to the IRS; or
  - (ix) Any transaction relating to sponsorship, promotion, or noncustodial distribution for or on behalf of any Local FFI, as described in § 1.1471-5(f)(1)(i)(A), that is an investment entity.
- (2) Notice of event of default. Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. If the FFI's participating FFI status is terminated, in addition to the requirements in § 1.1471-3(c)(6)(ii)(E)(2), the FFI must, within 30 days of the termination, send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided. An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS to register. A participating FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of a notice of default or notice of termination by written request to the IRS.
- (3) Remediation of event of default. A participating FFI will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a participating FFI to remediate an event of default described in paragraph (g)(1)(iii) of this section by providing specific information regarding its U.S. accounts when the FFI has been unable to report all of the information with respect to such accounts as required under paragraph (d) of this section and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the FFI or the performance of the specified review procedures described in paragraph (f)(4)(ii) of this section.