

GUERNSEY STATUTORY INSTRUMENT

2015 No. [     ]

**The Income Tax (Approved International Agreements)  
(Implementation) (Common Reporting Standard)  
Regulations, 2015**

<i>Made</i>	<i>[xxx], 2015</i>
<i>Coming into operation</i>	<i>1<sup>st</sup> December, 2015</i>
<i>Laid before the States</i>	<i>[xxx], 2015</i>

**THE TREASURY AND RESOURCES DEPARTMENT**, in exercise of the powers conferred upon it by sections 75CC and 203A of the Income Tax (Guernsey) Law, 1975, as amended<sup>a</sup>, and all other powers enabling it in that behalf, hereby makes the following regulations:-

**Implementation of Agreements.**

**1.** These regulations implement –

- (a) Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters<sup>b</sup>, in accordance with the information exchange procedure agreed under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information<sup>c</sup> ("MCAA"), and

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75CC was inserted by the Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013 and section 203A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII of 2005).

<sup>b</sup> which is an approved international agreement by virtue of the Income Tax (Guernsey) (Approved International Agreements) (Amendment) Ordinance, 2014 (No. XXXI of 2014).

<sup>c</sup> which was signed on behalf of Guernsey on 29<sup>th</sup> October 2014.

(b) the Bilateral Agreements listed in Schedule 1,  
("the Agreements").

**Information exchange procedure under the Agreements.**

2. The Agreements prescribe -

- (a) the information to be provided by way of exchange (see regulation 3), and
- (b) the reporting and due diligence procedures, detailing how, when and by whom the information shall be collated and provided (see regulation 4).

**Information to be exchanged.**

3. (1) The information detailed in Section I of Schedule 2 (General Reporting Requirements), in relation to a Reportable Account held by a Reportable Person, or by a Passive NFE with a Controlling Person that is Reportable Person, of another Reportable Jurisdiction, shall be provided only to the Relevant Competent Authority of that jurisdiction by the Director, or -

- (a) by such other person, body or as the Director may by notice specify, and
- (b) in such form and manner and by such means, as the Director may by notice require.

(2) In this regulation, "**the Relevant Competent Authority**" means the competent authority of a jurisdiction which, in the relevant calendar year, in the opinion of the Director, -

- (a) is a signatory to one of the Agreements and in which the applicable Agreements has been given domestic effect in a manner similar to these regulations,
- (b) has elected, or is, to receive information under the

Agreements, and

- (c) has adequate data protection safeguards in place to protect the confidentiality of the information provided.

(3) A list of the jurisdictions that satisfy the conditions of paragraph 2 shall be published by the Director in respect of each calendar year.

**The reporting and due diligence procedure.**

4. (1) A Reporting Financial Institution in Guernsey ("**RFI**") must, in respect of the calendar year 2016 and every following calendar year, comply with the due diligence requirements imposed by, and provide the information required by, the Common Standard on Reporting and Due Diligence for Financial Account Information, as it applies in Guernsey, as set out in Schedule 2 –

- (a) to the Director, or to such other person, body or as the Director may by notice specify, and
- (b) in such form and manner and by such means, as the Director may by notice require.

(2) If, in any calendar year, an RFI holds no information that is required to be provided in accordance with paragraph (1) it must provide a return to that effect to the Director, in such form and manner and by such means as the Director may by notice require.

(3) For the purposes of, but without prejudice to the generality of, paragraphs (1) and (2) -

- (a) the notices referred to therein may require an RFI to register with, to use and to provide information and documents by means of an electronic portal specified in the notices for that purpose,
- (b) the notices may be given or published in such form

and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Income Tax office or by being set out in guidance notes issued under regulation 12.

(4) An RFI is taken to comply with the obligation set out in paragraph (1) only if -

- (a) the RFI, in relation to all financial accounts which it maintains, establishes and maintains arrangements in conformity with the applicable due diligence procedures as set out in the Schedule, and
- (b) the arrangements secure that the evidence used in compliance with the Schedule, or a record of the steps taken in accordance with the Schedule, is kept for a period of six years beginning with the end of the year in which the arrangements were applied to the financial accounts.

(5) An RFI which without reasonable excuse fails to comply with any provision of paragraph (1) or Schedule 2 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale, or to both.

**Application of information powers.**

5. (1) Section 75B of the Law ("power to call for documents, etc, relating to taxpayer") applies in respect of these regulations as if there were added at the end of subsection (2)(c) the words "and/or compliance with the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015", and sections -

- (a) 75CB ("notices under section 75B: ancillary provision"),

- (b) 75D ("sections 75A and 75B: supplementary"),
- (c) 75F ("court orders for delivery of documents, etc, relating to a taxpayer"),
- (d) 75G ("court orders under sections 75E and 75F: supplementary"),
- (e) 75H ("court orders under sections 75E and 75F: notice and procedure"),
- (f) 75I ("entry with warrant to obtain material"),
- (g) 75J ("procedure where documents etc, are removed"),
- (h) 75K ("right of appeal to Royal Court"), and
- (i) 75L ("offences in relation to falsification, etc, of documents"),

of the Law, apply accordingly.

(2) Section 75C ("notices under section 75A and 75B: requests for information") also applies by virtue of paragraph (1) and, in addition, these regulations apply as if references to a request for information included references to a notification by a Competent Authority pursuant to section 4 of the MCAA ("Collaboration on Compliance and Enforcement") or any similar provision in a Bilateral Agreement listed in Schedule 1 and references to "requests" and related expressions shall be construed accordingly.

#### **Notification of reporting to Reportable Persons.**

6. (1) Where [,in any calendar year,] an RFI is to provide information about an individual Reportable Person in accordance with regulation 4, which information may be transferred to the government of another territory under regulation 3, the RFI must notify that person of -

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- [(a)] the fact that the information is to be provided[.]/[, and
  - (b) the jurisdictions to which that information may be sent.]

no less than 30 days in advance of the provision of information under regulation 4.

(2) A notification under paragraph (1) shall be effective in respect of that calendar year [only.]/[and in respect of all [subsequent]/[consecutive] calendar years in which such information is provided.]

**Civil penalties for contravention of regulations.**

7. Section 193 of the Law ("penalties in respect of returns not relating to income") applies in respect of these regulations as if -

- (a) references in subsections (1) and (2) of that section to a return other than a return of income included references to a return or other document or information required to be provided by or under these regulations or any other obligation under these regulations,
- (b) references in subsection (1) of that section to the time prescribed included references to the time prescribed by or under these regulations, and
- (c) subsection (3) of that section were omitted.

**Criminal penalties for false statements, etc.**

8. (1) Section 75M of the Law (duties of confidentiality, liens, and self-incrimination) applies in respect of these regulations as if in subsection (4)(b)(ii)(A) of that section after the words "section 75L(3)" there was inserted "or section 201(1) by virtue of a contravention of section 201(4)".

(2) Section 201 of the Law ("discretion to prosecute in cases involving fraud, etc.") applies in respect of these regulations as if -

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- (a) references in subsections (4) and (5) to the Director included references to any other person, body or authority (including the Relevant Competent Authorities under the Agreements) upon whom functions corresponding to those of the Director are conferred by or under these regulations,
  - (c) references in those subsections to tax, penalties, surcharges or additional surcharges under the Law included references to tax, penalties and other liabilities imposed by the laws of the other parties to the Agreements.

**Guernsey representative of a non-resident RFI.**

9. Where an RFI is not resident in Guernsey for the purposes of the Law, the obligations and liabilities of the institution under these regulations are to be treated as if they were also the obligations and liabilities of any representative of the institution situate in Guernsey.

**Accounts with a negative value.**

10. For the purposes of these regulations, an account balance that has a negative value is treated as having a nil value.

**Anti-avoidance.**

11. (1) If -

- (a) a person enters into any transaction or series of transactions, and
- (b) the main purpose, or one of the main purposes, of the person in entering into the transaction or series of transactions is to avoid any obligation or liability under these regulations,

these regulations shall have effect as if the transaction or series of transactions had

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not been entered into.

(2) In paragraph (1) "**transaction**" has the meaning given by subsection (2) of section 67 of the Law (general provision against legal avoidance).

(3) Subsection (4) of section 67 of the Law has effect for the purposes of this regulation as if references therein to tax under the Law included references to tax imposed by the laws of the jurisdiction of any Relevant Competent Authority

(4) Subsection (5) of section 67 of the Law does not have effect for the purposes of this regulation.

**Guidance notes.**

**12.** (1) The Director may issue guidance notes for the purpose of providing practical guidance in respect of any provision of, and in connection with the administration of, these regulations.

(2) Such guidance notes -

(a) shall come into force on such date as the Director may appoint,

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient,

(c) may be revoked or revised, and

(d) shall be published in such manner as the Director considers appropriate.

(3) Guidance notes must be taken into account by the Director in exercising his functions under these regulations, the Agreements and the Law.

(4) In any legal proceedings, criminal or otherwise, whether or



not under the Law or these regulations (including, for the avoidance of doubt, proceedings before the appropriate body under section 76 of the Law), guidance notes are admissible in evidence, and if any provision of guidance notes appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings, then -

- (a) the provision may be taken into account in determining that question, and
- (b) the provision may be relied on as tending to support or, as the case may be, defeat any representation or submission of any party to the proceedings.

(5) The powers conferred by paragraph (1) are without prejudice to any power conferred by the Law to issue statements of practice.

(6) Section 203A(2) of the Law applies in respect of guidance notes as it applies in respect of regulations.

**Application of provisions as to service of notice.**

13. Without prejudice to the provisions of regulation 4(1) and (2), section 68(1AAA) of the Law (giving of notice from Director) applies in relation to a notice of the Director under regulation 4(1) or (2) or otherwise given by the Director for the purposes of these regulations, as it applies in relation to a notice of the Director requiring a person to deliver a return as to income, and references (however expressed) in these regulations to the giving or receipt of such a notice shall be construed accordingly.

**Application of duty to submit in electronic form and by electronic means.**

14. Section 68AA of the Law ("returns to be submitted in electronic form and by electronic means") applies in respect of these regulations as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to these regulations,
- (b) references in section 68AA(1) to a return as to a person's

income included references to a return or other document or information required or authorised to be provided by, under or for the purposes of these regulations,

- (c) in, paragraphs (a) and (b) of section 68AA(1), the words "in the case of a company" were omitted.

#### **General modification of provisions of Law.**

**15.** For the purposes of these regulations, and without prejudice to any other provision of these regulations -

- (a) any reference in the Law to the Law (whether by use of the expression "**this Law**" or otherwise) or any provision thereof has effect as if the reference were to the Law or that provision as modified in its application by these regulations, and
- (b) the provisions of the Law shall be construed and shall have effect subject to those modifications.

#### **Interpretation.**

**16.** (1) In these regulations -

"**the Agreements**" has the meaning given in regulation 1,

"**the Convention on Mutual Administrative Assistance in Tax Matters**" means the Joint Council of Europe and the Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters (which entered into force on 25<sup>th</sup> January 1988) as amended by the Amending Protocol (which entered into force on 27<sup>th</sup> May 2010), which was extended to Guernsey by the United Kingdom on the 17<sup>th</sup> April 2014 (and which entered into force on 1<sup>st</sup> August 2014),

"**the Director**" means the Director of Income Tax,

"**the Law**" means the Income Tax (Guernsey) Law, 1975,

"MCAA" has the meaning given in regulation 1,

"Relevant Competent Authority" has the meaning given in regulation 3(2),

"Reporting Financial Institution in Guernsey" has the meaning given in Section VIII of the Schedule,

"RFI" means a Reporting Financial Institution in Guernsey,

other terms have the meaning given in Section VIII of the Schedule, to the extent they are defined therein, all other terms not so defined have the same respective meanings as in the Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>d</sup> applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

(3) Any reference in these regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

17. These Regulations may be cited as the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015.

**Commencement.**

18. These Regulations shall come into force on the 1<sup>st</sup> day of December, 2015.

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<sup>d</sup> Ordres en Conseil Vol. XIII, p. 355.

## SCHEDULE 1

### BILATERAL AGREEMENTS IMPLEMENTED BY THESE REGULATIONS

#### Regulation 1

- (I) Article 24 of the Double Taxation Agreement made between the States of Guernsey and Government of the Isle of Man<sup>e</sup>, in accordance with the information exchange procedure agreed thereunder in the Bilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information<sup>f</sup>, made between the Competent Authorities of the same parties.
- (II) Article 24 of the Double Taxation Agreement made between the States of Guernsey and Government of Jersey<sup>g</sup>, in accordance with the information exchange procedure agreed thereunder in the Bilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information<sup>h</sup>, made between the Competent Authorities of the same parties.
- (III) Article 5A of the Tax Information Exchange Agreement made between the States of Guernsey and Government of the British Virgin Islands as amended by the Protocol thereto<sup>i</sup>, in accordance with the information exchange procedure agreed thereunder in the Bilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information<sup>j</sup>, made between the Competent Authorities of the same parties.

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<sup>e</sup> which is an approved international agreement by virtue of the Income Tax (Guernsey) (Approval of Agreements with Brazil, Isle of Man, Jersey, Mauritius and Singapore) Ordinance, 2013 (No. XV of 2013).

<sup>f</sup> which was signed in Paris on 13th February 2015.

<sup>g</sup> which is an approved international agreement by virtue of the Income Tax (Guernsey) (Approval of Agreements with Brazil, Isle of Man, Jersey, Mauritius and Singapore) Ordinance, 2013 (No. XV of 2013).

<sup>h</sup> which was signed in Paris on 13th February 2015.

<sup>i</sup> which is an approved international agreement by virtue of the Income Tax (Guernsey) (Approval of Agreement with the British Virgin Islands) Ordinance, 2015 (No. XIII of 2015)

<sup>j</sup> which was signed in the British Virgin Islands and Guernsey on 3 September 2015 and 9 September 2015, respectively.

## SCHEDULE 2

### COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION AS IT APPLIES IN GUERNSEY

Regulations 3 and 4

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

**A.** Subject to paragraphs C through F, each Reporting Financial Institution in Guernsey ("**RFI**") must report the following information with respect to each Reportable Account of such RFI –

1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person,
2. the account number (or functional equivalent in the absence of an account number),
3. the name and identifying number (if any) of the RFI,
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account,
5. in the case of any Custodial Account -

- (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period, and
  - (b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the RFI acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder,
- 6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period, and
- 7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the RFI is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

**B.** The information reported must identify the currency in which each amount is denominated.

**C.** Notwithstanding subparagraph A(1), with respect to –

- (i) each Reportable Account that is a Preexisting Account, or
- (ii) each Financial Account that is opened prior to becoming a Reportable Account,

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the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the RFI and is not otherwise required to be collected by such RFI under domestic law. However, an RFI is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which such Accounts were identified as Reportable Accounts.

**D.** Notwithstanding subparagraph A(1), the TIN is not required to be reported if –

- (i) a TIN is not issued by the relevant Reportable Jurisdiction, or
- (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by it.

**E.** Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the RFI is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the RFI.

**F.** The information detailed above shall be reported with respect to each calendar year from 2016 onwards.

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

**AA.** In order to comply with the due diligence requirements an RFI must identify the jurisdiction in which all Account Holders and Controlling Persons are resident for tax purposes, regardless of whether the jurisdiction in question is a Participating Jurisdiction.

**A.** An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

**BB.** A Reporting Financial Institution, which pursuant to the procedures

described in Sections II through VII, identifies any account as a Foreign Account that is not a Reportable Account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.

**B.** The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

**C.** Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

**D.** RFIs may use service providers to fulfil the reporting and due diligence obligations imposed on them under these regulations but those obligations shall remain the responsibility of the RFIs.

**E.** RFIs may apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts, without prejudice to the rules otherwise applicable to Preexisting Accounts.

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

The following procedures apply to Preexisting Individual Accounts.

**A.** *Accounts Not Required to be Reviewed, Identified, or Reported.* A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the RFI is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.

**B.** *Lower Value Accounts.* The following procedures apply with respect to Lower Value Accounts.

- 1.** *Residence Address.* If the RFI has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the RFI may treat the individual Account Holder as being



a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

If an RFI relies on the residence address test above and there is a Change in Circumstances that causes the RFI to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the RFI must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the RFI cannot obtain the self-certification and new Documentary Evidence by such date, the RFI must apply the electronic record search procedure described in subparagraphs B(2) to (6) below.

2. *Electronic Record Search.* If the RFI does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the RFI must review electronically searchable data maintained by the RFI for any of the following indicia and apply subparagraphs B(3) through (6) -
  - (a) identification of the Account Holder as a resident of a Foreign Jurisdiction,
  - (b) current mailing or residence address (including a post office box) in a Foreign Jurisdiction,
  - (c) one or more telephone numbers in a Foreign Jurisdiction and no telephone number in the jurisdiction of the RFI,
  - (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Foreign Jurisdiction,

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- (e) currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction, or
  - (f) a 'hold mail' instruction or 'in-care-of' address in a Foreign Jurisdiction if the RFI does not have any other address on file for the Account Holder.
3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a Change in Circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
  4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a Change in Circumstances that results in one or more indicia being associated with the account, then the RFI must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
  5. If a 'hold mail' instruction or 'in-care-of' address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the RFI must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the RFI must report the account as an undocumented account.

6. Notwithstanding a finding of indicia under subparagraph B(2), an RFI is not required to treat an Account Holder as a resident of a Foreign Jurisdiction if -

(a) the Account Holder information contains a current mailing or residence address in the Foreign Jurisdiction, one or more telephone numbers in the Foreign Jurisdiction (and no telephone number in the jurisdiction of the RFI) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Foreign Jurisdiction, the RFI obtains, or has previously reviewed and maintains a record of -

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction, and

(ii) Documentary Evidence establishing the Account Holder's residence for tax purposes in a place other than in such Foreign Jurisdiction.

(b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Foreign Jurisdiction, the RFI obtains, or has previously reviewed and maintains a record of -

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Foreign Jurisdiction, or

(ii) Documentary Evidence establishing the Account Holder's residence for tax purposes in a place other than in such Foreign Jurisdiction.

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

1. *Electronic Record Search.* With respect to High Value Accounts, the RFI must review electronically searchable data maintained by the RFI for any of the indicia described in subparagraph B(2).
2. *Paper Record Search.* If the RFI's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the RFI 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 RFI within the last five years for any of the indicia described in subparagraph B(2) –
  - (a) the most recent Documentary Evidence collected with respect to the account,
  - (b) the most recent account opening contract or documentation,
  - (c) the most recent documentation obtained by the RFI pursuant to AML/KYC Procedures or for other regulatory purposes,
  - (d) any power of attorney or signature authority forms currently in effect, and
  - (e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. *Exception To The Extent Databases Contain Sufficient Information.* An RFI is not required to perform the paper record search described in subparagraph C(2) to the extent the RFI's electronically searchable information includes the following -
  - (a) the Account Holder's residence status,

- (b) the Account Holder's residence address and mailing address currently on file with the RFI,
- (c) the Account Holder's telephone number(s) currently on file, if any, with the RFI,
- (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the RFI or another Financial Institution),
- (e) whether there is a current 'in-care-of' address or 'hold mail' instruction for the Account Holder, and
- (f) whether there is any power of attorney or signatory authority for the account.

4. *Relationship Manager Inquiry for Actual Knowledge.* In addition to the electronic and paper record searches described above, the RFI must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

5. *Effect of Finding Indicia.*

- (a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a resident for tax purposes in a Foreign Jurisdiction in subparagraph C(4), then further action is not required until there is a Change in Circumstances that results in one or more indicia being associated with the account.

- (b) If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent Change in Circumstances that results in one or more indicia being associated with the account, then the RFI must treat the Account Holder as a resident for tax purposes of each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
  - (c) If a 'hold mail' instruction or 'in-care-of' address is discovered in the enhanced review of High Value Accounts described above, and no other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the RFI must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the RFI cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account.
- 6. If a Preexisting Individual Account is not a High Value Account as of 31<sup>st</sup> December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the RFI must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the RFI must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
- 7. Once an RFI applies the enhanced review procedures described in paragraph C to a High Value Account, the RFI is not required to re-apply such procedures, other than the relationship manager inquiry

described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the RFI should re-apply them annually until such account ceases to be undocumented.

8. If there is a Change in Circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the RFI must treat the account as a Reportable Account with respect to each Foreign Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.
9. An RFI must implement procedures to ensure that a relationship manager identifies any Change in Circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Foreign Jurisdiction, the RFI is required to treat the new address as a Change in Circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.

**D. Review of Preexisting Individual Accounts must be completed –**

- (a) by 31<sup>st</sup> December 2016, in the case of High Value Accounts, and
- (b) by 31<sup>st</sup> December 2017, in the case of Lower Value Accounts.

**E.** Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

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

The following procedures apply with respect to New Individual Accounts.

**A.** With respect to New Individual Accounts, upon account opening, the RFI

must obtain a self-certification, which may be part of the account opening documentation, that allows the RFI to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

**B.** If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the RFI must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.

**C.** If there is a Change in Circumstances with respect to a New Individual Account that causes the RFI to know, or have reason to know, that the original self-certification is incorrect or unreliable, the RFI cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

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

The following procedures apply with respect to Preexisting Entity Accounts.

**A.** *Entity Accounts Not Required to Be Reviewed, Identified or Reported.* If the RFI so elects, in respect of any calendar year, and notifies the Director of the election in advance of the reporting date for that calendar year, then either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250,000 as of 31<sup>st</sup> December 2017, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250,000 as of the last day of any subsequent calendar year.

**B.** *Entity Accounts Subject to Review.* A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250,000 as of 31<sup>st</sup> December 2017, and a Preexisting Entity Account that does not exceed USD 250,000 as of 31<sup>st</sup> December 2017 but the aggregate account balance or value of which exceeds USD



250,000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. [.....]<sup>k</sup>.

**D.** *Review Procedures for Identifying Entity Accounts With Respect to Which Reporting may be Required.* For Preexisting Entity Accounts described in paragraph B, an RFI must apply the following review procedures—

**1.** *Determine the Residence of the Entity*

- (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the Account Holder's residence. For this purpose, information indicating the Account Holder's residence includes a place of incorporation or organisation, or an address in a Foreign Jurisdiction.
- (b) If the information indicates that the Account Holder is a Reportable Person, the RFI must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

**2.** *Determine the Residence of the Controlling Persons of a Passive NFE.* With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the RFI must identify whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Controlling Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the RFI must follow the guidance in subparagraphs D(2)(a)

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<sup>k</sup> Intentionally blank.

through (c) in the order most appropriate under the circumstances.

- (a) *Determining whether the Account Holder is a Passive NFE.* For purposes of determining whether the Account Holder is a Passive NFE, the RFI must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity as described in subparagraph (b) of the definition thereof that is not a Participating Jurisdiction Financial Institution.
- (b) *Determining the Controlling Persons of an Account Holder.* For the purposes of determining the Controlling Persons of an Account Holder, an RFI may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (c) *Determining the residence of a Controlling Person of a Passive NFE.* For the purposes of determining the residence of a Controlling Person of a Passive NFE, an RFI may rely on –
  - (i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more Passive NFEs with an aggregate account balance or value that does not exceed USD 1,000,000, or
  - (ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the Controlling Person is resident for tax purposes. If self-certification is not provided the RFI will establish such residence(s) by applying the procedures described in paragraph C of Section III.

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

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250,000 as of 31<sup>st</sup> December 2015 must be completed by 31<sup>st</sup> December 2017.
2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250,000 as of 31<sup>st</sup> December 2015, but exceeds USD 250,000 as of 31<sup>st</sup> December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250,000.
3. If there is a Change in Circumstances with respect to a Preexisting Entity Account that causes the RFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the RFI must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

#### **Section VI: Due Diligence for New Entity Accounts**

The following procedures apply with respect to New Entity Accounts.

**A.** *Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.* For New Entity Accounts, an RFI must apply the following review procedures -

1. *Determine the Residence of the Entity*
  - (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the RFI to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the RFI may rely on the

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address of the principal office of the Entity to determine the residence of the Account Holder.

- (b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the RFI must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

2. *Determine the Residence of the Controlling Persons of a Passive NFE.* With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the RFI must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of any such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the RFI must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.

- (a) *Determining whether the Account Holder is a Passive NFE.* For purposes of determining whether the Account Holder is a Passive NFE, the RFI must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph (b) of the definition thereof that is not a Participating Jurisdiction Financial Institution.
- (b) *Determining the Controlling Persons of an Account Holder.* For purposes of determining the Controlling Persons of an Account Holder, an RFI may rely on information collected

and maintained pursuant to AML/KYC Procedures.

- (c) *Determining the residence of a Controlling Person of a Passive NFE.* For purposes of determining the residence of a Controlling Person of a Passive NFE, an RFI may only rely on a self-certification from the Account Holder or such Controlling Person.

## **Section VII: Special Due Diligence Rules**

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

**A.** *Reliance on Self-Certifications and Documentary Evidence.* An RFI may not rely on a self-certification or Documentary Evidence if the RFI knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

**B.** *Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract.* An RFI may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the RFI has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. An RFI has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the RFI and associated with the beneficiary contains indicia as described in paragraph B of Section III. If an RFI has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the RFI must follow the procedures in paragraph B of Section III.

An RFI may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity

Contract meets the following requirements –

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employee/certificate holders,
- (b) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death, and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1,000,000.

**C. *Account Balance Aggregation and Currency Rules.***

1. *Aggregation of Individual Accounts.* For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, an RFI is required to aggregate all Financial Accounts maintained by the RFI, or by a Related Entity, but only to the extent that the RFI's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. *Aggregation of Entity Accounts.* For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, an RFI is required to take into account all Financial Accounts that are maintained by the RFI, or by a Related Entity, but only to the extent that the RFI's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.

3. *Special Aggregation Rule Applicable to Relationship Managers.* For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, an RFI is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. *Amounts Read to Include Equivalent in Other Currencies.* All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, in determining the balance or value of an account denominated in a currency other than US dollars, the RFI must convert the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the RFI is determining the threshold amounts.

### **Section VIII: Defined Terms**

The following terms have the meanings set forth below –

**"Account Holder"** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an

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Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder,

"**Active NFE**" means any NFE that meets any of the following criteria –

- (a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income,
- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market,
- (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing,
- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes,
- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the



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intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE,

- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution,
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution, or
- (h) the NFE meets all of the following requirements –
  - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes, or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare,
  - (ii) it is exempt from income tax in its jurisdiction of residence,
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets,

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- (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased, and
  - (v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof,

**"AML/KYC Procedures"** means the customer due diligence procedures of an RFI pursuant to the anti-money laundering or similar requirements to which such RFI is subject,

**"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,

**"Broad Participation Retirement Fund"** means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund -

- (a) does not have a single beneficiary with a right to more than five per cent of the fund's assets,
- (b) is subject to government regulation and provides information reporting to the tax authorities, and
- (c) satisfies at least one of the following requirements –
  - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan,
  - (ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in this definition and in the definitions of Narrow Participation Retirement Fund, and a Pension Fund of Government Entity, International Organisation or Central Bank or from retirement and pension accounts described in subparagraph (a) of the definition of Excluded Accounts) from the sponsoring employers,
  - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in this definition and in the definitions of Narrow Participation Retirement Fund, and a Pension Fund of Government Entity, International Organisation or Central Bank or retirement and pension accounts described in subparagraph (a) of the definition of Excluded Accounts), or penalties apply to distributions or withdrawals made before such specified events, or

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- (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50,000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation

"**Cash Value**" means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "**Cash Value**" does not include an amount payable under an Insurance Contract -

- (a) solely by reason of the death of an individual insured under a life insurance contract,
- (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against,
- (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract,
- (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph (b) of the definition of Cash Value, or
- (e) as a return of an advance premium or premium deposit for an

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Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract,

**"Cash Value Insurance Contract"** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value,

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

**"Change in Circumstances"** includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) to (3) of Section VII) if such change or addition of information affects the status of the Account Holder.

**"Controlling Persons"** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions and must be interpreted in a manner consistent with the Financial Action Task Force Recommendations,

**"Custodial Account"** means an account (other than an Insurance

Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person,

**"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of –

- (i) the three-year period that ends on 31<sup>st</sup> 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, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon,

**"Depository Institution"** means any Entity that accepts deposits in the ordinary course of a banking or similar business,

**"Documentary Evidence"** includes any of the following -

- (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident,
- (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a

government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes,

(c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes -

(i) the name of the Entity and

(ii) either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised,

and in relation to (ii), the address of the Entity's principal office is generally the place in which its place of effective management is situated, the address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents, further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

(d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report,

(e) with respect to a Preexisting Entity Account, any classification in the RFI's records with respect to the Account Holder, as -

(i) determined under a standardised industry coding system (a coding system used to classify

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establishments by business type for purposes other than tax purposes),

- (ii) recorded by the RFI consistent with its normal business practices for purposes of AML/KYC Procedures or other regulatory purposes (other than tax purposes) and
- (iii) implemented by the RFI prior to the date used to classify the Financial Account as a Preexisting Account,

provided that the RFI does not know or has reason to know that such classification is incorrect or unreliable.

**"Dormant Account"** is an account other than an Annuity Contract, with a balance that does not exceed US\$1,000 and where -

- (i) the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the RFI in the past three years,
- (ii) the Account Holder has not communicated with the RFI that maintains such account regarding the account or any other account held by the Account Holder with the RFI in the past six years, and
- (iii) in the case of a Cash Value Insurance Contract, the RFI has not communicated with the Account Holder that holds such account regarding the account or any other account held by the Account Holder with the RFI in the past six years,

or, where under the normal operating procedures of the RFI that are consistently applied for all accounts maintained by such institution in Guernsey, provided that such procedures contain substantially similar



requirements to subparagraphs (i) to (iii) above,

**"Entity"** means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation, and an Entity is a **"Related Entity"** of another Entity if –

- (a) either Entity controls the other Entity,
- (b) the two Entities are under common control, or
- (c) the two Entities are Investment Entities described in subparagraph (b) of the definition of Investment Entity, are under common management, and such management fulfils the due diligence obligations of such Investment Entities.

For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to the definition of Reportable Jurisdiction Person, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered “similar” to a partnership and a limited liability partnership where it is not treated as a taxable unit in a jurisdiction under the tax laws of that jurisdiction but to avoid duplicate reporting, a trust that is a Passive NFE may not be considered a similar legal arrangement.

**"Equity Interest"** means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary

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distribution from the trust,

**"Excluded Account"** means any of the following accounts –

- (a) a retirement or pension account that satisfies the following requirements -
  - (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits),
  - (ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate),
  - (iii) information reporting is required to the tax authorities with respect to the account,
  - (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events, and
  - (v) either
    - (i) annual contributions are limited to USD 50,000 or less, or
    - (ii) there is a maximum lifetime contribution limit to the account of USD 1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account

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aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph (a)(v) above will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraphs–(a) or (b) of this definition or from one or more retirement or pension funds that meet the requirements of any of in the definitions of Broad Participation Retirement Fund, Narrow Participation Retirement Fund, and a Pension Fund of Government Entity, International Organisation or Central Bank.

- (b) an account that satisfies the following requirements –
  - (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement,
  - (ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate),
  - (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met, and
  - (iv) annual contributions are limited to USD 50,000 or

less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph (b)(iv) above will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraphs (a) or (b) of this definition or from one or more retirement or pension funds that meet the requirements of any of in the definitions of Broad Participation Retirement Fund, Narrow Participation Retirement Fund, and a Pension Fund of Government Entity, International Organisation or Central Bank.

- (c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements –
  - (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter,
  - (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract,
  - (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination

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of the contract, and

- (iv) the contract is not held by a transferee for value.
- (d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- (e) an account established in connection with any of the following –
  - (i) a court order or judgment,
  - (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements –
    - (i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property,
    - (ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,
    - (iii) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy

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such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates,

- (iv) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and
- (v) the account is not associated with an account described in subparagraph (f) of this definition .
- (iii) 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.
- (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- (f) a Depository Account that satisfies the following requirements
  - 
  - (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer, and
  - (ii) beginning on or before 1<sup>st</sup> January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for

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currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns,

- (g) where the RFI so elects, in respect of any calendar year, and notifies the Director of the election in advance of the reporting date for that calendar year, a Dormant Account,

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

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

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31<sup>st</sup> December 2015,
- (b) the collective investment vehicle retires all such shares upon surrender,
- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II through VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment, and
- (d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to 1<sup>st</sup>

January 2018,

**"Financial Account"** means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and –

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

but does not include any account that is an Excluded Account, for the purpose of this definition, an account shall be considered to be maintained by a Financial Institution if -

- (i) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets 'in street name' for an Account Holder in such



institution),

- (ii) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution),
- (iii) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution,
- (iv) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract,

**"Financial Asset"** includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract, but does not include a non-debt, direct interest in real property,

**"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company,

**"Foreign Jurisdiction"** means any jurisdiction other than Guernsey,

**"Governmental Entity"** means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the

foregoing (each, a "Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

- (a) An "**integral part**" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- (b) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that –
  - (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities,
  - (ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person, and
  - (iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
- (c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is

considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

**"Group Annuity Contract"** means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

**"Group Cash Value Insurance Contract"** means a Cash Value Insurance Contract that –

- (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group, and
- (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

**"High Value Account"** means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1,000,000 as of 31<sup>st</sup> December 2015 or 31<sup>st</sup> December of any subsequent year.

**"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,

**"International Organisation"** means any international organisation or wholly owned agency or instrumentality thereof, which includes any intergovernmental organisation (including a supranational organisation): that is comprised primarily of governments; that has in effect a headquarters or substantially similar agreement with the jurisdiction; and, the income of

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which does not inure to the benefit of private persons,

**"Investment Entity"** means any Entity -

- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer –
  - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading,
  - (ii) individual and collective portfolio management, or
  - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons, or
- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph (a) above.

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (a) above, or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph (b) above, if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of –

- (i) the three-year period ending on 31<sup>st</sup> December of the

year preceding the year in which the determination is made, or

- (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs (d) to (g) of the definition of Active NFE.

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

**"Lower Value Account"** means a Preexisting Individual Account with an aggregate balance or value as of 31<sup>st</sup> December 2015 that does not exceed USD 1,000,000,

**"Narrow Participation Retirement Fund"** means a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that

—

- (a) the fund has fewer than 50 participants,
- (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs,
- (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph (a) of the definition of Excluded Accounts) are limited by reference to earned income and compensation of the employee, respectively,
- (d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20% of

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the fund's assets, and

- (e) the fund is subject to government regulation and provides information reporting to the tax authorities,

**"New Account"** means a Financial Account maintained by an RFI opened on or after 1<sup>st</sup> January 2016,

**"New Entity Account"** means a New Account held by one or more Entities,

**"New Individual Account"** means a New Account held by one or more individuals,

**"NFE"** means any Entity that is not a Financial Institution,

**"Non-Reporting Financial Institution"** means any Financial Institution that is:

- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution,
- (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank, or a Qualified Credit Card Issuer,
- (c) an Exempt Collective Investment Vehicle, or
- (d) a trust to the extent that the trustee of the trust is an RFI and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

**"Participating Jurisdiction"** means a jurisdiction -

- (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I, and
- (ii) which is identified in a published list,

**"Participating Jurisdiction Financial Institution"** means –

- (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and
- (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction, and

that is not a Non-Reporting Financial Institution.

**"Passive NFE"** means any –

- (i) NFE that is not an Active NFE, or
- (ii) an Investment Entity as described in subparagraph (b) of the definition thereof that is not a Participating Jurisdiction Financial Institution,

**"Pension Fund of a Governmental Entity, International Organisation or Central Bank"** means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services

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performed for the Governmental Entity, International Organisation or Central Bank,

**"Preexisting Account"** means –

- (a) a Financial Account maintained by an RFI as of 31<sup>st</sup> December 2015,
- (b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if –
  - (i) the Account Holder also holds with the RFI (or with a Related Entity within the same jurisdiction as the RFI) a Financial Account that is a Preexisting Account under subparagraph(a) above,
  - (ii) the RFI (and, as applicable, the Related Entity within the same jurisdiction as the RFI) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Preexisting Accounts under this subparagraph (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds,
  - (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the RFI is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in subparagraph (a) above, and
  - (iv) the opening of the Financial Account does not require



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the provision of new, additional or amended customer information by the Account Holder other than for purposes of the Common Reporting Standard,

**"Preexisting Entity Account"** means a Preexisting Account held by one or more Entities,

**"Preexisting Individual Account"** means a Preexisting Account held by one or more individuals,

**"Qualified Credit Card Issuer"** means a Financial Institution satisfying the following requirements –

- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer, and
- (b) beginning on or before 1<sup>st</sup> January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of USD 50,000 is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

**"Related Entity"**; see Entity,

**"Reportable Account"** means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such

pursuant to the due diligence procedures described in Sections II to VII,

**"Reportable Jurisdiction"** means a jurisdiction –

- (i) with which an agreement is in place pursuant to which there is an obligation in place to provide the information specified in Section I, and
- (ii) which is identified in the list published by the Director in accordance with regulation 3(3),

**"Reportable Person"** means a Reportable Jurisdiction Person other than –

- (i) a corporation the stock of which is regularly traded on one or more established securities markets,
- (ii) any corporation that is a Related Entity of a corporation described in clause (i),
- (iii) a Governmental Entity,
- (iv) an International Organisation,
- (v) a Central Bank, or
- (vi) a Financial Institution.

**"Reportable Jurisdiction Person"** means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

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**"Reporting Financial Institution in Guernsey"**, see definition of RFI below,

**"Resident"** in the context of a Financial Institution's residence, means—

- (a) the territory in which it is resident for tax purposes, to whose jurisdiction it is subject,
- (b) if (a) does not apply (i.e. if it has no residence for tax purposes), the territory under the laws of which it is incorporated, where it has its place of management (including effective management), or where it is subject to financial supervision,
- (c) where Financial Institution is a trust, notwithstanding paragraph (a), the territory in which one or more trustees are resident, except if the trust reports all the information required to be reported under these regulations to another territory because it is resident for tax purposes in such other territory, and
- (d) where a Financial Institution (other than a trust) is resident in two or more territories, such Financial Institution will be subject to the reporting and due diligence obligations of the territory in which it maintains the Financial Account(s).

**"RFI"** means a Reporting Financial Institution in Guernsey, which includes -

- (a) any Financial Institution that is Resident in Guernsey, but excludes any branch of that Financial Institution that is located outside Guernsey,
- (b) any branch of a Financial Institution that is not Resident in Guernsey, if that branch is located in Guernsey, and

that is not a Non-Reporting Financial Institution.

**"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.

**"TIN"** means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

Consultation Draft

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Dated this [xx] day of [November], 2015

DEPUTY G. A. ST PIER

Minister of the Treasury and Resources Department

For and on behalf of the Department

#### EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations implement and enable the administration and enforcement in domestic law of Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (an approved international agreement providing for the obtaining, furnishing and exchanging of information in relation to tax), in accordance with the information exchange procedure agreed under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information signed on behalf of the States of Guernsey at Berlin on 29<sup>th</sup> October 2014.