

# **IRAS e-Tax Guide**

## **Compliance Requirements of the Singapore-US Intergovernmental Agreement on Foreign Account Tax Compliance Act**



INLAND REVENUE  
AUTHORITY  
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# **Compliance Requirements of Singapore-US Intergovernmental Agreement on Foreign Account Tax Compliance Act**

## **1 Aim**

- 1.1 This e-Tax Guide is issued to provide guidance to businesses, entities and persons affected by the Singapore-US Intergovernmental Agreement on Foreign Account Tax Compliance Act ("FATCA").
- 1.2 This e-Tax Guide may not be exhaustive in the topics covered, but it seeks to convey broad principles which can be applied to different circumstances. For avoidance of doubt, this is not a legal document and should not serve to substitute professional advice.

## **2 At a Glance**

- 2.1 On 5 May 2014, Singapore initialled a Model 1 Intergovernmental Agreement ("IGA") with the United States ("US") that will facilitate compliance with the US FATCA by Singapore-based Financial Institutions ("SGFIs"). Since then, Singapore has been included in the US Treasury's list of jurisdictions that are treated as having an IGA in effect with the US. The Singapore-US IGA ("Agreement") was signed on 9 December 2014 and will enter into force on 18 March 2015. The Agreement can be found on the Inland Revenue Authority of Singapore's ("IRAS") website.
- 2.2 Under the Agreement, Reporting SGFIs are required to report account information of US persons to IRAS. IRAS will in turn share this information with the US Internal Revenue Service ("US IRS"). This e-Tax Guide covers the main aspects of the due diligence and reporting requirements under the Agreement by explaining:
  - The Financial Institutions that must report;
  - The Account Holders and US Reportable Accounts;
  - Exempt Financial Institutions and Excluded Financial Accounts;
  - The due diligence procedures required to be performed by Reporting SGFIs to identify the US Reportable Accounts;
  - The information to be reported; and
  - The timeline for such reporting.

### 3 Glossary

The following terms and acronyms are used throughout this e-Tax Guide.

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

|                    |   |
|--------------------|---|
| IDES               | <p>International Data Exchange Service</p> <p>A data exchange service to allow Financial Institutions and Tax Administrations of Partner Jurisdictions to automatically exchange FATCA data with the US IRS.</p>  |
| Model 1 IGA        | <p>Model 1 Intergovernmental Agreement</p> <p>An arrangement between the US or the US Treasury Department and a non-US government or one or more agencies thereof to implement FATCA through reporting by FFIs to such non-US government or agency thereof, followed by automatic exchange of such reported information with the US IRS. In Singapore's case, this would refer to the Singapore-US IGA ("Agreement").</p> |
| NFFE               | <p>Non-Financial Foreign Entity</p> <p>A NFFE is a Non-US Entity that does not meet the definition of a FFI.</p>  |
| Non-Reporting SGFI | <p>Non-Reporting Singapore-based Financial Institution</p> <p>Any SGFI, or other entity resident in Singapore, that is described in Annex II of the Agreement as a Non-Reporting SGFI or that otherwise qualifies a Deemed-Compliant FFI or an Exempt Beneficial Owner under relevant US Treasury Regulations in effect on 9 December 2014.</p>   |
| Non-US Entity      | <p>An entity that is not a US Person.</p>   |
| NPFFI              | <p>Nonparticipating Financial Institution</p> <p>A FFI that does not enter into an agreement with the US IRS and is not deemed compliant, but does not include an SGFI or other Partner Jurisdiction FI other than an SGFI treated as an NPFFI pursuant to subparagraph 3(b) of Article 5 of the Agreement or the corresponding provision in an agreement between the US and a Partner Jurisdiction.</p>                  |



|                        |   |
|------------------------|---|
| Partner Jurisdiction   | A jurisdiction that has in effect an agreement with the US to facilitate the implementation of FATCA.   |
| Preexisting Account    | A Financial Account opened prior to 1 July 2014.  |
| Qualified intermediary | A person, described in US Treasury Regulation §1.1441-1(e)(5)(ii), that enters into a withholding agreement with the US IRS to be treated as a qualified intermediary and acts in its capacity as a qualified intermediary.   |
| Reporting SGFI         | Reporting Singapore-based Financial Institution<br><br>Any SGFI that is not a Non-Reporting SGFI.<br>Any Non-Reporting SGFI to which a GIIN has been properly allocated by the US IRS will be a Reporting SGFI under the SG Regulations.  |
| Self-certification     | <p>A self-certification is the process by which:</p> <ul style="list-style-type: none"> <li>- Individual financial account holders or Controlling Persons of a Passive NFFE certify whether they are US citizens or US tax residents; or</li> <li>- Entity financial account holders certify their FATCA status</li> </ul> <p>Reporting SGFIs that maintain an account will be able to rely on the account holder's self-certification indefinitely for FATCA purposes, unless they know or have reason to know that such a self-certification is incorrect or unreliable.</p> <p>Reporting SGFIs can rely on an US IRS W-8 or W-9 form to obtain self-certification from their account holders. An overview of the various FATCA related forms and instructions can be found at the webpage:</p> <p><a href="http://www.irs.gov/Businesses/Corporations/FATCA-Related-Forms">http://www.irs.gov/Businesses/Corporations/FATCA-Related-Forms</a>.</p> |
| SG Regulations         | Refers to the Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2015.   |

|                                |   |
|--------------------------------|---|
| SGFI                           | <p>Singapore-based Financial Institution</p> <p>SGFI has the same meaning as the term “Singaporean Financial Institution” set out in Article 1(l) of the Agreement.</p>   |
| SG Legislation                 | Refers to Part XXB of the Income Tax Act and the SG Regulations.  |
| Specified US Person            | The term Specified US Person means any US Person other than those specifically excluded under Article 1(bb) of the Agreement.   |
| US                             | United States   |
| US IRS                         | US Internal Revenue Service   |
| US Person                      | A US citizen or resident individual, a partnership or corporation organised in the US or under the laws of the US or any State thereof, a trust if (i) a court within the US would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more US persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the US. |
| US Reportable Account          | <p>A Financial Account maintained by a Reporting SGFI and held by one or more Specified US Persons or by a Non-US Entity (i.e. a Passive NFFE) with one or more Controlling Persons that is a Specified US Person.</p> <p>An account shall not be treated as a US Reportable Account if such account is not identified as a US Reportable Account after application of the due diligence procedures in Annex I of the Agreement.</p>  |
| US Source Withholdable Payment | Any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and   |

|  |  |
|--|--|
|  | <p>income, if such payment is from sources within the US.</p> <p>However, a US Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant US Treasury Regulations.</p> |
|--|--|

## **4 Background**

### **4.1 What is FATCA**

4.1.1 FATCA was enacted by the US in March 2010 to target non-compliance with US tax laws by US persons using non-US accounts. FATCA requires all FIs outside the US to transmit, on a regular basis, information about Financial Accounts held by US persons to the US IRS. FIs that fail to comply will face a 30% FATCA-related withholding tax on certain payments made from the US to them.

4.1.2 FATCA affects FIs worldwide. The US has developed a framework to enter into IGAs with partner jurisdictions around the world to facilitate FIs' compliance with FATCA:

- Model 1 IGAs provide for FIs outside the US to report account information of US persons to their relevant domestic authority. The domestic authority (in Singapore's case, IRAS) will in turn share the information with the US IRS.
- Model 2 IGAs provide for FIs outside the US to directly report account information of US persons to the US IRS, which is supplemented by information exchange upon request between the US IRS and its relevant government counterpart.

4.1.3 In response to industry feedback, Singapore agreed to enter into a Model 1 IGA with the US to facilitate the discharge of the SGFIs' obligations arising under FATCA. Without the Agreement, individual SGFIs will each have to enter into separate individual Foreign Financial Institution ("FFI") Agreements with the US to avoid FATCA-related withholding. With the Agreement, SGFIs (Section 5 of this e-Tax Guide) will benefit from simplified compliance procedures with regard to identifying and reporting on Financial Accounts held by Specified US persons. SGFIs which meet Singapore's domestic requirements will also avoid FATCA-related withholding tax on relevant payments that they receive from the US.

4.1.4 The table below summarises the key implementation steps under the Agreement. Reporting SGFIs are allowed, and encouraged, to adopt an earlier implementation schedule:-

| <b>Actions</b>                   | <b>Implementation Schedule</b>  |
|----------------------------------|---|
| Registration                     | Reporting SGFIs should register themselves at the US IRS Online FATCA Registration Portal <sup>1</sup> as FIs within a Model 1 IGA jurisdiction to obtain a Global Intermediary Identification Number (GIIN), to be included on the US IRS' Foreign Financial Institution (FFI) List and to avoid FATCA-related withholding tax on US source payments.  |
| Identification and Documentation | <p>For accounts held by individuals (otherwise referred to as Individual Accounts), guidance is provided under the following sections of this e-Tax Guide in relation to the applicable due diligence requirements as set out under Regulation 9 of the SG Regulations and read with Annex I of the Agreement:</p> <ul style="list-style-type: none"> <li>• In respect of accounts opened prior to 1 July 2014 ("Preexisting Individual Accounts") - Sections 9.2 to 9.8;</li> <li>• In respect of accounts opened between 1 July 2014 to 17 March 2015 - Section 9.27; and</li> <li>• In respect to accounts opened after 17 March 2015 ("New Individual Accounts") - Sections 9.9 to 9.11.</li> </ul> <p>For accounts held by persons who are not individuals (otherwise known as Entity Accounts), guidance is provided under the following sections of this e-Tax Guide in relation to the applicable due diligence requirements as set out under Regulation 9 of the SG Regulations and read with Annex I of the Agreement:-</p> <ul style="list-style-type: none"> <li>• In respect of accounts opened prior to 31 July 2014 ("Preexisting Entity Accounts") - Sections 9.12 to 9.17.</li> <li>• In respect of accounts opened after 31 July 2014 ("New Entity Accounts") - Sections 9.18 to 9.20.</li> </ul> |

<sup>1</sup> <https://sa2.www4.irs.gov/fatca-rup/>

|           |  |
|-----------|--|
| Reporting | The first Reporting Year is 2014. The deadline for information reporting to IRAS is 31 May annually starting from 2015, for Reporting Year 2014. |
|-----------|--|

## 4.2 Overview of Timelines

| Deadlines    | Milestones  |
|--------------|---|
| 31 May 2015  | Reporting SGFIs submit FATCA information to IRAS relating to Reporting Year 2014.   |
| 30 June 2015 | Reporting SGFIs complete due diligence procedures for Preexisting High Value Individual Accounts with balance or value that exceeds US\$1,000,000 as of 30 June 2014 (See Section 9.6), as part of due diligence requirements under the Agreement.  |
| 30 June 2016 | Reporting SGFIs complete due diligence procedures for: <ul style="list-style-type: none"> <li>• Preexisting Entity Accounts with balance or value that exceeds US\$250,000 as of 30 June 2014 (See Section 9.14); and</li> <li>• all Preexisting Individual Accounts with balance or value between US\$50,000 and US\$1,000,000 as of 30 June 2014.(See Section 9.5);</li> </ul> as part of due diligence requirements under the Agreement. |

## **5 Singapore-based Financial Institutions**

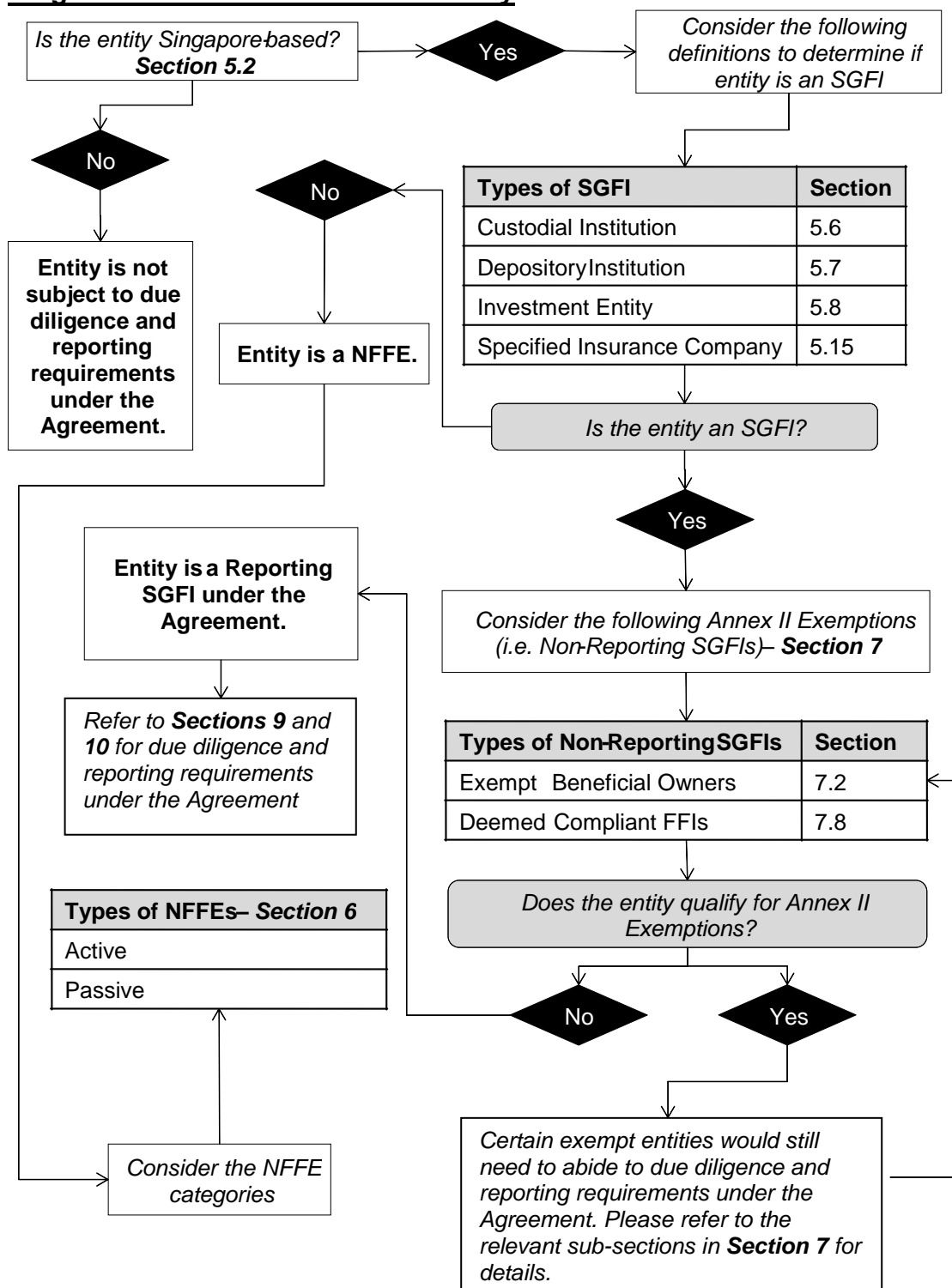
### **5.1 Overview of FATCA Classification for Singapore Entities**

- 5.1.1 Under FATCA, Singapore entities can be classified into several categories that are affected by different obligations and requirements. The first step to be undertaken by a Singapore entity or its representative is therefore to establish whether the entity is an SGFI or a Non-Financial Foreign Entity (“NFFE”).
- 5.1.2 An entity is an FI under Regulation 4 of the SG Regulations if it falls within any of the following categories.
- Custodial Institution (Section 5.6)
  - Depository Institution (Section 5.7)
  - Investment Entity (Section 5.8)
  - Specified Insurance Company (Section 5.15)
- 5.1.3 Each category of FI is determined by a set of criteria, as described in the corresponding sections stated above.
- 5.1.4 Where an entity does not meet the definition of an FI, it will be regarded as a NFFE. NFFEs are in turn divided into two sub-categories defined under Annex I to the Agreement: (i) Active NFFEs and (ii) Passive NFFEs. Refer to Section 6 for more details on NFFEs.
- 5.1.5 Under the Agreement, SGFIs will be classified either as Reporting SGFIs or Non-Reporting SGFIs (see Section 7). Reporting SGFIs are responsible for ensuring that their due diligence and reporting requirements under the Agreement are met. A Non-Reporting SGFI is one that is either described as such in Annex II of the Agreement or that otherwise qualifies as a Deemed-Compliant FFI or an Exempt Beneficial Owner under relevant US Treasury Regulations in effect on 9 December 2014. While the Non-Reporting SGFIs are generally not required to report US reportable accounts, these SGFIs may be subject to the US IRS registration requirements, henceforth due diligence and reporting requirements, if so required in Annex II of the Agreement. One example would be Financial Institutions with a Local Client Base. SGFIs relying on the US Treasury Regulations to qualify as a Non-Reporting SGFI under categories not set out in Annex II of the Agreement may similarly be subject to the US IRS registration requirements.

- 5.1.6 In case of significant non-compliance with applicable obligations under the SG Legislation, a Reporting SGFI could be penalised by IRAS. In situations where the non-compliance is not resolved within 18 months of notification, the US IRS may treat the Reporting SGFI as an NPFFI.
- 5.1.7 Please refer to the next page for a visual guide on the classification of an entity.



## Diagram A - Classification Of An Entity



## **5.2 Singapore-based Financial Institutions (“SGFIs”)**

5.2.1 Under the Agreement, an SGFI is:

- a) any FI that is a tax resident in, or incorporated, formed or established under the laws of Singapore, but excludes any branch of the FI located outside of Singapore; or
- b) any branch of an FI that is not tax resident in, not incorporated, formed or established under the laws of Singapore, if such branch is located in Singapore.

5.2.2 If an FI is a tax resident in two countries, such that it is resident in Singapore and also in another country, it will be considered an SGFI under the Agreement.

## **5.3 Subsidiaries and Branches**

5.3.1 As noted in the above section, subsidiaries and branches of SGFIs that are not located in Singapore are excluded from the scope of the Agreement and will not be regarded as SGFIs. These entities will be subject to either:-

- a) The relevant US Treasury Regulations; or
- b) The legislation introduced to bring effect to an IGA between the jurisdiction where the subsidiary or branch is located and the US.

## **5.4 Related Entities Groups**

5.4.1 An entity is a “Related Entity” of another Entity if either entity controls the other entity, or the two entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50% of the vote or value in an entity. Notwithstanding the foregoing, Singapore may treat an entity as not a Related Entity of another entity if the two entities are not members of the same Expanded Affiliated Group (“EAG”) which is further explained in Section 5.5.

5.4.2 An entity that is a member of an EAG will not be an SGFI, if:

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its EAG);
- The entity does not hold an account with or receive US Source Withholdable Payments from any withholding agent other than a member of its EAG;

- The entity does not make US Source Withholdable Payments to any person other than to members of its EAG that are not limited FIs or limited branches; and
- The entity has not agreed to undertake reporting as a Sponsoring Entity or otherwise act as an agent regarding the Agreement on behalf of any FI, including a member of its EAG.

5.4.3 Related Entities are relevant in the context of the obligations placed on Reporting SGFIs, in respect of any Related Entities that are NPFFIs.

5.4.4 Where a Reporting SGFI has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the Reporting SGFI must treat the Related Entity as an NPFFI and fulfil obligations in respect of that NPFFI as set out in Article 4 of the Agreement. Further guidance on these obligations is set out in Section 10.4.

## **5.5 Expanded Affiliated Groups (“EAG”)**

5.5.1 Under Article 1(bb) of the Agreement, a corporation is considered as part of an EAG if it is affiliated with a common parent that directly or indirectly owns more than 50% of the shareholding by both voting rights and value of such corporation. In the case of any other entity (other than a corporation), the entity will be considered as part of an EAG if the common parent owns more than 50% by value of the beneficial interest of such entity.

## **5.6 Custodial Institutions**

5.6.1 Apart from the SGFIs that have been listed under Regulation 5(a) to (c) of the SG Regulations, an entity that holds, as a substantial portion of its business, financial assets for the account of others is a Custodial Institution under Regulation 5(d) of the SG Regulations.

5.6.2 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 either:

- a) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- b) the period during which the entity has been in existence.

5.6.3 Related financial services are any ancillary services directly related to the holding of financial assets by the institution on behalf of others and means:-

- Custody, account maintenance and transfer fees;
- Execution and pricing commission and fees from securities transactions;
- Income earned from extending credit to customers;
- Income earned from contracts for differences and on the bid-ask spread of financial assets; and
- Fees for providing financial advice, clearance and settlement services (as such, an entity could qualify as a Custodial Institution even if the entity's sole business is to provide financial advice to clients, and it does not conduct any activities as a custodian or broker).

5.6.4 The term "financial asset" will include any of the following:-

- An insurance contract or annuity contract as defined in paragraph 1(u) and (v) of Article 1 of the Agreement; and
- Commodities.

5.6.5 Such institutions could include brokers (i.e. trading or clearing), custodian banks, trust companies and nominees. Insurance brokers that do not hold assets on behalf of clients do not fall within the scope of this provision. In addition, where an entity's business is to carry on treasury activities for its Related Entities, that are not FIs, that entity would be considered as a NFFE (see Section 6.2).

## **5.7 Depository Institutions**

5.7.1 A Depository Institution is an entity which accepts deposits in the ordinary course of banking or similar business. Ordinary course of business, in this case, refers to one or more of the following activities:-

- Makes personal, mortgage, industrial, or other loans or provides other extensions of credit;
- Purchases, sells, discounts, or negotiates accounts receivable, instalment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
- Issues letters of credit and negotiates drafts drawn thereunder;
- Provides trust or fiduciary services;
- Finances foreign exchange transactions; or
- Enters into, purchases, or disposes of finance leases or leased assets.

- 5.7.2 For the purpose of the Agreement, only SGFIs that have been listed under Regulation 6(a) to (c) of the SG Regulations will be regarded as a Depository Institution.

## **5.8 Investment Entities**

- 5.8.1 Apart from the SGFIs that have been listed under Regulation 7(1)(a) to (e) of the SG Regulations, an entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer is an Investment Entity under Regulation 7(1)(f) of the SG Regulations:

- a) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.), foreign exchange, exchange, interest rate and index instruments, transferable securities, or commodity futures trading.
- b) Individual and collective portfolio management.
- c) Otherwise investing, administering, or managing funds or money on behalf of other persons.

- 5.8.2 For avoidance of doubt, entities carrying out such activities for their own accounts would not be considered as Investment Entities. In addition, where an entity's business is to carry on treasury activities for its Related Entities, that are not FIs, that entity would be considered as a NFFE (see Section 6.2).

- 5.8.3 An entity that only has business assets that are immovable properties legally owned by the entity (whether or not it also has beneficial ownership of the assets), will not be an Investment Entity even if it is managed by another Investment Entity.

- 5.8.4 Where a property fund or Real Estate Investment Trust ("REIT") uses a holding company or special purpose vehicle structure to hold immovable properties for the property fund or REIT, such property fund or REIT will be considered as an Investment Entity, provided that such property fund or REIT falls within one of the paragraphs under Regulation 7(1) of the SG Regulations.

- 5.8.5 This definition of Investment Entity should be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

5.8.6 An elaboration of a few types of Investment Entities is set out in the following sections:-

- Collective Investment Schemes (Section 5.9)
- Fund Distributors (Section 5.10)
- Advisory-only Distributors (Section 5.11)
- Trusts (Sections 5.12 and 5.13)

## **5.9 Collective Investment Schemes (“CIS”)**

5.9.1 For the purposes of the SG Regulations, Collective Investment Schemes (“CIS”) has the same meaning given to it in the Securities and Futures Act (Cap. 289) (“SFA”).

5.9.2 CIS constituted in Singapore will fall within the scope of the Agreement. CIS constituted outside Singapore will fall outside the scope of the Agreement and will not be subject to due diligence and reporting obligations under the Agreement.

5.9.3 For the purposes of the SG Regulations, a CIS constituted in Singapore means:

- Where the CIS is incorporated as a company, a Singapore-incorporated company; or
- Where the CIS is constituted as a unit trust, a CIS whose trust deed is subject to Singapore laws and whose trustee is located in Singapore.

5.9.4 Subject to Regulation 7(3) of the SG Regulations, any entity treated as a qualifying CIS for the purposes of the SG Regulations will fall under the category of an Investment Entity and in turn will be regarded as an SGFI. The only Financial Accounts relevant are the Equity and Debt Interests issued in the qualifying CIS.

### **How the Agreement will apply to fund entities**

5.9.5 Generally, any Investment Entity which is part of a fund structure other than (i) a CIS; or (ii) a manager or operator of a CIS that is not constituted as an entity; will not have any reporting responsibilities in relation to interests in the CIS.

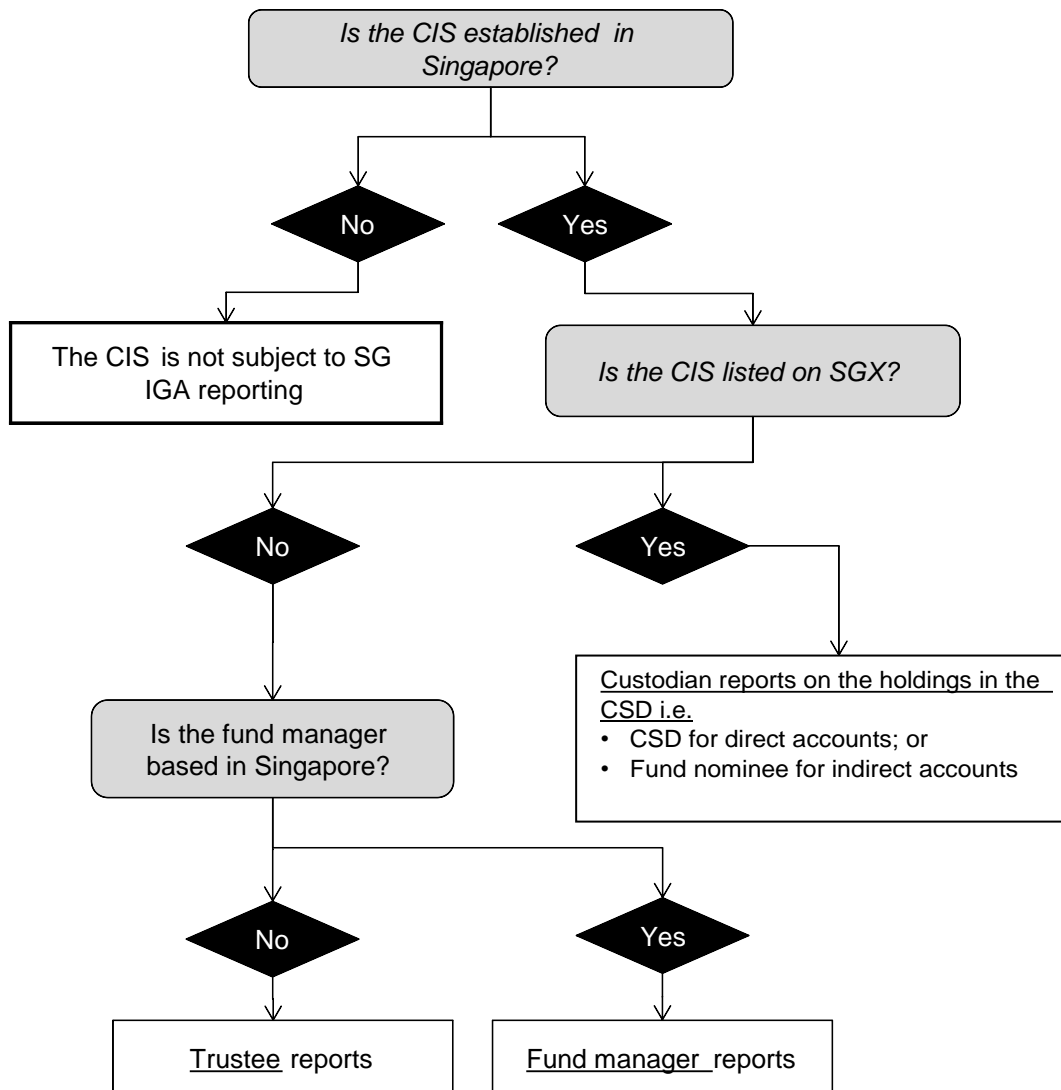
## **Reporting obligations of publicly-traded CIS**

- 5.9.6 If the CIS is listed on the Singapore Exchange (“SGX”), for the holdings in the Central Securities Depository (“CSD”), the CIS will not need to fulfil the due diligence and reporting obligations under the Agreement, as the custodian will comply with the requirements. For direct CSD accounts, the custodian will be the CSD (see Section 5.17), whilst for indirect accounts, the custodian will generally be the fund nominee.

## **Reporting obligations of non-publicly-traded CIS**

- 5.9.7 Section 5.9.8 and Diagram B apply to a CIS which is not sponsored by a sponsoring entity. For a CIS which is sponsored by a sponsoring entity, please refer to Section 7.11 on Sponsored Investment Entities for more details.
- 5.9.8 For non-publicly traded CIS, given that the fund manager is responsible for performing AML/CFT due diligence and on-boarding of the investor, the fund manager shall similarly be responsible for complying with the obligations under the Agreement. Where the fund manager is not based in Singapore, the trustee shall be responsible for complying with the obligations under the Agreement. The fund manager or trustee may appoint a third party service provider to fulfill account identification and reporting requirements, but the fund manager or trustee remains responsible for ensuring that these requirements are fulfilled.
- 5.9.9 Account identification and reporting obligations apply only to direct Account Holders. For indirect individual accounts held through an intermediary SGFI (for example a platform or other nominee), the obligation is to identify the direct Account Holder (i.e. the intermediary SGFI) only. In turn, the intermediary SGFI has its own obligation to identify and report on its Account Holders.
- 5.9.10 Please refer to the diagram on the next page for guidance.

## Diagram B – Collective Investment Schemes (“CIS”)





## **5.10 Fund Distributors**

5.10.1 Fund distributors may include:

- Financial advisors,
- Fund platforms,
- Wealth managers,
- Brokers (including execution-only brokers),
- Banks, and
- Members of an Insurance group,

5.10.2 There are two different types of fund distributors:

- a) Those that act as an intermediary in holding the legal title to the CIS; and
- b) Those that act on an advisory-only basis (Section 5.11).

5.10.3 Where a customer appears on a CIS' register, the responsibility to report on that customer lies with the fund. Where a fund distributor appears on a CIS' register on behalf of their customers as nominees, the fund distributor will be responsible for reporting on its Financial Accounts.

5.10.4 A fund distributor may have a 'mixed business' i.e. it acts as an advisor or 'pure intermediary' between the investor and the underlying SGFI (such as a CIS), on behalf of some customers. In addition, it also holds legal title to interests on behalf of other customers. In the case where legal title is held on behalf of the customer, the fund distributor will be an SGFI, as a Custodial Institution, with a reporting obligation in respect of those interests.

### **Aggregation of Custodial Accounts**

5.10.5 For the purpose of aggregating accounts to determine whether any Preexisting Custodial Accounts are below the de minimis threshold, a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customers' underlying interests are in different CIS.

## **5.11 "Advisory-only" Distributors**

5.11.1 "Advisory-only" distributors may include financial advisors, whose activities do not go beyond the provision of investment advice to their customers and/or acting as an intermediary between the CIS, or fund platform and the

customer. Such distributors will not hold legal title to the assets and therefore are not in the chain of legal ownership of a CIS and will not be regarded as the FIs that maintain the Financial Accounts in respect of the accounts they advise on.

- 5.11.2 Such distributors, may nevertheless be asked by FIs to provide assistance in identifying Account Holders and obtaining self-certifications.
- 5.11.3 For example, financial advisors will often have the most in-depth knowledge of the investor and direct access to the customer and so will be best placed to obtain self-certifications. However, since such “Advisory-only” distributors are not regarded as FIs, they will only have obligations pursuant to contractual agreements with those FIs where they act as third party service providers in relation to those Financial Accounts.
- 5.11.4 SGFIs should have no obligation to use distributors to comply with their FATCA obligations, and may instead obtain self-certifications directly.

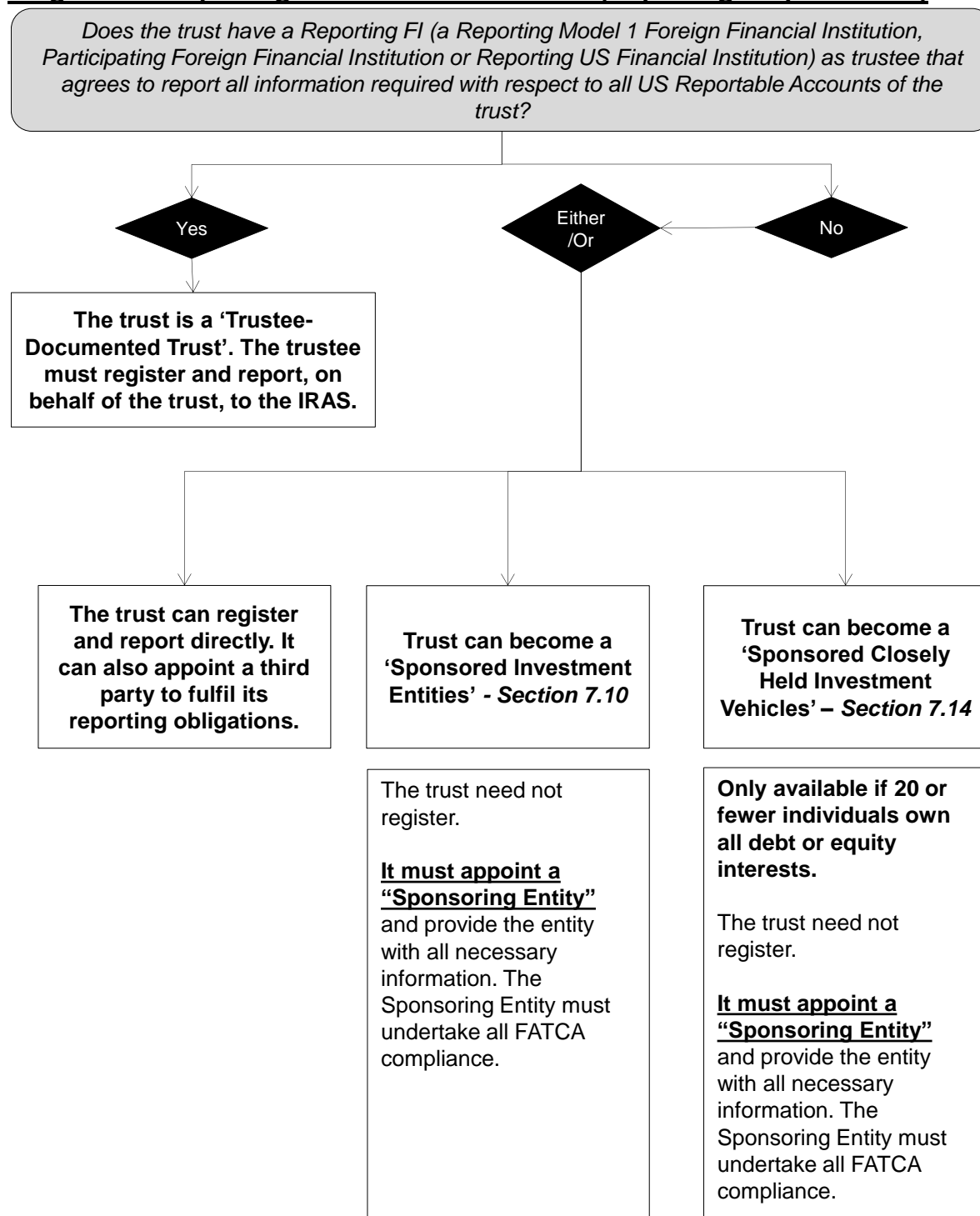
## **5.12 Trusts**

- 5.12.1 Trusts generally fall under two broad categories:-
  - a) Financial Institution; or
  - b) Non-Financial Foreign Entity (“NFFE”).
- 5.12.2 For trusts<sup>2</sup> which are identified as a Reporting SGFI, please refer to the diagram on the following page for the channels of reporting.
- 5.12.3 In the case of a trust that is classified as a Passive NFFE (see Section 6.2), the Reporting SGFI will have to determine and identify if the Controlling Persons of the trust are Specified US Persons. The definition of Controlling Persons under the Agreement, in such cases, may refer to the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

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<sup>2</sup>For the purpose of the Agreement, a trust will be an SGFI if the trust has a trustee that is (i) a licensed trust company in Singapore; or (ii) a private trust company incorporated in Singapore.

## Diagram C - Reporting of Trust that is an SGFI (Reporting Requirements)



## **5.13 Trusts as Investment Entities**

### **Trustee-Documented Trusts**

5.13.1 A trust will be treated as a Non-Reporting SGFI and will not be required to register with the US IRS if:

- The trust is classified as an Investment Entity;
- Where the trustee of the trust is a Reporting Model 1 FI, Participating FFI or Reporting USFI; and
- The trustee reports all information required with respect to US Reportable Accounts of the trust.

In this case, the trustee will need to register and report on behalf of the trust.

5.13.2 The trustee is required to register itself based on its own applicable status as a Reporting SGFI, and has to do a separate registration as the trustee of the Trustee-Documented Trusts. Thus, it should have two separate GIINs, one for its obligation as a Reporting SGFI, and the other for its reporting obligation as a trustee of the Trustee-Documented Trusts.

5.13.3 For a trust that is classified as an Investment Entity, because it is managed by an FI that does not act as a trustee for the trust, the trust will be required to register as an Investment Entity unless the trust is able to take advantage of the Sponsored Investment Entity or Sponsored Closely Held Investment Vehicle categories, or appoint a third party to fulfil its reporting obligations.

### **Third Party Reporting**

5.13.4 Trusts are permitted to engage a third party service provider to meet their obligations under the Agreement if they are defined as Investment Entities, but are not deemed to be Trustee-Documented Trusts, Sponsored Investment Entities (Section 7.11), or Sponsored Closely Held Investment Vehicles (Section 7.14) categories. However, the legal responsibility continues to fall on the trustee of the trust.

### **Information to be reported**

5.13.5 In general, the information to be reported in relation to trusts that are Investment Entities will be the

- (i) Debt or Equity Interest in the trust

- This should be reported as the Account Balance as at 31 Dec or other appropriate reporting period, under Article 2(2)(d) of the Agreement.; and
- (ii) Trust Distributions
- This should be reported as payments credited to the account during the calendar year or other appropriate reporting period, under Article 2(2)(g) of the Agreement.

This applies to interests held by:-

- A settlor of the trust;
- A beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the trust; or
- A beneficiary that receives a discretionary distribution (either directly or indirectly) from the trust in the calendar year.

5.13.6 The information required on Specified US Persons will be:

- Name
- Address
- TIN (where applicable)
- Account number or functional equivalent
- The account balance or value (Sections 5.13.7 to 5.13.11)
- Total gross amount paid or payable to the Specified US Person during the calendar year or other appropriate reporting period (Section 5.13.11 to 5.13.12)

### **Account Balance or Value**

5.13.7 The balance or value to be reported in respect of a Specified US Person who is the Beneficial Owner of a portion or all of the trust will be the most recent value calculated by the SGFI.

5.13.8 The balance or value to be reported in respect of a Specified US Person who is a beneficiary, entitled to mandatory interests (either directly or indirectly) from the trust will be the net present value of amounts payable in the future.

5.13.9 Where a Specified US Person has a mandatory interest in the trust, the net present value of his future interest should be measured on a recognised actuarial basis.

5.13.10 In arriving at the balance or value of the assets of the trust, the basis of measurement must be that which is applied for normal valuation purposes

and any valuation method adopted must be consistent and verifiable. Whilst it would be normal to value listed securities at the appropriate market rate on the day concerned, it is acceptable to value unlisted securities at the original book value unless another accounting basis was used by the trust for normal valuation purposes.

5.13.11 The information to be reported with regard to a settlor of a trust that is an Investment Entity is contingent on the settlor's status and how the trust is being structured. The details of the information to be reported are set out in the table below:-

| <b>Settlor's Status and Types of Distribution</b>  | <b>Revocable</b>  | <b>Irrevocable</b>   |
|--|---|--|
| Where settlor is <b><u>not</u></b> a beneficiary   | i) Account Balance<br>- Full Value of Interest in the Trust<br><br>ii) Payments<br>- Nil  | i) Account Balance<br>- Nil<br><br>ii) Payments<br>- Nil   |
| Where settlor <b><u>is</u></b> a beneficiary and distribution is <b><u>Discretionary</u></b>                                       | i) Account Balance<br>- Full Value of Interest in the Trust<br><br>ii) Payments<br>- Amount that is paid or payable from the trust to the settlor | i) Account Balance<br>- Full Value of Interest in the Trust<br><br>ii) Payments<br>- Amount that is paid or payable from the trust to the settlor                                |
| Where settlor <b><u>is</u></b> a beneficiary and Distribution is <b><u>Non-Discretionary</u></b><br><br>(or fixed interests trust) | i) Account Balance<br>- Full Value of Interest in the Trust<br><br>ii) Payments<br>- Amount that is paid or payable from the trust to the settlor | i) Account Balance<br>- Portion of Interest that Settlor (as a beneficiary) is entitled to<br><br>ii) Payments<br>- Amount that is paid or payable from the trust to the settlor |

## **Reportable Payments**

5.13.12 Payments to be reported are the total gross amounts paid or payable to any Beneficial Owner who is a Specified US Person and beneficiaries who are Specified US Persons, who receive mandatory or discretionary distributions during the calendar year or appropriate reporting period, including aggregate payments in redemption (in whole or in part) of the account.

### **5.14 Personal Investment Companies**

5.14.1 Personal Investment Companies will need to consider whether they are within the definition of Investment Entity. Similar to the treatment of trusts, where a Personal Investment Company is managed by an Investment Entity, it will be an Investment Entity (see Section 5.8).

### **5.15 Specified Insurance Companies**

5.15.1 A licensed insurer under the Insurance Act (Cap. 142) or a designated financial holding company under the Financial Holding Companies Act 2013 (Act 13 of 2013) of a licensed insurer would be treated as a Specified Insurance Company under Regulation 8 of the SG Regulations if it issues, or is obligated to make payments with respect to the following Insurance Contracts (see Sections 8.9 and 8.10):

- a) A Cash Value Insurance Contract (means an Insurance Contract, other than an Indemnity Reinsurance Contract between two insurance companies and a Term Life Insurance Contract); or
- b) An Annuity Contract.

5.15.2 In the case of insurance brokers, they will only be classified as Specified Insurance Companies if they have obligations to make payments under the terms of a Cash Value Insurance or Annuity Contracts.

### **5.16 Partnerships**

5.16.1 Specifically for a limited liability partnership ("LLP"), depending on the activities undertaken by a LLP, it may fall into any of the categories of SGFIs. Where a LLP is an SGFI, it will need to identify any Financial Accounts it holds, including any equity interest in the partnership itself. The equity interest will be the capital interest or profits interest in the partnership of any partners who are Specified US Persons.

- 5.16.2 On a related note, for the purpose of the Agreement only, SGFIs should regard Financial Accounts held by partnerships as Entity Accounts.

## **5.17 Central Securities Depository (“CSD”)**

- 5.17.1 For the purpose of the Agreement, where the participants of the Singapore securities settlement system hold interests recorded in a CSD directly, i.e., ‘Direct CSD Accounts’, the CSD will be treated as maintaining the Financial Accounts. This treatment will also apply to a Singapore entity that is a direct or indirect subsidiary or affiliate of the CSD used solely to provide services ancillary to the business operated by the CSD (“CSD Related Entity”).
- 5.17.2 For Direct CSD Accounts, the CSD that maintains the Financial Accounts is responsible for undertaking any reporting obligations.
- 5.17.3 Notwithstanding the foregoing, a CSD shall not be obliged to report any such information with respect to Article 2, paragraph 2(e)(2) of the Agreement, i.e. related to the total gross proceeds from the sale or redemption of any property held in such a Direct CSD Account. This would be undertaken by other Reporting SGFIs (such as brokers, see Section 5.10.1).
- 5.17.4 Conversely, where the participants of the Singapore securities settlement system hold interests recorded in a CSD through SGFIs (such as depository agents), i.e., ‘Indirect CSD Accounts’, the CSD will not be treated as maintaining the Financial Accounts. This treatment will also apply to a CSD Related Entity.
- 5.17.5 For Indirect CSD Accounts, the Reporting SGFIs (such as depository agents) that maintain the Financial Accounts are responsible for undertaking any reporting obligations.

## **5.18 Central Counterparty Clearing House (“CCP”)**

- 5.18.1 A CCP will not be treated as maintaining Financial Accounts. With respect to the clearing of securities and derivatives through a Singapore CCP, the clearing account held by an SGFI (who is a member of the CCP) with the CCP (or FIs designated by the CCP) does not constitute as a Financial Account. Accordingly, the CCP is not required to undertake any reporting in connection with the relationship or such clearing activities. It is the SGFI (who is a member of the CCP) that maintain the Financial Accounts, which is responsible for undertaking the reporting obligation.



## **6 Non- Financial Foreign Entities (NFFEs)**

### **6.1 Introduction**

6.1.1 An NFFE for the purposes of the Agreement refers to any non-US incorporated entity that is not a Foreign Financial Institution (“FFI”). There are two categories of NFFEs:

a) Active NFFEs; and

b) Passive NFFEs

6.1.2 An NFFE, whether Passive or Active, has no reporting obligations to IRAS. However, the entity is required to determine its entity classification and when required, to produce documentary evidence to the Reporting SGFI to certify its entity classification. A Passive NFFE may also be required to obtain self-certification from a Controlling Person of that NFFE.

6.1.3 A Reporting SGFI has to report Financial Accounts that are held by Passive NFFEs with Controlling Persons that are US citizens or residents.

### **6.2 Passive NFFEs**

6.2.1 A Passive NFFE is any NFFE that is not:

a) An Active NFFE; or

b) A withholding foreign partnership<sup>3</sup> or withholding foreign trust<sup>4</sup>

6.2.2 Only the accounts of Passive (and not Active) NFFEs need to be reviewed when applying the due diligence procedures under the Agreement to identify Controlling Persons who are US citizens or residents and US Reportable Accounts.

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<sup>3</sup> A withholding foreign partnership means a foreign partnership that has executed the agreement described in S1.1441-5(c)(2) of the US Treasury Regulations. This is the regulations on the withholding on payments to partnerships, trusts and estates.

<sup>4</sup> A withholding foreign trust means a foreign grantor trust or foreign simple trust that has executed the agreement described in S1.1441-5(e) of the US Treasury Regulations. This is the regulations on the withholding on payments to partnerships, trusts and estates.

## **6.3 Active NFFEs**

6.3.1 An Active NFFE refers to any NFFE that meets any one of the following criteria:

- a) Less than 50% of the NFFE's gross income for the preceding calendar year or other appropriate reporting period (such as an entity's financial reporting year) was Passive Income (see Section 6.4 on "Passive Income") and less than 50% of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period were assets that produce or are held for the production of passive income;
- b) The shares of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an entity, the share of which is regularly traded on an established securities market (Section 8.11.6);
- c) The NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- d) The NFFE is a government (other than the US government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a US Territory, an international organisation, a non-US Central Bank of issue, or an entity wholly-owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding shares of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of an FI, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of an FI, provided that such a NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial incorporation of the NFFE;

- g) The NFFE was not an FI in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of an FI;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of an FI;
- i) The NFFE is an “excepted NFFE<sup>5</sup>” as described in the US Treasury Regulations; or
- j) The NFFE meets all of the following requirements:
  - (1) 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 organization, business league, chamber of commerce, labour organisation, agricultural or horticultural organization, civic league or an organisation operated exclusively for the promotion of social welfare;
  - (2) It is exempt from income tax in its jurisdiction of residence;
  - (3) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (4) The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
  - (5) The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents require that upon the NFFE’s liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to

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<sup>5</sup> Excepted NFFEs as defined under S1.1472-1(c)(1) of the US FATCA regulations.

the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

- 6.3.2 All Charities registered under the Charities Act (Cap. 37) will not be subject to FATCA reporting requirements under the Agreement and FATCA-related withholding as they are Active NFFEs.

## **6.4 Passive Income**

- 6.4.1 Passive income means the portion of gross income that consists of:

- a) Dividends, including substitute dividend amounts;
- b) Interest;
- c) Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool;
- d) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;
- e) Annuities;
- f) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in items a) through e) of this section;
- g) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including:
  - (i) Any commodity hedging transaction described in Section 954(c)(5)(A) of the US Revenue Code, determined by treating the entity as a controlled foreign corporation; or
  - (ii) Active business gains or losses from the sale of commodities, but only if substantially all the foreign entity's commodities are property described in paragraph (1), (2), or (8) of Section 1221(a) of the US Revenue Code;
- h) The excess of foreign currency gains over foreign currency losses;

- i) Net income from notional principal contracts. A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. A notional principal includes interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements;
- j) Amounts received under cash value insurance contracts; or
- k) Amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts

6.4.2 However, passive income does not include:

- a) Any income from interest, dividends, rents, or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income. For purposes of this section, a person is a related person with respect to the NFFE if:
  - (i) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by the NFFE, or
  - (ii) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the NFFE.
- b) In the case of an NFFE that regularly acts as a dealer in property described in item f) above of Section 6.4.1 (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities)
  - (i) Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and
  - (ii) If such dealer is a dealer in securities, any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

## 7 Non-Reporting Singapore-based Financial Institutions

### 7.1 Introduction

7.1.1 A Non-Reporting SGFI is any SGFI falling under the description of such in Annex II of the Agreement (which is to be read subject to Regulation 13(2) of the SG Regulations) or that otherwise qualifies as a Deemed-Compliant FFI or an Exempt Beneficial Owner under the relevant US Treasury Regulations in effect on 9 December 2014<sup>6</sup>.

7.1.2 Sections 7.2 to 7.15 cover Non-Reporting SGFI categories which are set out in Annex II of the Agreement. SGFIs relying on the US Treasury Regulations by virtue of Article 1(1)(o) of the IGA to qualify as Non-Reporting SGFIs under categories not set out in Annex II of the Agreement (such as those listed below in this paragraph), should consult their legal/tax advisor on whether they can qualify:

- Non-Reporting members of FFI groups
- Restricted funds
- Limited life debt investment entities
- Owner-document FFIs

7.1.3 Under the Agreement, Non-Reporting SGFIs described in Annex II are generally are not required to register with the US IRS to obtain a GIIN nor report US Reportable Accounts, unless stated otherwise in Annex II of the Agreement (see Section 7.8 on DCFFIs).

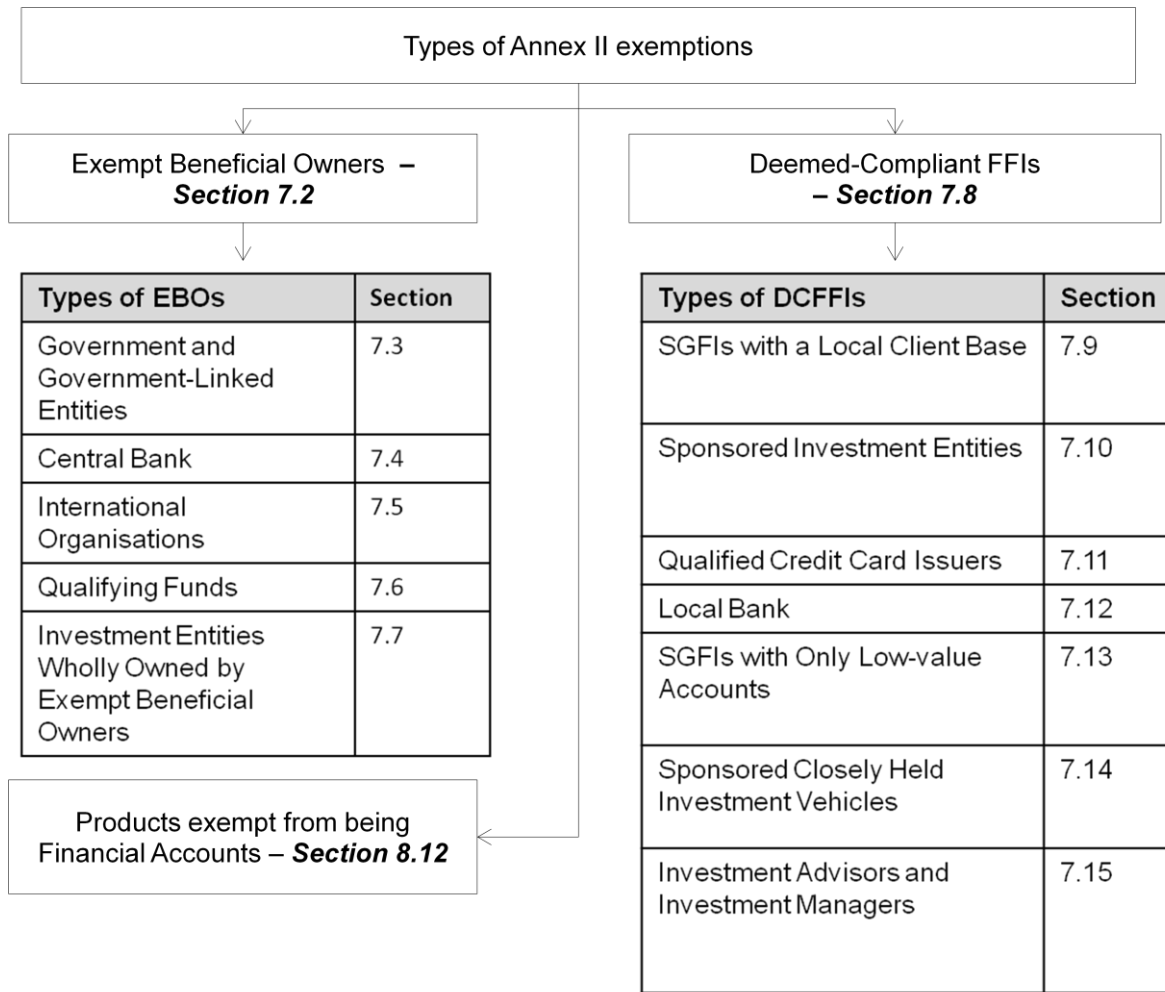
7.1.4 For the avoidance of doubt, entities qualifying under Annex II of the Agreement as Exempt Beneficial Owners other than Funds (i.e. Governmental Entity, International Organization, Central Bank) will **not** be treated as Non-Reporting SGFIs, with respect to any payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

7.1.5 Please refer to the next page for a chart on the classification of Non-Reporting SGFIs (i.e. Annex II Entities).

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<sup>6</sup> The reference in paragraph (1)(o) of Article 1 of the Agreement, Non-Reporting Singaporean Financial Institution, to an exempt beneficial owner under relevant US Treasury Regulations in effect on 9 December 2014 includes Temasek Holdings Pte Ltd and special purpose vehicles wholly owned (whether directly or indirectly) by it.

## **Diagram D – Classification of Non-Reporting SGFIs**



## **7.2 Exempt Beneficial Owners**

7.2.1 Exempt Beneficial Owners do not have any reporting or registration requirements in relation to any Financial Accounts that they maintain, unless they derive payments from commercial financial activities similar to those undertaken by SGFIs. As such, Exempt Beneficial Owners will generally not need to register with the US IRS for a GIIN.

7.2.2 Moreover, reporting SGFIs are not required to carry out due diligence measures or report on accounts held by Exempt Beneficial Owners.

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

- Governmental and Government-Linked Entities (Section 7.3)
- Central Bank (Section 7.4)
- International Organisations (Section 7.5)
- Qualifying Funds (Section 7.6)
- Investment Entities wholly-owned by Exempt Beneficial Owners. (Section 7.7)

7.2.4 Please refer to Sections 7.3 to 7.7 for more details.

## **7.3 Government and Government-Linked Entities**

7.3.1 Government and government-linked entities include but are not limited to the following:-

- a) All Singapore Ministries and their wholly-owned and controlled entities, whether held directly or indirectly. These include:-
  - All Singapore Restructured hospitals and Polyclinics (e.g. National University Hospital and Singapore General Hospital); and
  - GIC Private Limited, GIC (Realty) Pte. Ltd., GIC (Ventures) Pte. Ltd. and their wholly-owned subsidiaries.
- b) All Statutory Boards and their wholly-owned and controlled entities, whether held directly or indirectly.



**Example 1**

The Singapore Economic Development Board (EDB) as established under the Economic Development Board Act is a statutory board. Hence, it qualifies as an Exempt Beneficial Owner. Accordingly, all wholly-owned companies set up by EDB, such as EDB Investments, will also be covered as Exempt Beneficial Owners.

**Example 2**

The Central Provident Fund Board is a Non-Reporting SGFI and also an Exempt Beneficial Owner and does not derive payments from commercial financial activities. The accounts held by CPF [e.g. the Ordinary Account, Special Account (including CPF Investment Scheme-Special Account monies), Medisave Account] are correspondingly exempted from reporting requirements under the Agreement.

- c) All Statutory Bodies, i.e. any authority established by or under any Act whose income is exempt from tax by reason of Section 13(1)(e) of the Income Tax Act, and includes a Town Council established under the Town Councils Act (Cap. 329A).
- d) All Organs of State, e.g. the Attorney-General's Chambers, Auditor-General's Office, Industrial Arbitration Court, the Istana, the Singapore Judiciary, Parliament of Singapore, the Singapore Cabinet and the Public Service Commission.

**7.4 Central Bank**

- 7.4.1 This refers to the Monetary Authority of Singapore and all of its wholly-owned subsidiaries and International Representative Offices.

**7.5 International Organisations**

- 7.5.1 This comprises all International Organisations such as the International Monetary Fund and the World Bank.

**7.6 Qualifying Funds**

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

## **Broad Participation Retirement Fund**

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

## **Narrow Participation Retirement Fund**

- 7.6.3 A fund established in Singapore 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 NFFEs;
- c) The employee and employer contributions to the fund (other than transfers of assets from Retirement and Pension Accounts described under Section 8.12 of this e-Tax Guide) are limited by reference to earned income and compensation of the employee, respectively;
- d) Participants that are not residents of Singapore are not entitled to more than 20% of the fund's assets; and
- e) The fund is regulated and provides annual information reporting about its beneficiaries to IRAS.

### **Pension Fund of an Exempt Beneficial Owner**

- 7.6.4 A fund established in Singapore by an Exempt Beneficial Owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the Exempt Beneficial Owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Exempt Beneficial Owner.

## **7.7 Investment Entities Wholly-Owned by Exempt Beneficial Owners**

- 7.7.1 This refers to an entity that is an SGFI solely because it is an Investment Entity, provided that each direct holder of an Equity Interest (as defined in Article 1 Para 1(t) of the Agreement) in the Entity is an Exempt Beneficial Owner, and each direct holder of a debt interest in such entity is either a Depository Institution (with respect to a loan made to such entity) or an Exempt Beneficial Owner.

## **7.8 Deemed-Compliant FFIs (“DCFFIs”)**

- 7.8.1 In general, DCFFIs are not required to register with the US IRS or report US Reportable Accounts, unless stated otherwise in Annex II of the Agreement, where:

- The Non-Reporting SGFI is subject to registration requirement under its Qualified Intermediary (QI), Withholding Foreign Partnership or Withholding Foreign Trust Agreement;
- The Non-Reporting SGFI is acting as a sponsoring entity (see Section 7.10 for Sponsored Investment Entities and Section 7.14 for Sponsored Closely Held Investment Vehicles);
- The Non-Reporting SGFI is acting as a lead FI for one or more related entities;
- The Non-Reporting SGFI is explicitly required to register under the Agreement; or
- The Non-Reporting SGFI has a Financial Account on which it has to report to IRAS under the requirements in Annex II of the Agreement (see Section 7.9 on SGFIs with a Local Client Base).

## **7.9 SGFIs with a Local Client Base**

7.9.1 For the purpose of the SG Regulations, an SGFI will qualify as a Non-Reporting SGFI if it satisfies the requirements under limbs (a) and (b) of the definition of “financial institution with a local client base” under Regulation 13(2). Specifically for limb (b), an SGFI should carry out a self-assessment on whether it meets these criteria and maintain appropriate records to support the assessment.

7.9.2 The ten criteria are as such:-

- 1) The SGFI must be licensed and regulated under the laws of Singapore (e.g. a finance company licensed under the Finance Companies Act);
- 2) The SGFI must have no fixed place of business outside Singapore. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the SGFI performs solely administrative support functions. This applies even if the fixed place of business is within a jurisdiction that has entered into an Intergovernmental Agreement with the US with regards to FATCA;
- 3) The SGFI must not solicit potential Financial Account Holders outside Singapore. For this purpose, an SGFI shall not be considered to have solicited such customers outside Singapore merely because it operates a website, provided that the website does not specifically indicate that the SGFI provides accounts or services to customers who are not Singapore Residents<sup>7</sup> or otherwise target or solicit US customers. The SGFI will also not be considered to have solicited

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<sup>7</sup> Singapore Residents are persons who are either Singapore Citizens or Singapore Permanent Residents

potential Financial Account Holders outside Singapore if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside Singapore, as long as the advertisement does not specifically indicate that the SGFI provides services to non-residents, and does not otherwise target or solicit US customers or Account Holders;

- 4) The SGFI must be required under Singapore's tax laws to identify whether Account Holders are Singapore Residents for purposes of either:-
  - Information reporting or withholding of tax with respect to Financial Accounts held by residents; or
  - Satisfying Singapore's AML/KYC due diligence requirements
- 5) At least 98% of the accounts by value maintained by the SGFI must be held by Singapore Residents. The 98% threshold can include the accounts of US Persons (both Individual and Entity Accounts) if they are Singapore Residents. An SGFI will need to assess whether it meets this criteria annually. The assessment can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the assessment date remains the same from year to year;
- 6) Beginning on or before 1 July 2014, the SGFI must have policies and procedures, consistent with those set forth in Annex I of the Agreement, to prevent provision of Financial Accounts to:-
  - Any Specified US Person who is not a Singapore Resident (including a US Person that was Singapore Resident when the account was opened, but subsequently ceases to be one);
  - Any NPFFI; or
  - Any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not Singapore Residents.
- 7) From 1 July 2014, the SGFI should implement policies and procedures to establish and monitor whether it provides Financial Accounts to the persons described in subparagraph 6 above. If any such Financial Account is discovered, the SGFI must either:-
  - Report that account as though the SGFI were a Reporting SGFI (which includes following the applicable registration requirements on the US IRS Online FATCA Registration Portal); or
  - Close the account.

8) With respect to a Preexisting Account which is held by a non-Singapore Resident or by an entity, and that is opened prior to the date that the SGFI implements the policies and procedures described in subparagraph 7 above, the SGFI must review those accounts in accordance with the procedures applicable to Preexisting Accounts (as described in Annex I of the Agreement), to identify any US Reportable Account or Financial Account held by an NPFFI. If any such Financial Account is discovered, the SGFI must either:-

- Report that account as though the SGFI were a Reporting SGFI (which includes following the applicable registration requirements on the US IRS Online FATCA Registration Portal);or
- Close the account.

9) Each Related Entity of the SGFI, where the Related Entity is itself an FI:-

- Must be incorporated or organised in Singapore; and
- Must also meet the requirements for an SGFI with a Local Client Base,

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

10) The SGFI must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are Singapore Residents.

## **7.10 Sponsored Investment Entities**

7.10.1 An SGFI is a Sponsored Investment Entity if:-

- a) It is an Investment Entity that is not a qualified intermediary (“QI”), withholding foreign partnership, or withholding foreign trust; and
- b) If an entity has agreed with the SGFI to act as a sponsoring entity for the SGFI.

7.10.2 The sponsoring entity has to comply with the following requirements:-

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

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

7.10.3 Where a sponsor acts on behalf of a range of funds, the classification of an account as a New Account or a Preexisting Account can be done by reference to whether the account is new to the sponsor and not the fund (see Section 7.11.7 on reporting of Sponsored Offshore Funds and Section 7.11.8 on Multiple Service Providers). This prevents a sponsor from having to seek FATCA documentation from the same account holder repeatedly, where that account holder is invested in more than one of the sponsored funds. Where a sponsor is able to link accounts in this manner, the accounts will need to be aggregated for the purpose of determining whether the accounts exceed the de minimis for reporting (see Section 9.23 for more details on account balance aggregation).

7.10.4 While a sponsoring entity is required to register its sponsored entities to obtain GIINs, for payments prior to 1 January 2016, a sponsored entity is permitted to provide the GIIN of its sponsoring entity on withholding certificates if it has not yet obtained a GIIN. A sponsored entity does not need to provide its own GIIN until 1 January 2016, and is not required to register before that date.

7.10.5 A sponsor will report to IRAS on all the account holders of the funds it manages. Under the Agreement, these funds would refer to funds either constituted under the laws of Singapore or fund vehicles incorporated in Singapore. Please refer to Section 5.8 on Investment Entities for guidance.

## Reporting of Sponsored Offshore Funds

- 7.10.6 In practice a sponsor (such as a fund manager) may act for funds located in a number of jurisdictions. The sponsor will need to act on behalf of the sponsored funds independently, with respect to each tax authority in which the funds are domiciled. The sponsor would not report to IRAS in respect to funds which are not domiciled in Singapore.

### **Example**

A Singapore fund manager manages funds in Singapore (A), another Model 1 IGA Jurisdiction (B) and a non-IGA Jurisdiction (C). The Singapore manager can register as sponsor for all or some of the Collective Investment Vehicles in each of these jurisdictions. The fund manager would:

- Report to IRAS on behalf of the Singapore Collective Investment Vehicle domiciled in (A);
- Report to the relevant authority in (B) on behalf of the Collective Investment Vehicles domiciled there, subject to the law of (B); and
- Report directly to the US IRS on behalf of the funds domiciled in the (C), subject to the law of C, in relation to data protection, duties of confidentiality etc).

## Multiple Service Providers

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

## 7.11 Qualified Credit Card Issuers

- 7.11.1 A Qualified Credit Card Issuer may be treated as a DCFFI if it meets the following requirements:-

- a) It is an SGFI solely because it is an issuer of credit cards that accepts deposits only when the customer makes a payment in excess of a balance due with respect to the credit card account and overpayment is not immediately returned to the customer; and



- b) It implements policies and procedures (beginning on or before 30 June 2014) either to prevent a customer deposit in excess of US\$50,000 or to ensure that any customer deposit in excess of US\$50,000 is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

## **7.12 Local Bank**

### **7.12.1 An SGFI will be deemed as a Local Bank if:-**

- a) It is an SGFI which is either a bank regulated under the Banking Act (Cap. 19) or a credit cooperative registered under the Co-operative Societies Act (Cap. 62).
- b) Its business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit cooperative, i.e. credit union or similar cooperative credit organisation, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organisation.
- c) It has no fixed place of business outside of Singapore. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the SGFI performs solely administrative support functions.
- d) It must not solicit customers or Account Holders outside Singapore. For this purpose, an SGFI shall not be considered to have solicited customers or Account Holders outside Singapore merely because the it (a) operates a website, provided that the website does not specifically indicate that the SGFI provides Financial Accounts or services to nonresidents and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Singapore but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the SGFI provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders. The website aforementioned cannot permit the opening of a Financial Account outside Singapore.
- e) It does not have more than US\$175 million in assets for single entity and US\$500 million total for a group of Related Entities.

- f) Any Related Entities mentioned in e) above must be incorporated or organised in Singapore, and any Related Entity that is an SGFI, with the exception of any Related Entity that is a retirement fund described in Sections 7.6.2, 7.6.3 and 7.6.4 or an SGFI with only low-value accounts described in Section 7.15, must satisfy the requirements set forth in a) to e).

7.12.2 For the avoidance of doubt, all credit cooperatives formed under the Co-operative Societies Act of Singapore (Cap. 62), and which meet the conditions in Annex II, Section III(B), will not be subject to the reporting requirements under the Agreement and FATCA-related withholding.

### **7.13 SGFIs with only Low Value Accounts**

7.13.1 An SGFI is treated as having only Low Value Accounts, if:

- The SGFI is not an Investment Entity;
- No Financial Account maintained by the SGFI or any Related Entity has a balance or value exceeding US\$50,000 (applying the rules in Annex I of the Agreement for account aggregation and currency translation); and
- The SGFI, together with its Related Entities, has no more than US\$50 million in assets.

### **7.14 Sponsored Closely Held Investment Vehicles**

7.14.1 This category of DCFFI is very similar to a Sponsored Investment Entity (see Section 7.10). The requirements to qualify are as follows:

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

owned by an entity that is 100% owner and itself a Sponsored Closely Held Investment Vehicle).

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

## **7.15 Investment Advisors and Investment Managers**

7.15.1 When an investment advisor or investment manager falls within the scope of an Investment Entity (e.g. the investment advisor earns more than 50% of its gross income during the last three years from providing services as an investment advisor), it would be considered a Non-Reporting SGFI if it is established in Singapore solely because it:

- a) Renders investment advice to, and acts on behalf of, or
- b) Manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with an FI other than an NPFFI.

## **8 Financial Accounts**

### **8.1 Introduction**

8.1.1 A Financial Account is an account maintained by an SGFI.

8.1.2 There are four categories of Financial Accounts:

- Depository Accounts (Section 8.7);
- Custodial Accounts (Section 8.8);
- Cash Value Insurance Contracts (Section 8.9) and Annuity Contracts (Sections 8.10); and
- Equity and Debt Interests in a Financial Institution (Section 8.11).

8.1.3 Certain Financial Accounts are excluded from being subject to due diligence and reporting requirements under the Agreement, if certain or all requirements are met.

8.1.4 Also, a Financial Account is excluded from being subject to due diligence and reporting requirements under the Agreement if it is held solely:

- By one or more Exempt Beneficial Owners; or
- By NPFFIs that hold the Financial Accounts as intermediaries solely on behalf of one or more such Exempt Beneficial Owners.

8.1.5 In addition, the term Financial Account does not include any account that has been excluded from the definition of Financial Account as described in Annex II of the Agreement.

8.1.6 Reporting SGFIs must provide information, in relation to Financial Accounts held by Specified US Persons and Passive NFFEs with one or more Controlling Persons who are Specified US Persons, to IRAS on an annual basis. Such accounts are referred to as US Reportable Accounts in the Agreement.

8.1.7 A Reporting SGFI, unless otherwise exempt, must identify:

- If it maintains any Financial Accounts;
- The type of Financial Accounts it maintains, and
- If the Account Holder of those Financial Accounts are either Specified US Persons or Passive NFFEs with one or more Controlling Persons who are Specified US Persons.

8.1.8 For entities that are acting as executing brokers, they may be subject to failed trades and henceforth holding legal ownership of the assets that they

intend to broker. In such instances, the holding of the assets or resultant claims will not lead to Financial Accounts being established by the broker.

8.1.9 A transfer agent may hold cash for a short period within the settlement cycle (maximum 7 business days) for an underlying investor ahead of subscription into a CIS or subsequent to a redemption from a CIS. In such instances, after the subscription into the CIS is processed, the cash is then delivered to an operating or custodial account in the name of the CIS. To eliminate the creation of custodial accounts which would open and close in a short window and therefore be potentially reportable, such accounts will not be regarded as Financial Accounts provided that:

- The account is established and used solely for the subscription and redemption into a CIS.
- The monies are delivered to the CIS upon the processing of the subscription (maximum 7 business days), or sent to the underlying investor within the settlement cycle of redemption (maximum 7 business days) from a CIS.

## **8.2 US Reportable Accounts**

8.2.1 A Financial Account would be a US Reportable Account if it is maintained by a Reporting SGFI and held by:-

- One or more Specified US Person; or
- A Non-US Entity (i.e. a Passive NFFE) with one or more Controlling Persons who are Specified US Persons.

8.2.2 A Reporting SGFI with no US Reportable Accounts will be required to make a nil return to IRAS on an annual basis. Due diligence procedures under the SG Regulations read with the Agreement must be performed by the SGFI, or by a third party on behalf of the SGFI, in order to identify US Reportable Accounts. For the latter, please note that the due diligence and reporting obligations remain with the SGFI (see Sections 9 and 10).

## **8.3 Account Holders**

8.3.1 An Account Holder is a person listed or identified as the holder or owner of the account with the SGFI that maintains the account, regardless of whether the person is a flow-through entity.

### 8.3.2 For instance,

- Where a Partnership is listed as the holder of a Financial Account, the Partnership is the Account Holder, rather than the partners in the Partnership.
- Where a trust or estate is listed as the holder of a Financial Account, the trust or estate is the Account Holder, rather than its owners or beneficiaries.
- For the purpose of the Agreement, Financial Accounts held by partnerships, trust or estate should be regarded as Entity Accounts.

8.3.3 For the avoidance of doubt, an Individual Account is an account held by a natural person or a sole proprietor.

## 8.4 Accounts Held by Agents that are not FIs

8.4.1 A person, other than an FI, that holds a Financial Account for the benefit of another person, as an

- Agent;
- Custodian;
- Nominee;
- Signatory;
- Investment advisor; or
- Intermediary;

is not treated as an Account Holder.

8.4.2 Where the Financial Account does not meet the conditions relating to Intermediary Accounts (See Section 8.15), the person on whose behalf the account is held is the Account Holder.

## 8.5 Jointly Held Accounts

8.5.1 Where a Financial Account is jointly held, each Joint Account Holder is treated as an Account Holder for the purposes of determining whether the account is a US Reportable Account.

### **Example**

B, a Specified US Person, holds a Depository Account in a Participating FFI. The balance of the account for the calendar year is US\$100,000. The account is jointly held with C, an individual who is a non-US Resident. This account will be treated as a US Reportable Account.

8.5.2 If a Financial Account is jointly held by an individual and an entity, the Reporting SGFI must apply due diligence requirements under the Agreement in respect of the individual and the entity separately.

8.5.3 When more than one Specified US person is a Joint Account Holder, each Specified US person will be treated as an Account Holder and will be attributed the entire balance of the jointly held account, including for purposes of reporting and aggregation.

## **8.6 Account Holder for Cash Value Insurance Contracts and Annuity Contracts**

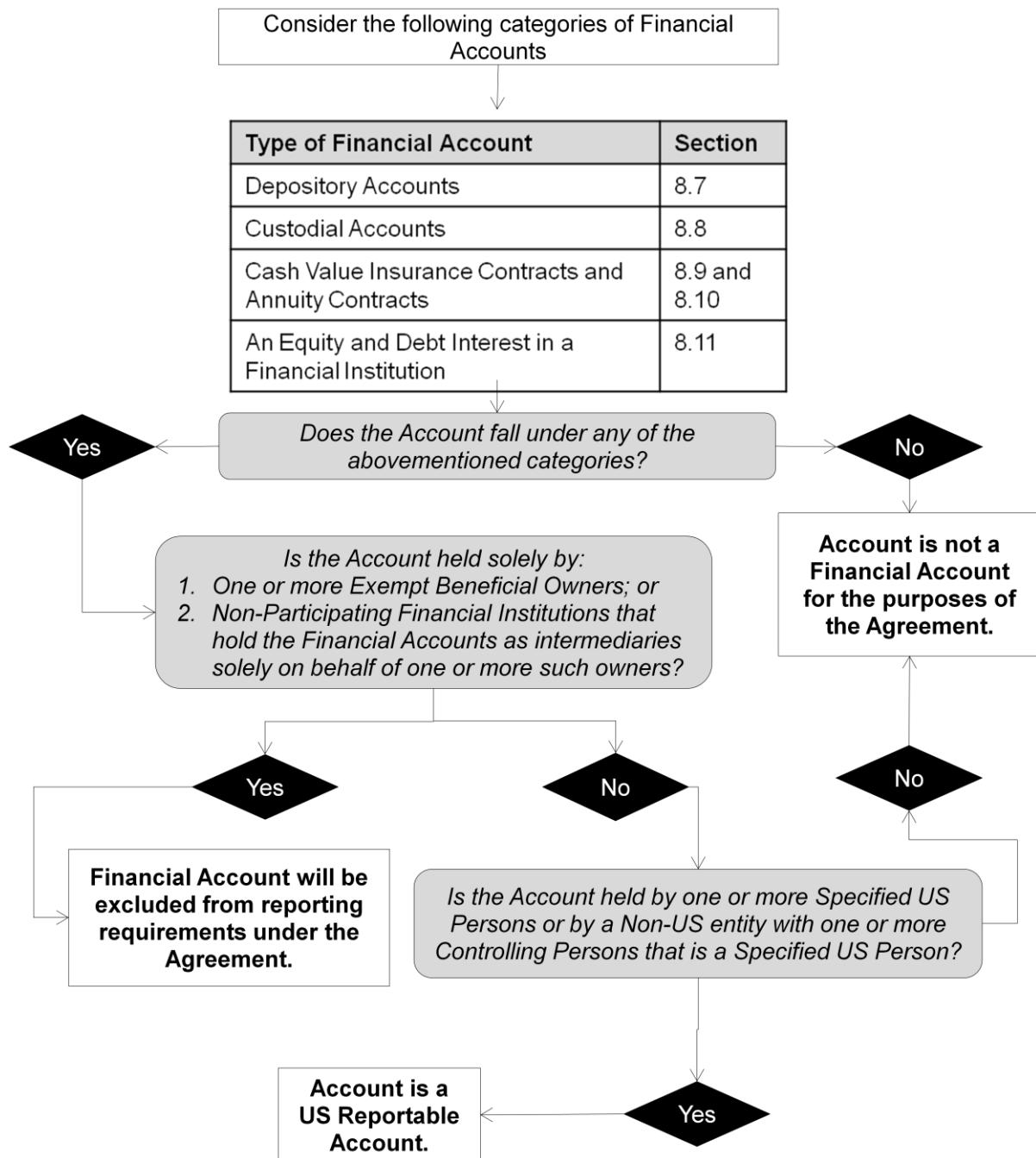
8.6.1 A Cash Value Insurance Contract or Annuity Contract is held by each person that is entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or has the ability to change a beneficiary under the contract. Where no person can access the contract's value or change a beneficiary, the Account Holders are:

- Any person named in the contract as an owner; and
- Any person who is entitled to receive a future payment under the terms of the contract.

8.6.2 When an obligation to pay an amount under the contract becomes fixed, each person that is entitled to receive a payment is an Account Holder.

8.6.3 Please refer to the diagram on the next page for guidance on the classification of Financial Accounts.

## Diagram E – Classification of Financial Accounts





## **8.7 Depository Accounts**

- 8.7.1 A Depository Account is 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 where cash is placed on deposit with an entity engaged in a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- 8.7.2 The account does not have to be an interest bearing account. A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card company engaged in banking or similar business. However, credit cards will not be considered to be Depository Accounts where the issuer meets the requirements to be deemed as a “Qualified Credit Card Issuer” (see Section 7.11).
- 8.7.3 A credit card account or revolving credit facility does not need to be reviewed, identified, or reported, provided that the Reporting SGFI maintaining the account implements policies and procedures to prevent the account balance owed to the Account Holder from exceeding US\$50,000.
- 8.7.4 Please refer to Section 9 of this e-Tax Guide for the relevant due diligence procedures under the Agreement for Depository Accounts that are required to be reviewed, identified or reported as US Reportable Accounts.
- 8.7.5 In relation to Insurance Contracts:
- A Depository Account includes an amount that an insurance company holds under an agreement to pay or credit interest thereon.
  - A Depository Account does not include an advance premium or premium deposit received by an insurance company provided the prepayment or deposit relates to an Insurance Contract for which the premium is payable annually and the amount of the prepayment or deposit does not exceed the annual premium for the contract. Such amounts are also excluded from Cash Value for purposes of determining whether a contract is a Cash Value Insurance Contract.

## **8.8 Custodial Accounts**

- 8.8.1 A Custodial Account means an account created for the benefit of another person that holds any financial instrument or contract held for investment.

Financial instruments or contracts which can be held in such accounts can include, but are not limited to:-

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

8.8.2 In the case of a collateral, if it is provided on a full title transfer basis (i.e. where the collateral holder has full legal and beneficial ownerships of the collateral during the term of the contract), it will not constitute as a Custodial Account for the purpose of the Agreement.

## **8.9 Cash Value Insurance Contracts**

8.9.1 A Cash Value Insurance Contract means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies and a term life insurance contract) that has an aggregate cash value greater than US\$50,000 at any time during the calendar year.

### **Cash Value**

8.9.2 The term “Cash Value” means any amount that:

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

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

- As a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

- As a refund to the policyholder of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than a Life Insurance or Annuity Contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract; or
- As a policyholder dividend (other than a termination dividend) related to certain Insurance Contracts.

## **8.10 Annuity Contracts**

8.10.1 An Annuity Contract is a contract under which:

- The issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals; or
- Is considered to be an annuity contract in accordance with the law, regulation or practice of Singapore in which the contract was issued and under which the issuer agrees to make payments for a term of years.

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

## **8.11 An Equity or Debt Interest in a Financial Institution**

8.11.1 Any debt or equity interest in an entity that is an SGFI solely because it is an Investment Entity will constitute Financial Accounts under the Agreement. An “Equity Interest” is defined in Article 1(1)(t) of the Agreement. A “Debt Interest”, though not defined in the Agreement, refers to any interest created when a lender lends to a borrower, which can arise from arrangements such as simple loan, bond issue or note issue. Given the broad definition of “Depository Account”, there could be a possible overlap in the definitions of “Depository Account” and “Debt Interest”. Hence, for a Financial Account which is both a “Depository Account” and “Debt Interest”, this should not affect the status of the Financial Account as a US Reportable Account.

8.11.2 Debt or equity interests maintained by Depository Institutions, Custodial Institutions and Specified Insurance Companies would constitute Financial Accounts if:-

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

8.11.3 Notwithstanding Section 8.11.1, interests that are regularly traded on an established securities market (see Section 8.11.6) shall not be regarded as a Financial Account.

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

8.11.5 In the case of a trust that is an SGFI, an Equity Interest means an interest held by:-

- A settlor of the trust;
- A beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the trust; or
- A beneficiary that receives a discretionary distribution (either directly or indirectly) from the trust in the calendar year.

#### **Debt or Equity Interests Regularly Traded on an Established Securities Market**

8.11.6 The Agreement excludes debt or equity interests in an FI as Financial Accounts if they are “regularly traded on an established securities market” because such interests are typically held through other FIs, so there would be no reporting obligations by the issuing entity.

a) The term “established securities market” refers to an exchange that:

- Is officially recognised and supervised by an authority in which the market is located; and
- Has an annual value of shares traded on the exchange, exceeding US\$1 billion during each of the three calendar years immediately preceding the calendar year in which the determination is being made (i.e. meaningful volume of trading).

b) Interests are deemed to be “regularly traded” if there is a meaningful volume of trading on an ongoing basis.

c) In view of conditions (a) and (b) above, an interest can be considered as “regularly traded on an established securities market” if the interest has been admitted to quotation for trading on an Approved Exchange, Recognised Market Operator, or recognised securities exchanges.

“Approved Exchange” and “Recognised Market” have the same meanings as given to them under the Securities and Futures Act (Cap 289).

- d) This means that, a relevant SGFI that issues interests that are “regularly traded on an established securities market” will not be required to undertake due diligence and reporting requirements under Annex I of the Agreement in relation to the debt or equity interest which meet these conditions. For the avoidance of doubt, a Custodial Institution has an obligation to report on Custodial Accounts which hold such debt or equity interests.
- e) As established under Annex I Section VI(B) of the Agreement, the term “regularly traded on an established securities market” is also relevant for a Reporting SGFI which is determining the status of its Entity Account Holders, in the following manner:-
- An Entity Account Holder that is a US corporation, whose share is “regularly traded on an established securities market” is excluded from the definition of Specified US Person.
  - A non-US Entity Account Holder whose share is “regularly traded on an established securities market” will be considered an Active NFFE, if it meets the relevant conditions to qualify as an Active NFFE. Financial Accounts held by Active NFFEs are not subject to reporting requirements under the Agreement or FATCA-related withholding.
- f) To establish the status in the above scenarios, a Reporting SGFI can rely on:-
- Self-certification provided by the Account Holder in question; or
  - Information the Reporting SGFI has in its possession or that is publicly available.
- g) However, if there is evidence of deliberate efforts or practices to avoid reporting obligations under the Agreement or facilitate tax evasion, such a debt or equity interest will be treated as a Financial Account.

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

- 8.11.7 An interest is not considered “regularly traded on an established securities market” if the holder of the interest (not including an SGFI acting as an intermediary) is registered on the books of an Investment Entity, as stated in Article 1(1)(g) of the Agreement. This is to ensure that reporting of such Financial Accounts still occurs where persons who hold interests that are

“regularly traded on an established securities market” hold such interests directly on the books of an Investment Entity, rather than through a Reporting SGFI on a custodian or nominee arrangement. Otherwise, investors could avoid reporting of their Financial Accounts if such interests were not acquired or held through a Reporting SGFI (i.e. in an inter-broke arrangement, where interests could be acquired with the assistance of a non-reporting execution-only broker and be held directly by the investor).

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

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

## **8.12 Accounts excluded from being Financial Accounts**

8.12.1 As per Regulation 14 of the SG Regulations, Annex II of the Agreement sets out certain accounts that have been agreed to present a low risk of tax evasion and which are excluded from the definition of Financial Accounts.

8.12.2 Please refer to Sections 8.13 to 8.18 for details.

## **8.13 Certain Other Tax Favoured Accounts or Products**

8.13.1 This category covers Retirement and Pension Accounts, Non-Retirement Savings Accounts, Child Development Accounts and Central Provident Fund Investment Accounts. These accounts are excluded from the definition of Financial Accounts pursuant to Annex II of the Agreement and need not be subject to due diligence or reporting requirements under the Agreement.

8.13.2 Please note that this category does not include Supplementary Retirement Scheme (SRS) accounts and SRS investment accounts. Such accounts will still be subject to due diligence and reporting requirements under the Agreement.

## **Retirement and Pension Accounts**

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

- a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- b) The account is tax-favoured (*i.e.*, contributions to the account that would otherwise be subject to tax in Singapore under the laws of Singapore, are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) Annual information reporting is required to IRAS with respect to the account;
- d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- e) Either (i) annual contributions are limited to 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 Annex I of the Agreement for account aggregation and currency translation.

## **Non-Retirement Savings Account**

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

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

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

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

### **Other Accounts Excluded from Financial Accounts**

- 8.13.5 Accounts Excluded from Financial Accounts also cover Edusave schemes, funds, grants and awards (Edusave) and Post Secondary Education Award (PSEA)
- 8.13.6 The Child Development Accounts (CDAs) as stipulated under Section 3 of the Child Development Co-Savings Act are covered under this category of Accounts Excluded from Financial Accounts.
- 8.13.7 Monies and products under CPF Investment Scheme - Ordinary Account<sup>8</sup>, CPF Investment Scheme - Special Account<sup>9</sup> and the CPF Minimum Sum Schemes, where the full sums of monies in the accounts are required to be refunded to the CPF upon dissolution, are also covered under this category.

### **8.14 Accounts of Deceased Persons/ Estates**

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

### **8.15 Intermediary Accounts (Escrow Accounts)**

- 8.15.1 Accounts held by an SGFI for a non-financial intermediary (such as a firm of solicitors or estate agents) and established for the purposes of the following will not be considered as Financial Accounts:

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<sup>8</sup> CPF Ordinary Account is exempted from reporting requirements under the Agreement. The monies and products under CPFIS-OA, which arose from CPF Ordinary Account, are correspondingly exempted from reporting requirements under the Agreement. This exemption also extends to all entitlements that arise from CPFIS-OA products.

<sup>9</sup> CPF Special Account is exempted from reporting requirements under the Agreement. The monies and products under CPFIS-SA, which arose from CPF Special Account, are correspondingly exempted from reporting requirements under the Agreement. This exemption also extends to all entitlements that arise from CPFIS-SA products.



- a) a court order, judgement or other legal matter on which the non-Financial Intermediary is acting on behalf of their underlying client; or
- b) a sale, exchange, or lease of real or personal property where it also meets the following conditions:
  - The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction;
  - The account is established and used solely to secure the obligation of the parties to the transaction;
  - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed;
  - The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - The account is not associated with a credit card account.
- c) An obligation of an SGFI 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.
- d) Any obligation of an SGFI solely to facilitate the payment of taxes at a later time.

## **8.16 Dormant Accounts**

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

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

8.16.2 Where neither of the above applies, an account will be a dormant account if;

- The Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the SGFI in the past three years; and
- The Account Holder has not communicated with the SGFI regarding that account or any other account in the past six years.

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

### **End of Dormancy**

8.16.4 An account will no longer be dormant when:

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

8.16.5 For such account, the Reporting SGFI would then have to establish the Account Holders' status as if the account were a New Account i.e. the SGFI would need to carry the necessary due diligence procedures (see Section 9) as the required due diligence procedures under the Agreement may not be fully adopted before and during dormancy.

## **8.17 Rollovers**

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

## **8.18 Syndicated Loans**

8.18.1 In relation to syndicated loan activities, an entity acting as a lead manager/ fronting bank/agent ("Agent") of a syndicated Invoice Finance facility would not be an Investment Entity or Custodian Institution provided no other business activities would bring the entity into these classifications.

8.18.2 Where a borrower requires a large or sophisticated facility, or multiple types of facility, this is commonly provided by a group of lenders, known as a syndicate, under a syndicated loan agreement.

- 8.18.3 To facilitate the process of administering the loan on a daily basis, one bank from the syndicate is typically appointed as Agent. The Agent's role is to act as the agent for the lenders, (i.e. not of the borrower) and to coordinate and administer all aspects of the loan once the loan agreement has been executed, including acting as a point of contact between the borrower and the lenders in the syndicate and monitoring the compliance of the borrower with certain terms of the facility.
- 8.18.4 In essence, the Agent performs exclusively operational functions. For example, the borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Agent and the Agent then passes these monies back to the lenders to which they are due. Similarly, the lenders advance funds to the borrower through the Agent. The terms of a syndicated loan agreement usually entitle the Agent to undertake the roles described above in return for a fee.
- 8.18.5 In these circumstances the participation of a lender in a syndicated loan, where an Agent acts for and on behalf of a syndicate of lenders which includes that lender, does not lead to the creation of a "Custodial Account" held by the Agent.
- 8.18.6 The lenders hold their interests in a loan directly rather than through the Agent and, therefore, the participation of a lender does not amount to a "Custodial Account" held by an Agent.

## 9 Due Diligence Procedures under the Agreement

### 9.1 General

- 9.1.1 For the purpose of this e-Tax Guide all monetary amounts are in US dollars and shall be read to include the equivalent Singapore dollar value or other currencies. Except as otherwise provided in this e-Tax Guide, the balance or value of an account shall be determined as of the last day of the calendar year.
- 9.1.3 Per the Currency Translation Rule under the Agreement, for the purpose of determining the balance or value of accounts denominated in a currency other than the US dollar, a Reporting SGFI must convert the US dollar threshold amounts described in Section 9.3.1, 9.10.1, 9.13.1 and 9.19.1 of this e-Tax Guide using a published spot rate<sup>10</sup> determined as of the last day of the calendar year preceding the year in which the Reporting SGFI is determining the balance or value.
- 9.1.4 The table below provides an overview of the classification of accounts for FATCA purposes and the corresponding sections in this e-Tax Guide that describe the applicable due diligence procedures:

| Relevant Dates  | Classification                        | Due Diligence Procedures |                       |
|---|---------------------------------------|--------------------------|-----------------------|
|   |                                       | Individual               | Entity                |
| Accounts maintained by Reporting SGFI as of 30 June 2014        | Preexisting Accounts <sup>11</sup>    | Sections 9.2 to 9.8      | Sections 9.12 to 9.17 |
| Accounts opened from 1 July 2014                                | New Accounts                          | Sections 9.9 to 9.11     | Sections 9.18 to 9.20 |
| Accounts opened from 1 July 2014 to 17 March 2015 <sup>12</sup> | New Accounts (Alternative Procedures) | Section 9.27             | Section 9.27 or 9.28  |

### 9.2 Preexisting Individual Accounts

- 9.2.1 The following rules and procedures set out under Sections 9.3 to 9.8 apply for the purpose of identifying US Reportable Accounts among Preexisting Accounts held by individuals (“Preexisting Individual Accounts”).

<sup>10</sup> E.g. the exchange rates published on the MAS website (<https://secure.mas.gov.sg/msb/ExchangeRates.aspx>)

<sup>11</sup> A “Preexisting Account” means a Financial Account maintained by a Reporting SGFI as of 30 June 2014.

<sup>12</sup> Accounts opened during this period will still be classified as “New Accounts”. However, Reporting SGFIs have the option to apply alternative due diligence procedures set out in Section 9.27 or 9.28.

9.2.2 Diagram F at the end of Section 9.8 summarises the due diligence procedures described in Sections 9.2 to 9.8. Diagram F should be read together with Sections 9.2 to 9.8.

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

9.3.1 Unless a Reporting SGFI elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as US Reportable Accounts:

- a) Subject to Section 9.7.2, a Preexisting Individual Account with a balance or value that does not exceed US\$50,000 as of 30 June 2014.
- b) Subject to Section 9.7.2, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of US\$250,000 or less as of 30 June 2014.
- c) A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Singapore or the US effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to US residents (e.g. if the Reporting SGFI does not have the required registration under US law, and the law of Singapore requires reporting or withholding with respect to insurance products held by residents of Singapore).
- d) A Depository Account with a balance of US\$50,000 or less.

### **9.4 Review Procedures for Preexisting Individual Lower Value Accounts**

9.4.1 Preexisting Individual Accounts with a balance or value as of 30 June 2014, that exceeds US\$50,000 (US\$250,000 for a Cash Value Insurance Contract or Annuity Contract), but does not exceed US\$1,000,000 are considered “Preexisting Individual Lower Value Accounts”.

#### **Electronic Record Search**

9.4.2 A Reporting SGFI must review electronically searchable data maintained by the Reporting SGFI for any of the following **US indicia**:

- Identification of the Account Holder as a US citizen or resident;
- Unambiguous indication of a US place of birth;

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

9.4.3 If none of the US indicia listed in Section 9.4.2 above 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 US indicia being associated with the account, or the account becomes a High Value Account described in Section 9.6 of this e-Tax Guide.

9.4.4 If any of the US indicia listed in Section 9.4.2 above are discovered in the electronic search, or if there is a change in circumstances that results in one or more US indicia being associated with the account, then the Reporting SGFI must treat the account as a US Reportable Account unless it elects to apply one of the exceptions to reporting described in Section 9.4.5 with respect to that account.

### **Exceptions to Reporting**

9.4.5 Notwithstanding a finding of US indicia under Section 9.4.2 above, a Reporting SGFI is not required to treat an account as a US Reportable Account if:

- a) The Account Holder information unambiguously indicates a US place of birth and the SGFI obtains, or has previously reviewed and maintains a record of:
  - (i) A self-certification that the Account Holder is neither a US citizen nor a US resident for tax purposes (which may be on a US IRS Form W-8);`
  - (ii) A non-US passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than US; **and**

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

- (ii) Documentary evidence, as defined in Section 9.24 of this e-Tax Guide, establishing the Account Holder's non-US status.

## **9.5 Additional Procedures Applicable to Preexisting Individual Lower Value Accounts**

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

### **Example**

The due diligence procedures under Section 9.4 of this e-Tax Guide are carried out in respect of a Preexisting Individual Lower Value Account and the account is identified as a US Reportable Account in April 2016. The Reporting SGFI is only required to report prospectively on the account on an annual basis, with the first reporting to IRAS to be done by 31 May 2017.

- 9.5.2 If there is a change of circumstances with respect to a Preexisting Individual Lower Value Account that results in one or more US indicia described in Section 9.4.2 being associated with the account, then the Reporting SGFI must treat the account as a US Reportable Account, unless it elects to apply one of the exceptions to reporting described in Section 9.4.5 with respect to that account.
- 9.5.3 Except for Depository Accounts with a balance of US\$50,000 or less, any Preexisting Individual Account that has been identified as a US Reportable Account under Section 9.4 shall be treated as a US Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified US Person.

## **9.6 Enhanced Review Procedures for Preexisting Individual High Value Accounts**

- 9.6.1 Preexisting Individual Accounts with a balance or value that exceeds US\$1,000,000 as of 30 June 2014, or 31 December 2015 or any subsequent year are considered "Preexisting Individual High Value Accounts".

### **Electronic Record Search**

- 9.6.2 A Reporting SGFI must review electronically searchable data maintained by the Reporting SGFI for any US indicia described in Section 9.4.2 of this e-Tax Guide.



## Paper Record Search

9.6.3 If the Reporting SGFI's electronically searchable databases include fields for, and capture all of the information described in Section 9.6.4 below, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a Preexisting Individual High Value Account, the Reporting SGFI must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting SGFI within the last five years for any of the US indicia as described in Section 9.4.2:

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

## Exception Where Databases Contain Sufficient Information

9.6.4 A Reporting SGFI is not required to perform the paper record search described in Section 9.6.3 above if the Reporting SGFI's electronically searchable information includes the following:-

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

## **Relationship Manager Inquiry for Actual Knowledge**

- 9.6.5 In addition to the electronic and paper record searches described above, the Reporting SGFI must treat as a US Reportable Account any Preexisting Individual High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified US Person.

## **Effect of Finding US Indicia**

- 9.6.6 If none of the US indicia listed in Section 9.6.2 (subject to Section 9.6.3) are discovered in the enhanced review of Preexisting Individual High Value Accounts and the account is not identified as held by a Specified US Person per Section 9.6.5, then no further action is required until there is a change in circumstances that results in one or more US indicia being associated with the account.
- 9.6.7 If any of the US indicia listed in Section 9.6.2 (read with Section 9.6.3) are discovered in the enhanced review of Preexisting Individual High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more US indicia being associated with the account, then the Reporting SGFI must treat the account as a US Reportable Account unless it elects to apply one of the exceptions to reporting described in Section 9.4.5 with respect to that account.
- 9.6.8 Except for Depository Accounts with balance of US\$50,000 or less, any Preexisting Individual Account that has been identified as a US Reportable Account under Section 9.6 shall be treated as a US Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified US Person.

## **9.7 Additional Procedures Applicable to Preexisting Individual High Value Accounts**

- 9.7.1 If a Preexisting Individual Account is a High Value Account as of 30 June 2014, the Reporting SGFI must complete the enhanced review procedures described in Section 9.6 of this e-Tax Guide with respect to such account by **30 June 2015**. If based on this review such account is identified as a US Reportable Account on or before 31 December 2014, the Reporting SGFI must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a US Reportable Account after 31 December 2014 and on or before 30 June 2015, the Reporting SGFI is not required to report information about such account with respect to 2014, but

must report information about the account on an annual basis thereafter.

**Example**

The due diligence procedures under Section 9.6 of this e-Tax Guide are carried out in respect of a Preexisting Individual High Value Account, which is determined to be a US Reportable Account in April 2015. The Reporting SGFI is only required to report prospectively on an annual basis, with the first reporting to IRAS to be done by 31 May 2016 on account information with respect to 2015.

- 9.7.2 If a Preexisting Individual Account is not a High Value Account as of 30 June 2014, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting SGFI must complete the enhanced review procedures described in Section 9.6 with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a US Reportable Account, the Reporting SGFI must report the required information about such account with respect to the year in which it is identified as a US Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified US Person.

**Example**

The balance of a Preexisting Individual Account is found to be in excess of \$1,000,000 as of 31 December 2015. The Reporting SGFI has till 30 June 2016 to complete enhanced review procedures for the account. Should the account be determined to be a US Reportable Account, the Reporting SGFI is required to report prospectively on an annual basis, with the first reporting to IRAS to be done by 31 May 2017 on account information with respect to 2016.

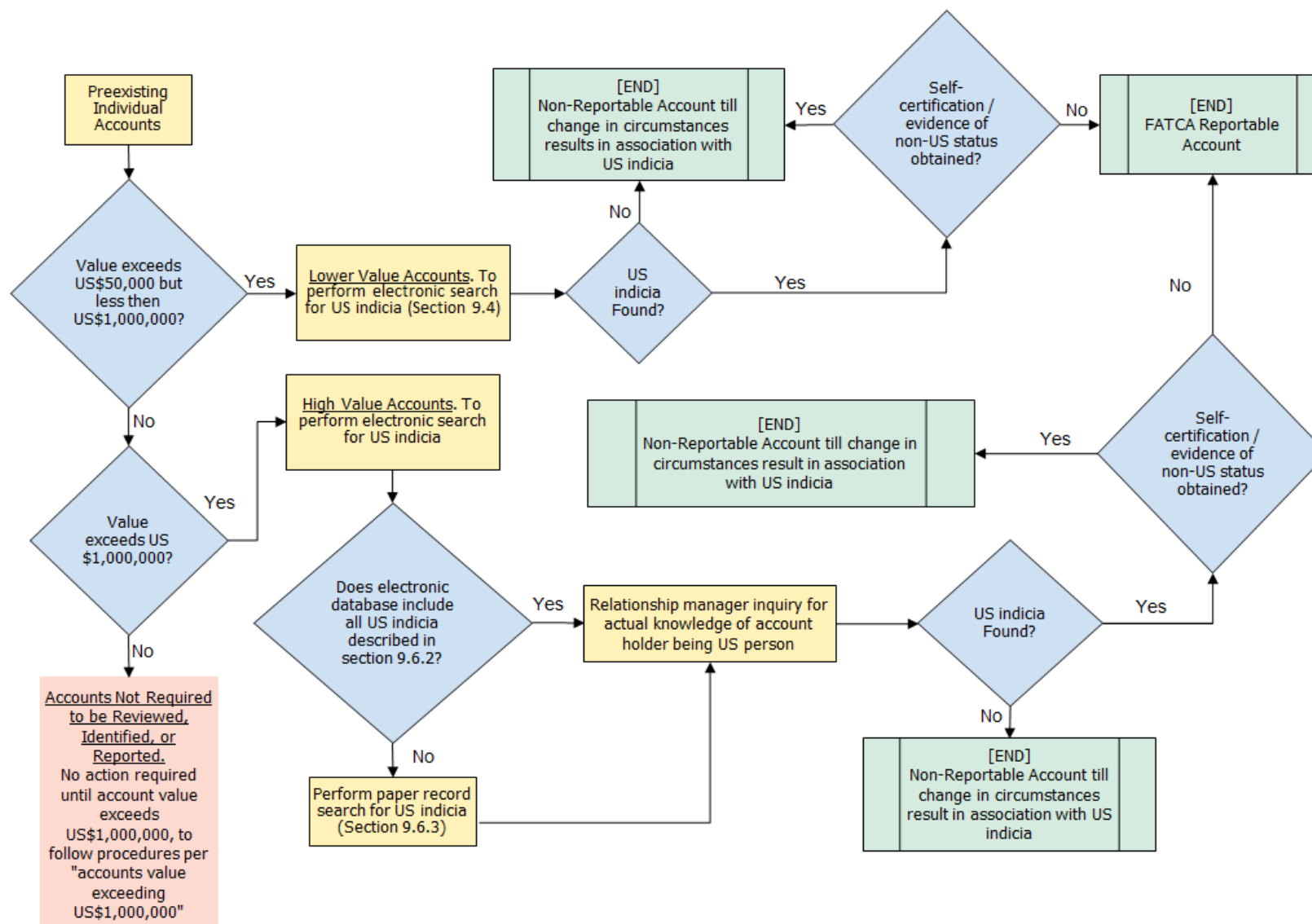
- 9.7.3 Once a Reporting SGFI applies the enhanced review procedures described in Section 9.6 of this e-Tax Guide to a Preexisting Individual High Value Account, the Reporting SGFI is not required to re-apply such procedures, other than the relationship manager inquiry described in Section 9.6.5, to the same High Value Account in any subsequent year.
- 9.7.4 If there is a change of circumstances with respect to a High Value Account that results in one or more US indicia listed in Section 9.4.2 of this e-Tax Guide being associated with the account, then the Reporting SGFI must treat the account as a US Reportable Account unless it elects to apply one of the exceptions to reporting described in Section 9.4.5 with respect to that account.

9.7.5 A Reporting SGFI must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the US, the Reporting SGFI is required to treat the new address as a change in circumstances and, if it elects to apply one of the exceptions to reporting described in Section 9.4.5, the Reporting SGFI is required to obtain the appropriate documentation from the Account Holder.

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

9.8.1 A Reporting SGFI that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a US citizen nor a US resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the US IRS, or to fulfil its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in Section 9.4.2 with respect to Lower Value Accounts or the procedures described in Sections 9.6.2 to 9.6.4 with respect to High Value Accounts.

**Diagram F – Due Diligence Procedures for Preexisting Individual Accounts**



## **9.9 New Individual Accounts**

- 9.9.1 The following rules and procedures apply for purposes of identifying US Reportable Accounts among Financial Accounts held by individuals and opened on or after 1 July 2014 ("New Individuals Accounts").

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

- 9.10.1 Unless the Reporting SGFI elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Singapore provide for such an election, the following New Individual Accounts are not required to be reviewed, identified, or reported as US Reportable Accounts:

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

## **9.11 Review Procedures for New Individual Accounts**

- 9.11.1 With respect to New Individual Accounts not described in Section 9.10.1, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in Section 9.10.1), the Reporting SGFI must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting SGFI to determine whether the Account Holder is resident in the US for tax purposes (for this purpose, a US citizen is considered to be resident in the US for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting SGFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Reporting SGFI is unable to obtain a valid self-certification, the Reporting SGFI cannot open the account.
- 9.11.2 If the self-certification establishes that the Account Holder is resident in the US for tax purposes, the Reporting SGFI must treat the account as a US Reportable Account and obtain a self-certification that includes the Account Holder's US TIN (which may be a US IRS Form W-9).
- 9.11.3 If there is a change of circumstances with respect to a New Individual Account that causes the Reporting SGFI to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting SGFI cannot rely on the original

self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a US citizen or resident for US tax purposes. If the Reporting SGFI is unable to obtain a valid self-certification, the Reporting SGFI must treat the account as a US Reportable Account.

## **9.12 Preexisting Entity Accounts**

- 9.12.1 The following rules and procedures set out under Sections 9.12 to 9.17 apply for purposes of identifying US Reportable Accounts and accounts held by NPFIs among Preexisting Accounts held by entities ("Preexisting Entity Accounts").
- 9.12.2 Diagram G at the end of Section 9.17 summarises the due diligence procedures described in Sections 9.12 to 9.17. Diagram G should be read together with Sections 9.12 to 9.17.

## **9.13 Preexisting Entity Accounts not required to be Reviewed, Identified or Reported**

- 9.13.1 Unless the Reporting SGFI elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Preexisting Entity Account with an account balance or value that does not exceed US\$250,000 as of 30 June 2014, is not required to be reviewed, identified, or reported as a US Reportable Account until the account balance or value exceeds US\$1,000,000.

## **9.14 Preexisting Entity Accounts Subject to Review**

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

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

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

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

9.16.1 For Preexisting Entity Accounts described in Section 9.14.1, the Reporting SGFI must apply the review procedures described in Sections 9.16.2 to 9.16.5 to determine whether the account is held by one or more Specified US Persons, by Passive NFFEs with one or more Controlling Persons who are US citizens or residents, or by NPFFIs.

9.16.2 Determine whether the entity is a Specified US Person:

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

9.16.3 Determine whether a Non-US Entity Is an FI:

- a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is an FI.
- b) If the information indicates that the Account Holder is an FI, or the Reporting SGFI verifies the Account Holder's GIIN on the published US IRS FFI List, then the account is not a US Reportable Account.

9.16.4 Determine whether an FI is an NPFFI payments to which are subject to aggregate reporting under Section 10.4 of this e-Tax Guide:

- a) Subject to Section 9.16.4(b), a Reporting SGFI may determine that the Account Holder is an SGFI or other Partner Jurisdiction FI if the Reporting SGFI reasonably determines that the Account Holder has such status on the basis of the Account Holder's GIIN on the published US IRS FFI List or other information that is publicly available or in the possession of the Reporting SGFI, as



applicable. In such case, no further review, identification, or reporting is required with respect to the account.

- b) If the Account Holder is an SGFI or other Partner Jurisdiction FI treated by the US IRS as an NPFFI, then the account is not a US Reportable Account, but payments to the Account Holder must be reported as per Section 10.4 of this e-Tax Guide.
- c) If the Account Holder is not an SGFI or other Partner Jurisdiction FI, then the Reporting SGFI must treat the Account Holder as an NPFFI, and payments to the Account Holder must be reported as per Section 10.4 of this e-Tax Guide, unless the Reporting SGFI:
  - (i) Obtains a self-certification (which may be on an US IRS Form W-8) from the Account Holder that it is a Certified DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations; **or**
  - (ii) In the case of a Participating FFI or Registered DCFFI, verifies the Account Holder's GIIN on the published US IRS FFI List.

#### 9.16.5 Determine whether an account held by an NFFE is a US Reportable Account:

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

In making these determinations the Reporting SGFI must follow the guidance in the order most appropriate under the circumstances below:

- (i) For purposes of determining the Controlling Persons of an Account Holder, a Reporting SGFI may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (ii) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting SGFI must obtain a self-certification (which may be on a US IRS Form W-8 or W-9) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

(iii) For purposes of determining whether a Controlling Person of a Passive NFFE is a US citizen or resident for tax purposes, a Reporting SGFI may rely on:

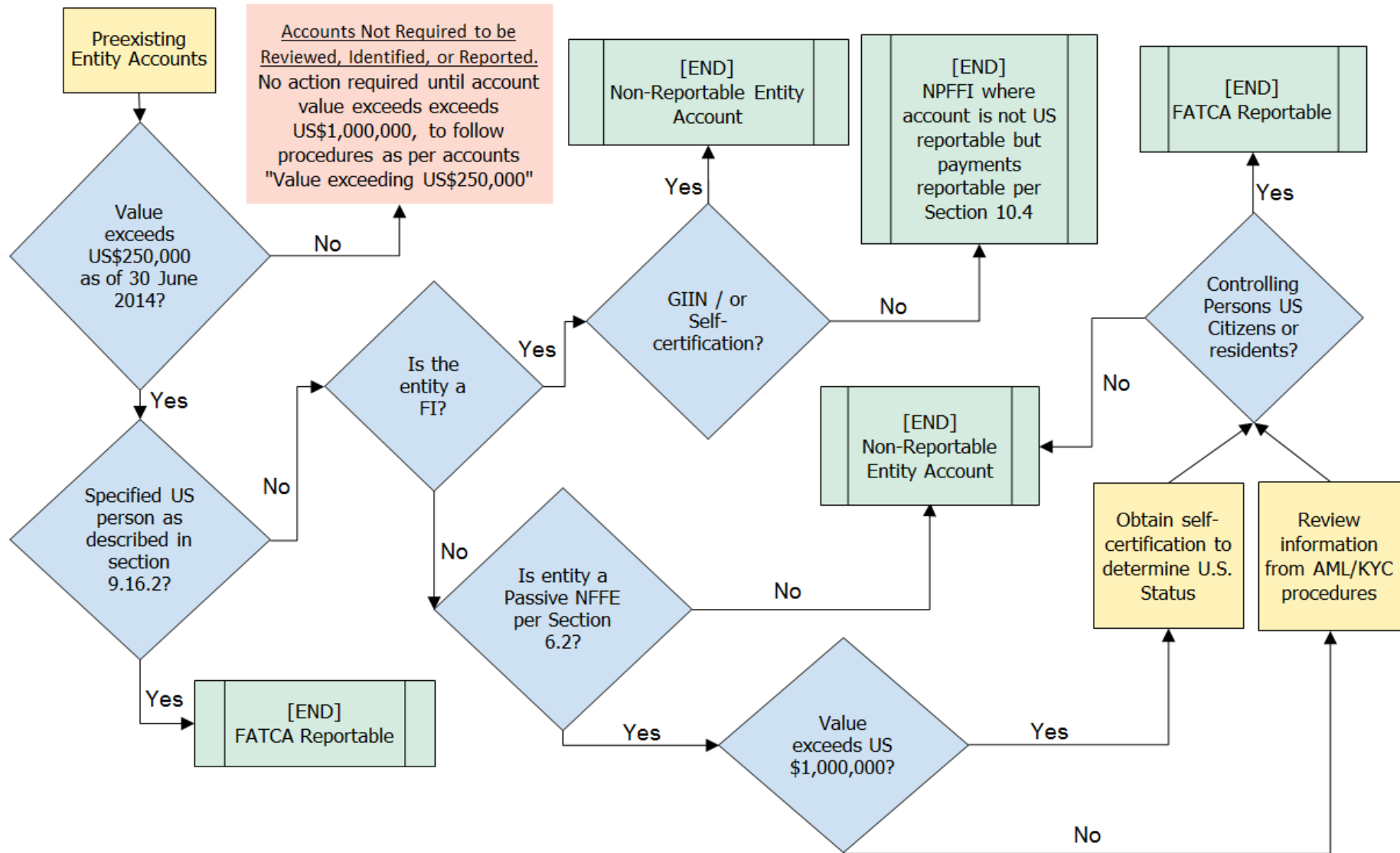
- 1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed US\$1,000,000; **or**
- 2) A self-certification (which may be on a US IRS Form W-8 or W-9) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds US\$1,000,000.

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

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

- 9.17.1 Review of Preexisting Entity Accounts with an account balance or value that exceeds US\$250,000 as of 30 June 2014 must be completed by 30 June 2016.
- 9.17.2 Review of Preexisting Entity Accounts with an account balance or value that does not exceed US\$250,000 as of 30 June 2014, but exceeds US\$1,000,000 as of 31 December of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds US\$1,000,000.
- 9.17.3 If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting SGFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting SGFI must re-determine the status of the account in accordance with the procedures set forth in Section 9.16 above.

**Diagram G - Due Diligence Procedures for Preexisting Entity Accounts**



## **9.18 New Entity Accounts**

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

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

- 9.19.1 Unless the Reporting SGFI elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Singapore provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting SGFI maintaining such an account implements policies and procedures to prevent an account balance owed to the Account Holder from exceeding US\$50,000.

## **9.20 Review Procedures for New Entity Accounts**

- 9.20.1 With respect to New Entity Accounts not described in Section 9.19.1, the Reporting SGFI must determine whether the Account Holder is:
- A Specified US Person;
  - An SGFI or other Partner Jurisdiction FI;
  - A Participating FFI, a DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations; or
  - An Active NFFE or Passive NFFE.
- 9.20.2 Subject to Section 9.20.3, a Reporting SGFI may determine that the Account Holder is an Active NFFE, an SGFI, or other Partner Jurisdiction FI if the Reporting SGFI reasonably determines that the Account Holder has such status on the basis of the Account Holder’s GIIN or other information that is publicly available or in the possession of the Reporting SGFI, as applicable.
- 9.20.3 If the Account Holder is an SGFI or other Partner Jurisdiction FI treated by the US IRS as an NPFFI, the account is not a US Reportable Account, but payments to the Account Holder must be reported as per Section 10.4 of the e-Tax Guide.
- 9.20.4 In all other cases, a Reporting SGFI must obtain a self-certification from the Account Holder to establish the Account Holder’s status. Based on the self-certification, the following rules apply:

- a) If the Account Holder is a **Specified US Person**, the Reporting SGFI must treat the account as a US Reportable Account.
- b) If the Account Holder is a **Passive NFFE**, the Reporting SGFI must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a US citizen or resident on the basis of the self-certification from the Account Holder or such person. If any such person is a US citizen or resident, the Reporting SGFI must treat the account as a US Reportable Account.
- c) If the Account Holder is:
  - (i) a US Person that is not a Specified US Person;
  - (ii) subject to Section 9.20.4(d), an SGFI or other Partner Jurisdiction FI;
  - (iii) a Participating FFI, a DCFFI, or an Exempt Beneficial Owner, as those terms are defined in relevant US Treasury Regulations;
  - (iv) an Active NFFE; or
  - (v) a Passive NFFE with none of the Controlling Persons of which is a US citizen or resident,

then the account is not a US Reportable Account, and no reporting is required with respect to the account.

- d) If the Account Holder is an NPFFI (including an SGFI or other Partner Jurisdiction FI treated by the US IRS as an NPFFI), then the account is not a US Reportable Account, but payments to the Account Holder must be reported as per Section 10.4 of this e-Tax Guide.

## 9.21 Special Rules and Definitions

- 9.21.1 The following additional rules and definitions in Sections 9.22 to 9.27 apply in implementing the due diligence procedures as described earlier in this section (Section 9).

## 9.22 Reliance on Self-Certifications and Documentary Evidence

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

## **9.23 Account Balance Aggregation**

### **Aggregation of Individual Accounts**

- 9.23.1 For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting SGFI is required to aggregate all Financial Accounts maintained by the Reporting SGFI, or by a Related Entity, but only to the extent that the Reporting SGFI's computerised systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. 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 Section.

### **Aggregation of Entity Accounts**

- 9.23.2 For purposes of determining the aggregate balance or value of Financial Accounts held by an entity, a Reporting SGFI is required to take into account all Financial Accounts that are maintained by the Reporting SGFI, or by a Related Entity, but only to the extent that the Reporting SGFI's computerised systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

### **Special Aggregation Rule Applicable to Relationship Managers**

- 9.23.3 For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting SGFI 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.

## **9.24 Documentary Evidence**

- 9.24.1 For the purpose of Section 9 of this e-Tax Guide, acceptable documentary evidence includes any of the following:
- a) A certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
  - b) With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a

municipality), that includes the individual's name and is typically used for identification purposes.

- c) With respect to an entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the entity and either the address of its principal office in the jurisdiction (or US Territory) in which it claims to be a resident or the jurisdiction (or US Territory) in which the entity was incorporated or organized.
- d) With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the US IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a US IRS Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities.
- e) Any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

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

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

## **9.26 Reliance on Third Parties**

- 9.26.1 A reporting SGFI may rely on a third party to carry out its obligations as set out in the Income Tax Act (chapter 134), Income Tax (International tax compliance agreements) (United States of America) Regulations 2015 paragraph 9(1) to 9(3), to the extent provided in the U.S. Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, TD 9657, 79 FR 12812 (March 6, 2014), as corrected.

- 9.26.2 When a reporting SGFI relies on a third party to carry out its FATCA obligations, it must meet the due diligence requirements as set out in Chapter 9 of this e-tax guide. These CDD obligations remain the responsibility of the SGFI and any due diligence failures will be the responsibility of the SGFI.

## **9.27 Alternative Procedures for New Accounts Opened Prior to 18 March 2015**

### **Applicability**

- 9.27.1 A Reporting SGFI may apply the alternative procedures described in Section 9.27.2, as applicable, to such New Accounts, in lieu of the due diligence procedures otherwise required under Sections 9.9 to 9.11 and Sections 9.18 to 9.20 of this e-Tax Guide. The alternative procedures described in Section 9.27.2 shall be available only for those New Individual Accounts or New Entity Accounts, as applicable, opened prior to 18 March 2015. If the alternative procedures for New Entity Accounts opened on or after 1 July 2014, and before 1 January 2015, described in Section 9.28 are applied with respect to all New Entity Accounts or a clearly identified group of such accounts, the alternative procedures described in this section (Section 9.27) may not be applied with respect to these accounts.
- 9.27.2 For all other New Accounts, the Reporting SGFI must apply the due diligence procedures described in Sections 9.9 to 9.11 or Sections 9.18 to 9.20, as applicable, to determine if the account is a US Reportable Account or an account held by an NPFFI.

### **Alternative Procedures for New Accounts**

- 9.27.3 Within one year after 18 March 2015, a Reporting SGFI must:
- a) With respect to a New Individual Account described in Section 9.27.1, request the self-certification specified in Sections 9.9 to 9.11 and confirm the reasonableness of such self-certification consistent with the procedures described in Sections 9.9 to 9.11, and
  - b) With respect to a New Entity Account described in Section 9.27.1, perform the due diligence procedures specified in Sections 9.18 to 9.20 and request information as necessary to document the account, including any self-certification required by Sections 9.18 to 9.20.
- 9.27.4 The Reporting SGFI must report on any New Account that is identified pursuant to Section 9.27.3 as a US Reportable Account or an account held by an NPFFI (see Section 10.4), as applicable, by the date that is the later of:



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

The information required to be reported with respect to such a New Account is any information that would have been reportable under the SG Regulations, as if the New Account had been identified as a US Reportable Account or an account held by an NPFFI, as applicable, as of the date the account was opened.

9.27.5 By 18 March 2016, a Reporting SGFI must close any New Account described in Section 9.27.1 for which it was unable to collect the required self-certification or other documentation pursuant to the procedures described in Section 9.27.3. In addition, by 18 March 2016, a Reporting SGFI must:

- a) With respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified in Section 9.6; or
- b) With respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified in Sections 9.12 to 9.16.

9.27.6 The Reporting SGFI must report on any closed account that is identified pursuant to Section 9.27.5 as a US Reportable Account or an account held by an NPFFI, as applicable, by the date that is the later of:

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

The information required to be reported for such a closed account is any information that would have been reportable under the SG Regulations, as if the account had been identified as a US Reportable Account or an account held by an NPFFI, as applicable, as of the date the account was opened.

**9.28 Alternative Procedures for New Entity Accounts Opened on or after 1 July 2014, and before 1 January 2015**

- 9.28.1 For New Entity Accounts opened on or after 1 July 2014, and before 1 January 2015, either with respect to all New Entity Accounts or with respect to a clearly identified group of such accounts, a Reporting SGFI may treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures specified in Sections 9.12 to 9.17, in lieu of the due diligence procedures specified in Sections 9.18 to 9.20. In this case, the due diligence procedures of Sections 9.12 to 9.17 must be applied without regard to the account balance or value thresholds specified in Section 9.13.1.

## **10 Reporting**

### **10.1 General**

- 10.1.1 Once a Reporting SGFI has applied the due diligence procedures under the Agreement in respect of the accounts it holds and has identified US Reportable Accounts, it must report certain information regarding those accounts to IRAS in accordance with the timetable in Section 10.5.
- 10.1.2 A Reporting SGFI with no US Reportable Accounts is required to file a nil return for the reporting year.
- 10.1.3 A Non-Reporting SGFI that has registered and obtained a GIIN from the US IRS is similarly required to file a nil return for the reporting year, notwithstanding that it has no US Reportable Accounts.

### **10.2 Information to be reported with respect to each US Reportable Account of a Reporting SGFI**

- 10.2.1 The information to be reported with respect to each US Reportable Account is:

- a) In relation to:

- (i) Each Specified US Person that is the account holder; and

- (ii) Each Non-US Entity (i.e. Passive NFFE) that is the account holder and is identified as having one or more Controlling Persons that is a Specified US Person

the information to be reported for the Specified US Person in (i) above; and the Non-US Entity as well as each Controlling Person of the Non-US Entity in (ii) above, is:-

- A. Name

- B. Address

- C. US Taxpayer Identification Number (TIN) – where applicable

- b) The account number or the functional equivalent of an account number - where applicable

- c) The name and identifying number (i.e. GIIN) of the Reporting SGFI

- d) The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value) as of the end of the calendar year or other appropriate reporting period. Where an account is closed during a year, the amount reportable is the amount in the account immediately before the date of closure.

10.2.2 In addition to elements (a) to (d) in Section 10.2.1 above, the following payment information (which may be reported in US dollars or the equivalent in other currencies) in relation to the calendar year or other appropriate reporting period must also be reported:

- a) In the case of any Custodial Account

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

- b) In the case of any Depository Account

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

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

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

### **10.3 Explanation of information required**

#### **Address**

- 10.3.1 The address to be reported with respect to an account held by a Specified US Person is the address recorded by the Reporting SGFI for the Account Holder pursuant to the due diligence procedures detailed in Section 9. In the case of an account held by an individual, the address to be reported is the current residence address of the individual; or if no residence address is associated with the Account

Holder, the address for the account used for mailing or other purposes by the Reporting SGFI.

- 10.3.2 In the case of an account held by a Non-US Entity (i.e. Passive NFFE) that is identified as having one or more Controlling Persons who are Specified US Persons, the address to be reported is the address of the entity and the address of each Controlling Person of the entity.

### **Taxpayer Identification Numbers (“TINs”)**

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

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

(i) In respect of Reporting Years 2014 to 2016, the US TIN of the relevant Specified US Persons need only be reported if it exists in the records of the Reporting SGFI. If the relevant Specified US Person is an individual, the Reporting SGFI should provide the date of birth (if it is available) in the absence of a record of the US TIN.

(ii) In respect of Reporting Year 2017 and onwards, the US TIN of the relevant Specified US Persons has to be reported.

- b) With respect to New Entity Accounts opened between 1 July 2014 and 31 December 2014; and where the Reporting SGFI has applied the due diligence procedures provided for in Section 9.28, a Reporting SGFI may regard such accounts as Preexisting Entity Accounts and the provision of the US TIN is mandatory in respect of Reporting Year 2017 and onwards.

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

### **Account Number**

- 10.3.5 This is the unique identifying number or code that is sufficient for the Reporting SGFI to identify the US Reportable Account held by the named Account Holder.

## Account Balance or Value

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

### a) General

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

### b) Valuation

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

#### **Example**

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

- (iii) Where the 31 December falls on a weekend or non-working day, the date to be used is the last working day before that 31 December.
- (iv) The balance or value of an Equity Interest is the value calculated by the Reporting SGFI for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.

- (v) The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges for which the Account Holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

c) Joint Accounts

- (i) Where a Financial Account is jointly held, the balance or value to be reported in respect of the Specified US Person is the entire balance or value of the account. The entire balance or value should be attributed to each holder of the account.

**Example**

For example where a jointly held account has a balance or value of \$100,000 and one of the Account Holders is a Specified US Person then the amount to be attributed to that person would be \$100,000.

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

d) Account closures and transfers

- (i) Where an account was closed during the year, the account balance or value to be reported is the balance or value immediately before the account was closed.

Reporting SGFIs are allowed to capture and report the account balance or value on the date when procedures commenced to close the account. For instance, the Reporting SGFI may report the account balance or value when it commences procedures to close the account after it receives instructions from the account holder to do so.

- (ii) In the case of a Cash Value Insurance Contract and Annuity Contract that has been fully surrendered during the calendar year the Specified Insurance Company will need to report the total amount paid out to the Account Holder or nominated person at the close of the account. This will include any amount of interest following maturity where the amount is awaiting payment.

- (iii) Where the Reporting SGFI has reviewed and identified one or more US indicia associated with a preexisting account and the account closed on or after 1 July 2014, the account should be treated as reportable in that reporting year unless that Reporting SGFI has sufficient evidence to show that the account is not a US Reportable account.

## **10.4 Information to be Reported with respect to Payments to NPFFIs**

10.4.1 A Reporting SGFI that makes payments to an account holder that is an NPFFI is required to report the:

- Name,
- Aggregate amount of payments

made to the financial account of each such NPFFI for the Reporting Years 2015 and 2016 to IRAS.

10.4.2 A Reporting SGFI shall report all payments made to the financial account of NPFFIs without the need to distinguish nature of payments and whether they are US or non-US sourced. Alternatively, a Reporting SGFI may report only payments of foreign reportable amounts<sup>13</sup> made to NPFFIs.

10.4.3 In addition to the aforementioned reporting obligation, Article 4(1)(e) of the Agreement provides that, in the case of a Reporting SGFI (i) that is not acting as a QI that has elected to assume primary withholding responsibility and (ii) that makes a payment of, or acts as an intermediary with respect to, a US Source Withholdable Payment to any NPFFI, the Reporting SGFI is to provide to any immediate payor of such payment the information required for withholding and reporting to occur with respect to such payment. The applicable format for the transmission of the relevant information should be agreed upon by the Reporting SGFI with the immediate payor of the payment.

## **10.5 Timetable for reporting to IRAS**

10.5.1 All information for the relevant reporting year is to be submitted to IRAS by 31 May of the year following the end of the reporting year. For example, a Reporting SGFI will submit information for Reporting Year 2014 to IRAS by 31 May 2015.

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<sup>13</sup> The term “foreign reportable amount” means a payment of Fixed, Determinable, Annual, Periodical (FDAP) income, as defined in the US Treasury Regulations, that would be a US Source withholdable payment if paid by a US person.



|   | Reporting Year |      |      |                  |
|---|----------------|------|------|------------------|
|   | 2014           | 2015 | 2016 | 2017 and onwards |
| <b>A. Information to be reported with respect to each US Reportable Account</b>   |                |      |      |                  |
| (i) In respect of each Specified US Person that is an account holder;<br><br>or<br><br>each Passive NFFE that is an account holder, and each of the NFFE's Controlling Person who is a Specified US Person: |                |      |      |                  |
| (a) Name  | ✓              | ✓    | ✓    | ✓                |
| (b) Address   | ✓              | ✓    | ✓    | ✓                |
| (c) US TIN  | ☺              | ☺    | ☺    | ✓                |
| (ii) Account Number   | ✓              | ✓    | ✓    | ✓                |
| (iii) Name and GIIN of Reporting SGFI   | ✓              | ✓    | ✓    | ✓                |
| (iv) Account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value)  | ✓              | ✓    | ✓    | ✓                |
| (v) In the case of any Custodial Account  |                |      |      |                  |
| (a) Total gross amount of interest paid   | ✗              | ✓    | ✓    | ✓                |
| (b) Total gross amount of dividends paid  | ✗              | ✓    | ✓    | ✓                |
| (c) Total gross amount of other income paid   | ✗              | ✓    | ✓    | ✓                |
| (d) Total gross proceeds from the sale or redemption of property paid   | ✗              | ✗    | ✓    | ✓                |
| (viii) In the case of any Depository Account  |                |      |      |                  |
| (a) Total gross amount of interest paid   | ✗              | ✓    | ✓    | ✓                |

|   |   |   |   |   |
|---|---|---|---|---|
| (ix) In the case of any account other than a Custodial Account or a Depository Account  |   |   |   |   |
| (a) The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the Account Holder | x | ✓ | ✓ | ✓ |
| <b>B. Information to be reported with respect to payments to the financial account of each NPFFI</b>  |   |   |   |   |
| (a) Name and Address  | x | ✓ | ✓ | x |
| (b) Aggregate amount of payments  | x | ✓ | ✓ | x |

✓ Information required to be included for the reporting year

x Information not required to be included for the reporting year

↪ For Preexisting US Reportable Accounts that are reportable as of 30 June 2014, the US TIN need only be reported if it exists in the records of the Reporting SGFI. The date of birth (if available) of the relevant Specified US Person may be provided in lieu of the US TIN (see Section 10.3.3)

## 10.6 Format for Reporting to IRAS

10.6.1 The format in which reporting will be required is the prevailing Intergovernmental FATCA XML Schema ("XML Schema") as published on IRAS website<sup>14</sup>.

10.6.2 Reporting SGFIs will need to have processes in place to collate and prepare the required data in accordance to the XML Schema. Returns providing information on US Reportable Accounts or payments to the account of NPFFIs will have to be prepared in accordance to the prevailing XML Schema. However, a Reporting SGFI will be able to declare that it has no US Reportable Accounts or payments to the financial accounts of NPFFIs by submitting a paper nil return to IRAS. A copy of the paper nil return for use by a Reporting SGFI will be made available on the IRAS FATCA webpage at a later date. Reporting SGFIs are advised to seek the services of an IT professional or vendor to assist them in capturing and preparing the data in accordance to the XML Schema if they do not have the relevant expertise to do so.

## 10.7 Transmission

10.7.1 Reporting SGFIs shall submit the information to be reported to IRAS via the International Data Exchange Service ("IDES")<sup>15</sup>. There will not be other online

<sup>14</sup> <http://www.iras.gov.sg/irasHome/fatca/>

service or separate portal for manual input and reporting of FATCA data. IRAS will then authorise the onward transmission of FATCA data held at the IDES to the US IRS.

10.7.2 The IDES is able to accept both SFTP and HTTPS transfers. Reporting SGFIs will be able to decide on the data transfer method to adopt.

10.7.3 More information on the technical requirements to transmit FATCA data to the IDES will be published on IRAS' website.

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<sup>15</sup> More information on IDES submission available at <http://www.irs.gov/Businesses/Corporations/International-Data-Exchange-Service>

## **11 Compliance**

### **11.1 Minor Errors**

11.1.1 If the US IRS has questions or concerns in respect of minor or administrative errors that have led to an incorrect or incomplete information reporting or resulted in other infringements of the Agreement, it will contact IRAS to resolve the issue. If necessary, IRAS will contact the Reporting SGFI to request for the error to be corrected.

11.1.2 Examples of minor errors could include:

- Data fields missing or incomplete;
- Data that has been corrupted;
- Use of an incompatible format.

11.1.3 Where this leads to the information having to be resubmitted, the revised return shall be submitted to IRAS via the IDES. The Reporting SGFI concerned shall rectify the error(s) and resubmit the data to IDES by an appropriate date as directed by IRAS.

11.1.4 IRAS may update the US IRS on the progress of its discussions with the Reporting SGFI to correct the error. IRAS will inform the US IRS when the error is resolved.

11.1.5 Penalties may be imposed by the IRAS if the error is considered to contravene SG Legislation.

11.1.6 Continual and repeated administrative or minor errors could be considered as significant non-compliance where they repeatedly disrupt and prevent transfer of the information.

### **11.2 Significant Non-Compliance**

11.2.1 The US IRS is entitled to notify IRAS if it has determined significant non-compliance with the obligations under the Agreement by a Reporting SGFI. IRAS will contact the Reporting SGFI to request for the non-compliance to be addressed.

11.2.2 The following are examples of what would be regarded as significant non-compliance:

- Repeated failure to file a return or repeated late filing
- On-going or repeated failure to supply accurate information or establish appropriate governance or due diligence processes
- The intentional provision of substantially incorrect information
- The deliberate or negligent omission of required information
- Otherwise actively assisting Specified US Persons in avoiding the reporting obligations

11.2.3 IRAS, together with MAS, may also engage with the Reporting SGFI to:

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

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

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

11.2.6 IRAS may update the US IRS on the progress of its discussions with the Reporting SGFI to correct the error. IRAS will inform the US IRS when the error is resolved.

11.2.7 Penalties may be imposed by IRAS if the error is considered to contravene SG Legislation.

11.2.8 In the event that the issues remain unresolved after a period of 18 months of the US IRS' notification of the issues, the US IRS may treat the Reporting SGFI as an NPFFI and trigger adverse consequences associated with that status in the US.

### **11.3 Anti-Avoidance**

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

## 11.4 Offences

11.4.1 Reporting SGFIs are responsible for putting in place the necessary procedures for account review, identification and reporting, and providing the correct information in the correct format on a timely basis to IRAS.

11.4.2 There are penalties for:

| Offence   | Penalties upon conviction  |
|---|--|
| a) Failure to provide IRAS with information in the form, manner and frequency as prescribed in the SG Regulations | A fine up to \$1,000; and in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction. |
| b) Failure to comply with the due diligence and other obligations as prescribed in the SG Regulations             |  |
| c) Reporting of false information to IRAS   | A fine up to \$10,000 or to imprisonment for a term not exceeding 2 years or to both.  |

## 12 Registration

12.1 Reporting SGFIs should register themselves at the US IRS Online FATCA Registration Portal<sup>16</sup> as FIs within a Model 1 IGA jurisdiction to obtain a GIIN and to be included on the US IRS FFI List. US payers and withholding agents will be able to rely on this list and not deduct the 30% withholding on payments to the SGFIs that have registered.

12.2 The following types of entities are not required to register for FATCA:

- Non-Reporting SGFIs, i.e. any SGFI falling under the description of such in Annex II of the Agreement or that otherwise qualifies as a Deemed-Compliant FFI or an Exempt Beneficial Owner under the relevant US Treasury Regulations in effect on 9 December 2014.
- Active and Passive NFFEs

### **Registration requirements for certain categories of Non-Reporting SGFIs which are described in Annex II of the Agreement**

12.3 Notwithstanding Section 12.2 above, certain categories of Non-Reporting SGFIs falling under the description of such in Annex II of the Agreement may still be subject to the US IRS registration requirements, under the following scenarios:

- a) They are subject to registration requirement under their Qualified Intermediary, Withholding Foreign Partnership or Withholding Foreign Trust Agreement;
- b) They act as sponsoring entities;
- c) They act as lead FIs for one or more related entities;
- d) They are explicitly required to register under the Agreement; or
- e) They have financial accounts on which to report to the IRAS under the requirements in Annex II of the Agreement.

12.4 The categories of Non-Reporting SGFIs which may be subject to the US IRS registration requirements are as follows:

- SGFIs with a Local Client Base (see Section 7.10)
- Sponsored Investment Entities (see Section 7.11)
- Trustee-Documented Trusts (see Sections 5.13.1 to 5.13.3)

12.5 SGFIs relying on the US Treasury Regulations in effect on 9 December 2014, to qualify as Non-Reporting SGFIs may also be subject to the US IRS registration requirements.

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<sup>16</sup> <https://sa2.www4.irs.gov/fatca-rup/>

## **13      Contact information**

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