

Subsidiary Legislation made under s. 23(1).

**INTERNATIONAL CO-OPERATION (IMPROVEMENT  
OF INTERNATIONAL TAX COMPLIANCE) (UNITED  
STATES) REGULATIONS 2015**

**(LN. 2015/134)**

*Commencement*      **21.8.2015**

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*In exercise of the powers conferred on him by section 23(1) of the International Co-Operation (Tax Information) Act 2009 and all other enabling powers, the Minister has made the following regulations—*

**Title and commencement.**

1. (1) These regulations may be cited as the International Co-Operation (Improvement of International Tax Compliance) (United States) Regulations 2015.

(2) These regulations shall come into operation on the day of publication.

**Overview and Purpose.**

2. (1) These regulations—

- (a) implement in relevant part reciprocal exchange of information arrangements with the United States in relation to information that is foreseeably relevant to the administration and enforcement of certain taxes;
- (b) provide for the automatic reporting of financial information that is foreseeably relevant to the administration and enforcement of certain taxes;
- (c) are intended to further the fiscal and economic wellbeing of Gibraltar and of the United States; and
- (d) are intended to further the prevention of international tax evasion by contributing to the international objective of an international standard on automatic exchange of information.

(2) The purpose of these regulations is to collect data for transmission to the relevant competent authority in the United States so that the said competent authority can check the accuracy of the tax returns submitted by U.S. Persons, enforce or collect tax claims in respect of such persons, and investigate or prosecute tax matters in respect of such persons.

**Interpretation.**

3.(1) To the extent that a definition in these regulations differs from a definition in the Agreement, the definition in these regulations shall prevail to the extent of that difference.

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(2) A Financial Institution may use as an alternative definition a definition in—

- (a) The U.S. Treasury Regulations; or
- (b) The Common Reporting Standard for the Automatic Exchange of Financial Account Information published by the Organisation for Economic Co-operation and Development on 13 February 2014,

insofar as such use would not frustrate the purposes of the Agreement.

(3) Subject to subregulations (1) and (2) of this regulation, in these regulations—

“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 adviser, or intermediary, is not treated as holding the account for the purposes of this Agreement, 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.

“Agreement” means the Agreement between the Government of the United States of America and the Government of Gibraltar to Improve International Tax Compliance, signed on 8 May 2014.

“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.

“Authority” means the Chief Secretary or such other official as may be appointed by the Minister pursuant to regulation 6.

“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.

“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.

“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 actually exercising ultimate effective control over the trust, and any other natural person actually 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 Recommendations of the Financial Action Task Force.

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“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).

“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 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.

“Depository Account” includes any commercial, chequing, 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 generally includes an amount held by an insurance company under an agreement to pay or credit interest thereon.

“Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

“Entity” means a legal person or a legal arrangement such as a trust, partnership or limited liability partnership. An Entity such as a partnership, limited liability partnership or similar arrangement shall be resident in the United States or Gibraltar if the control and management of the business takes place there.

“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 Person shall be treated as being a beneficiary of a trust if such Specified 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.

“FATCA” means the Foreign Account Tax Compliance Act under sections 1471 to 1474 of the Internal Revenue Code of the United States of America, as enabled by the Hiring Incentives to Restore Employment Act 2010.

“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 these Regulations, 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 US Source Withholdable Payments, and
  - (ii) the class of interests was established with a purpose of avoiding reporting in accordance with these Regulations;and,
- (3) 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, product, or arrangement that is excluded from the definition of Financial Account in Schedule 2.

Notwithstanding the foregoing, the term “Financial Account” does not include any account, product, or arrangement that is excluded from the definition of Financial Account in Schedule 2.

For purposes of these Regulations, 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 recognised 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 these Regulations, 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.

“Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

“GIIN” means a Global Intermediary Identification Number which has been allocated to a Financial Institution by the Internal Revenue Service of the United States of America for FATCA purposes.

“Income Tax Tribunal” means the Income Tax Tribunal constituted, appointed and acting in accordance with the provisions of Schedule 2 of the Income Tax 2010.

“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.

“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 definition shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Recommendations of the Financial Action Task Force;

For the purposes of this definition “activities” and “operations” do not include the controlled activities set out in paragraph 1 of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act.

“IRS” means the U.S. Internal Revenue Service;

“Legal Persons’ means any entities other than natural persons that can establish a permanent customer relationship with a Financial Institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.”

“Minister” means the Minister with responsibility for the international exchange of information;

“Nonparticipating Financial Institution” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a 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 the Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.



“Non-Reporting Financial Institution” means any Financial Institution, or other Entity resident in Gibraltar, that is described in Annex II to the Agreement as a Non-Reporting Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations;

“Non-United States Entity” means an Entity that is not a U.S. Person.

“Partner Jurisdiction” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA and regarding which the IRS publishes a list of Partner Jurisdictions;

“Related Entity” of another Entity occurs 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, an Entity is not a related entity if the two Entities are not members of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code.

“Reportable Account” means a Financial Account maintained by a Reporting Financial Institution and held by one or more Specified Persons or by a non-United States Entity with one or more Controlling Persons that is a Specified Person. Notwithstanding the foregoing, an account shall not be treated as a Reportable Account if such account is not identified as a Reportable Account after application of the due diligence procedures in Schedule 1.

“Reporting Financial Institution” means a Financial Institution that is not a Non-Reporting Financial Institution and that is either—

- (i) a Financial Institution resident in Gibraltar (but excluding any branches of such a Financial Institution that are located outside Gibraltar), or
- (ii) any branch of a Financial Institution not resident in Gibraltar, if such branch is located in Gibraltar.

For purposes of these regulations “resident in Gibraltar” means—

- (a) when applied to a company, “ordinarily resident” as defined in section 74 of the Income Tax Act 2010,

- (b) when applied to a trust, if the trust is resident in Gibraltar in accordance with section 13 of the Income Tax Act 2010,
- (c) when applied to partnerships, when the partnership is managed and controlled in Gibraltar or when its management and control is exercised outside by Gibraltar by persons who are “ordinarily resident” in Gibraltar as defined in section 74 of the Income Tax Act 2010.

“Schedule” means a Schedule to these regulations;

“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.

“Specified 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

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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.

“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;

“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 definition shall be interpreted in accordance with the U.S. Internal Revenue Code;

“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;

“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;

“U.S. TIN” means a U.S. federal taxpayer identifying number;

“U.S. Treasury Regulations” means the U.S. Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities. In the event that these regulations are amended, then the term “U.S. Treasury Regulations” shall mean the amended Regulations where both Gibraltar and the United States have agreed that any or all of the amendments should apply.

(2) Any term not otherwise defined in these regulations shall, unless the context otherwise requires, have the meaning under the Income Tax Act 2010 or any other applicable primary or subordinate legislation in force in Gibraltar.

**Reporting obligations with respect to Reportable Accounts.**

4.(1) Subject to regulation 7, a Financial Institution shall provide the information specified in this regulation with respect to a Reportable Account.

(2) The information to be provided with respect to each Reportable Account of each Reporting Financial Institution is—

- (a) the name, address and U.S. TIN, for each Specified Person that is an Account Holder of such account and, in the case of an Entity that, after application of the due diligence procedures set forth in Schedule 1, is identified as having one or more Controlling Persons that is a Specified Person, the name, address and U.S. TIN of such Entity and each such Specified Person;
- (b) the account number (or functional equivalent in the absence of an account number);
- (c) the name and identifying number 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, immediately before closure.

(3) The information to be provided with respect to a Reportable Account by a Reporting Financial Institution where the Reportable Account is a Custodial Account is—

- (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

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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 Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

(4) The information to be provided with respect to a Reportable Account by a Reporting Financial Institution where the Reportable Account is a Depository Account is the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period;

(5) The information to be provided in the case of a Reportable Account that is not a Custodial Account or a Depository Account is 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.

#### **Reporting obligations of Reporting Financial Institutions.**

5.(1) Subject to regulation 7, a Reporting Financial Institution shall provide to the Authority the information specified in subregulations 4(2) to 4(5) with respect to a Reportable Account.

(2) In providing the required information to the Authority, the Reporting Financial Institution shall at all times disclose its registered name and, where it has registered with the U.S. Internal Revenue Service for FATCA purposes, its GIIN.

(3) Where the Financial Institution does not have a GIIN it shall instead provide its tax reference number or other unique numerical or alpha-numerical identifier.

- (4) (a) A Financial Institution that has no Reportable Account or that does not have any information to provide to the Authority in respect of a Reportable Account need not provide a nil return to the Authority.

- (b) Nothing in subregulation (4)(a) shall be construed as altering the obligation of a Reporting Financial Institution to apply due diligence procedures pursuant to regulation 8.
- (5) (a) A Reporting Financial Institution that has actual knowledge that a Reportable Account is being reported (whether the Reportable Account is in Gibraltar or otherwise) pursuant to these regulations and the Agreement by another Financial Institution (whether the Financial Institution is a Gibraltar Financial Institution or otherwise), does not have a reporting obligation under these regulations.
- (b) For the purposes of subregulation 5(a) a Reporting Financial Institution has actual knowledge where it holds written confirmation from the Financial Institution that a Reportable Account has been reported pursuant to the Agreement.
- (c) Nothing in this subregulation removes the obligation of a Reporting Financial Institution to ensure that a report has been made.

**Competent Authority.**

6.(1) Subject to subregulation (2) of this regulation the Authority is the Chief Secretary, who shall be the competent authority for Gibraltar for the purposes of these regulations.

(2) The Minister may, from time to time by notice in the Gazette, designate such other or additional person or persons as he sees fit to be the Authority.

(3) Appointments under subregulation (2)–

(a) shall be subject to such terms as the Minister may, from time to time, see fit to impose;

(b) may be revoked at such time as the Minister deems appropriate.

(4) The Authority shall have a duty to perform the functions assigned to or conferred upon it by or under these regulations and to carry out the obligations undertaken by the Government in connection therewith.

**Time and manner of reporting.**

7.(1) For purposes of the reporting obligation in regulation 4, the amount and characterisation of payments made with respect to a Reportable Account may be determined by the Financial Institution in accordance with the principles of the Income Tax Act 2010 and other applicable tax laws of Gibraltar.

(2) For purposes of the reporting obligation in regulation 4, the information shall identify the currency in which each relevant amount is denominated.

(3) With respect to regulation 4, information is to be provided with respect to 2014 and all subsequent years, except that—

- (a) the information to be obtained with respect to 2014 is only the information described in subregulation 4(2);
- (b) the information to be obtained and exchanged with respect to 2015 is the information described in subregulations 4(2) to 4(5), except for gross proceeds described in subregulation 4(3)(b); and
- (c) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subregulations 4(2) to 4(5).

(4) with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of June 30, 2014 a Reporting Financial Institution is not required to obtain or provide the U.S. TIN of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such a case, the Reporting Financial Institution shall obtain and provide the date of birth of the relevant person, if the Reporting Financial Institution has such date of birth in its records.

(5) Subject to subregulation (5) of this regulation, the information described in regulation 4 shall be reported within six months after the end of the calendar year to which the information relates.

(6) The information that relates to calendar year 2014 shall be reported no later than 15 September 2015.

(7) Without prejudice to subregulation (5) of this regulation, the Authority may specify the format and medium of reporting of the information to be provided by a Reporting Financial Institution.

**Due diligence obligations.**

8. A Reporting Financial Institution shall apply the due diligence procedures contained in Schedule 1 in order to identify Reportable Accounts.

**Non-Reporting Financial Institutions.**

9. The Entities in Schedule 2 are treated and shall be regarded as either exempt beneficial owners, as other Non-Reporting Financial Institutions, or as both, as the case may be, and the Exempt Products in Schedule 2 are excluded from the definition of Financial Accounts.

**Reliance on third party service providers.**

10. A Reporting Financial Institution may use third party service providers to fulfil its obligations under these regulations but the obligations shall remain the responsibility of the Financial Institution.

**Retention of Records.**

11. A Reporting Financial Institution shall retain a complete record of the information it provides to the Authority for a period of one year from the date by which it was required to provide it, following which the information shall be destroyed.

**Privilege.**

12.(1) No person shall be obliged under these regulations to provide information to the Authority which is an item subject to legal privilege.

(2) No person shall be obliged under these regulations to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information required to be provided to the Authority pursuant to these regulations shall not by reason of that fact alone be treated as a secret or trade process.

**Confidentiality.**

13.(1) Subject to subregulation (2), information obtained by the Authority under these regulations from a Reporting Financial Institution shall be regarded and dealt with as secret and confidential.



(2) Information obtained by the Authority under these Regulations may be transmitted by the Authority in accordance with the Agreement.

(3) The obligation of a Reporting Financial Institution to provide information to the Authority under these regulations shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information contained in any other enactment.

**Overriding instruments.**

14. These regulations must be construed in accordance with the fundamental right to private life as protected by the following instruments-

- (a) Article 8 of the European Convention on Human Rights;
- (b) Article 7 of the Gibraltar Constitution Order 2006;
- (c) Article 7 of the Charter of Fundamental Rights of the European Union;
- (d) Directive 95/46/EC of the European Parliament and Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (as may be amended from time to time or replaced).

**Data protection.**

15.(1) Subject to subregulation (2) of this regulation, information processed under these regulations is subject to the relevant law of Gibraltar on data protection, in accordance with Article 25 of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

(2) The following provisions of the Data Protection Act 2004 are disapplied for the purposes of these regulations-

- (a) section 30(5)(c); and
- (b) section 31(1)(b).

(3) The processing of data under these regulations, including as between Financial Institutions and the Authority and as between the Authority and

the United States, is subject to the Data Protection Act 2004 as if that Act applied to both legal persons and natural persons.

(4) Reporting Financial Institutions and the Authority are data processors for the purposes of the Data Protection Act 2004.

(5) A Reporting Financial Institution must take all reasonable steps to inform each Account Holder concerned that the information relating to him or it referred to in regulation 4 will be collected and provided to the Authority and shall, upon request, provide to that Account Holder all information that he is entitled to under the Data Protection Act 2004 at least 90 days before the Reporting Financial Institution provides the information referred to in regulation 4 to the Authority.

(6) The period of 90 days in subregulation (5) is substituted by a period of seven days in the first year in which a Reporting Financial Institution has a duty to inform an Account Holder under that subregulation.

#### **Penalties.**

16. A person is liable to a penalty not exceeding £3,000 if he—

- (a) fails to provide any information required to be provided to the Authority; or
- (b) provides the Authority with information that is false or misleading in a material particular;
- (c) without reasonable excuse fails so to do, within such time as may be specified by any notice or order issued under these regulations;
- (d) alters, suppresses, destroys or places beyond his reach or access any document, including a document in electronic form, which he has been required to produce;
- (e) by furnishing any estimate, return or other information required of him, or otherwise in purported compliance with a requirement under these regulations, furnishes information or makes any statement which is false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular;  
or

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- (f) removes from Gibraltar, destroys, conceals or alters any books or papers, including any material held electronically.

**Assessment of penalties.**

17(1) If a person becomes liable to a penalty under regulation 16 the Authority may assess the penalty.

(2) If the Authority does so, it must notify the person.

(3) An assessment of a penalty under regulation 16 must be made—

- (a) within the period of 12 months beginning with the date on which the contravention first came to the attention of the Authority, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

**Right to appeal against penalty.**

18. (1) A person may appeal to the Tribunal against a decision by the Authority—

- (a) that a penalty is payable; or
- (b) as to the amount of such a penalty.

(2) The Tribunal shall have the authority to consider appeals under these regulations.

(3) In this regulation “the Tribunal” means the Income Tax Tribunal constituted under Schedule 2 of the Income Tax Act 2010.

**Procedure on appeal against penalty.**

19. (1) Notice of an appeal under regulation 18 must be given—

- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which notification was given, and

(c) to the Authority and the Income Tax Tribunal.

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 18(a) that is notified to the Income Tax Tribunal, it may confirm or cancel the decision.

(4) On an appeal under regulation 18(b) that is notified to the Income Tax Tribunal, it may—

(a) confirm the decision, or

(b) substitute for the decision another decision that the Authority had the power to make.

#### **Enforcement of penalties**

20. (1) A penalty under these regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) The date is the date on which notification is given in respect of the penalty or, if a notice of appeal is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty due under these regulations is a debt due to Government recoverable as a civil debt.

#### **Immunity.**

21.(1) Neither the Minister nor the Authority shall be liable in damages for anything done or omitted in the discharge of their functions under these regulations unless it is shown that the act or omission was in bad faith.

(2) A Reporting Financial Institution which pursuant to these regulations provides information that is subject to an obligation of confidentiality shall be immune to suit arising from the provision of such information.

Regulation 8.

**SCHEDULE 1**

**DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND  
REPORTING ON REPORTABLE ACCOUNTS**

**I. General**

A. Pursuant to regulation 8 a Financial Institution shall apply the due diligence procedures contained in this Schedule to identify Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

B. For purposes of this Schedule—

1. All dollar amounts are US dollars and shall be read to include the equivalent in other currencies.
2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.
3. Where a balance or value threshold is to be determined as of 30 June 2014 under this Schedule, the relevant balance or value shall be determined as of the last day of the reporting period ending immediately before 30 June 2014, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Schedule, the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.
4. Subject to subparagraph E.1. of section II of this Schedule, an account shall be treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Schedule.
5. Unless otherwise provided, information with respect to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in this Schedule a Reporting Financial Institution may apply the procedures described in the relevant U.S. Treasury Regulations, to establish whether an account is a Reportable Account or an account held by a Nonparticipating Financial institution. A Financial Institution may make such an election separately for each section of this Schedule either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

## **II. Pre-existing Individual Accounts**

The following rules and procedures apply for identifying Reportable Accounts among Pre-existing Accounts held by individuals (“Pre-existing Individual Accounts”).

**A. Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Individual Accounts or, separately, with respect to any clearly identified group of such accounts the following accounts are not required to be reviewed, identified, or reported as Reportable Accounts—

1. Subject to subparagraph E.2. of this section, Pre-existing Individual Accounts with a balance or value that does not exceed \$50,000 as of 30 June 2014.
2. Subject to subparagraph E.2. of this section, Pre-existing Individual Accounts that are Cash Value Insurance Contracts or Annuity Contracts with a balance or value of \$250,000 or less as of 30 June 2014.
3. A Pre-existing Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Gibraltar or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (e.g., if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Gibraltar requires reporting or withholding with respect to insurance products held by residents of Gibraltar).

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4. Any Depository Account with a balance or value of \$50,000 or less.

**B. Review Procedures for Pre-existing Individual Accounts With a Balance or Value as of 30 June 2014, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”).**

1. **Electronic Record Search.** A Reporting Financial Institution must review electronically searchable data maintained by it for any of the following U.S. indicia—

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

2. If none of the U.S. indicia listed in subparagraph B.1. of this section 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 U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B.1. of this section, a Reporting Financial Institution is not required to treat an account as a Reportable Account if—

- a) Where the Account Holder information unambiguously indicates a U.S. place of birth, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of—

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than the United States; and

(3) A copy of the Account Holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; or

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.

- b) Where the Account Holder information contains a current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of—

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); and



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(2) Documentary evidence, as defined in paragraph D of section VI of this Schedule, establishing the Account Holder's non-U.S. status.

- c) Where the Account Holder information contains standing instructions to transfer funds to an account maintained in the United States, the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); and

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

- d) Where the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account), the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); or

(2) Documentary evidence, as defined in paragraph D of section VI of this Schedule, establishing the Account Holder's non-U.S. status.

**C. Additional Procedures Applicable to Pre-existing Individual Accounts That Are Lower Value Accounts.**

1. Review of Pre-existing Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by 30 June 2016.

2. If there is a change of circumstances with respect to a Pre-existing Individual Account that is a Lower Value Account that results in one or more indicia described in subparagraph B.1. of this section being associated

with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B.4. of this section applies.

3. Except for Depository Accounts described in subparagraph A.4 of this section, any Pre-existing Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

**D. Enhanced Review Procedures for Pre-existing Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of 30 June 2014, or 31 December of 2015 or Any Subsequent Year (“High Value Accounts”).**

1. **Electronic Record Search.** The Reporting Financial Institution must review electronically searchable data maintained by them for any of the indicia described in subparagraph B.1. of this section.

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 D.3. of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to High Value Accounts, 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 U.S. indicia described in subparagraph B.1. of this section—

- (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 to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph D.2. of this section if the Reporting Financial Institution's electronically searchable information includes the following—

- a) The Account Holder's nationality or residence status;
- b) The Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
- d) 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" address 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 Reportable Accounts any High Value Accounts assigned to a relationship manager (including any Financial Accounts aggregated with such account) if the relationship manager has actual knowledge that the Account Holder is a Specified Person.

**5. Effect of Finding U.S. Indicia.**

(a) If none of the U.S. indicia listed in subparagraph B.1. of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified Person in subparagraph D.4. of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.

(b) If any of the U.S. indicia listed in subparagraph B.1. of this section 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 U.S. indicia being associated with the account, then the Reporting

Financial Institution must treat the account as a Reportable Account unless it elects to apply subparagraph B.4. of this section and one or more of the exceptions in that subparagraph applies with respect to that account.

(c) Except for Depository Accounts described in subparagraph A.4. of this section, any Pre-existing Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

**E. Additional Procedures Applicable to High Value Accounts.**

1. If a Pre-existing Individual Account is a High Value Account as of 30 June 2014, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by 01 September 2015. If based on this review such account was identified as a Reportable Account on or before 31 December 2014, the Reporting Financial Institution must report the required information about such account with respect to 2014 in the first report on the Account and on an annual basis thereafter. In the case of an account identified as a Reportable Account after 31 December 2014 and on or before 01 September 2015, the Reporting Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Pre-existing Individual Account is not a High Value Account as of 30 June 2014, but becomes a High Value Account as of 31 December 2015 or of any subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a 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 Specified Person.

3. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Financial Institution shall not be required to re-apply such procedures, other than the relationship manager inquiry in subparagraph D.4. of this section, to the same High Value Account in any subsequent year.

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4. 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.1. of this section being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless it elects to apply subparagraph B.4. of this section and one of the exceptions in that subparagraph applies with respect to that account.

5. 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 the United States, the Reporting Financial Institution shall be required to treat the new address as a change in circumstances and shall be required to obtain the appropriate documentation from the Account Holder.

**F. Pre-existing Individual Accounts That Have Been Documented for Certain Other Purposes.**

A Reporting Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfil its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B.1 of this section with respect to Lower Value Accounts or subparagraphs D.1 through D.3 of this section with respect to High Value Accounts.

**III. New Individual Accounts.**

The following rules and procedures apply for identifying Reportable Accounts among accounts held by individuals and opened on or after 1 July 2014 ("New Individual Accounts").

**A. Accounts Not Required to Be Reviewed, Identified, or Reported.**

Unless the Reporting Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following New Individual

Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts—

1. A Depository Account unless the account balance exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

2. A Cash Value Insurance Contract unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

**B. Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), 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 whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

C. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Financial Institution must treat the account as a Reportable Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

D. 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 whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Financial Institution is unable to obtain a valid self-certification, the Reporting Financial Institution must treat the account as a Reportable Account.

#### IV. Pre-existing Entity Accounts.

The following rules and procedures apply for purposes of identifying Reportable Accounts and accounts held by Nonparticipating Financial

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Institutions among Pre-existing Accounts held by Entities (“Pre-existing 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 Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in the jurisdiction provide for such an election, Pre-existing Entity Accounts with account balances that do not exceed \$250,000 as of 30 June 2014, are not required to be reviewed, identified, or reported as Reportable Accounts until the account balance exceeds \$1,000,000.

**B. Entity Accounts Subject to Review.** A Pre-existing Entity Account that has an account balance or value that exceeds \$250,000 as of June 30, 2014, and a Pre-existing Entity Account that does not exceed \$250,000 as of June 30, 2014 but the account balance or value of which exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

**C. Entity Accounts With Respect to Which Reporting is Required.** With respect to Pre-existing Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in subparagraph 1(b) of Article 4 of the Agreement are reported to the Authority.

**D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting is Required.** For Pre-existing Entity Accounts described in paragraph B of this section, the Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions—

**1. Determine Whether the Entity is a Specified Person.**

- (a) 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 a U.S. Person. For this purpose, information indicating that the Account Holder is a

U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

- (b) If the information indicates that the Account Holder is a U.S. Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified Person.

**2. Determine Whether a Non-U.S. Entity is a Financial Institution.**

- (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 a Financial Institution.
- (b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a Reportable Account.

**3. Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Subparagraph 1(b) of Article 4 of the Agreement.**

(a) Subject to subparagraph D(3)(b) of this section, a Reporting Financial Institution may determine that the Account Holder is a Gibraltar Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

(b) If the Account Holder is a Gibraltar Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S.



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Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

(c) If the Account Holder is not a Gibraltar Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable under subparagraph 1(b) of Article 4 of the Agreement, unless the Reporting Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

**4. Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account.**

With respect to an Account Holder of a Pre-existing Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

(a) 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.

(b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

(c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Financial Institution may rely on—

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFFEs with an account balance or value that does not exceed \$1,000,000; or

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Pre-existing Entity Account held by one or more NFFEs with an account balance or value that exceeds \$1,000,000.

(d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Reportable Account.

**E. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts.**

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

2. Review of Pre-existing Entity Accounts with an account balance or value that does not exceed \$250,000 as of June 30, 2014, but exceeds \$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds \$1,000,000.

3. If there is a change of circumstances with respect to a Pre-existing 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 of this section.

**V. New Entity Accounts.**

The following rules and procedures apply for purposes of identifying Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened on or after July 1, 2014 (“New Entity Accounts”).

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A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where these Regulations provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Financial Institution must determine whether the Account Holder is—

(i) a Specified Person;

(ii) a Financial Institution or other Partner Jurisdiction Financial Institution;

(iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or

(iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B.2 of this section, a Reporting Financial Institution may determine that the Account Holder is an Active NFFE, a Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number or other information that is publicly available or in the possession of the Reporting Financial Institution, as applicable.

2. If the Account Holder is a Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

3. In all other cases, a Reporting Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply—

(a) If the Account Holder is a Specified Person, the Reporting Financial Institution must treat the account as a Reportable Account.

(b) If the Account Holder is a Passive NFFE, the Reporting Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Financial Institution must treat the account as a Reportable Account.

(c) If the Account Holder is—

(i) a U.S. Person that is not a Specified Person;

(ii) subject to subparagraph B.(d) of this section, a Financial Institution or other Partner Jurisdiction Financial Institution;

(iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations;

(iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a Reportable Account, and no reporting is required with respect to the account.

(d) If the Account Holder is a Nonparticipating Financial Institution (including a Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

## **VI. Special Rules and Definitions.**

The following additional rules and definitions 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

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reason to know that the self-certification or documentary evidence is incorrect or unreliable.

## **B. Definitions.**

The following definitions apply for purposes of this Schedule.

1. AML/KYC Procedures. “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements of Gibraltar to which such Reporting Financial Institution is subject.

2. NFFE. An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B.4(j) of this section, and also includes any Non-U.S. Entity that is established in Gibraltar or another Partner Jurisdiction and that is not a Financial Institution.

3. Passive NFFE. A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4. Active NFFE. An “Active NFFE” means any NFFE that meets any of the following criteria:

(a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

(b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

(c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;

(d) The NFFE is a government (other than the U.S. Government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S.

central bank of issue, or an Entity wholly owned by one or more of the foregoing;

(e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, 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 shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

(f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;

(g) The NFFE 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;

(h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

(i) The NFFE is an “excepted NFFE” as described in relevant U.S. Treasury Regulations; or

(j) The NFFE meets all of the following requirements—

i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

ii. It is exempt from income tax in its jurisdiction of residence;

iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE 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 NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and

v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

5. Preexisting Account. A "Preexisting Account" means a Financial Account maintained by a [for Model 1A IGAs: Reporting Financial Institution][for Model 1B IGAs: Reporting Financial Institution] as of June 30, 2014.

## C. Account Balance Aggregation and Currency Translation 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 computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.

**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 computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

**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.Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Financial Institution is determining the balance or value.

**D. Documentary Evidence.**

For purposes of this Schedule, acceptable documentary evidence includes any of the following:

1. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
2. With respect to an individual, any valid identification issued by an authorized 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.
3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.



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4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.

5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

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

A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified 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 Specified Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph B.(1) of section II of this Schedule. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified Person, the Reporting Financial Institution must follow the procedures in subparagraph B.(3) of section II of this Schedule.

**F. Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Schedule, a Reporting Financial Institutions to rely on due diligence procedures performed by third parties, to the extent provided in relevant U.S. Treasury Regulations.

## SCHEDULE 2

NON-REPORTING FINANCIAL INSTITUTIONS AND EXEMPT  
PRODUCTS

Pursuant to regulation 9 the following Entities are treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts are excluded from the definition of Financial Accounts.

**I. Exempt Beneficial Owners.**

The following Entities are exempt beneficial owners and are treated as Non-Reporting Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, 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.

**A. Governmental Entity.** The Government of Gibraltar, any political subdivision of Gibraltar whatsoever, or any wholly owned agency or instrumentality of Gibraltar or any one or more of the foregoing (each, a "Gibraltar Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of Gibraltar.

1. An integral part of Gibraltar means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Gibraltar. The net earnings of the governing authority must be credited to its own account or to other accounts of a Gibraltar Governmental Entity, 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.

2. A controlled entity means an Entity that is separate in form from Gibraltar or that otherwise constitutes a separate juridical entity, provided that—

- (a) The Entity is wholly owned and controlled by one or more Gibraltar Governmental Entities directly or through one or more controlled entities;

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- (b) The Entity's net earnings are credited to its own account or to the accounts of one or more Gibraltar Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
- (c) The Entity's assets vest in one or more Gibraltar Governmental Entities upon dissolution.

3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program 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.

**B. International Organisation.** Any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (1) that has in effect a headquarters agreement with Gibraltar; and (2) the income of which does not inure to the benefit of private persons.

**C. Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Gibraltar itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Gibraltar, whether or not owned in whole or in part by Gibraltar.

## II. Funds that Qualify as Exempt Beneficial Owners.

The following Entities shall be treated as Non-Reporting Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

**A. Broad Participation Retirement Fund.** A fund established in Gibraltar 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—

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

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

3. Satisfies at least one of the following requirements—

(a) The fund is generally exempt from tax in Gibraltar on investment income under the laws of Gibraltar due to its status as a retirement or pension plan;

(b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through D of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;

(c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through D of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II), or penalties apply to distributions or withdrawals made before such specified events; or

(d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

**B. Narrow Participation Retirement Fund.** A fund established in Gibraltar 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—

1. The fund has fewer than 50 participants;

2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;

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3. The employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph A.(1) of section V of this Schedule) are limited by reference to earned income and compensation of the employee, respectively;

4. Participants that are not residents of Gibraltar are not entitled to more than 20 percent of the fund's assets; and

5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Gibraltar.

**C. Pension Fund of an Exempt Beneficial Owner.** A fund established in Gibraltar by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (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 exempt beneficial owner.

**D. Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

### **III. Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.**

The following Financial Institutions are Non-Reporting Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code.

**A. Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements—

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Gibraltar;

2. The Financial Institution must have no fixed place of business outside of Gibraltar. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;

3. The Financial Institution must not solicit customers or Account Holders outside Gibraltar. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Gibraltar merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to non-residents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Gibraltar but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;

4. The Financial Institution must be required under the laws of Gibraltar to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Gibraltar's AML due diligence requirements;

5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of Gibraltar or a Member State of the European Union;

6. Beginning on or before July 1, 2014, the Financial Institution must have policies and procedures, consistent with those set forth in Schedule 1, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified Person who is not a resident of Gibraltar (including a U.S. Person that was a resident of Gibraltar when the Financial Account was opened but subsequently ceases to be a resident of Gibraltar) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Gibraltar;

7. Such policies and procedures must provide that if any Financial Account held by a Specified Person who is not a resident of Gibraltar or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S.

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citizens who are not residents of Gibraltar is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

8. With respect to a Pre-existing Account held by an individual who is not a resident of Gibraltar or by an Entity, the Financial Institution must review those Pre-existing Accounts in accordance with the procedures set forth in Schedule 1 applicable to Pre-existing Accounts to identify any U.S. Reportable Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Gibraltar and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C of section II of this Schedule, satisfy the requirements set forth in this paragraph A; and

10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified Persons and residents of Gibraltar.

**B. Local Bank. A Financial Institution satisfying the following requirements--**

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Gibraltar as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;

2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;

3. The Financial Institution satisfies the requirements set forth in subparagraphs A.2 and A.3 of this section, provided that, in addition to the limitations on the website described in subparagraph A.3 of this section, the website does not permit the opening of a Financial Account;

4. The Financial Institution does not have more than \$175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheets; and

5. Any Related Entity must be incorporated or organized in Gibraltar, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Schedule or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

**C. Financial Institution with Only Low-Value Accounts. A Gibraltar Financial Institution satisfying the following requirements--**

1. The Financial Institution is not an Investment Entity;
2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Schedule 1 for account aggregation and currency translation; and
3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

**D. Qualified Credit Card Issuer. A Gibraltar Financial Institution satisfying the following requirements—**

1. 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
2. Beginning on or before July 1, 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Schedule 1 for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.



**IV. Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.**

The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

**A. Trustee-Documented Trust.** A trust established under the laws of Gibraltar to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all Reportable Accounts of the trust.

**B. Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B.1 or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B.3 of this section.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Gibraltar that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.

2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation organized under the laws of Gibraltar that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

3. The sponsoring entity complies with the following requirements—

(a) The sponsoring entity is authorised to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfil applicable registration requirements on the IRS FATCA registration website;

(b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

(c) If the sponsoring entity identifies any Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified;

(d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Gibraltar Financial Institution;

(e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and

(f) The sponsoring entity has not had its status as a sponsor revoked.

### **C. Sponsored, Closely Held Investment Vehicle.**

A Gibraltar Financial Institution satisfying the following requirements—

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;

2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorised to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements

that the Financial Institution would have been required to perform if it were a Reporting Financial Institution;

3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;

4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and

5. The sponsoring entity complies with the following requirements—

(a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

(b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;

(c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and

(d) The sponsoring entity has not had its status as a sponsor revoked.

**D. Investment Advisors and Investment Managers.** An Investment Entity established in Gibraltar that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

**E. Collective Investment Vehicle.** An Investment Entity established in Gibraltar that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B.4 of section

VI of Schedule 1, U.S. Persons that are not Specified Persons, or Financial Institutions that are not Nonparticipating Financial Institutions.

**F. Special Rules.**

The following rules apply to an Investment Entity—

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

2. With respect to interests in—

(a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Schedule 1, U.S. Persons that are not Specified Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or

(b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations; the reporting obligations of any Investment Entity that is a Gibraltar Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in Gibraltar that is not described in paragraph E or subparagraph F.2 of this section, consistent with paragraph 3 of Article 5 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity pursuant to the Agreement with respect to such interests is reported by such Investment Entity or another person.

4. An Investment Entity established in Gibraltar that is regulated as a collective investment vehicle shall not fail to qualify under paragraph E or subparagraph F.2 of this section, or otherwise as a deemed-compliant FFI, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

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(a) The collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after December 31, 2012;

(b) The collective investment vehicle retires all such shares upon surrender;

(c) The collective investment vehicle (or a Reporting Financial Institution) performs the due diligence procedures set forth in Schedule 1 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 immobilized as soon as possible, and in any event prior to January 1, 2017.

**V. Accounts Excluded from Financial Accounts. The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Reportable Accounts.**

**A. Certain Savings Accounts.**

1. Retirement and Pension Account. A retirement or pension account maintained in Gibraltar that satisfies the following requirements under the laws of Gibraltar.

(a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(b) The account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax under the laws of Gibraltar are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(c) Annual information reporting is required to the tax authorities in Gibraltar with respect to the account;

(d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(e) Either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of 1,000,000 or less, in each case applying the rules set forth in Schedule 1 for account aggregation and currency translation.

**2. Non-Retirement Savings Accounts.** An account maintained in Gibraltar (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Gibraltar.

(a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;

(b) The account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax under the laws of Gibraltar are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(d) Annual contributions are limited to \$50,000 or less, applying the rules set forth in Schedule 1 for account aggregation and currency translation.

**B. Certain Term Life Insurance Contracts.** A life insurance contract maintained in Gibraltar with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements—

1. 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;

2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

3. 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

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existence and any amounts paid prior to the cancellation or termination of the contract; and

4. The contract is not held by a transferee for value.

**C. Account Held By an Estate.** An account maintained in Gibraltar that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

**D. Escrow Accounts.** An account maintained in Gibraltar established in connection with any of the following—

1. A court order or judgment.
2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements—

(a) 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;

(b) 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;

(c) 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;

(d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

(e) The account is not associated with a credit card account.

3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.

4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

**E. Partner Jurisdiction Accounts.** An account maintained in Gibraltar and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

## **VI. Definitions.**

The following additional definitions shall apply to the descriptions above--

**A. Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

**B. Participating FFI.** The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.



International Co-Operation (Tax Information)

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INTERNATIONAL CO-OPERATION (IMPROVEMENT OF  
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