UNITED ARAB EMIRATES
MINISTRY OF FINANCE

Guidance Notes on the requirements of the Intergovernmental Agreement between the United Arab Emirates and the United States

Issue Date:	**6 July 2015**
Last Updated:	30 June 2015
Document Ref:	UAE FATCA Guidelines Notes
Version:	V1.0

DISCLAIMER:

These notes should always be read in conjunction with the UAE Intergovernmental Agreement ("IGA"). It should be noted that the Guidance Notes do not have the force of law. If you are in any doubt as to your obligations under the law you should seek independent professional advice.

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CHAPTER 1

GENERAL INTRODUCTION

1 CHAPTER 1 – GENERAL INTRODUCTION

1.1 OUTLINE OF THIS PART

This Part provides a general introduction to the Foreign Account Tax Compliance Act ("FATCA") and its application to entities regulated by the Central Bank, the Insurance Authority, the Securities and Commodities Authority, the Dubai International Financial Centre and Unregulated Entities.

1.2 CONTENTS OF THIS PART

- What is FATCA and how will it be applied in the United Arab Emirates?
- How will FATCA affect banking entities, insurance companies, financial services companies and asset managers?
- How will FATCA affect Unregulated Entities?
- What if an entity or account holder does not comply with the UAE IGA?
- Purpose and outline of these Guidance Notes.

1.3 What is FATCA and how will it be applied in the UAE?

In 2010, the United States enacted FATCA to increase income tax reporting by US taxpayers on assets held in offshore accounts and through "**Non-US Entities**". FATCA imposes new reporting and withholding obligations on foreign financial institutions and certain other foreign persons which must be complied with in order to avoid a 30 percent US withholding tax on certain US-source payments and "passthru" payments that such non-US persons receive. These foreign financial institutions are referred to as "**FFIs**", when referenced in the U.S. Treasury Regulations (**"FATCA Regulations"**), and as "**Financial Institutions**" when referenced in intergovernmental agreements ("**IGAs**"), which are agreements that the United States has entered into with many jurisdictions (each a "**FATCA Partner**") . IGAs have been agreed to as part of an effort to facilitate compliance with FATCA by Financial Institutions located in countries whose internal laws (e.g., privacy laws) impose requirements on Financial Institutions that are inconsistent with those imposed by FATCA and as a method of encouraging other countries to cooperate with the implementation of FATCA. IGAs contain two annexes: Annex I sets forth due diligence requirements for certain financial institutions to determine whether their accounts and payments are reportable information and Annex II describes the classes of entities not required to report and products that will not be treated as financial accounts.

The United Arab Emirates ("UAE") has been added to Treasury's IGA list as having substantively agreed to a Model 1 IGA as of 21 May 2014 pursuant to IRS Announcement 2014-17 and the U.S. Treasury Department website. Thus, the UAE is treated as having a Model 1B IGA in effect and will continue to be so treated if it continues to demonstrate "firm resolve" to sign the IGA as soon as possible, which allows UAE Financial Institutions to register on the FATCA registration website consistent with that status. However, the UAE could be removed from this list of countries treated as having an IGA in effect, in which case financial institutions will not be able to comply with FATCA under a Model 1 IGA. FFIs located in countries where an IGA is treated as in effect should generally have registered by 31 December 2014.

More specifically, we anticipate the UAE IGA to be a Model 1B IGA, which will not provide for the U.S. to reciprocate by sharing information with the UAE. The Treasury generally has a policy of not deviating from the model text except in limited circumstances in Annex II. To the extent Treasury and the UAE agree to any modifications to the model Annex II (or otherwise), such modifications will not be applicable until the UAE IGA is actually signed. To date, the U.S. Treasury Department has posted two "Notification of More Favorable Terms" to its website. Under the UAE IGA, financial institutions located within the UAE must register with the US Internal Revenue Service ("**IRS**"), but are not required to enter into an agreement with the IRS. Instead, the UAE is obligated to obtain certain information from each "**Reporting Financial Institution**" in the UAE with respect to all "**US Reportable Accounts.**" In order to do so, the UAE will implement local laws to impose reporting obligations on UAE Financial Institutions and branches of non-UAE financial institutions resident in the UAE.

1.4 How will FATCA affect banking entities, insurance companies, financial services companies and asset managers?

Entities that are Financial Institutions under the UAE IGA are initially categorized either as "**Reporting Financial Institutions**" or "**Non-Reporting Financial Institutions**". Non-Reporting Financial Institutions include Financial Institutions that are **Deemed-Compliant** or **Exempt Beneficial Owners** under the FATCA Regulations or that are Non-Reporting Financial Institutions under the UAE IGA's Annex II. Non-Reporting Financial Institutions are generally not required to report information to the UAE; however, they will need to provide properly completed US tax forms

or self-certifications to withholding agents in order to avoid FATCA withholding on US source payments to them.

Reporting Financial Institutions are required to comply with Article 4 of the UAE IGA, which generally includes reporting the information specified in Article 2 of the UAE IGA with respect to US Reportable Accounts to the UAE, reporting information with respect to payments made to **Nonparticipating Financial Institutions** to the UAE, and properly registering on the IRS FATCA registration website by 31 December 2014. Entities that become Reporting Financial Institutions after 31 December 2014 must also comply and register on the IRS FATCA website. Additional requirements apply depending on whether a Reporting Financial Institution is an intermediary that has undertaken primary withholding responsibility under the US Internal Revenue Code of 1986, as amended (the "**Code**"), and the regulations thereunder.

Non-US Entities that are not Financial Institutions are considered to be Non-Financial Foreign Entities ("**NFFEs**"). NFFEs are classified as either "Active" or "Passive" NFFEs and do not have to report to the UAE pursuant to the UAE IGA. **Active NFFEs** may be required to provide certification of their active status on an IRS Form W-8 (or other self-certification) to withholding agents to avoid FATCA withholding on payments to it, but are not required to report or disclose their ownership. **Passive NFFEs** may be required to report and disclose their "**Substantial US Owners**" and/or "**Controlling Persons**" who are "**Specified US Persons**" and certify their status as a Passive NFFE on an IRS Form W-8 (or other self-certification) to avoid 30 percent FATCA withholding on certain U.S. source payment payments to it.

The UAE IGA also may require, depending on an entity's current business procedures, regulated entities to alter their business procedures to allow for the collection and refreshing of information on clients. For more details regarding how the UAE IGA will affect regulated entities, please see Part 2 of this guidance note.

1.5 How will FATCA affect UAE Unregulated Entities?

Under UAE Law all entities within the UAE should ensure they are compliant with the US-UAE IGA. Certain Regulated entities within the UAE have been provided with specific guidance from their respective Regulators to assist them with their FATCA implementation and compliance. However, not all entities within the UAE are regulated by the Central Bank, Insurance Authority, Securities and Commodities Authority or the Dubai Financial Services Authority.

Entities that are not regulated by these Regulators (hereafter "Unregulated Entities") should use these Guidance Notes together with the US-UAE IGA to understand their FATCA compliance requirements. Broadly, such entities will need to determine whether they are a Financial Institution or a Non-Financial Foreign Entity and following that determination comply with the requirements of the US-UAE IGA. Financial Institutions, in particular (unless exempt or certain deemed compliant categories), have registration; due diligence and reporting requirements that they must fulfil. In addition, Direct Reporting NFFEs shall have registration and reporting requirements that they must also fulfil. Direct Reporting NFFEs are NFFEs that have decided to report information directly to the IRS instead of identifying their owners to counterparties.

Unregulated Entities which have reporting obligations under FATCA will be required to report reportable information using the Ministry of Finance's Reporting Portal. The Ministry of Finance's Reporting Portal can be accessed via the following link: https://moffatca.mof.gov.ae/fatca/.

Detailed instructions in relation to reporting may be found on the MOF's Reporting Portal. Each entity using the MOF's Reporting Portal will have to register on the portal and will be provided with a user ID and password by the MOF.

Unregulated Entities licensed by the Local Emirate Development Economic Departments will be governed by the Federal Ministry of Economy. The Federal Ministry of Economy shall be the Regulatory Authority responsible for the compliance and enforcement of FATCA of these entities.

All Unregulated Entities licensed in the Free Zones will be governed by their respective Free Zone Regulatory Authority. Each Free Zone Regulatory Authority shall be responsible for the compliance and enforcement of FATCA of its entities.

1.6 What if an entity or account holder does not comply with the UAE IGA?

Reporting Financial Institutions must comply with the reporting requirements of the UAE IGA. The UAE IGA contains provisions for managing non-compliance and has separate procedures for "minor and administrative errors" and "significant non-compliance". With respect to "minor and administrative errors," the IRS must notify the UAE Ministry of Finance when it believes there has been a minor or administrative error that has led to incorrect or incomplete information reporting or resulted in other infringement of the UAE IGA. Each regulated entity should contact its regulator if there are any questions as to penalties may apply. In cases of "significant non-compliance," the IRS must notify the UAE Ministry of Finance, which will apply its own domestic law to address the non-compliance. The UAE Ministry of Finance will also engage Reporting Financial Institutions to discuss the areas of non-compliance, solutions to prevent further non-compliance and agree to measures and a timetable to resolve significant non-compliance. When a Reporting Financial Institution is non-compliant and the UAE IGA procedures do not cure the deficiency within 18 months after notification of significant non-compliance is first provided by the IRS, the United States will include such Financial Institution on the Nonparticipating Financial Institutions list, subjecting such entity to FATCA withholding.

The UAE IGA also provides that the US will not require a Reporting Financial Institution to withhold tax with respect to an account held by a "**Recalcitrant Account Holder**" or to close such accounts, so long as the IRS receives the relevant information with respect to each account.

1.7 Purpose and outline of these Guidance Notes

These following Guidance Notes are intended to provide guidance on how FATCA and the UAE IGA will affect UAE Financial Institutions, UAE entities that need to certify their FATCA status and entities that undertake FATCA obligations on behalf of Financial Institutions. Each of the Central Bank, Insurance Authority and the Securities and Commodities Authority has prepared a separate, largely consistent, Guidance Note that focuses on issues specific to entities it regulates and other regulator-specific concerns.

A Financial Institution must comply with the regulations in force at the time with reference to this guidance.

Certain issues may not be covered in these Guidance Notes where the law and regulations are considered to be sufficiently clear. Where topics are covered, the Guidance Notes are not exhaustive but do seek to convey principles which can be applied to various situations and circumstances. If further guidance is required, it may be sought from the relevant regulator. Information regarding FATCA may also be found at the IRS website, at http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA.

For purposes of FATCA, entities organized in the UAE will generally be governed by UAE law and by the UAE IGA. The FATCA regulations also apply to the extent provided in the Guidance Notes, and may also provide guidance even if not directly applicable. These Guidance Notes do not contain a complete analysis of all the provisions of the Code, the FATCA Regulations or the UAE IGA that may be relevant to a particular entity in the UAE. These Guidance Notes are a living document that may be amended from time to time by the relevant regulator or the UAE Ministry of Finance and by the other regulators who have provided separate Guidance Notes herein. Accordingly, valid suggestions for alterations and amendments arising from the use of the Guidance Notes may be raised with the UAE Ministry of Finance.

Compliance under FATCA for any particular entity in the UAE is fact specific and the recommendations in these Guidance Notes are subject to change pending the final UAE IGA, UAE implementing legislation, and any authoritative guidance from the US or the UAE. Consequently, these Guidance Notes should not be used on their own to ensure compliance with FATCA, but should be read in conjunction with the final UAE IGA, the FATCA Regulations, and UAE implementing legislation, and any updates provided by the US Treasury.

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Chapter 2

Guidance Notes for Banking Sector

2 CHAPTER 2 – Guidance Notes for Banking Sector

2.1 CHAPTER 2 – PART 1 - DETAILED GUIDANCE NOTES

2.1.1 OUTLINE OF THIS PART

This Part outlines how entities will be classified under the UAE IGA. It outlines the circumstances in which entities will need to carry out due diligence procedures, or reporting obligations, under the UAE IGA. It also includes some procedural guidance; a list of compliance procedures is contained in Part 3 – the Checklist.

When determining an entity's FATCA obligations, a good starting point is to determine if the entity is a **"Financial Institution"** because this will help determine the specific obligations that the entity has under FATCA. See Section 1 regarding Financial Institutions.

Any reference in this Part to a "Section" is to one of the other Sections within this Part.

2.1.2 CONTENTS OF THIS PART

This Part contains:

Flowchart 1 - For assessing the obligations of "Financial Institutions" under the UAE IGA.

Flowchart 2 - For assessing the obligations of "NFFEs" under the UAE IGA.

Section 1 - Is the entity a "Financial Institution"?

Section 2 - Is a Financial Institution a "Reporting" Financial Institution?

Section 3 - Is a Financial Institution a "Non-Reporting" Financial Institution?

Section 4 - Does the Financial Institution maintain "Financial Accounts"?

Section 5 - Are the Financial Accounts "US Reportable Accounts"?

Section 6 - What Due Diligence Requirements need to be met?

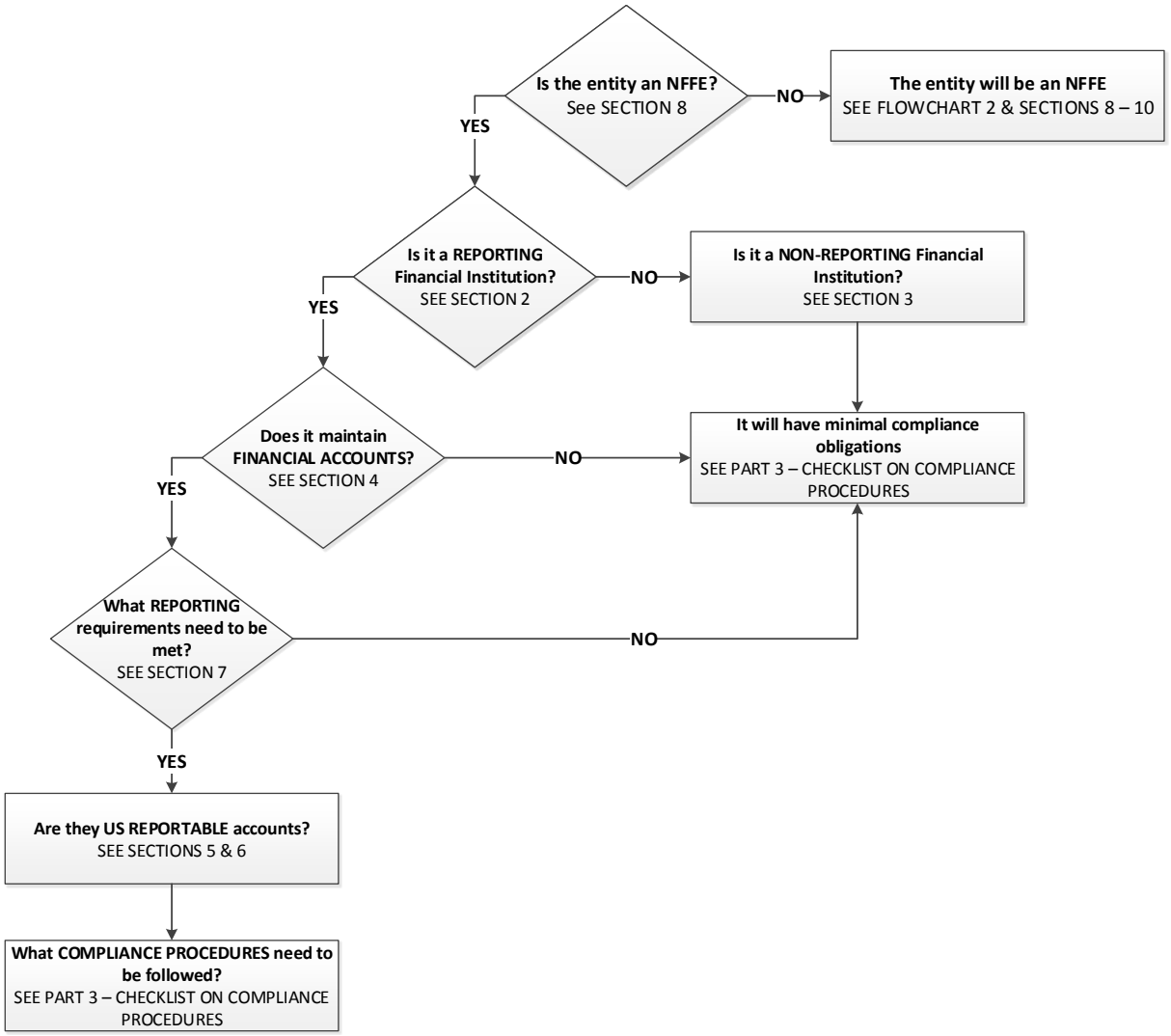
Section 7 - What Reporting Requirements need to be met?

Section 8 - Is the entity a "NFFE"?

Section 9 - Is it an "Active" NFFE?

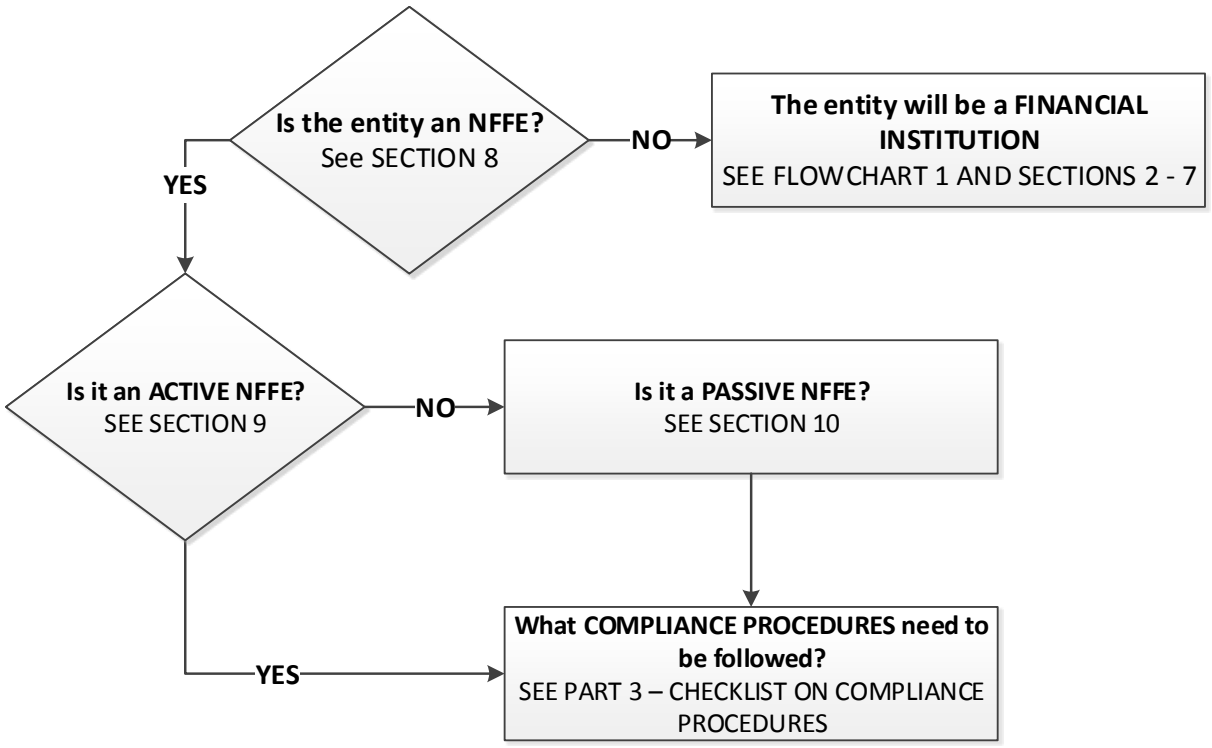
Section 10 - Is it a "Passive" NFFE?

2.1.3 Flowchart 1 – For Assessing the Obligations of Financial Institutions



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

2.1.4 Flowchart 2 – For Assessing the Obligations of NFFEs



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

2.1.5 SECTION 1 - IS THE ENTITY A FINANCIAL INSTITUTION

The UAE IGA imposes certain due diligence, reporting and other obligations on Financial Institutions.

A "Financial Institution", for these purposes:

- Meets certain residence requirements – see Section 1.1 below; and
- Is a certain type of entity, as defined in the UAE IGA – see Section 1.2 below.

2.1.5.1 Residence Requirements

The UAE IGA will apply to:

a) Financial Institutions, as defined below, organized under the laws of the UAE; and
b) branches, located in the UAE, of non-UAE Financial Institutions.

It will not apply to branches of UAE Financial Institutions located outside of the UAE.

For these purposes, organized under the laws of the UAE means the following:

- For a company, if the company is incorporated in the UAE.
- For a partnership, if the partnership is established in the UAE.

2.1.5.2 Type of Entity

An entity will be a UAE Financial Institution if it is one of the following types of entities:

a) **Depository Institution** – means any entity that accepts deposits in the ordinary course of a banking or similar business. Depository institutions are usually banks or similar institutions. An entity is not considered to be engaged in a banking or similar business if it solely provides asset based finance services or accepts deposits solely from persons as collateral or security pursuant to a sale or lease of property, a loan secured by property, or pursuant to similar financing arrangements between that entity and the person making the deposit.

   The following would not be expected to fall within the definition of Depository Institution:

   - Insurance brokers
   - Attorneys at law
   - Factoring or invoice discounting businesses
   - Entities that complete money transfers by instructing agents to transmit funds

b) **Custodial Institution** – means any entity that holds, as a "substantial portion" of its business, financial assets for the account of others. Custodial institutions can include custodial banks, trust companies or brokers, in certain circumstances.

   An entity will hold financial assets for the account of others as a "substantial portion" of its business if its gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of its total gross income over, in general

terms, a specified 3-year period (or over the period that the entity has been in existence, if that is less than 3 years). The relevant three year period is the entity's accounting period.

The term income attributable to holding financial assets and related financial services means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

An execution only broker that simply executes trading instructions, or receives and transmits such instructions to another executing broker, will not hold assets for the account of others and should not be a custodial institution (although it is possible that it could be an investment entity).

Entities that only provide advice, do not hold, and will not hold financial assets; and therefore have no financial accounts should not be treated as custodial institutions. As noted above, the term "income attributable to holding financial assets" from financial assets is limited to providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

c) **Investment Entity** – means any entity that:
   i. primarily conducts a business (or is managed by an entity that conducts a business) of one or more of the following activities or operations, for or on behalf of a customer:
      - trading in money market instruments (such as checks, bills, certificates of deposit and derivatives), foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading;
      - individual and collective portfolio management; or
      - otherwise investing, administering, or managing funds or money on behalf of other persons, or
   ii. the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity described in (a) above. For this paragraph (c), "primarily" means such income exceeds 50 percent of the entity's gross income during the shorter of the prior three year period or the period in which the entity has been in existence.

   Investment entities can include investment funds and other fund structures, in certain circumstances. Generally, entities that are professionally managed will be treated as Investment Entities because its managing entity is an Investment Entity.

d) **Specified Insurance Company** – means any insurance company (or the holding company of such insurance company) that issues (or writes) or is obliged to make payments in respect of a Cash Value Insurance Contract or an Annuity Contract.
   - "insurance company" means (under the Treasury Regulations) an entity or arrangement:
     i. that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;

ii. the gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or

iii. the aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

2.1.5.3 Definitions from FATCA Regulations

In accordance with Article 4 paragraph 7 of the UAE IGA, the UAE permits Financial Institutions to use a definition in the FATCA Regulations in lieu of a corresponding definition in the UAE IGA, provided that such application would not frustrate the purposes of the UAE IGA.

2.1.6 SECTION 2 - IS A FINANCIAL INSTITUTION A REPORTING FINANCIAL INSTITUTION

2.1.6.1 Overview

The concept of a "**Reporting Financial Institution**" is designed to identify Financial Institutions that must identify, and report on, certain of their accounts and account holders (those that have a relevant connection to the US (for details, see 2.1.9)).

A Financial Institution is a "UAE Reporting Financial Institution" if it does not fall within any of the exceptions in 2.1.7, which deals with "**Non-Reporting Financial Institutions**". In other words, Financial Institutions are Reporting Financial Institutions, UNLESS they are Non-Reporting Financial Institutions.

UAE Reporting Financial Institutions will generally have to register with the IRS for a **Global Intermediary Identification Number ("GIIN").** A summary of the registration process is at Part 5, Registration, and at Part 3, the Checklist on compliance requirements and procedures.

Most of the subsequent due diligence, reporting and compliance obligations imposed by the UAE IGA fall on UAE Reporting Financial Institutions (rather than Non-Reporting Financial Institutions). See Sections 4 – 7 and Part 4 for details on Due Diligence and Part 3, the Checklist, for compliance requirements and procedures.

2.1.6.2 Related Entities

a) IGA

In accordance with the UAE IGA, an Entity is a "Related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control (the "**related entity group**"). For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, the UAE Ministry of Finance will not treat an Entity as a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 471(e)(2) of the Code.

b) Exceptions

Interaffiliate FFIs. Pursuant to Annex I, Art. VI(4)(i), an "**Excepted NFFE**" is not a Financial Institution. Excepted NFFEs include, but are not limited to, an "Excepted inter-affiliate FFI." An entity that is a member of a related entity group will not be a Financial Institution if:

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- The entity does not hold an account with or receive US source withholdable payments from any withholding agent other than a member of its related entity group;
- The entity does not make US source withholdable payments to any person other than to members of its related entity group that are not limited FIs or limited branches; and
- 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 Financial Institution, including a member of its related entity group.

Investment entities. Investment Entities which have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the UAE IGA. In general, a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes of establishing a performance record before selling interests in the entity to unrelated investors, or for purposes otherwise deemed appropriate by the manager.

Specifically, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest in excess of 50 percent of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; and
- in the case of an equity interest that has been held for over three years, its value is less than 50 percent of the total value of the stock of the Investment Entity.

c) Why do related entities matter?

Related Entities are relevant in the context of the obligations placed on UAE Financial Institutions, in respect of any Related Entities that are Non-Participating Financial Institutions ("**NPFI**").

Where a UAE Financial Institution has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UAE Financial Institution must treat the related entity as an NPFI and fulfill obligations in respect of that NPFI as set out in Article 4 of the UAE IGA.

2.1.7 SECTION 3 - IS THE FINANCIAL INSTITUTION A NON-REPORTING FINANCIAL INSTITUTION?

The concept of a "**Non-Reporting Financial Institution**" is designed to identify Financial Institutions that do not have the characteristics, or hold the accounts with which FATCA and the implementing IGAs are most concerned.

Consequently, most Non-Reporting Financial Institutions will have no, or will have few, obligations under the UAE IGA.

Non-Reporting Financial Institutions are either Financial Institutions, or certain other legal persons or legal arrangements that are resident in the UAE, that fall into one of two categories:

- "Annex II" Non-Reporting Financial Institutions – those that are listed in Annex II of the UAE IGA – see 3.1 below; or
- "FATCA Regulations" Non-Reporting Financial Institutions – those that meet certain criteria under the FATCA Regulations – see 3.2 below.

Exempt Beneficial Owners and most Non-Reporting UAE Financial Institutions will not need to register with the IRS or obtain a GIIN (save for certain limited exceptions listed herein). They will need to provide certain documentation to withholding agents to certify their status.

Some Non-Reporting UAE Financial Institutions, referred to as Registered Deemed Compliant, will be obliged to register with the IRS and obtain a GIIN.

See Part 5, Registration, for further details.

2.1.7.1 Non-Reporting Financial Institutions

A Non-Reporting UAE Financial Institution is any UAE Financial Institution that falls within the exemptions of Annex II of the UAE IGA or of the FATCA Regulations or one which otherwise qualifies as:

- An Exempt Beneficial Owner (Section 3.1(a))
- A Deemed Compliant Financial Institution (Section 3.1(b))
- An Owner Documented Financial Institution (Section 3.3)

There are two main types of Non-Reporting Financial Institutions contained in Annex II. These are:

a) **"Exempt Beneficial Owners"**, which include Non-Fund and Fund Exempt Beneficial Owners:

i. Non-Funds. Annex II, Article I.

- The UAE Government – at a national, state or local level – or any of its wholly owned agencies (including "integral parts", "controlled entities" (in certain circumstances), and political subdivisions of the UAE);
- Certain international organizations and intergovernmental organizations;
- The UAE Central Bank ("CB");

The first three types of Exempt Beneficial Owners will not be treated as such with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

ii. Funds. Annex II, Article II.

- UAE retirement funds that are established to provide retirement, disability or death benefits to employees, and that meet specified participation, contribution, regulatory and tax requirements in the UAE;
- Certain pension funds established in the UAE by an Exempt Beneficial Owner; and
- Investment Entities wholly owned by Exempt Beneficial Owners. Investment Entities are Exempt Beneficial Owners in circumstances in which each direct holder of an equity interest is an Exempt Beneficial Owner and each direct holder of a debt interest is either a Depository Institution or an Exempt Beneficial Owner (see Section 4.1 below, for the meaning of equity and debt interests).

b) **"Deemed-Compliant Financial Institutions"**, which include certain small or limited scope Financial Institutions and certain Investment Entities, as listed below:

Certain Small or Limited Scope Financial Institutions. Annex II Article III.

i. Financial Institutions with a Local Client Base.

These are Financial Institutions that are based and regulated in the UAE, that generally do not solicit non-UAE clients and, with effect from 1 July 2014, have procedures in place, consistent with those outlined in Annex I of the UAE IGA, to identify various accounts that must be reported or disclosed under the UAE IGA.

Annex II lists the classification criteria for Local Client Base Financial Institutions in detail. The criteria are lengthy and complex; any institution that may think it falls within the criteria should seek specific professional advice. See UAE Annex II, Article III(A) for specific requirements.

A Financial Institution with a Local Client Base that has a reporting obligation, because it has some Reportable Accounts, will require a GIIN and will need to register.

ii. Local UAE regulated banks.

These are Local UAE regulated banks that do not hold more than $175 million in assets on their balance sheets (or more than $500 million on consolidated balance sheets with related entities) and that generally do not solicit non-UAE clients. See UAE Annex II Article III(B) for specific requirements;

iii. Certain UAE Financial Institutions that have only low-value accounts.

In order to qualify, the Financial Institution must satisfy three requirements:

- it must not be an Investment Entity (as defined in Section 1);
- no Financial Account maintained by the Financial Institution or any related entity has a balance or value in excess of $50,000, applying certain rules for aggregating account values and translating currencies; and
- the Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any related entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

Companies that would otherwise be "Specified Insurance Companies" may qualify for this exception if they satisfy the three requirements listed above.

When calculating account balances, an Annuity Contract should be treated as a Financial Account unless it is one of certain noninvestment-linked,

nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit. See Section 4.1 for more details on Financial Accounts.

iv. Qualified Credit Card Issuer.

Certain UAE Financial Institutions that are Financial Institutions solely because they issue credit cards (and such institutions implement policies and procedures to prevent a customer deposit in excess of $50,000 or to ensure any amount in excess of $50,000 is returned to the customer within 60 days).

Certain Investment Entities. Annex II Article IV.

In addition, there are further special rules that apply to certain Financial Institutions that are Investment Entities (as defined in 2.1.5Section 1). In general terms, an Investment Entity may be treated as Deemed-Compliant as follows:

v. Trustee-Documented Trust.

The Entity has a trustee that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

vi. Sponsored Investment Entity and Controlled Foreign Corporation.

The Entity has a sponsor, or parent company that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

A Sponsored Investment Entity must be registered by its sponsor if it has Reportable Accounts.

vii. Sponsored. Closely Held Investment Vehicle.

The Entity has a sponsor that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

viii. Investment Advisors and Investment Managers.

The entity only provides investment advisory services, or investment management services, to customers, for the purposes of their investments deposited with other qualifying Financial Institutions (which would themselves be expected to comply with the FATCA Regulations and the UAE IGA).

An Investment Entity will qualify if it (1) renders investment advice to, or on behalf, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

ix. Collective Investment Vehicle.

Certain UAE-regulated collective investment schemes established in the UAE that are regulated as collective investment vehicles, and that are held by certain classes of owners.

These rules, particularly those relating to collective investment schemes, are detailed and complex. Any Investment Entity that believes it may qualify under the rules, as a Deemed-Compliant Financial Institution, should seek specific professional advice.

2.1.7.2 Registered Deemed Compliant Financial Institutions

The "Registered Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Non-reporting members of Participating FFI groups. See FATCA Regulations § 1.1471-5 (f)(1)(i)(B).
b) Qualified Collective Investment Vehicles. See FATCA Regulations § 1.1471-5(f)(1)(i)(C))
c) Restricted Funds. See FATCA Regulations § 1.1471-5(f)(1)(i)(D)).
d) Qualified credit card issuers. See FATCA Regulations § 1.1471-5(f)(1)(i)(E).
e) Sponsored Investment Entities. See FATCA Regulations § 1.1471-5(f)(1)(i)(F).

2.1.7.3 Certified Deemed Compliant Financial Institutions

The "Certified Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Limited life debt investment entities. See FATCA Regulations § 1.1471-5(f)(2)(iv).

2.1.7.4 Owner Document Financial Institution

See FATCA Regulations § 1.1471-5(f)(3)).

This category is intended to reduce the burden of meeting the obligations under FATCA for closely held passive investment vehicles that fall within the definition of Investment Entity. It is not, however, restricted to those cases.

In order to qualify as an "Owner Document Financial Institution", the Investment Entity must satisfy the following:

- It must not maintain a Financial Account for any Non-Participating Financial Institution;
- It must not be owned by, nor be a member of, a group of Related Entities with any member that is a Depository Institution, Custodial Institution or Specified Insurance Company (i.e. it can only be affiliated to other Investment Entities); and
- It must provide the required documentation regarding its owners and agree to notify any changes in its circumstances to the Financial Institution that is undertaking the reporting obligations on its behalf.

2.1.8 SECTION 4 - DOES THE FINANCIAL INSTITUTION MAINTAIN FINANCIAL ACCOUNTS?

The concept of "**Financial Accounts**" is broadly defined and may include products or obligations that would not normally be regarded as an "account" under UAE law or in everyday commercial use, but which could act a substitute for an "account". The definition is designed to require Financial Institutions to monitor their customer accounts.

A Financial Institution, unless otherwise exempt, must identify:

- Whether it maintains any Financial Accounts
- The Type of Financial Accounts maintained
- Whether the account holder of those Financial Accounts is a Specified US Person or a Passive NFFE with one or more Controlling Persons who are Specified US Persons.

However, not all accounts held by a Financial Institution will be Financial Accounts for these purposes. Some products are exempt from the definition of Financial Account. See Section 4.2.

Where accounts are held by persons that have a relevant connection to the US (for details, see 2.1.9) at any point during the reportable period, Financial Institutions will be obliged to report them (for details, see 2.1.11).

If a Financial Institution:

- does not maintain any Financial Accounts – as defined below in Section 4.1; or
- only maintains accounts that are "Exempt Accounts" under Annex II of the UAE IGA – see Section 4.2 below;

then, once it has obtained a GIIN, it will generally have minimal further compliance obligations under the FATCA Regulations or the UAE IGA (see Part 3, the Checklist, for details on compliance requirements and procedures); however, **nil reporting is required** (i.e., a Financial Institution will be required to report that it does not maintain any Financial Accounts or only maintains Exempt Accounts).

2.1.8.1 "Financial Accounts"

"Financial Accounts" are generally any accounts maintained by a Financial Institution.

The type of Financial Institution (defined at 2.1.5) may determine the type of Financial Account:

a) "Depository Accounts" broadly include commercial or savings accounts, or other debts, maintained by a Financial Institution in the ordinary course of its business;
b) "Custodial Accounts" broadly include accounts that hold, for the benefit of another person, financial instruments, such as shares, loan notes, bonds, options and derivative instruments, and may include other arrangements pursuant to which an obligation exists to return cash or assets to another;
c) Financial Accounts, for Financial Institutions that are Investment Entities, will include "equity or debt interests" – generally shares or debt interests – in the Financial Institution, other than interests that are regularly traded on certain established security markets.

   An interest is "regularly traded" if there is a meaningful volume of trading with respect to that interest on an ongoing basis. Any interest treated as "regularly traded" pursuant to

FATCA Regulations §1.1471-5(b)(3)(iv) shall be treated as regularly traded for purposes of the UAE IGA.

In the case of partnerships, "equity interest" means either a capital or profits interest in the partnership. In the case of trusts, "equity interest" means certain interests held by persons over some, or all, of the trusts, or by persons controlling the trusts. (For Financial Institutions that are not Investment Entities, equity or debt interests in the Financial Institutions will only be Financial Accounts in certain limited circumstances.)

d) Financial Accounts, for Financial Institutions that are Specified Insurance Companies, will generally include Cash Value Insurance Contracts (in short, insurance contracts that have a cash value greater than $50,000) and Annuity Contracts (in short, contracts under which payments are made, over a period of time, based on the life expectancy of specified persons). However, a non-investment linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded under Annex II is not considered a financial account.

- "Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than $50,000. The term "Cash Value" generally means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract.

- Notwithstanding the foregoing, the term Cash Value does not include an amount payable under an Insurance Contract as:

  i. a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  ii. 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 under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
  iii. Solely by reason of the death of an individual insured under a life insurance contract;
  iv. As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph 1 above;
  v. As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract; and
  vi. Death benefits are excluded from cash value.

- Once a policy becomes subject to a claim, it does not become a New Account.

- The term "Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to

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

- Pension annuities, immediate needs annuities, periodic payment orders and reinsurance of annuity contracts between two insurance companies are excluded from this definition.

2.1.8.2 "Exempt Accounts"

Certain types of accounts are exempt, under Annex II of the UAE IGA, from the definition of Financial Accounts. If the accounts are exempt under Annex II, the Financial Institution will need to report that it only maintains Exempt Accounts. "Exempt Accounts" include:

a) Certain savings accounts maintained in the UAE, including savings, retirement and pension accounts, that all meet specified regulatory and tax conditions;

   Consideration should be given to the criteria set out in Annex II of the UAE IGA in relation to savings, retirement and pension accounts. There are currently no tax favored accounts or products identified as being exempt. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

b) Certain term life insurance contracts maintained in the UAE;

   More specifically, Exempt Accounts include a life insurance contract maintained in the UAE with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

   i. periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
   ii. the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
   iii. the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
   iv. the contract is not held by a transferee for value.

c) Accounts maintained in the UAE that are held solely by an estate, if the documentation for the account includes a copy of a will or death certificate;
d) Certain escrow accounts maintained in the UAE, established in connection with any of the following:
   (1) a court order or judgment
   (2) a sale, exchange or lease of real or personal property, provided that the account satisfies the following requirements:
      a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
e) The account is not associated with a credit card account.

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

c) Certain accounts, maintained in the UAE, that are excluded from the definition of Financial Account, under an agreement between the US and another country to implement the FATCA Regulations in that country, and that meet certain further conditions.

This exception is meant to capture accounts or products that are excluded under another country's IGA and for which the UAE has internal regulations that provide equal assurance that the account or product presents a low-risk of tax evasion. There are currently no accounts or products identified by the UAE as being exempt under this exception. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

2.1.9 SECTION 5 - ARE THE FINANCIAL ACCOUNTS US REPORTABLE ACCOUNTS?

Under the UAE IGA, a Financial Institution needs to report Financial Accounts that are "**US Reportable Accounts**". These are, broadly, accounts held by persons that have a relevant connection with the US. The details that need to be reported are at 2.1.11.

A "US Reportable Account" is a Financial Account maintained by a Reporting Financial Institution and held:

- by one or more "**Specified US Persons**" – see Section 5.1 below; or
- by a "**Non-US Entity**" that is controlled by one or more Specified US Persons – see Section 5.2 below.

An account may be established as being a "US Reportable Account" if, after necessary due diligence is carried out on the account (for details, see 2.1.10 and Part 4), US indicia (which are, essentially, broad indications of connections to the US) are uncovered – see Section 5.3 below.

2.1.9.1 Financial Accounts held by "Specified US Persons"

The term "**Specified US Person"** is broad and will essentially cover any "US Person", which is defined as a:

a) US citizen or resident individual;
b) partnership or corporation organized in the US, or under the laws of the US (or any of its States); or
c) trust, if, in general terms, a US court has jurisdiction over it and it is controlled by US persons.

Accounts held by any one or more of those persons, will generally be reportable.

Certain persons are specifically excluded from being "Specified US Persons", so accounts held by them will not be reportable. These include:

Companies whose stock is regularly traded on an established securities market and, in general terms, members of their corporate groups;

a) the US, or any of its States or specified US Territories, or wholly owned governmental agencies or organizations;
b) certain:
    - tax exempt organizations;
    - retirement plans;
    - banks, real estate trusts, regulated investment companies, tax exempt trusts and common trust funds; and
    - securities, commodities or derivatives dealers or brokers;

    all as specifically defined under relevant provisions of the Code and FATCA Regulations, and as set forth in the UAE IGA.

2.1.9.2 Financial Accounts held by a "Non-US Entity" where one or more Controlling Persons are Specified US Persons

The objective behind these provisions is to identify Financial Accounts that are controlled by US persons, even if they are actually held by non-US persons. If so, they will generally be reportable.

A "**Non-US Entity**" is any legal person (such as an individual, or a corporation), or legal arrangement (such as a trust), that is not a US Person.

A "**Controlling Person**" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012) (which provide that a controlling ownership interest depends on the ownership structure of the company). It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 percent). Accordingly, if a non-US Financial Account has a Controlling Person who is a US natural person, it will generally be reportable.

2.1.9.3 Financial Accounts with US indicia discovered after due diligence

As noted above, a Financial Institution must carry out necessary due diligence procedures on its accounts. Section 6 outlines the details of the due diligence procedures required in relation to the size and date of creation of various accounts. Part 4, Due Diligence, gives a summary of the obligations outlined at section 6 in the form of two flowcharts and a checklist.

If, after carrying out relevant due diligence into an account, the Financial Institution discovers any US indicia, it may need to (depending on the size and date of creation of the account) report the account. Any of the following US indicia may make the account reportable:

a) Identity of the account holder as a US citizen or resident;
b) Unambiguous indication of a US place of birth;
c) Indication of incorporation or organization in the US with respect to entities;
d) A current US mailing or residence address, including a US post office box;
e) A current US telephone number;
f) Standing instructions to transfer funds to an account maintained in the US;
g) A currently effective power of attorney or signatory granted to a person with a US address; or
h) A US "in care of", or "hold mail" address, that is the sole address that the Reporting Financial Institution has on file for the Account Holder.

The effect of the use of these US indicia is to considerably broaden the ambit of the FATCA Regulations and the UAE IGA, so that they can apply even if account holders have fairly loose or historic connections with the US. Even if an account holder is not specifically a US citizen or resident individual (defined at Section 5.1 above), the account may be reportable if any of these US indicia are found and not cured.

2.1.10 SECTION 6 - WHAT DUE DILIGENCE REQUIREMENTS MUST BE MET?

Annex I of the UAE IGA lists the due diligence obligations of Financial Institutions.

The broad purpose is to ensure that Financial Institutions identify Financial Accounts that are US Reportable Accounts (that are held by persons that have a relevant connection to the US (for details, see 2.1.9)), in order to be able to report on them where necessary.

The due diligence obligations fall into two main categories:

- Procedures for individual accounts (accounts held by human persons) – see Section 6.1 below and Flowchart 3 at Part 4; and
- Procedures for entity accounts (accounts held by legal persons, such as companies and partnerships) – see Section 6.2 below and Flowchart 4 at Part 4.

The due diligence processes for identification of account holders require one or more of these three processes to be carried out by Financial Institutions with respect to its accounts:

- Indicia search: searching for relevant indicia by reference to documentation or information held or collected in accordance with opening or maintaining an account (for details, see Section 5.3).
- Self-certification or documentary evidence: requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable.
- Publicly available information (for entities only).

The due diligence procedures are very significant and very detailed. Financial Institutions should seek specific professional advice on how the rules will apply to them; the information in this Section is a general summary only. Financial Institutions may also want to consider collecting additional information (including, for example, tax residence, date of birth and place of birth) from account holders in anticipation of the implementation of the OECD Common Reporting Standard.

As detailed below, Financial Institutions should not report any accounts that fall below the thresholds set forth in Annex I of the UAE IGA.

2.1.10.1 Due diligence procedures for individual accounts (Flowchart 3)

The due diligence procedures for individual accounts aim to identify accounts that are held by human persons with a relevant connection to the US (for details, see 2.1.9).

To carry out the due diligence correctly, a Financial Institution will need to group its individual accounts into 2 general categories:

- "Pre-existing Individual Accounts", which are accounts held by individuals as of 30 June 2014 – see (a) below; and
- "New Individual Accounts", which are accounts opened by individuals on or after 1 July 2014 – see (b) below;

a) Pre-existing Individual Accounts

Pre-existing Individual Accounts can be divided into 3 categories:

- Small accounts, which have a balance or value of $50,000 or less (or $250,000 or less, in the case of cash value insurance contracts or annuity contracts) as of 30 June 2014.

  These do not need to be reviewed, identified or reported, unless the accounts later become High Value Accounts.

- "Lower Value Accounts", which have a balance or value that exceeds $50,000 (or $250,000, in the case of cash value insurance contracts or annuity contracts) and that does not exceed $1,000,000 as of 30 June 2014.

  On these accounts, a Financial Institution must carry out, by 30 June 2016, an electronic record search, to identify US indicia. If no US indicia are found after the electronic record search, no further action is required (unless the account becomes a High Value Account or is later associated with one or more US indicia). If any one of the US indicia is discovered, then the account is, in principle, reportable (under the procedures at Section 7) and self-certification should be requested from the account holder.

  Even so, the Financial Institution may elect not to report the account, if the account holder provides various documents, certificates and evidence (i.e., self-certification, which may be on an IRS Form W-8 or W-9) about his/her status, essentially to prove that he/she is in fact not a US citizen or US resident for tax purposes. The UAE IGA contains detailed rules on the evidence that the Financial Institution must require from the account holder.

- "High Value Accounts", which are accounts with a balance or value that exceeds $1,000,000 on 30 June 2014, or on 31 December of any subsequent year.

  On these accounts, a Financial Institution must carry out an electronic records search to find any of the US indicia listed above. If the Financial Institution's electronic search does not capture all of the required information, the Financial Institution must also review specified historic paper records, for the previous 5 years (including Anti-Money Laundering and "Know Your Client Information"). The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last five years: (i) the most recent documentary evidence collected with respect to the account, (ii) the most recent account opening contract or documentation, (iii) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes, (iv) any power of attorney or signature authority forms currently in effect, and (v) and standing instruction to transfer funds currently in effect. These should be reviewed for any US indicia.

  The Financial Institution must also find out, from the account holder's relationship manager, whether the relationship manager actually knows that the account holder is a US person as actual knowledge by the relationship manager will override the results of any inconclusive electronic/paper search. Records of electronic searches, requests made and responses to the relationship manager inquiries should be retained for six years following the end of the year in which the due diligence was undertaken.

  If no US indicia are found, following all of these searches, then the Financial Institution will not need to report the account (unless the account is later associated with one or more US indicia).

  If US indicia are found, the account will be a US Reportable Account unless the Financial Institution requests and receives specified evidence from the account holder that he/she is not a US citizen or US tax resident. Where the indicia found is an unambiguous US place of birth then the account needs to be reported unless

the Financial Institution obtains or currently maintains a record of all of the following: (i) a self-certification showing that the account holder is neither a US citizen nor a US resident for US tax purposes, (ii) evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification) and (iii) a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of the reason the account holder does not have such a certificate or the reason the account holder did not obtain US citizenship at birth.

Where the indicia includes a current US mailing or residence address, or one or more US telephone numbers that are the only telephone numbers associated with the account, then the account must be reported unless the Financial Institution obtains or currently maintains a record of: (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes and (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

Where the indicia found contains standing instructions to transfer funds to an account maintained in the United States (but has a non-US telephone number also associated with the account), the account must be reported unless the Financial Institution obtains or currently maintains a record of (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes or (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

The review of High Value Accounts must be carried out by 30 June 2015, unless the accounts later become High Value Accounts, in which case, the accounts must be reviewed, broadly, within 6 months after the end of the calendar year in which they became High Value.

b) New Individual Accounts

Unless a Financial Institution elects to do so, it will not generally need to perform a due diligence review with respect to New Individual Accounts with a value of $50,000 or less at the end of any calendar year, or other appropriate reporting period. Accounts below this threshold should not be reported.

For all other New Individual Accounts, the Financial Institution must, on opening the account, obtain self-certification from the account holder, to determine whether the individual is US tax resident. The Financial Institution must also confirm the reasonableness of the self-certification.

If the self-certification establishes that the account holder is a US tax resident, then the Financial Institution must report the account. If, as a result of a change of circumstances, the Financial Institution knows, or has reason to know, that the original self-certification has become inadequate, or unreliable, the Financial Institution must seek further self-certification. If it is then unavailable, the Financial Institution must report the account.

2.1.10.2 Due diligence procedures for entity accounts (Flowchart 4)

The due diligence procedures for entity accounts (those held by legal persons such as companies and partnerships) are more complex than the procedures for accounts held by individuals.

In particular, the UAE IGA creates several categories of entities, based on definitions in the FATCA Regulations.

In general terms, to carry out the due diligence correctly, a Financial Institution will need to group its entity accounts into two categories:

- "Pre-existing Entity Accounts", which are accounts held by entities as of 30 June 2014 (or 31 December 2014, with certain conditions)– see (a) below; and
- "New Entity Accounts", which are accounts opened by entities on or after 1 July 2014 – see (b) below.

a) Pre-Existing Entity Accounts

Pre-existing Entity Accounts can be divided into the two categories below. (For these purposes, Annex I and Notice 2014-33 allow an Entity Account that is issued, opened or executed on or after 1 July 2014, and before 1 January 2015, to be treated as a pre-existing account (with certain conditions), at the discretion of the Financial Institution).

The two categories of Pre-Existing Entity Accounts are:

- Small accounts, which have a balance or value of $250,000 or less, as of 30 June 2014.

  These do not need to be reviewed until the account balance exceeds $1,000,000.

- All other entity accounts, which must be reviewed. These will consist of accounts:
  - i. with a balance or value that exceeds $250,000 as of 30 June 2014 – which must be reviewed by 30 June 2016; or
  - ii. with a balance or value that does not exceed $250,000 as of 30 June 2014 but that does exceed $1,000,000 on certain specified dates going forward – which must be reviewed within 6 months after the end of the calendar year in which the account exceeded $1,000,000.

The specified review procedures differ from those specified for individual accounts. For pre-existing entity accounts, the Financial Institution must, for example, review information maintained for regulatory or customer relationship purposes (including Anti-Money Laundering or "Know Your Client" information). Beyond that, the review procedures will vary, depending on the account holder, so Financial Institutions should seek specific professional advice on the exact review procedures they must follow.

The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

i. **Accounts held by Specified US Persons** (essentially, all US persons, with some exceptions, as outlined in Section 5 above).

   If the review suggests that the account holder is a Specified US person, the Financial Institution must report the account, unless the account holder self-certifies that the account holder is not a Specified US person, or the Financial Institution reasonably determines (based on information in its possession or publicly available information) that the account holder is not a Specified US person.

ii. **Accounts held by Financial Institutions**

   If the review indicates that the account holder is a Financial Institution, and details of its GIIN are confirmed, the account will not need to be reported.

iii. **Accounts held by "Nonparticipating Financial Institutions"**

The definition of "Nonparticipating Financial Institution" is detailed and refers to the FATCA Regulations. Essentially, such an institution is "nonparticipating", because it has failed to comply with FATCA.

If the review indicates that an account holder is a Financial Institution treated by the IRS as a UAE Nonparticipating Financial Institution, the Reporting FI will need to annually report on payments made to it.

If the review indicates that an account holder is a Financial Institution, but not a UAE Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then it should be treated as a "nonparticipating", unless the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner, or unless the Financial Institution is able to verify that the entity is a participating Financial Institution or Registered Deemed Compliant Financial Institution, for instance from its GIIN.

This is to allow the IRS to monitor institutions that are not complying with FATCA and to watch the payments being made to them.

iv. Accounts held by NFFEs

The meaning of NFFEs is outlined in detail at Section 8 below. Essentially, NFFEs are entities that are not US entities and are not Financial Institutions, under the relevant definitions.

NFFEs can be "Active" or "Passive". The details of the difference are outlined in Sections 8 – 10.

If the review indicates that an account holder is a Passive NFFE, the Financial Institution must investigate the persons that control it to determine if there are any Controlling Persons who are Specified US Persons (as determined under the procedures specified in the UAE IGA, which generally requires direct or indirect control of 25 percent of the entity). If those persons are US persons, the account must be reported.

b) New Entity Accounts

There are several categories of New Entity Accounts, some of which are defined in the FATCA Regulations. Any Financial Institution opening New Entity Accounts must take specific professional advice on its due diligence obligations.

In general, New Entity Accounts will be:

- Small accounts, which are certain credit card or revolving credit facility accounts with a balance or value of $50,000 or less (and that cannot exceed $50,000).

  These accounts do not need to be reviewed.

- All other New Entity Accounts, which must be reviewed.

  The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

  i. Accounts held by Specified US Persons (essentially, all US persons, with some exceptions, as outlined in Section 5.1 above)

     These accounts are reportable.

ii. Accounts held by UAE Financial Institutions, or Financial Institutions of other countries that have an IGA with the US to implement FATCA

These are generally not reportable (as the Financial Institutions will themselves be complying with FATCA pursuant to an IGA).

iii. Accounts held by "Participating" or "Deemed-Compliant Foreign Financial Institutions", or "Exempt Beneficial Owners"

These terms are defined in the UAE IGA or the FATCA Regulations, as applicable. Essentially, they describe institutions that are complying with the FATCA Regulations or the IGA. The accounts are not reportable.

iv. Accounts held by Active or Passive NFFEs

Active and Passive NFFEs are defined in detail at Sections 8 – 10.

Active NFFE accounts are not generally reportable. Passive NFFE accounts are only generally reportable if they are controlled (as determined under the procedures specified herein) by US persons.

v. Accounts held by "Nonparticipating Financial Institutions"

As noted above, "Nonparticipating Financial Institutions" are institutions that are "nonparticipating", because they have consistently failed to comply with the FATCA Regulations.

If the review indicates that a New Entity Account holder is a UAE Nonparticipating Financial Institution, the account will not specifically be reportable. However, the Financial Institution will need to annually report on payments made to it.

2.1.10.3 Self-Certification; Documentary Evidence; and Aggregation.

This Section 6.3 applies to both individual and entity accounts.

a) Self-Certification

A self-certification must be signed and dated by the account holder and solicit the following information: (i) name, (ii) residence address for tax purposes, (iii) jurisdiction(s) of residence for tax purposes (note that a US citizen is considered a US tax resident even if the person is also a tax resident of another jurisdiction), (iv) taxpaying identification number ("TIN") (if taxpayer has a US TIN and a non-US TIN, the US TIN must be provided, and the non-US TIN may be provided), (v) in the case of an entity, the entity's FATCA status and (iv) in the case of a Passive NFFE, the name, residence address for tax purposes, and TIN with respect to a Controlling Person that is a Specified US person.

The self-certification can include other information required for other purposes such as AML due diligence and can be in paper or electronic format. There will be no specific template for self-certification issued by the UAE Ministry of Finance. Self-certifications and other documentary evidence provided by account holders to Financial Institutions should be retained for six years following the end of the year in which the account holder's tax status was established.

IRS Forms W-8 and W-9 are acceptable to establish an account holder's status. A pre-FATCA W-8 form may be accepted in lieu of obtaining an updated W-8 until such time as the W-8 needs to be reviewed.

A self-certification cannot be relied upon if a Financial Institution has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status. A Financial Institution receiving a self-certification must consider other information it has obtained concerning the account holder, including any documentation collected pursuant to AML/KYC procedures, to check whether the self-certification is reliable. In instances where there is an apparent conflict, the Financial Institution is required to make further inquiries.

b) Documentary Evidence

Financial Institutions may need to request documentary evidence from account holders where any US indicia are present. Acceptable documentary evidence includes: (i) a certificate of residence issued by an authorized government body of the jurisdiction in which the account holder claims to be a resident, (ii) with respect to an individual, any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes, (iii) with respect to an entity, any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which the entity was incorporated or organized, and (iv) any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

Documentation is required to support the status of each Financial Account held. However, documentation obtained by a Financial Institution may be used in relation to more than one Financial Account in certain circumstances. For example, documentation furnished by a customer may be relied on for another account if both accounts are held at the same branch location and both accounts are treated as a single account or obligation. A Financial Institution may also rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or a branch location of a related entity of the Financial Institution if the Financial Institution treats all accounts that share documentation as a single account or obligation or as held by the same account holder and the Financial Institution and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to systematically retrieve all other accounts of the customer. Lastly, a Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the expanded affiliated group of the Financial Institution if the Financial Institution treats all accounts that share documentation as consolidated accounts or as held by the same account holder and the Financial Institution and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, as described in the FATCA Regulations.

c) Aggregation and Currency Translation

To identify whether Financial Accounts are reportable, and the extent to which enhanced review procedures are required in respect of High Value Accounts, a Financial Institution will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

A Financial Institution is required to aggregate all Financial Accounts, belonging to an individual or entity, maintained by it or a Related Entity, but only to the extent that the Financial Institution's current computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to aggregated. If an individual, who holds an account in

his or her own name, is also a Controlling Person of an entity, then the accounts of the individual and the entity for which they are a Controlling Person should not be aggregated.

An inquiry should also be made to the account holder's relationship manager, if applicable, to determine if the relationship manager knows, or has to reason to know, of other Financial Accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person. In such cases and for the purposes of determining a High Value Account all such accounts should be aggregated.

For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the US dollar, Financial Institutions must convert the US dollar threshold amounts described below into such currency using a published spot rate determined as of the last of the calendar year preceding the year in which the Financial Institution is determining the balance or value.

d) Change in Circumstances

If there is a change in circumstances with respect to a Financial Account that causes the Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Financial Institution must redetermine the status of the account in accordance with the due diligence procedures described in this Section.

A change in circumstance includes any change to or addition of information in relation to the account holder's account (including the addition, substitution or other change of account holder) or any change to or addition of information to any account associated with such account. Associated accounts are those accounts that are associated through the aggregation rules or where a new account is treated as a pre-existing obligation.

If a Financial Institution does not report Financial Accounts where US indicia is present but are subsequently "cured", then the Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the US, the Financial Institution is required to treat the new address as a change in circumstances and is required to obtain the appropriate documentation from the account holder.

2.1.11 SECTION 7 - WHAT REPORTING REQUIREMENTS MUST BE MET?

Once a Financial Institution has identified accounts as US Reportable Accounts, it must report on those accounts (or report that it does not have any such accounts).

The UAE IGA allows UAE Financial Institutions to supply the information to the UAE Ministry of Finance instead, who will then supply it to the IRS. This information will first be provided to the relevant regulator, at the following links:

- CB: Central Bank Services Portal (private network)
- IA: http://fatca.ia.gov.ae/fatca
- SCA: https://scafatca.sca.ae/fatca/
- DIFC/RoC: https://portal.difc.ae
- MoF: https://moffatca.mof.gov.ae/fatca/

Please also consult these links for additional details on reporting, including what account holder details are required; what account information is required; what information is required on US persons; how to report on joint accounts; how to report on payments to non-participating financial institutions; how to report on recalcitrant accounts; the data format; how to transmit data; and the deadline for filing with the relevant regulator.

The information required to be reported, in relation to any US Reportable Account (defined at Section 5) includes:

- Details of the account holder:
    - Where an account is held by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US Taxpayer Identification Number ("TIN") of the Specified US Person.
    - Where an account is held by a Non-US Entity that is controlled by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US TIN (if any) of the Non-US Entity and each Specified US Person.
    - If the Financial Institution has no TIN on record for any particular individual, it can provide a date of birth instead, for accounts maintained as of June 30, 2014 (subject to further limitations provided in the IGA).
- The account number.
- The name and identifying number of the Reporting Financial Institution.
- The account balance or value at the end of the relevant calendar year (or certain other specified time periods). The account balance or value includes, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value.
- For an Insurance Contract or an Annuity Contract, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting, including the aggregate amount of any redemption payments made to the policy holder.

After the first year of reporting, additional information will need to be reported annually, which generally relates to income or capital earned in the account, or arising from assets held in the account. The first year of reporting will occur in 2015, at which time information related to 2014 information must be reported.

2.1.12 SECTION 8 - IS THE ENTITY AN NFFE?

The concept of an "**NFFE**" aims to identify entities that are neither US entities nor Financial Institutions (as defined in the UAE IGA). It generally includes foreign entities that are not engaged in banking or investment management business activities.

As noted above, most of the obligations under the UAE IGA fall on Financial Institutions that are "Reporting Financial Institutions" (see above, Section 2). So the rules are generally only concerned with non-financial entities to the extent that they are not actively trading, hold mostly passive income (such as dividends, interest, rents) and are controlled by US persons. Such entities will usually fall within the definition of "Passive" NFFEs (see 2.1.14), which may be reportable if they are controlled by US persons (see above, 2.1.11). NFFEs that are not "Passive" are generally "Active", not engaged in banking or investment activities or earning mostly passive income, and therefore carry fewer obligations under the FATCA Regulations and the UAE IGA.

The definitions of Active and Passive Non-Financial Foreign Entities are outlined at Sections 9 and 10, respectively.

2.1.13 SECTION 9 - IS IT AN ACTIVE NFFE?

An "**Active NFFE**" is, essentially, an NFFE that is not engaged in banking or investment activities, is not earning largely passive income, and does not largely hold passive assets. Passive income generally includes dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort. The FATCA Regulations provide that amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts are passive income, and such income should also be treated as passive income under the UAE IGA. Passive assets include assets that produce or are held for the production of passive income.

More specifically, an NFFE will be "Active" if it meets any of the following criteria:

a) Less than 50 percent of its gross income for the preceding year is passive and less than 50 percent of its assets during the preceding year are assets that produce passive income. As noted in Annex I, Art. VI(B)(4)(a), the term "preceding year" refers to the preceding calendar year or other appropriate reporting period (e.g., a fiscal year);
b) The stock of the NFFE (or a Related Entity) is regularly traded on an established securities market;
c) The NFFE is organized in a US territory (which means certain territories connected to the US, such as American Samoa, Guam, the Commonwealth of Puerto Rico and the US Virgin Islands) and all of the owners of the payee are residents of that territory;
d) The NFFE is a non-US government organization (at national, state, or local level), a public body performing governmental tasks, a government of a US territory, an international organization, a central bank, or an entity wholly owned by any of them;
e) Substantially all the activities of the NFFE consist of holding shares in, or providing financing services to, subsidiaries engaged in trade or businesses, other than the business of a Financial Institution. (The entity must not function as, or hold itself out as, an investment fund or investment holding structure however, which holds interests in companies as investments, as it will then become conceptually similar to a Financial Institution);
f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution (this criterion will not apply after the first 2 years of the initial organization of the NFFE);
g) The NFFE was not a Financial Institution in the past 5 years and is in the process of liquidating its assets, or reorganizing its business, with the intent of continuing/recommencing operations in a business other than that of a Financial Institution;
h) The NFFE primarily engages in financing or hedging transactions with certain Related Entities that are not Financial Institutions and does not provide such services to entities that are not Related Entities – as long as the overall group does not carry on the business of a Financial Institution;
i) The NFFE is an "excepted" NFFE under the FATCA Regulations (which broadly includes publicly-traded companies, certain US territory entities, certain non-financial holding companies, start-up companies, non-financial entities that are liquidating, the hedging or financing centers of non-financial groups and certain not-for-profit organizations); or
j) The NFFE meets all of the following requirements:
    - It is established and operated in its jurisdiction of residence exclusively for specified non-profit purposes (such as religious or charitable organizations, chambers of commerce, or civic leagues);
    - It is exempt from income tax in its jurisdiction of residence;

- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, do not permit any income or assets to be applied for the benefit of a private person or non-charitable entity (with some exceptions, such as payments that are reasonable compensation for services rendered, or property purchased); and
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, require that, upon liquidation, all its assets are distributed to governmental entities, or other non-profit organizations.

Please see Annex I of the UAE IGA for the specific requirements of each of the "Active NFFE" requirements.

2.1.14 SECTION 10 - IS IT A PASSIVE NFFE?

As noted above, FATCA and the UAE IGA are mostly concerned about requiring Financial Institutions to report on accounts held by persons with a relevant connection to the US (for details, see 2.1.9).

The rules are generally less concerned about NFFEs, which are, broadly, non-US entities that are not Financial Institutions. However, where an NFFE is "**Passive**", rather than "Active", accounts held by it will need to be reported to payors or other withholding agents in certain circumstances.

The object of the rules is, broadly, to identify NFFEs that earn largely passive income (such as dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort) and that have Controlling Persons (as determined under the rules) who are Specified US persons. Accounts held by Passive NFFEs that are controlled by US persons are reportable in certain circumstances (see 2.1.11).

A "Passive NFFE" is an NFFE that is NOT:

a) an Active NFFE (see Section 9);
b) a "withholding foreign partnership" under the relevant Regulations; or
c) a "withholding foreign trust" under the relevant Regulations.

These partnerships and trusts are, broadly, entities that have entered into withholding agreements with the IRS, which require them to withhold US tax on certain payments made to foreign persons from the US.

Direct Reporting NFFEs

In Notice 2013-69 and subsequent changes to the FATCA Regulations, a new category of Passive NFFE was introduced - a "**Direct Reporting NFFE**". A Direct Reporting NFFE is described at FATCA Regulation §1.1472-1T(c)(3) and will be treated as an Excepted NFFE. It is a Passive NFFE that elects to report certain information about its direct or indirect substantial US owners directly to the IRS as opposed to providing such information to the UAE Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain a GIIN.

The US Regulations also allow an entity to serve as a sponsor for one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs), which will require the sponsoring entity to report information about a Sponsored Direct Reporting NFFE's direct or indirect substantial US owners directly to the IRS.

2.2 CHAPTER 2 – PART 2 - APPLICATION OF FATCA TO REGULATED ENTITIES

2.2.1 OUTLINE OF THIS PART

This Part outlines how certain types of entities regulated by CB may be classified under the UAE IGA. However, the classification of each entity regulated by CB is a fact specific test and this outline is not conclusive of any such classification. Consequently, any likely classification noted in this Part 2 should be interpreted only as a guide.

2.2.2 CONTENTS OF THIS PART

The CB governs the banking industry in the UAE. There are several legal authorities applicable to the CB. **Union Law No. 10 of 1980**, Concerning the Central Bank, the Monetary System, and Organization of Banking is the implementing law which created the CB, and set outs the terms of operation of the CB, and details certain of its regulatory powers over commercial banks, investment banks, and other financial institutions. **Federal Law No. 10 of 1985,** regarding Islamic Banks, Financial Institutions and Investment Companies governs the authority of the CB over Islamic Banks. **Central Bank Notice No.2922-2008**, Addendum to Circular No. 24/2000 - Regulation concerning Procedures for Anti-Money Laundering, provides for certain Anti-Money Laundering Regulations.

This Part contains an example analysis for each of the following types of entities regulated by the CB:

Section 1– Bank

Section 2 – Financial Institution with a Local Client Base

Section 3 – Local Bank

2.2.3 SECTION 1 - BANK

FACTS:

Bank is regulated in the UAE as a commercial bank and is established under UAE law. It has both local and non-local customers and in the course of its ordinary business receives funds from the public in the form of demand, under notice, or time deposits. More than 5 percent of Bank's deposits (by value) are held by non-residents of the UAE and Bank has more than $500 million in total assets.

ANALYSIS:

i. Is Bank a Depository Institution?

   Because Bank accepts deposits from customers in the ordinary course of a banking or similar business, it determines that it is a "Depository Institution".

ii. Is Bank a Financial Institution?

   The definition of Financial Institution includes a "Depository Institution". Because Bank is a Depository Institution, it is a Financial Institution.

iii. Is Bank a Reporting or Non-Reporting Financial Institution?

   Since Bank determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. Since Bank does not have a purely local client base and has assets in excess of $500 million, and does not otherwise qualify for an exemption, it is a Reporting Financial Institution.

iv. Does Bank maintain Financial Accounts?

   Financial Accounts specifically include a "Depository Account", which includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. Because Bank determines that it holds Depository Accounts, it holds Financial Accounts.

v. Does Bank maintain US Reportable Accounts?

   A Financial Account will be a reportable account where it is held by a Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. Bank must follow the due diligence procedures set out in Annex I of the UAE IGA and detailed in Section 5 and Section 6 of Part 1 of this Guidance Note in order to identify Account Holders and US Reportable Accounts.

vi. What Compliance Procedures does Bank need to follow?

   Register on the IRS registration portal and obtain a GIIN.

   Undertake the necessary due diligence and make annual reports to the UAE CB (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE CB by the date announced by the CB.

2.2.4 SECTION 2 - FINANCIAL INSTITUTION WITH A LOCAL CLIENT BASE

FACTS:

Financial Institution with a Local Client Base ("**FILCB**") is regulated in the UAE as a bank, and in the course of its ordinary business receives funds from the public in the form of demand, under notice, or time deposits. FILCB is (i) licensed and regulated as a financial institution in the UAE; (ii) has no fixed place of business outside the UAE; (iii) does not solicit customers outside the UAE (and does not have a website that indicates nonresidents may open accounts and does not conduct advertising that is primarily targeted outside the UAE); (iv) is required under UAE law to comply with UAE AML due diligence requirements; (v) at least 98 percent of its financial accounts (by value) are held by UAE residents; (vi) has policies and procedures to prevent and monitor for financial accounts of Nonparticipating FIs, Specified US Persons not resident in the UAE, and Passive NFFEs with Controlling Persons who are US residents or US citizens that are not UAE residents; (vii) has policies and procedures to either report such accounts or to close them; (viii) to determine whether any preexisting account is held is a US reportable account and to either report or close such accounts; (ix) is incorporated or organized in the UAE; and (x) does not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified US persons and residents of the UAE.

ANALYSIS:

i. Is FILCB a Depository Institution?

   Because FILCB accept deposits from customers in the ordinary course of a banking or similar business, it determines that it is a "Depository Institution".

ii. Is FILCB a Financial Institution?

   The definition of Financial Institution includes a "Depository Institution". Because FILCB determined it is a Depository Institution, it is a Financial Institution.

iii. Is FILCB a Reporting or Non-Reporting Financial Institution?

   Since FILCB determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. After reviewing the ten specific requirements of Annex II of the UAE IGA for a Financial Institution with a Local Client Base, FILCB determines that it so qualifies; and if FILCB further determines that it has no reporting obligations as outlined therein (e.g., with respect to an account held by a Specified US Person who is not a resident of the UAE); then FILCB is a non-Reporting Financial Institution.

iv. Does FILCB maintain Financial Accounts?

   Financial Accounts specifically include a "Depository Account", which includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. Because FILCB determines that it holds Depository Accounts, it holds Financial Accounts.

v. Does FILCB maintain US Reportable Accounts?

   A Financial Account will be a reportable account where it is held by a Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. FILCB must follow the due diligence procedures set out in Annex I of the UAE IGA

and detailed in Section 5 and Section 6 of Part 1 of this Guidance Note in order to identify Account Holders and US Reportable Accounts and must also satisfy the requirement set out in Annex II of the UAE IGA with respect to a Financial Institution with a Local Client Base.

vi. What Compliance Procedures does FILCB need to follow?

FILCB may need to register on the IRS registration portal and obtain a GIIN in certain circumstances. Registration may be required if the FILCB determines that it maintains a Financial Account for a US person not resident in the UAE or if the FILCB identifies any Financial Accounts held by a Non-Participating Financial Institution during its pre-existing account review and such accounts are not closed.

FILCB will have to undertake the necessary due diligence, and will be required to maintain the policies and procedures required of a Financial Institution with a Local Client Base under Annex II of the UAE IGA.

If reporting is required, FILCB must make annual reports to the UAE CB (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE CB by the date announced by the CB.

2.2.5 SECTION 3 - LOCAL BANK

FACTS:

Local Bank ("**LB**") is established under UAE law. LB (i) operates solely as a bank, and is so licensed and regulated in the UAE; (ii) LB's business consists primarily of receiving deposits from and making loans to unrelated retail customers; (iii) LB (a) does not have a fixed place of business outside the UAE, and (b) does not solicit customers outside the UAE (and does not have a website that indicates nonresidents may open accounts; does not have a website that permits the opening of a Financial Account; and does not conduct advertising that is primarily targeted outside the UAE); (iv) LB does not have more than $175 million of assets on its balance sheet; and (v) does not have any Related Entities.

ANALYSIS:

i. Is LB a Depository Institution?

   Because LB accept deposits from customers in the ordinary course of a banking or similar business, LB determines that it is a "Depository Institution".

ii. Is LB a Financial Institution?

   The definition of Financial Institution includes a "Depository Institution". Because LB determined that it is a Depository Institution, it is a Financial Institution.

iii. Is LB a Reporting or Non-Reporting Financial Institution?

   Since LB determined that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise exempted from reporting as outlined in this Guidance Note. After review of the requirements in Annex II of the UAE IGA, LB determines that it meets the requirements for a Local Bank, and is thus a "Deemed Compliant FFI" and a Non-Reporting UAE Financial Institution.

iv. What Compliance Procedures does LB need to follow?

   LB must periodically review whether it qualifies as a Local Bank; and must provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request.

2.3 CHAPTER 2 – PART 3 - CHECKLIST OF COMPLIANCE PROCEDURES UNDER THE FOREIGN ACCOUNT TAX COMPLIANCE ACT

2.3.1 OUTLINE OF THIS PART

This Part provides a general checklist of the steps necessary for an entity to comply with FATCA and the due diligence and reporting deadlines that may need to be met with respect to its financial accounts. It should be used in conjunction with the UAE IGA and the detailed explanations contained herein.

Entities that are required to register with the IRS under FATCA can do so by visiting: www.irs.gov/fatca-registration.

Obligations of Financial Institutions

Type of Financial Institution	Obligations
Non-Reporting Financial Institution	• "Registered deemed compliant FFIs" must register on the IRS website; all other Non-Reporting Financial Institutions general do not need to register under FATCA
Reporting FI that does not maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca/ ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**
Reporting FI that does maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Perform due diligence procedures described in Section 6 of Part 1 to determine if such Financial Accounts are "US Reportable

	Accounts" that must be reported to the UAE Ministry of Finance as described in Section 7 • Due diligence with respect to high value pre-existing individual accounts must be completed by 30 June 2015; note, however that US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Due diligence on low value pre-existing individual accounts and entity accounts must be completed by 30 June 2016 and US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • New individual and entity accounts must be subject to new account procedures in accordance with the due diligence requirements of Annex I and US Reportable Accounts must be reported to the relevant regulator annually. • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca/ ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**

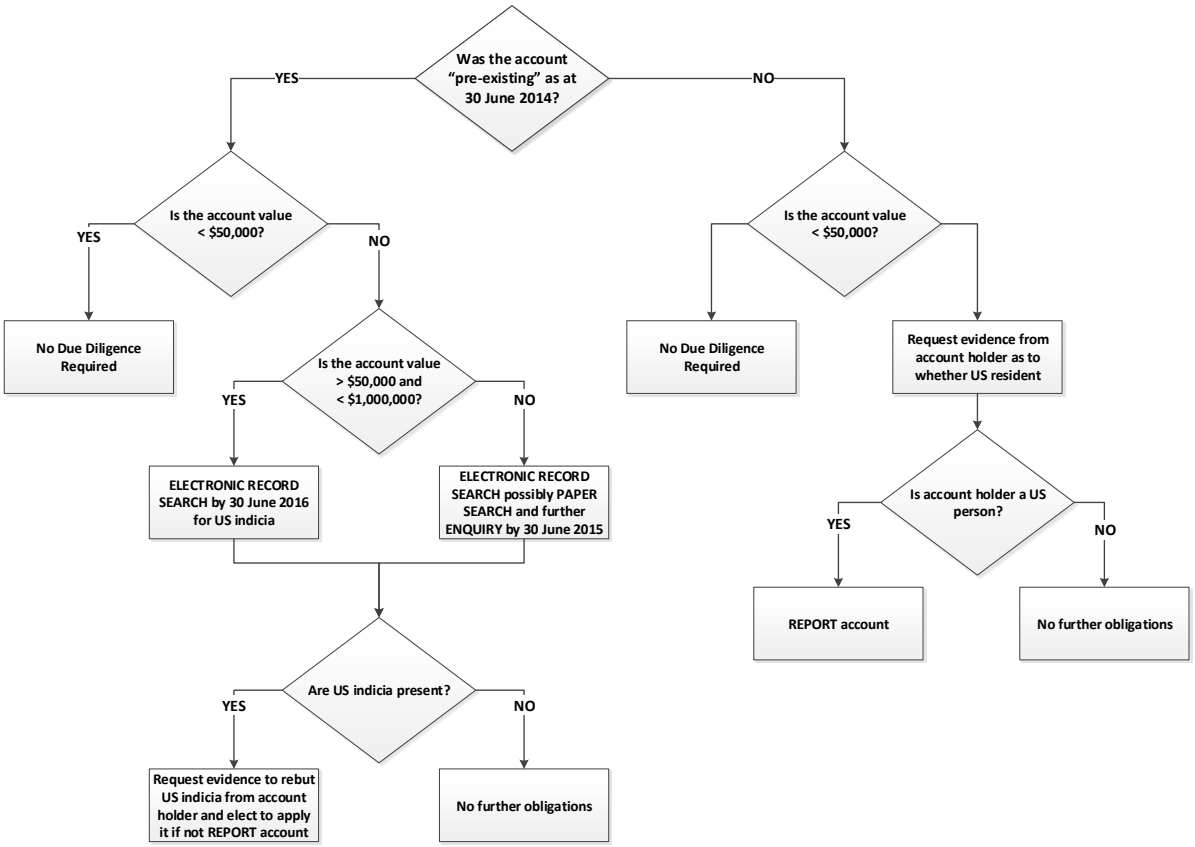
Obligations of NFFEs

Type of NFFE	Obligations
Active NFFE	• No requirement to register on the IRS website

	• Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request
Passive NFFE	• No requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification that includes information about any substantial US owners to withholding agents upon request
Direct Reporting NFFE	• Requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Generally subject to same obligations as a Reporting Financial Institution

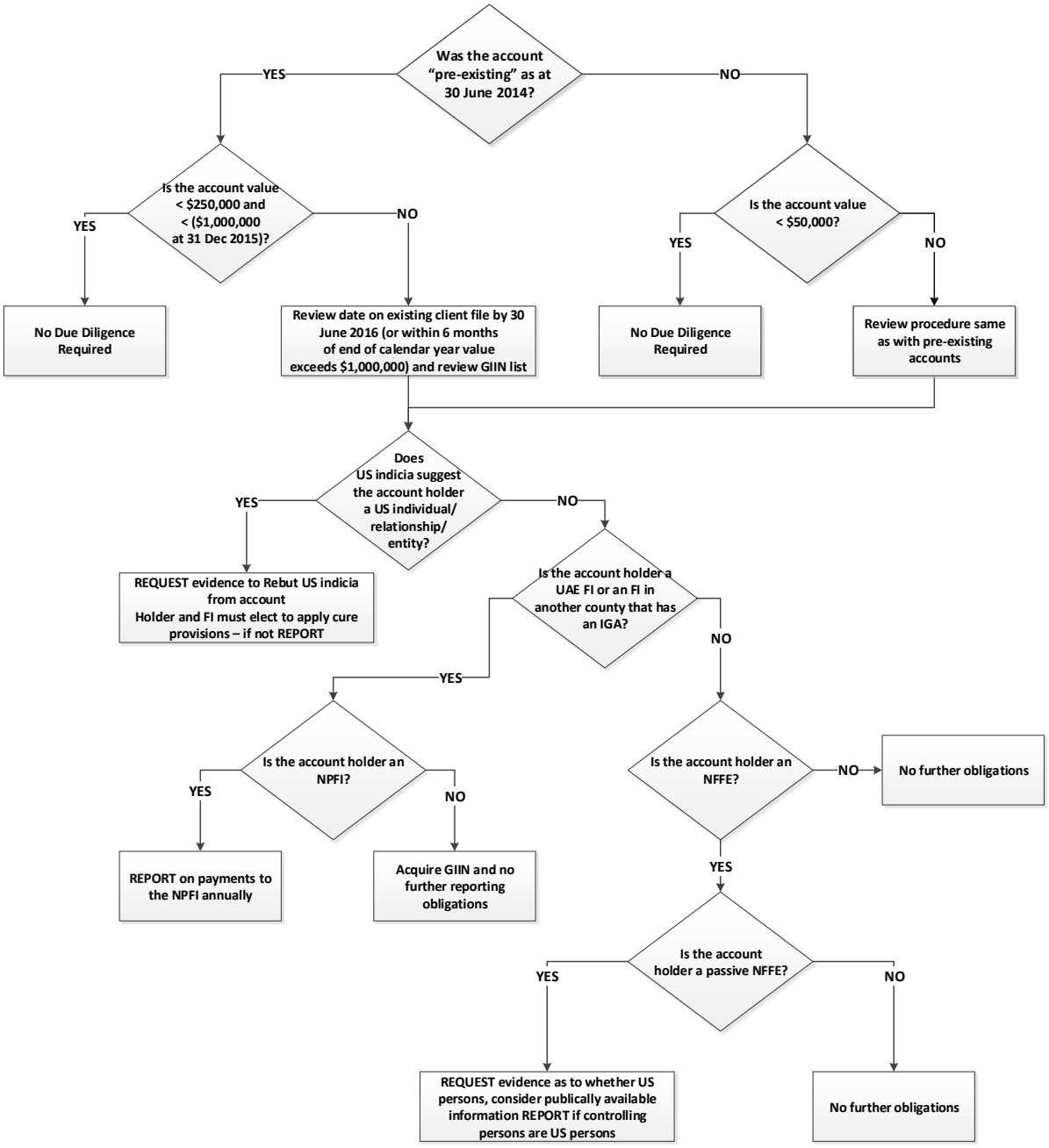
2.4 CHAPTER 2 – PART 4 - DUE DILIGENCE

2.4.1 Flowchart 3 – For Assessing Due Diligence Obligations for Individual Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

2.4.2 Flowchart 4 – For Assessing Due Diligence Obligations for Entity Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

2.4.3 Due Diligence Checklist

Type of Account	Obligations
Individual Accounts	
Pre-existing (Part 1, section 6.1(a))	
Value < $50,000	No Due Diligence required
Value >$50,000 <$1,000,000	Electronic Record Search for US indicia
Value >$1,000,000	Electronic Record Search Paper record search and enquire of Relationship Manager where required
New (Part 1, section 6.1(b))	
Value <$50,000	No Due Diligence required
Value >$50,000	Request evidence (such as W-8) from account holder as to residence status
Entity Accounts	
Pre-existing (Part 1, section 6.2(a))	
Value < $250,000	No Due Diligence required
Value >$250,000	Review Anti Money Laundering/Know Your Client documents for US indicia
New (Part 1, section 6.2(b))	
Value <$50,000	No Due Diligence required
Value >$50,000	Review Anti Money Laundering/Know Your Client documents for US indicia

US indicia includes (see Part 1, section 5.3):

1. Identity of the account holder as a US citizen or resident;
2. Unambiguous indication of a US place of birth;
3. A current US mailing or residence address, including a US post office box;
4. A current US telephone number;
5. Standing instructions to transfer funds to an account maintained in the US;
6. A currently effective power of attorney or signatory granted to a person with a US address;
7. A US "in care of", or "hold mail" address, that is the sole address on file.

Note: For determining USD equivalent, use the spot rate on 31 December of the previous year.

Please note that this checklist presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

2.5 CHAPTER 2 – PART 5 - REGISTRATION

2.5.1 SECTION 1 – REGISTRATION OVERVIEW

The following entities will not need to register and obtain a GIIN:

- Exempt Beneficial Owners
- Non-Reporting Financial Institutions
- Active or Passive NFFE (excluding direct reporting NFFEs)
- Deemed Compliant Financial Institution, except for:
    - Registered Deemed Compliant Financial Institutions
    - Financial Institutions with a Local Client Base that has Reportable Accounts
    - Sponsored Investment Entities with Reportable Accounts
- Owner Document FFIs

The following will have to register and obtain a GIIN:

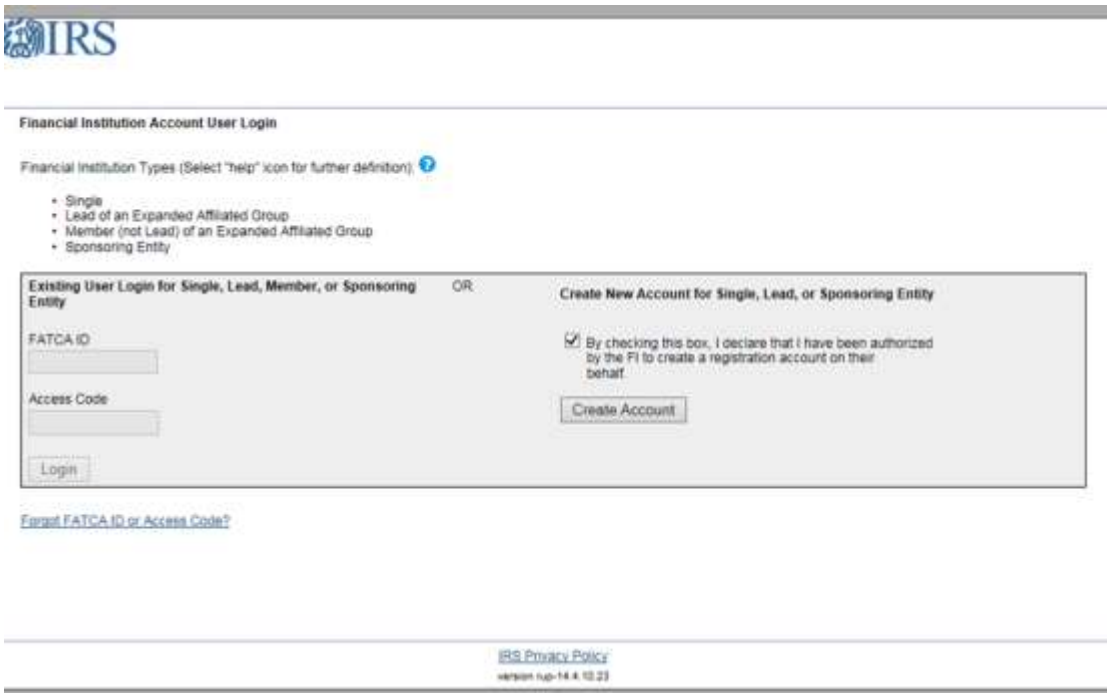
- Reporting Financial Institutions
- Registered Deemed Compliant Financial Institutions
- Sponsors of Sponsored Investment Vehicles or Sponsored Closely Held Investment Vehicles.
- The trustee of a Trustee Documented Trust.

2.5.2 SECTION 2 – REGISTRATION WALKTHROUGH

FATCA Registration should be undertaken via the IRS online registration portal.

The registration system can be accessed here: www.irs.gov/fatca-registration. The following is intended only to provide an overview of the registration process. For more detailed assistance on registration, an online user guide can be found at the following link: http://www.irs.gov/pub/irs-pdf/p5118.pdf. The preceding link provides access to IRS Publication 5118, User Guide: Foreign Account Tax Compliance Act (FATCA).

You will then be taken to an account set up page.



There are then 4 key steps to registration:

STEP 1: CREATE ACCOUNT

The user may register either as:

A **Single Financial Institution**- broadly this is a Financial Institution that does not have any other group member Financial Institutions that it is registering for or on behalf of.

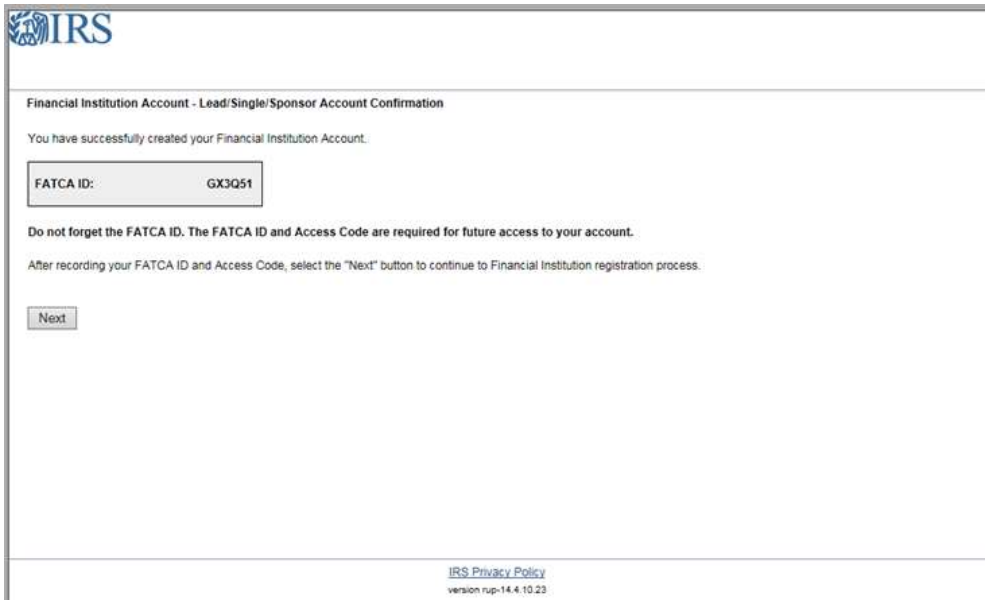
A **Lead Financial Institution**- broadly this is a Financial Institution that fulfils the requirements to be so and will initiate the FATCA Registration for any other group Financial Institutions that authorize it to do so.

A **Member Financial Institution**- broadly this is a Financial Institution that is registering as a member of a group for the FATCA registration process. A Member Financial Institution will need to obtain its FATCA ID from its Lead Financial Institution. Note that the FATCA ID is used to identify the Member Financial Institution for purposes of registration and is not the same number as the GIIN.

A **Sponsoring Entity**- broadly this is an entity that will perform the due diligence, withholding, and reporting obligations of one or more Sponsored Investment Entities or Controlled Foreign Institutions (see Part 1 Section 11).

The user will be asked to create two challenge questions for extra security and an access code for future log-ins.

A FATCA ID will then be created to establish the online FATCA account with access code.



*this is an example only

STEP 2: COMPLETE REGISTRATION FORM

There are 4 parts to the application form which ask a series of short questions about the Financial Institution.

Part 1: This must be completed by all Financial Institutions providing basic identifying information.

Part 2: This should be completed only by a "Lead Financial Institution" who will identify each Member Financial Institution for which it is acting for as a Lead Financial Institution.

Part 3: This should be completed only by a Financial Institution acting as a Qualifying Intermediary, withholding foreign partnerships, or withholding foreign partnership that is currently using an issued Employer Identification Number (EIN) to establish its applicable status. More information about Qualifying Intermediaries and other such agreements can be found at www.irs.gov/fatca and the in the FATCA User Guide (IRS Publication 5118).

Part 4: This must be completed by all Financial Institutions and requires a Financial Institution to certify that the information provided in the FATCA Registration form is accurate and complete and to agree and confirm that it will comply with its FATCA obligations.

A paper version of what will be required during the online registration process can be viewed in advance here: http://www.irs.gov/pub/irs-pdf/f8957.pdf

STEP 3: SUBMISSION

Once satisfied that the information provided is accurate and complete the form can be submitted through the online account.

STEP 4: APPROVAL

Once the information is approved, the user will be issued with a Global Intermediary Identification Number (GIIN).

2.5.3 SECTION 3 – COMPLIANCE

Minor errors.

In the event that the information reported is corrupted or incomplete, the US will notify the UAE Ministry of Finance. The UAE Ministry of Finance will contact the Reporting UAE Financial Institution to resolve the problem. Examples of minor errors could include:

a) Data fields missing or incomplete;
b) Data that has been corrupted; and
c) Use of an incompatible format.

Where this leads to the information having to be resubmitted this will be via the relevant regulator's portal.

Compliance measures may be exercised by the relevant regulator if the error is considered to contravene the UAE IGA.

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

Significant non-compliance

Significant non-compliance may be determined by the IRS or the UAE Ministry of Finance. In any event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the Financial Institution must resolve the non-compliance.

Where the UAE Ministry of Finance is notified of or identifies significant non-compliance by a Reporting UAE Financial Institution, the UAE Ministry of Finance may exercise any compliance measures under the FATCA Regulations or UAE law.

The UAE Ministry of Finance through the relevant regulator will also engage with the Reporting UAE Financial Institution to:

- discuss the areas of non-compliance;
- discuss remedies/solution to prevent future non-compliance; and
- agree to measures and a timetable to resolve its significant non-compliance.

The UAE Ministry of Finance will inform the US of the outcome of these discussions. The following are examples of what may be regarded as significant non-compliance:

- Repeated failure to file a return or repeated late filing.
- Ongoing or repeated failure to register 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.

In the event that the issues remain unresolved after a period of 18 months then the Reporting UAE Financial Institution will be treated as a Non-Participating Financial Institution under the UAE IGA.

Chapter 3

Guidance Notes for Insurance Sector

3 CHAPTER 3 – Guidance Notes for Insurance Sector

3.1 CHAPTER 3 – PART 1 - DETAILED GUIDANCE NOTES

3.1.1 OUTLINE OF THIS PART

This Part outlines how entities will be classified under the UAE IGA. It outlines the circumstances in which entities will need to carry out due diligence procedures, or reporting obligations, under the UAE IGA. It also includes some procedural guidance; a list of compliance procedures is contained in Part 3 – the Checklist.

When determining an entity's FATCA obligations, a good starting point is to determine if the entity is a **"Financial Institution"** because this will help determine the specific obligations that the entity has under FATCA. See Section 1 regarding Financial Institutions.

Any reference in this Part to a "Section" is to one of the other Sections within this Part.

3.1.2 CONTENTS OF THIS PART

This Part contains:

Flowchart 1 - For assessing the obligations of "Financial Institutions" under the UAE IGA.

Flowchart 2 - For assessing the obligations of "NFFEs" under the UAE IGA.

Flowchart 3 - For assessing whether an Insurance Company is a Financial Institution.

Section 1 - Is the entity a "Financial Institution"?

Section 2 - Is a Financial Institution a "Reporting" Financial Institution?

Section 3- Is a Financial Institution a "Non-Reporting" Financial Institution?

Section 4 - Does the Financial Institution maintain "Financial Accounts"?

Section 5 - Are the Financial Accounts "US Reportable Accounts"?

Section 6 - What Due Diligence Requirements need to be met?

Section 7 - What Reporting Requirements need to be met?

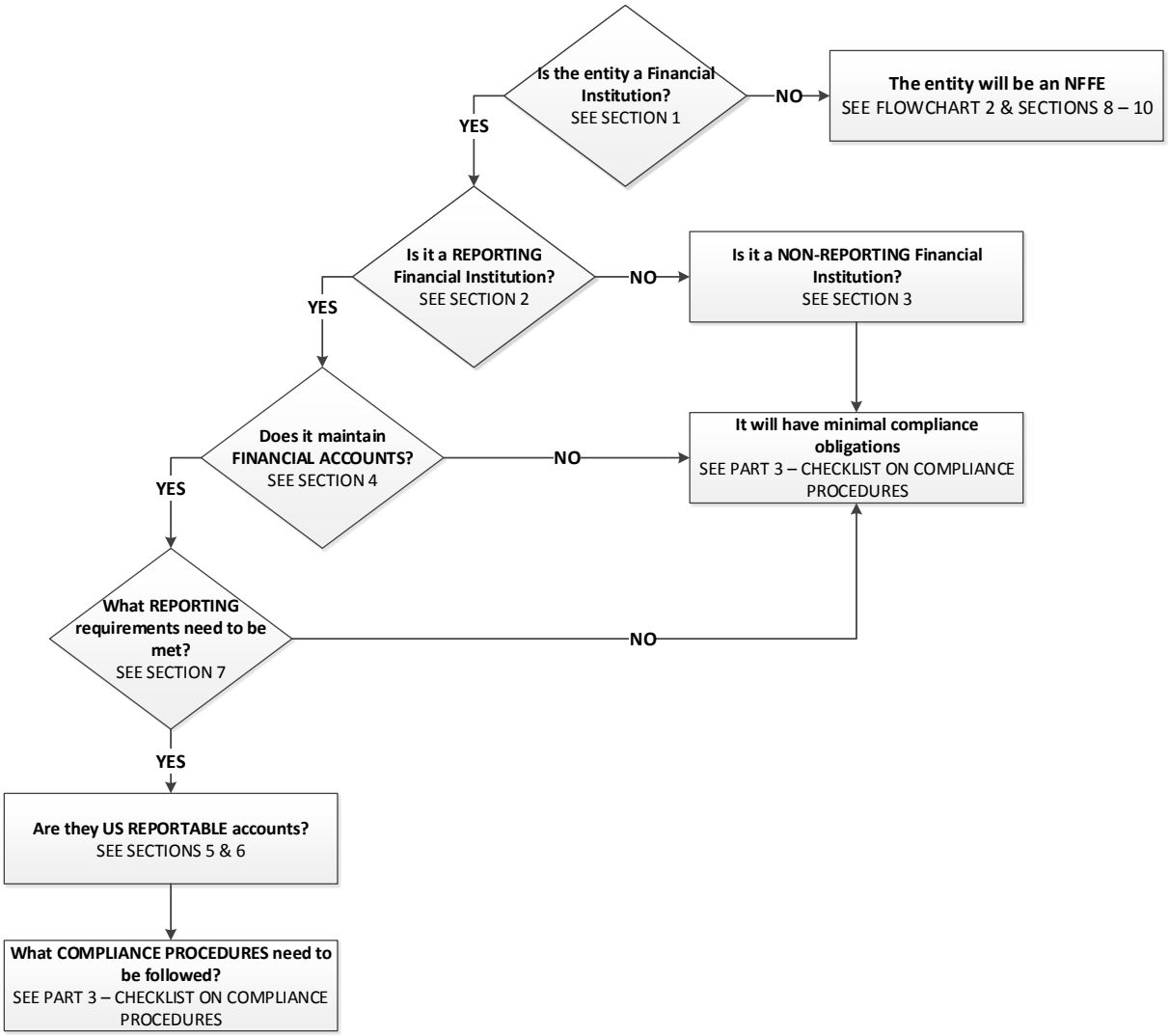
Section 8- Is the entity a "NFFE"?

Section 9 - Is it an "Active" NFFE?

Section 10 - Is it a "Passive" NFFE?

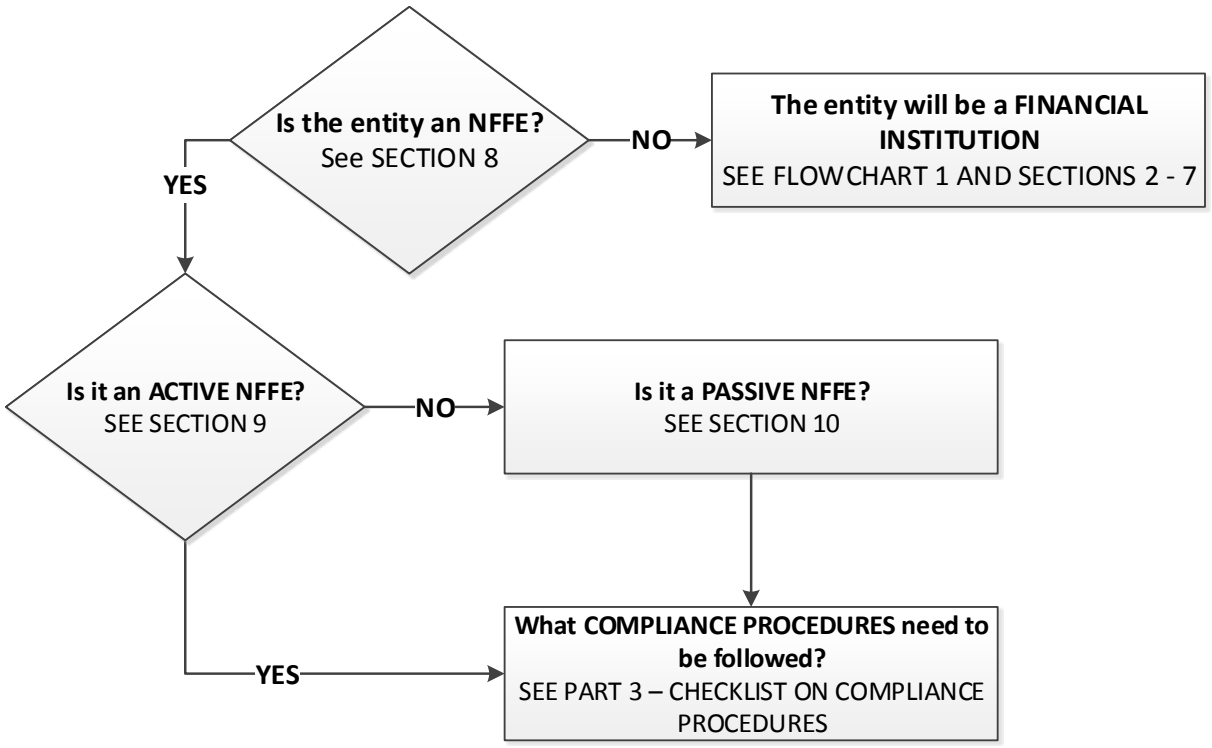
Section 11 - Special FATCA considerations for Insurance Companies.

3.1.3 Flowchart 1 – For Assessing the Obligations of Financial Institutions



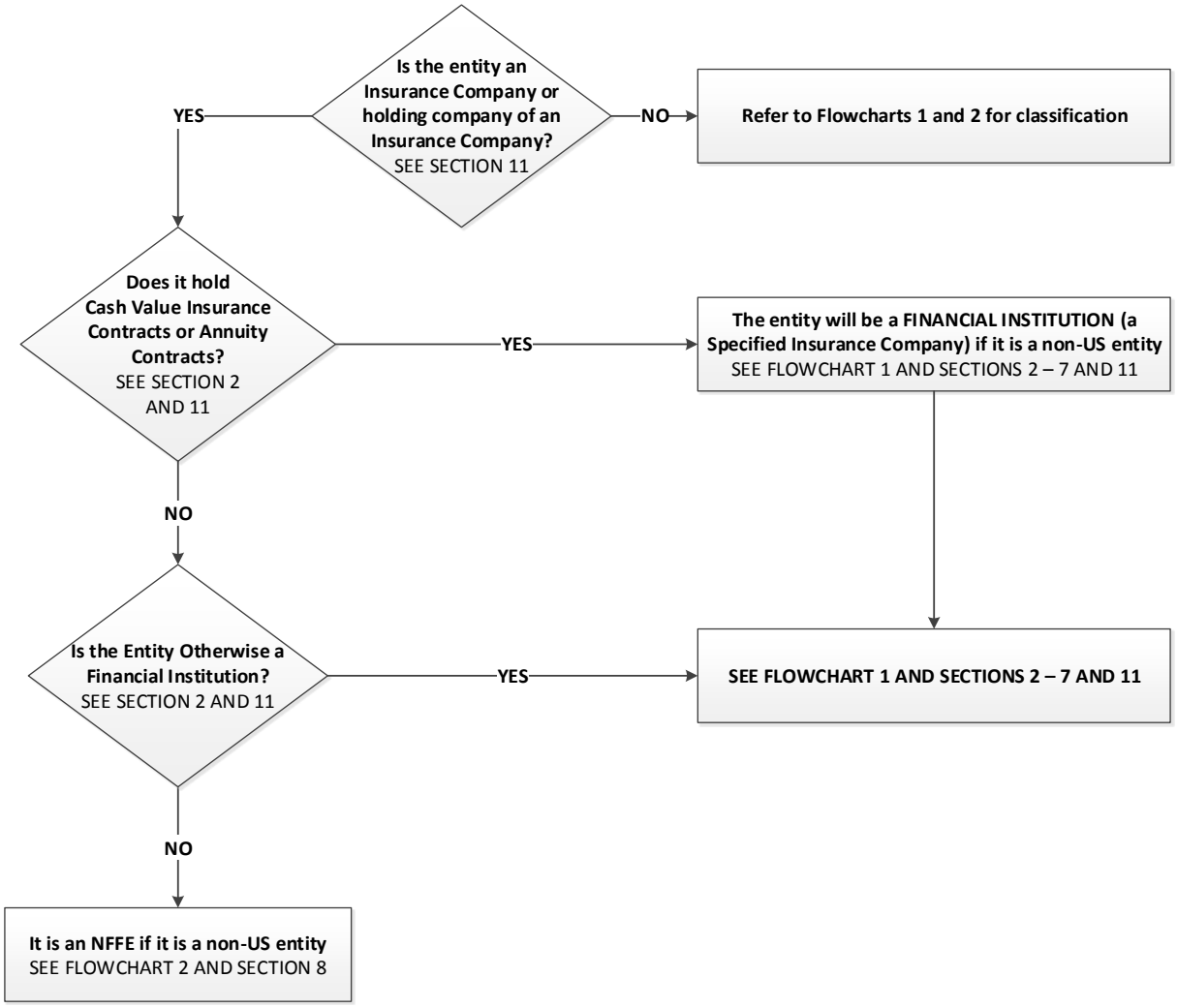
Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

3.1.4 Flowchart 2 – For Assessing the Obligations of NFFEs



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

3.1.5 Flowchart 3 – For Assessing whether an Insurance Company is a Financial Institution



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

3.1.6 SECTION 1- IS THE ENTITY A FINANCIAL INSTITUTION

The UAE IGA imposes certain due diligence, reporting and other obligations on Financial Institutions.

A "Financial Institution", for these purposes:

- Meets certain residence requirements – see Section 1.1 below; and
- Is a certain type of entity, as defined in the UAE IGA – see Section 1.2 below.

3.1.6.1 Residence requirements

The UAE IGA will apply to:

a) Financial Institutions, as defined below, organized under the laws of the UAE; and
b) branches, located in the UAE, of non-UAE Financial Institutions.

It will not apply to branches of UAE Financial Institutions located outside of the UAE.

For these purposes, organized under the laws of the UAE means the following:

- For a company, if the company is incorporated in the UAE.
- For a partnership, if the partnership is established in the UAE.

3.1.6.2 Type of entity

An entity will be a UAE Financial Institution if it is one of the following types of entities:

a) **Depository Institution** – means any entity that accepts deposits in the ordinary course of a banking or similar business. Depository institutions are usually banks or similar institutions. An entity is not considered to be engaged in a banking or similar business if it solely provides asset based finance services or accepts deposits solely from persons as collateral or security pursuant to a sale or lease of property, a loan secured by property, or pursuant to similar financing arrangements between that entity and the person making the deposit.

   The following would not be expected to fall within the definition of Depository Institution:

   - Insurance brokers
   - Attorneys at law
   - Factoring or invoice discounting businesses
   - Entities that complete money transfers by instructing agents to transmit funds

b) **Custodial Institution** – means any entity that holds, as a "substantial portion" of its business, financial assets for the account of others. Custodial institutions can include custodial banks, trust companies or brokers, in certain circumstances.

   An entity will hold financial assets for the account of others as a "substantial portion" of its business if its gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of its total gross income over, in general terms, a specified 3-year period (or over the period that the entity has been in existence, if that is less than 3 years). The relevant three year period is the entity's accounting period.

   The term income attributable to holding financial assets and related financial services means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired

through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

An execution only broker that simply executes trading instructions, or receives and transmits such instructions to another executing broker, will not hold assets for the account of others and should not be a custodial institution (although it is possible that it could be an investment entity).

Entities that only provide advice, do not hold, and will not hold financial assets; and therefore have no financial accounts should not be treated as custodial institutions. As noted above, the term "income attributable to holding financial assets" from financial assets is limited to providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

c) **Investment Entity** – means any entity that:
   i. primarily conducts a business (or is managed by an entity that conducts a business) of one or more of the following activities or operations, for or on behalf of a customer:
      - trading in money market instruments (such as checks, bills, certificates of deposit and derivatives), foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading;
      - individual and collective portfolio management; or
      - otherwise investing, administering, or managing funds or money on behalf of other persons, or
   ii. the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity described in (a) above. For this paragraph (c), "primarily" means such income exceeds 50 percent of the entity's gross income during the shorter of the prior three year period or the period in which the entity has been in existence.

      Investment entities can include investment funds and other fund structures, in certain circumstances. Generally, entities that are professionally managed will be treated as Investment Entities because its managing entity is an Investment Entity.

d) **Specified Insurance Company** – means any insurance company (or the holding company of such insurance company) that issues (or writes) or is obliged to make payments in respect of a Cash Value Insurance Contract or an Annuity Contract – see also Section 11 below.
   - "insurance company" means (under the Treasury Regulations) an entity or arrangement:
     1. that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;
     2. the gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or
     3. the aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

3.1.6.3 Definitions from FATCA Regulations

In accordance with Article 4 paragraph 7 of the UAE IGA, the UAE permits Financial Institutions to use a definition in the FATCA Regulations in lieu of a corresponding definition in the UAE IGA, provided that such application would not frustrate the purposes of the UAE IGA.

3.1.7 SECTION 2 - IS A FINANCIAL INSTITUTION A REPORTING FINANCIAL INSTITUTION

3.1.7.1 Overview

The concept of a "**Reporting Financial Institution**" is designed to identify Financial Institutions that must identify, and report on, certain of their accounts and account holders (those that have a relevant connection to the US (for details, see 2.1.9)).

A Financial Institution is a "UAE Reporting Financial Institution" if it does not fall within any of the exceptions in 2.1.7, which deals with "**Non-Reporting Financial Institutions**". In other words, Financial Institutions are Reporting Financial Institutions, UNLESS they are Non-Reporting Financial Institutions.

UAE Reporting Financial Institutions will generally have to register with the IRS for a **Global Intermediary Identification Number ("GIIN").** A summary of the registration process is at Part 5, Registration, and at Part 3, the Checklist on compliance requirements and procedures.

Most of the subsequent due diligence, reporting and compliance obligations imposed by the UAE IGA fall on UAE Reporting Financial Institutions (rather than Non-Reporting Financial Institutions). See Sections 4 – 7 and Part 4 for details on Due Diligence and Part 3, the Checklist, for compliance requirements and procedures.

3.1.7.2 Related entities

a) **IGA**

In accordance with the UAE IGA, an Entity is a "Related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control (the "**related entity group**"). For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, the UAE Ministry of Finance will not treat an Entity as a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 471(e)(2) of the Code.

b) **Exceptions**

Interaffiliate FFIs. Pursuant to Annex I, Art. VI(4)(i), an "**Excepted NFFE**" is not a Financial Institution. Excepted NFFEs include, but are not limited to, an "Excepted inter-affiliate FFI." An entity that is a member of a related entity group will not be a Financial Institution if:

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- The entity does not hold an account with or receive US source withholdable payments from any withholding agent other than a member of its related entity group;
- The entity does not make US source withholdable payments to any person other than to members of its related entity group that are not limited FIs or limited branches; and

- 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 Financial Institution, including a member of its related entity group.

Investment entities. Investment Entities which have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the UAE IGA. In general, a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes of establishing a performance record before selling interests in the entity to unrelated investors, or for purposes otherwise deemed appropriate by the manager.

Specifically, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest in excess of 50 percent of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; and
- in the case of an equity interest that has been held for over three years, its value is less than 50 percent of the total value of the stock of the Investment Entity.

c) Why do related entities matter?

Related Entities are relevant in the context of the obligations placed on UAE Financial Institutions, in respect of any Related Entities that are Non-Participating Financial Institutions ("**NPFI**").

Where a UAE Financial Institution has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UAE Financial Institution must treat the related entity as an NPFI and fulfill obligations in respect of that NPFI as set out in Article 4 of the UAE IGA.

3.1.8 SECTION 3 - IS THE FINANCIAL INSTITUTION A NON-REPORTING FINANCIAL INSTITUTION?

The concept of a "**Non-Reporting Financial Institution**" is designed to identify Financial Institutions that do not have the characteristics, or hold the accounts with which FATCA and the implementing IGAs are most concerned.

Consequently, most Non-Reporting Financial Institutions will have no, or will have few, obligations under the UAE IGA.

Non-Reporting Financial Institutions are either Financial Institutions, or certain other legal persons or legal arrangements that are resident in the UAE, that fall into one of two categories:

- "Annex II" Non-Reporting Financial Institutions – those that are listed in Annex II of the UAE IGA – see 3.1 below; or
- "FATCA Regulations" Non-Reporting Financial Institutions – those that meet certain criteria under the FATCA Regulations – see 3.2 below.

Exempt Beneficial Owners and most Non-Reporting UAE Financial Institutions will not need to register with the IRS or obtain a GIIN (save for certain limited exceptions listed herein). They will need to provide certain documentation to withholding agents to certify their status.

Some Non-Reporting UAE Financial Institutions, referred to as Registered Deemed Compliant, will be obliged to register with the IRS and obtain a GIIN.

See Part 5, Registration, for further details.

3.1.8.1 Non-Reporting Financial Institutions

A Non-Reporting UAE Financial Institution is any UAE Financial Institution that falls within the exemptions of Annex II of the UAE IGA or of the FATCA Regulations or one which otherwise qualifies as:

- An Exempt Beneficial Owner (Section 3.1(a))
- A Deemed Compliant Financial Institution (Section 3.1(b))
- An Owner Documented Financial Institution (Section 3.3)

There are two main types of Non-Reporting Financial Institutions contained in Annex II. These are:

a) **"Exempt Beneficial Owners"**, which include Non-Fund and Fund Exempt Beneficial Owners:

   i. Non-Funds. Annex II, Article I.
      - The UAE Government – at a national, state or local level – or any of its wholly owned agencies (including "integral parts", "controlled entities" (in certain circumstances), and political subdivisions of the UAE);
      - Certain international organizations and intergovernmental organizations;
      - The UAE Central Bank;

   The first three types of Exempt Beneficial Owners will not be treated as such with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

   ii. Funds. Annex II, Article II.

- UAE retirement funds that are established to provide retirement, disability or death benefits to employees, and that meet specified participation, contribution, regulatory and tax requirements in the UAE;
- Certain pension funds established in the UAE by an Exempt Beneficial Owner; and
- Investment Entities wholly owned by Exempt Beneficial Owners. Investment Entities are Exempt Beneficial Owners in circumstances in which each direct holder of an equity interest is an Exempt Beneficial Owner and each direct holder of a debt interest is either a Depository Institution or an Exempt Beneficial Owner (see Section 4.1 below, for the meaning of equity and debt interests).

b) **"Deemed-Compliant Financial Institutions"**, which include certain small or limited scope Financial Institutions and certain Investment Entities, as listed below:

Certain Small or Limited Scope Financial Institutions. Annex II Article III.

i. Financial Institutions with a Local Client Base.

These are Financial Institutions that are based and regulated in the UAE, that generally do not solicit non-UAE clients and, with effect from 1 July 2014, have procedures in place, consistent with those outlined in Annex I of the UAE IGA, to identify various accounts that must be reported or disclosed under the UAE IGA.

Annex II lists the classification criteria for Local Client Base Financial Institutions in detail. The criteria are lengthy and complex; any institution that may think it falls within the criteria should seek specific professional advice. See UAE Annex II, Article III(A) for specific requirements.

A Financial Institution with a Local Client Base that has a reporting obligation, because it has some Reportable Accounts, will require a GIIN and will need to register.

ii. Local UAE regulated banks.

These are Local UAE regulated banks that do not hold more than $175 million in assets on their balance sheets (or more than $500 million on consolidated balance sheets with related entities) and that generally do not solicit non-UAE clients. See UAE Annex II Article III(B) for specific requirements;

iii. Certain UAE Financial Institutions that have only low-value accounts.

In order to qualify, the Financial Institution must satisfy three requirements:

1. it must not be an Investment Entity (as defined in Section 1);
2. no Financial Account maintained by the Financial Institution or any related entity has a balance or value in excess of $50,000, applying certain rules for aggregating account values and translating currencies; and
3. the Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any related entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

Companies that would otherwise be "Specified Insurance Companies" may qualify for this exception if they satisfy the three requirements listed above.

When calculating account balances, an Annuity Contract should be treated as a Financial Account unless it is one of certain noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit. See Section 4.1 for more details on Financial Accounts.

iv. Qualified Credit Card Issuer.

Certain UAE Financial Institutions that are Financial Institutions solely because they issue credit cards (and such institutions implement policies and procedures to prevent a customer deposit in excess of $50,000 or to ensure any amount in excess of $50,000 is returned to the customer within 60 days).

Certain Investment Entities. Annex II Article IV.

In addition, there are further special rules that apply to certain Financial Institutions that are Investment Entities (as defined in 2.1.5). In general terms, an Investment Entity may be treated as Deemed-Compliant as follows:

v. Trustee-Documented Trust.

The Entity has a trustee that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity

vi. Sponsored Investment Entity and Controlled Foreign Corporation.

The Entity has a sponsor, or parent company that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

A Sponsored Investment Entity must be registered by its sponsor if it has Reportable Accounts.

vii. Sponsored. Closely Held Investment Vehicle.

The Entity has a sponsor that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

viii. Investment Advisors and Investment Managers.

The entity only provides investment advisory services, or investment management services, to customers, for the purposes of their investments deposited with other qualifying Financial Institutions (which would themselves be expected to comply with the FATCA Regulations and the UAE IGA).

An Investment Entity will qualify if it (1) renders investment advice to, or on behalf, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

ix. Collective Investment Vehicle.

Certain UAE-regulated collective investment schemes established in the UAE that are regulated as collective investment vehicles, and that are held by certain classes of owners.

These rules, particularly those relating to collective investment schemes, are detailed and complex. Any Investment Entity that believes it may qualify under the rules, as a Deemed-Compliant Financial Institution, should seek specific professional advice.

3.1.8.2 Registered Deemed Compliant Financial Institutions

The "Registered Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Non-reporting members of Participating FFI groups. See FATCA Regulations § 1.1471-5 (f)(1)(i)(B).
b) Qualified Collective Investment Vehicles. See FATCA Regulations § 1.1471-5(f)(1)(i)(C))
c) Restricted Funds. See FATCA Regulations § 1.1471-5(f)(1)(i)(D)).
d) Qualified credit card issuers. See FATCA Regulations § 1.1471-5(f)(1)(i)(E).
e) Sponsored Investment Entities. See FATCA Regulations § 1.1471-5(f)(1)(i)(F).

3.1.8.3 Certified Deemed Compliant Financial Institutions

The "Certified Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Limited life debt investment entities. See FATCA Regulations § 1.1471-5(f)(2)(iv).

3.1.8.4 Owner Document Financial Institution

See FATCA Regulations § 1.1471-5(f)(3)).

This category is intended to reduce the burden of meeting the obligations under FATCA for closely held passive investment vehicles that fall within the definition of Investment Entity. It is not, however, restricted to those cases.

In order to qualify as an "Owner Document Financial Institution", the Investment Entity must satisfy the following:

- It must not maintain a Financial Account for any Non-Participating Financial Institution;
- It must not be owned by, nor be a member of, a group of Related Entities with any member that is a Depository Institution, Custodial Institution or Specified Insurance Company (i.e. it can only be affiliated to other Investment Entities); and
- It must provide the required documentation regarding its owners and agree to notify any changes in its circumstances to the Financial Institution that is undertaking the reporting obligations on its behalf.

3.1.9 SECTION 4 - DOES THE FINANCIAL INSTITUTION MAINTAIN FINANCIAL ACCOUNTS?

The concept of "**Financial Accounts**" is broadly defined and may include products or obligations that would not normally be regarded as an "account" under UAE law or in everyday commercial use, but which could act a substitute for an "account". The definition is designed to require Financial Institutions to monitor their customer accounts.

A Financial Institution, unless otherwise exempt, must identify:

- Whether it maintains any Financial Accounts
- The Type of Financial Accounts maintained
- Whether the account holder of those Financial Accounts is a Specified U.S. Person or a Passive NFFE with one or more Controlling Persons who are Specified. U.S. Persons.

However, not all accounts held by a Financial Institution will be Financial Accounts for these purposes. Some products are exempt from the definition of Financial Account. See Section 4.2.

Where accounts are held by persons that have a relevant connection to the US (for details, see 2.1.9) at any point during the reportable period, Financial Institutions will be obliged to report them (for details, see 2.1.11).

If a Financial Institution:

- does not maintain any Financial Accounts – as defined below in Section 4.1; or
- only maintains accounts that are "Exempt Accounts" under Annex II of the UAE IGA – see Section 4.2 below;

then, once it has obtained a GIIN, it will generally have minimal further compliance obligations under the FATCA Regulations or the UAE IGA (see Part 3, the Checklist, for details on compliance requirements and procedures); however, **nil reporting is required** (i.e., a Financial Institution will be required to report that it does not maintain any Financial Accounts or only maintains Exempt Accounts).

3.1.9.1 "Financial Accounts"

"Financial Accounts" are generally any accounts maintained by a Financial Institution.

The type of Financial Institution (defined at 2.1.5) may determine the type of Financial Account:

a) **"Depository Accounts"** broadly include commercial or savings accounts, or other debts, maintained by a Financial Institution in the ordinary course of its business;
b) **"Custodial Accounts"** broadly include accounts that hold, for the benefit of another person, financial instruments, such as shares, loan notes, bonds, options and derivative instruments, and may include other arrangements pursuant to which an obligation exists to return cash or assets to another;
c) Financial Accounts, for Financial Institutions that are Investment Entities, will include **"equity or debt interests"** – generally shares or debt interests – in the Financial Institution, other than interests that are regularly traded on certain established security markets.

   An interest is "regularly traded" if there is a meaningful volume of trading with respect to that interest on an ongoing basis. Any interest treated as "regularly traded" pursuant to FATCA Regulations §1.1471-5(b)(3)(iv) shall be treated as regularly traded for purposes of the UAE IGA.

In the case of partnerships, "equity interest" means either a capital or profits interest in the partnership. In the case of trusts, "equity interest" means certain interests held by persons over some, or all, of the trusts, or by persons controlling the trusts. (For Financial Institutions that are not Investment Entities, equity or debt interests in the Financial Institutions will only be Financial Accounts in certain limited circumstances.)

d) **Financial Accounts**, for Financial Institutions that are Specified Insurance Companies, will generally include **Cash Value Insurance Contracts** (in short, insurance contracts that have a cash value greater than $50,000) and **Annuity Contracts** (in short, contracts under which payments are made, over a period of time, based on the life expectancy of specified persons). However, a non-investment linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded under Annex II is not considered a financial account.
   - "Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than $50,000. The term "Cash Value" generally means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract.
   - Notwithstanding the foregoing, the term Cash Value does not include an amount payable under an Insurance Contract as:
     1. a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
     2. a refund to the policyholder of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
     3. Solely by reason of the death of an individual insured under a life insurance contract;
     4. As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph 1 above;
     5. As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract; and
     6. Death benefits are excluded from cash value.

- Once a policy becomes subject to a claim, it does not become a New Account.
- Please see Section 11 for examples of the treatment of specific Insurance products.
- The term "Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

- Pension annuities, immediate needs annuities, periodic payment orders and reinsurance of annuity contracts between two insurance companies are excluded from this definition.

3.1.9.2 "Exempt Accounts"

Certain types of accounts are exempt, under Annex II of the UAE IGA, from the definition of Financial Accounts. If the accounts are exempt under Annex II, the Financial Institution will need to report that it only maintains Exempt Accounts. "Exempt Accounts" include:

a) Certain savings accounts maintained in the UAE, including savings, retirement and pension accounts, that all meet specified regulatory and tax conditions;

   Consideration should be given to the criteria set out in Annex II of the UAE IGA in relation to savings, retirement and pension accounts. There are currently no tax favored accounts or products identified as being exempt. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

b) Certain term life insurance contracts maintained in the UAE;

   More specifically, Exempt Accounts include a life insurance contract maintained in the UAE with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

   (1) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
   (2) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
   (3) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
   (4) the contract is not held by a transferee for value.

c) Accounts maintained in the UAE that are held solely by an estate, if the documentation for the account includes a copy of a will or death certificate;
d) Certain escrow accounts maintained in the UAE, established in connection with any of the following:
   (1) a court order or judgment
   (2) a sale, exchange or lease of real or personal property, provided that the account satisfies the following requirements:
      - The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
      - The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
      - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee

(including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
- 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.

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

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

e) Certain accounts, maintained in the UAE, that are excluded from the definition of Financial Account, under an agreement between the US and another country to implement the FATCA Regulations in that country, and that meet certain further conditions.

This exception is meant to capture accounts or products that are excluded under another country's IGA and for which the UAE has internal regulations that provide equal assurance that the account or product presents a low-risk of tax evasion. There are currently no accounts or products identified by the UAE as being exempt under this exception. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

3.1.10 SECTION 5 - ARE THE FINANCIAL ACCOUNTS US REPORTABLE ACCOUNTS?

Under the UAE IGA, a Financial Institution needs to report Financial Accounts that are "**US Reportable Accounts**". These are, broadly, accounts held by persons that have a relevant connection with the US. The details that need to be reported are at 2.1.11.

A "US Reportable Account" is a Financial Account maintained by a Reporting Financial Institution and held:

- by one or more "**Specified US Persons**" – see Section 5.1 below; or
- by a "**Non-US Entity**" that is controlled by one or more Specified US Persons – see Section 5.2 below.

An account may be established as being a "US Reportable Account" if, after necessary due diligence is carried out on the account (for details, see 2.1.10 and Part 4), US indicia (which are, essentially, broad indications of connections to the US) are uncovered – see Section 5.3 below.

Because insurance policies are not financial accounts in the ordinary sense of the term, the UAE IGA provides guidance regarding who is treated as an "**Account Holder**" of a Cash Value Insurance Contract or an Annuity Contract. The Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

3.1.10.1 Financial Accounts held by "Specified US Persons"

The term "**Specified US Person"** is broad and will essentially cover any "US Person", which is defined as a:

a) US citizen or resident individual;
b) partnership or corporation organized in the US, or under the laws of the US (or any of its States); or
c) trust, if, in general terms, a US court has jurisdiction over it and it is controlled by US persons.

Accounts held by any one or more of those persons, will generally be reportable.

Certain persons are specifically excluded from being "Specified US Persons", so accounts held by them will not be reportable. These include:

a) Companies whose stock is regularly traded on an established securities market and, in general terms, members of their corporate groups;
b) the US, or any of its States or specified US Territories, or wholly owned governmental agencies or organizations;
c) certain:
   - tax exempt organizations;
   - retirement plans;
   - banks, real estate trusts, regulated investment companies, tax exempt trusts and common trust funds; and
   - securities, commodities or derivatives dealers or brokers;

all as specifically defined under relevant provisions of the Code and FATCA Regulations, and as set forth in the UAE IGA.

3.1.10.2 Financial Accounts held by a "Non-US Entity" where one or more Controlling Persons are Specified US Persons

The objective behind these provisions is to identify Financial Accounts that are controlled by US persons, even if they are actually held by non-US persons. If so, they will generally be reportable.

A "**Non-US Entity**" is any legal person (such as an individual, or a corporation), or legal arrangement (such as a trust), that is not a US Person.

A "**Controlling Person**" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012) (which provide that a controlling ownership interest depends on the ownership structure of the company). It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 percent). Accordingly, if a non-US Financial Account has a Controlling Person who is a US natural person, it will generally be reportable.

3.1.10.3 Financial Accounts with US indicia discovered after due diligence

As noted above, a Financial Institution must carry out necessary due diligence procedures on its accounts. Section 6 outlines the details of the due diligence procedures required in relation to the size and date of creation of various accounts. Part 4, Due Diligence, gives a summary of the obligations outlined at section 6 in the form of two flowcharts and a checklist.

If, after carrying out relevant due diligence into an account, the Financial Institution discovers any US indicia, it may need to (depending on the size and date of creation of the account) report the account. Any of the following US indicia may make the account reportable:

a) Identity of the account holder as a US citizen or resident;
b) Unambiguous indication of a US place of birth;
c) Indication of incorporation or organization in the US with respect to entities;
d) A current US mailing or residence address, including a US post office box;
e) A current US telephone number;
f) Standing instructions to transfer funds to an account maintained in the US;
g) A currently effective power of attorney or signatory granted to a person with a US address; or
h) A US "in care of", or "hold mail" address, that is the sole address that the Reporting Financial Institution has on file for the Account Holder.

The effect of the use of these US indicia is to considerably broaden the ambit of the FATCA Regulations and the UAE IGA, so that they can apply even if account holders have fairly loose or historic connections with the US. Even if an account holder is not specifically a US citizen or resident individual (defined at Section 5.1 above), the account may be reportable if any of these US indicia are found and not cured.

3.1.11 SECTION 6 - WHAT DUE DILIGENCE REQUIREMENTS MUST BE MET?

Annex I of the UAE IGA lists the due diligence obligations of Financial Institutions.

The broad purpose is to ensure that Financial Institutions identify Financial Accounts that are US Reportable Accounts (that are held by persons that have a relevant connection to the US (for details, see 2.1.9)), in order to be able to report on them where necessary.

The due diligence obligations fall into two main categories:

- Procedures for individual accounts (accounts held by human persons) – see Section 6.1 below and Flowchart 3 at Part 4; and
- Procedures for entity accounts (accounts held by legal persons, such as companies and partnerships) – see Section 6.2 below and Flowchart 4 at Part 4.

The due diligence processes for identification of account holders require one or more of these three processes to be carried out by Financial Institutions with respect to its accounts:

- Indicia search: searching for relevant indicia by reference to documentation or information held or collected in accordance with opening or maintaining an account (for details, see Section 5.3).
- Self-certification or documentary evidence: requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable.
- Publicly available information (for entities only).

The due diligence procedures are very significant and very detailed. Financial Institutions should seek specific professional advice on how the rules will apply to them; the information in this Section is a general summary only. Financial Institutions may also want to consider collecting additional information (including, for example, tax residence, date of birth and place of birth) from account holders in anticipation of the implementation of the OECD Common Reporting Standard.

As detailed below, Financial Institutions should not report any accounts that fall below the thresholds set forth in Annex I of the UAE IGA.

3.1.11.1 Due diligence procedures for individual accounts (Flowchart 3)

The due diligence procedures for individual accounts aim to identify accounts that are held by human persons with a relevant connection to the US (for details, see 2.1.9).

To carry out the due diligence correctly, a Financial Institution will need to group its individual accounts into 2 general categories:

- "Pre-existing Individual Accounts", which are accounts held by individuals as of 30 June 2014 – see (a) below; and
- "New Individual Accounts", which are accounts opened by individuals on or after 1 July 2014 – see (b) below;

a) Pre-existing Individual Accounts

Pre-existing Individual Accounts can be divided into 3 categories:

- Small accounts, which have a balance or value of $50,000 or less (or $250,000 or less, in the case of cash value insurance contracts or annuity contracts) as of 30 June 2014.

  These do not need to be reviewed, identified or reported, unless the accounts later become High Value Accounts.

- "Lower Value Accounts", which have a balance or value that exceeds $50,000 (or $250,000, in the case of cash value insurance contracts or annuity contracts) and that does not exceed $1,000,000 as of 30 June 2014.

  On these accounts, a Financial Institution must carry out, by 30 June 2016, an electronic record search, to identify US indicia. If no US indicia are found after the electronic record search, no further action is required (unless the account becomes a High Value Account or is later associated with one or more US indicia). If any one of the US indicia is discovered, then the account is, in principle, reportable (under the procedures at 2.1.11) and self-certification should be requested from the account holder.

  Even so, the Financial Institution may elect not to report the account, if the account holder provides various documents, certificates and evidence (i.e., self-certification, which may be on an IRS Form W-8 or W-9) about his/her status, essentially to prove that he/she is in fact not a US citizen or US resident for tax purposes. The UAE IGA contains detailed rules on the evidence that the Financial Institution must require from the account holder.

- "High Value Accounts", which are accounts with a balance or value that exceeds $1,000,000 on 30 June 2014, or on 31 December of any subsequent year.

  On these accounts, a Financial Institution must carry out an electronic records search to find any of the US indicia listed above. If the Financial Institution's electronic search does not capture all of the required information, the Financial Institution must also review specified historic paper records, for the previous 5 years (including Anti-Money Laundering and "Know Your Client Information"). The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last five years: (i) the most recent documentary evidence collected with respect to the account, (ii) the most recent account opening contract or documentation, (iii) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes, (iv) any power of attorney or signature authority forms currently in effect, and (v) and standing instruction to transfer funds currently in effect. These should be reviewed for any US indicia.

  The Financial Institution must also find out, from the account holder's relationship manager, whether the relationship manager actually knows that the account holder is a US person as actual knowledge by the relationship manager will override the results of any inconclusive electronic/paper search. Records of electronic searches, requests made and responses to the relationship manager inquiries should be retained for six years following the end of the year in which the due diligence was undertaken.

  If no US indicia are found, following all of these searches, then the Financial Institution will not need to report the account (unless the account is later associated with one or more US indicia).

  If US indicia are found, the account will be a US Reportable Account unless the Financial Institution requests and receives specified evidence from the account holder that he/she is not a US citizen or US tax resident. Where the indicia found is an unambiguous US place of birth then the account needs to be reported unless the Financial Institution obtains or currently maintains a record of all of the following: (i) a self-certification showing that the account holder is neither a US citizen nor a US resident for US tax purposes, (ii) evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification) and (iii) a copy of the

account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of the reason the account holder does not have such a certificate or the reason the account holder did not obtain US citizenship at birth.

Where the indicia includes a current US mailing or residence address, or one or more US telephone numbers that are the only telephone numbers associated with the account, then the account must be reported unless the Financial Institution obtains or currently maintains a record of: (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes and (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

Where the indicia found contains standing instructions to transfer funds to an account maintained in the United States (but has a non-US telephone number also associated with the account), the account must be reported unless the Financial Institution obtains or currently maintains a record of (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes or (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

The review of High Value Accounts must be carried out by 30 June 2015, unless the accounts later become High Value Accounts, in which case, the accounts must be reviewed, broadly, within 6 months after the end of the calendar year in which they became High Value.

b) New Individual Accounts

Unless a Financial Institution elects to do so, it will not generally need to perform a due diligence review with respect to New Individual Accounts with a value of $50,000 or less at the end of any calendar year, or other appropriate reporting period. Accounts below this threshold should not be reported.

For all other New Individual Accounts, the Financial Institution must, on opening the account, obtain self-certification from the account holder, to determine whether the individual is US tax resident. The Financial Institution must also confirm the reasonableness of the self-certification.

If the self-certification establishes that the account holder is a US tax resident, then the Financial Institution must report the account. If, as a result of a change of circumstances, the Financial Institution knows, or has reason to know, that the original self-certification has become inadequate, or unreliable, the Financial Institution must seek further self-certification. If it is then unavailable, the Financial Institution must report the account.

3.1.11.2 Due diligence procedures for entity accounts (Flowchart 4)

The due diligence procedures for entity accounts (those held by legal persons such as companies and partnerships) are more complex than the procedures for accounts held by individuals.

In particular, the UAE IGA creates several categories of entities, based on definitions in the FATCA Regulations.

In general terms, to carry out the due diligence correctly, a Financial Institution will need to group its entity accounts into two categories:

- "Pre-existing Entity Accounts", which are accounts held by entities as of 30 June 2014 (or 31 December 2014, with certain conditions)– see (a) below; and
- "New Entity Accounts", which are accounts opened by entities on or after 1 July 2014 – see (b) below.

a) Pre-Existing Entity Accounts

Pre-existing Entity Accounts can be divided into the two categories below. (For these purposes, Annex I and Notice 2014-33 allow an Entity Account that is issued, opened or executed on or after 1 July 2014, and before 1 January 2015, to be treated as a pre-existing account (with certain conditions), at the discretion of the Financial Institution).

The two categories of Pre-Existing Entity Accounts are:

- Small accounts, which have a balance or value of $250,000 or less, as of 30 June 2014.

  These do not need to be reviewed until the account balance exceeds $1,000,000.

- All other entity accounts, which must be reviewed. These will consist of accounts:
  - with a balance or value that exceeds $250,000 as of 30 June 2014 – which must be reviewed by 30 June 2016; or
  - with a balance or value that does not exceed $250,000 as of 30 June 2014 but that does exceed $1,000,000 on certain specified dates going forward – which must be reviewed within 6 months after the end of the calendar year in which the account exceeded $1,000,000.

    The specified review procedures differ from those specified for individual accounts. For pre-existing entity accounts, the Financial Institution must, for example, review information maintained for regulatory or customer relationship purposes (including Anti-Money Laundering or "Know Your Client" information). Beyond that, the review procedures will vary, depending on the account holder, so Financial Institutions should seek specific professional advice on the exact review procedures they must follow.

    The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

    - **Accounts held by Specified US Persons** (essentially, all US persons, with some exceptions, as outlined in Section 2.1.9.1 above).

      If the review suggests that the account holder is a Specified US person, the Financial Institution must report the account, unless the account holder self-certifies that the account holder is not a Specified US person, or the Financial Institution reasonably determines (based on information in its possession or publicly available information) that the account holder is not a Specified US person.

    - **Accounts held by Financial Institutions**

      If the review indicates that the account holder is a Financial Institution, and details of its GIIN are confirmed, the account will not need to be reported.

    - **Accounts held by "Nonparticipating Financial Institutions"**

      The definition of "Nonparticipating Financial Institution" is detailed and refers to the FATCA Regulations. Essentially, such an institution is "nonparticipating", because it has failed to comply with FATCA.

      If the review indicates that an account holder is a Financial Institution treated by the IRS as a UAE Nonparticipating Financial Institution, the Reporting FI will need to annually report on payments made to it.

If the review indicates that an account holder is a Financial Institution, but not a UAE Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then it should be treated as a "nonparticipating", unless the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner, or unless the Financial Institution is able to verify that the entity is a participating Financial Institution or Registered Deemed Compliant Financial Institution, for instance from its GIIN.

This is to allow the IRS to monitor institutions that are not complying with FATCA and to watch the payments being made to them.

- **Accounts held by NFFEs**

  The meaning of NFFEs is outlined in detail at Section 8 below. Essentially, NFFEs are entities that are not US entities and are not Financial Institutions, under the relevant definitions.

  NFFEs can be "Active" or "Passive". The details of the difference are outlined in Sections 8 – 10.

  If the review indicates that an account holder is a Passive NFFE, the Financial Institution must investigate the persons that control it to determine if there are any Controlling Persons who are Specified US Persons (as determined under the procedures specified in the UAE IGA, which generally requires direct or indirect control of 25 percent of the entity). If those persons are US persons, the account must be reported.

b) New Entity Accounts

There are several categories of New Entity Accounts, some of which are defined in the FATCA Regulations. Any Financial Institution opening New Entity Accounts must take specific professional advice on its due diligence obligations.

In general, New Entity Accounts will be:

- Small accounts, which are certain credit card or revolving credit facility accounts with a balance or value of $50,000 or less (and that cannot exceed $50,000).

  These accounts do not need to be reviewed.

- All other New Entity Accounts, which must be reviewed.

  The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

  - Accounts held by Specified US Persons (essentially, all US persons, with some exceptions, as outlined in Section 5.1 above)

    These accounts are reportable.

  - Accounts held by UAE Financial Institutions, or Financial Institutions of other countries that have an IGA with the US to implement FATCA

    These are generally not reportable (as the Financial Institutions will themselves be complying with FATCA pursuant to an IGA).

  - Accounts held by "Participating" or "Deemed-Compliant Foreign Financial Institutions", or "Exempt Beneficial Owners"

These terms are defined in the UAE IGA or the FATCA Regulations, as applicable. Essentially, they describe institutions that are complying with the FATCA Regulations or the IGA. The accounts are not reportable.

- Accounts held by Active or Passive NFFEs

  Active and Passive NFFEs are defined in detail at Sections 8 – 10.

  Active NFFE accounts are not generally reportable. Passive NFFE accounts are only generally reportable if they are controlled (as determined under the procedures specified herein) by US persons.

- Accounts held by "Nonparticipating Financial Institutions"

  As noted above, "Nonparticipating Financial Institutions" are institutions that are "nonparticipating", because they have consistently failed to comply with the FATCA Regulations.

  If the review indicates that a New Entity Account holder is a UAE Nonparticipating Financial Institution, the account will not specifically be reportable. However, the Financial Institution will need to annually report on payments made to it.

3.1.11.3 Self-Certification; Documentary Evidence; and Aggregation.

This Section 6.3 applies to both individual and entity accounts.

a) Self-Certification

A self-certification must be signed and dated by the account holder and solicit the following information: (i) name, (ii) residence address for tax purposes, (iii) jurisdiction(s) of residence for tax purposes (note that a US citizen is considered a US tax resident even if the person is also a tax resident of another jurisdiction), (iv) taxpaying identification number ("TIN") (if taxpayer has a US TIN and a non-US TIN, the US TIN must be provided, and the non-US TIN may be provided), (v) in the case of an entity, the entity's FATCA status and (iv) in the case of a Passive NFFE, the name, residence address for tax purposes, and TIN with respect to a Controlling Person that is a Specified US person.

The self-certification can include other information required for other purposes such as AML due diligence and can be in paper or electronic format. There will be no specific template for self-certification issued by the UAE Ministry of Finance. Self-certifications and other documentary evidence provided by account holders to Financial Institutions should be retained for six years following the end of the year in which the account holder's tax status was established.

IRS Forms W-8 and W-9 are acceptable to establish an account holder's status. A pre-FATCA W-8 form may be accepted in lieu of obtaining an updated W-8 until such time as the W-8 needs to be reviewed.

A self-certification cannot be relied upon if a Financial Institution has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status. A Financial Institution receiving a self-certification must consider other information it has obtained concerning the account holder, including any documentation collected pursuant to AML/KYC procedures, to check whether the self-certification is reliable. In instances where there is an apparent conflict, the Financial Institution is required to make further inquiries.

b) Documentary Evidence

Financial Institutions may need to request documentary evidence from account holders where any US indicia are present. Acceptable documentary evidence includes: (i) a certificate of

residence issued by an authorized government body of the jurisdiction in which the account holder claims to be a resident, (ii) with respect to an individual, any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes, (iii) with respect to an entity, any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which the entity was incorporated or organized, and (iv) any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

Documentation is required to support the status of each Financial Account held. However, documentation obtained by a Financial Institution may be used in relation to more than one Financial Account in certain circumstances. For example, documentation furnished by a customer may be relied on for another account if both accounts are held at the same branch location and both accounts are treated as a single account or obligation. A Financial Institution may also rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or a branch location of a related entity of the Financial Institution if the Financial Institution treats all accounts that share documentation as a single account or obligation or as held by the same account holder and the Financial Institution and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to systematically retrieve all other accounts of the customer. Lastly, a Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the expanded affiliated group of the Financial Institution if the Financial Institution treats all accounts that share documentation as consolidated accounts or as held by the same account holder and the Financial Institution and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, as described in the FATCA Regulations.

c) Aggregation and Currency Translation

To identify whether Financial Accounts are reportable, and the extent to which enhanced review procedures are required in respect of High Value Accounts, a Financial Institution will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

A Financial Institution is required to aggregate all Financial Accounts, belonging to an individual or entity, maintained by it or a Related Entity, but only to the extent that the Financial Institution's current computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to aggregated. If an individual, who holds an account in his or her own name, is also a Controlling Person of an entity, then the accounts of the individual and the entity for which they are a Controlling Person should not be aggregated.

An inquiry should also be made to the account holder's relationship manager, if applicable, to determine if the relationship manager knows, or has to reason to know, of other Financial Accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person. In such cases and for the purposes of determining a High Value Account all such accounts should be aggregated.

For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the US dollar, Financial Institutions must convert the US dollar threshold amounts described below into such currency using a published spot rate determined as of the last of the calendar year preceding the year in which the Financial Institution is determining the balance or value.

d) Change in Circumstances

If there is a change in circumstances with respect to a Financial Account that causes the Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Financial Institution must redetermine the status of the account in accordance with the due diligence procedures described in this Section.

A change in circumstance includes any change to or addition of information in relation to the account holder's account (including the addition, substitution or other change of account holder) or any change to or addition of information to any account associated with such account. Associated accounts are those accounts that are associated through the aggregation rules or where a new account is treated as a pre-existing obligation.

If a Financial Institution does not report Financial Accounts where US indicia is present but are subsequently "cured", then the Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the US, the Financial Institution is required to treat the new address as a change in circumstances and is required to obtain the appropriate documentation from the account holder.

3.1.12 SECTION 7 - WHAT REPORTING REQUIREMENTS MUST BE MET?

Once a Financial Institution has identified accounts as US Reportable Accounts, it must report on those accounts (or report that it does not have any such accounts).

The UAE IGA allows UAE Financial Institutions to supply the information to the UAE Ministry of Finance instead, who will then supply it to the IRS. This information will first be provided to the relevant regulator, at the following links:

CB: Central Bank Services Portal (private network)

IA: http://fatca.ia.gov.ae/fatca

SCA: https://scafatca.sca.ae/fatca/

DIFC/RoC: https://portal.difc.ae

MoF: https://moffatca.mof.gov.ae/fatca/

Please also consult these links for additional details on reporting, including what account holder details are required; what account information is required; what information is required on US persons; how to report on joint accounts; how to report on payments to non-participating financial institutions; how to report on recalcitrant accounts; the data format; how to transmit data; and the deadline for filing with the relevant regulator.

The information required to be reported, in relation to any US Reportable Account (defined at Section 5) includes:

- Details of the account holder:
    - Where an account is held by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US Taxpayer Identification Number ("TIN") of the Specified US Person.
    - Where an account is held by a Non-US Entity that is controlled by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US TIN (if any) of the Non-US Entity and each Specified US Person.
    - If the Financial Institution has no TIN on record for any particular individual, it can provide a date of birth instead, for accounts maintained as of June 30, 2014 (subject to further limitations provided in the IGA).
- The account number.
- The name and identifying number of the Reporting Financial Institution.
- The account balance or value at the end of the relevant calendar year (or certain other specified time periods). The account balance or value includes, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value.
- For an Insurance Contract or an Annuity Contract, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting, including the aggregate amount of any redemption payments made to the policy holder.

After the first year of reporting, additional information will need to be reported annually, which generally relates to income or capital earned in the account, or arising from assets held in the account. The first year of reporting will occur in 2015, at which time information related to 2014 information must be reported.

3.1.13 SECTION 8 - IS THE ENTITY AN NFFE?

The concept of an "**NFFE**" aims to identify entities that are neither US entities nor Financial Institutions (as defined in the UAE IGA). It generally includes foreign entities that are not engaged in banking or investment management business activities.

As noted above, most of the obligations under the UAE IGA fall on Financial Institutions that are "Reporting Financial Institutions" (see above, Section 2). So the rules are generally only concerned with non-financial entities to the extent that they are not actively trading, hold mostly passive income (such as dividends, interest, rents) and are controlled by US persons. Such entities will usually fall within the definition of "Passive" NFFEs (see 2.1.14), which may be reportable if they are controlled by US persons (see above, 2.1.11). NFFEs that are not "Passive" are generally "Active", not engaged in banking or investment activities or earning mostly passive income, and therefore carry fewer obligations under the FATCA Regulations and the UAE IGA.

The definitions of Active and Passive Non-Financial Foreign Entities are outlined at Sections 9 and 10, respectively.

3.1.14 SECTION 9 - IS IT AN ACTIVE NFFE?

An "**Active NFFE**" is, essentially, an NFFE that is not engaged in banking or investment activities, is not earning largely passive income, and does not largely hold passive assets. Passive income generally includes dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort. The FATCA Regulations provide that amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts are passive income, and such income should also be treated as passive income under the UAE IGA. Passive assets include assets that produce or are held for the production of passive income.

More specifically, an NFFE will be "Active" if it meets any of the following criteria:

a) Less than 50 percent of its gross income for the preceding year is passive and less than 50 percent of its assets during the preceding year are assets that produce passive income. As noted in Annex I, Art. VI(B)(4)(a), the term "preceding year" refers to the preceding calendar year or other appropriate reporting period (e.g., a fiscal year);
b) The stock of the NFFE (or a Related Entity) is regularly traded on an established securities market;
c) The NFFE is organized in a US territory (which means certain territories connected to the US, such as American Samoa, Guam, the Commonwealth of Puerto Rico and the US Virgin Islands) and all of the owners of the payee are residents of that territory;
d) The NFFE is a non-US government organization (at national, state, or local level), a public body performing governmental tasks, a government of a US territory, an international organization, a central bank, or an entity wholly owned by any of them;
e) Substantially all the activities of the NFFE consist of holding shares in, or providing financing services to, subsidiaries engaged in trade or businesses, other than the business of a Financial Institution. (The entity must not function as, or hold itself out as, an investment fund or investment holding structure however, which holds interests in companies as investments, as it will then become conceptually similar to a Financial Institution);
f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution (this criterion will not apply after the first 2 years of the initial organization of the NFFE);
g) The NFFE was not a Financial Institution in the past 5 years and is in the process of liquidating its assets, or reorganizing its business, with the intent of continuing/recommencing operations in a business other than that of a Financial Institution;
h) The NFFE primarily engages in financing or hedging transactions with certain Related Entities that are not Financial Institutions and does not provide such services to entities that are not Related Entities – as long as the overall group does not carry on the business of a Financial Institution;
i) The NFFE is an "excepted" NFFE under the FATCA Regulations (which broadly includes publicly-traded companies, certain US territory entities, certain non-financial holding companies, start-up companies, non-financial entities that are liquidating, the hedging or financing centers of non-financial groups and certain not-for-profit organizations); or
j) The NFFE meets all of the following requirements:
    - It is established and operated in its jurisdiction of residence exclusively for specified non-profit purposes (such as religious or charitable organizations, chambers of commerce, or civic leagues);
    - It is exempt from income tax in its jurisdiction of residence;

- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, do not permit any income or assets to be applied for the benefit of a private person or non-charitable entity (with some exceptions, such as payments that are reasonable compensation for services rendered, or property purchased); and
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, require that, upon liquidation, all its assets are distributed to governmental entities, or other non-profit organizations.

Please see Annex I of the UAE IGA for the specific requirements of each of the "Active NFFE" requirements.

3.1.15 SECTION 10 - IS IT A PASSIVE NFFE?

As noted above, FATCA and the UAE IGA are mostly concerned about requiring Financial Institutions to report on accounts held by persons with a relevant connection to the US (for details, see 2.1.9).

The rules are generally less concerned about NFFEs, which are, broadly, non-US entities that are not Financial Institutions. However, where an NFFE is "**Passive**", rather than "Active", accounts held by it will need to be reported to payors or other withholding agents in certain circumstances.

The object of the rules is, broadly, to identify NFFEs that earn largely passive income (such as dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort) and that have Controlling Persons (as determined under the rules) who are Specified US persons. Accounts held by Passive NFFEs that are controlled by US persons are reportable in certain circumstances (see 2.1.11).

A "Passive NFFE" is an NFFE that is NOT:

a) an Active NFFE (see 2.1.13);
b) a "withholding foreign partnership" under the relevant Regulations; or
c) a "withholding foreign trust" under the relevant Regulations.

These partnerships and trusts are, broadly, entities that have entered into withholding agreements with the IRS, which require them to withhold US tax on certain payments made to foreign persons from the US.

Direct Reporting NFFEs

In Notice 2013-69 and subsequent changes to the FATCA Regulations, a new category of Passive NFFE was introduced - a "**Direct Reporting NFFE**". A Direct Reporting NFFE is described at FATCA Regulation §1.1472-1T(c)(3) and will be treated as an Excepted NFFE. It is a Passive NFFE that elects to report certain information about its direct or indirect substantial US owners directly to the IRS as opposed to providing such information to the UAE Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain a GIIN.

The US Regulations also allow an entity to serve as a sponsor for one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs), which will require the sponsoring entity to report information about a Sponsored Direct Reporting NFFE's direct or indirect substantial US owners directly to the IRS.

3.1.16 SECTION 11 - SPECIAL FATCA CONSIDERATIONS FOR INSURANCE COMPANIES

Insurance Company

The term "Insurance Company" has the meaning given to it under the UAE IGA, not under UAE law. Accordingly, one should not determine that an entity is (or is not) an insurance company merely based upon whether or not that entity is regulated as an insurance company in the UAE. The FATCA Regulations define an entity as an "Insurance Company" if it meets any of three conditions:

a) It is regulated as an insurance company under local (i.e., UAE law);
b) Its gross income from insurance, reinsurance, and annuity contracts for the preceding year exceeds 50 percent of its income for that year; or
c) The value of assets associated with insurance, reinsurance and annuity contracts exceeds 50 percent of its assets at any time during the previous year.

Entities that are not regulated as insurance companies in the UAE but perform functions that fall within the definition above should closely examine how they are characterized under the UAE IGA.

Specified Insurance Company

When reviewing the definitions of Cash Value, Cash Value Insurance Contract and Annuity Contract, it helps to recall the underlying policy purposes of FATCA. The US enacted FATCA to discover financial accounts held by US citizens abroad that were not being reported to the US government and for which US taxes were not being paid. Because individuals may use some insurance products as a substitute for a financial account, certain insurance policies are treated as US Reportable Accounts. However, the definitions intentionally exclude the types of policies for which there is no substantial risk of tax evasion by US persons. Thus, for example, indemnity reinsurance contracts between insurance companies are not considered financial accounts. Similarly, the term Cash Value excludes certain payments made in cash (e.g., payments on claims made for personal injury or sickness, refunds of certain premiums, and certain payments made to adjust for underwriting experience).

As previously noted, the term "Specified Insurance Company" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract. This means that the holding company of a Specified Insurance Company that actively conducts one of the specified types of insurance businesses will also be considered a Specified Insurance Company.

Financial Institution vs. NFFE

When an Insurance Company seeks to determine its FATCA status under the UAE IGA, it should keep certain points in mind. First, Insurances Companies can be a Financial Institution even if they are not a "Specified Insurance Company." As explained in Section 1, there are four principal ways that an entity can be a Financial Institution. If an Insurance Company determines that it is not a "Specified Insurance Company" it could still be a Financial Institution under one of the three other Financial Institution categories (Depository Institution, Custodial Institution, and Investment Entity). An Insurance Company will normally hold investments as part of its reserving activities. The FATCA Regulations clarify that the "reserving activities of an insurance company will not cause the company to be a Financial Institution." Although the term "reserving activities"

is not defined under the UAE IGA or the FATCA Regulations, the IRS has in other contexts stated that:

> [t]he business of an insurance company necessarily includes substantial investment activities. Both life and nonlife insurance companies routinely invest their capital and the amounts they receive as premiums. The investment earnings are then used to pay claims, support writing more business or to fund distributions to the company's owners. The presence of investment earnings does not, in itself, suggest that an entity does not qualify as an insurance company.

However, if an Insurance Company holds investments for purposes other than reserving activities, a determination should be made as to what effect those investments have on its FATCA classification under the UAE IGA.

Conversely, Insurance Companies may be NFFEs. If an Insurance Company is an NFFE, it is likely to be a Passive NFFE unless it is publicly traded. An Insurance Company may be an NFFE if it issues no cash value insurance contracts or annuity contracts (for example, a pure reinsurance company or casualty insurance company). Many Insurance Companies are unlikely to qualify as an Active NFFE under the "and" test that requires 50 percent of assets and 50 percent of income to be "active" because under the FATCA Regulations, income from reserve activities is treated as passive income. The same rule will apply under the UAE IGA in determining whether income is passive or active.

Joint Accounts

For joint accounts held by individuals, each Account Holder should be treated as holding the entire Cash Value of a policy. Thus, if the Cash Value of a policy is $90,000, but only one account holder is a US person, the Cash Value would be greater than the $50,000 exclusion.

Insurance Brokers

Insurance Brokers likely will be treated as Active NFFEs because they do not hold accounts for others.

Property and Casualty Insurers

Property and Casualty Insurers will likely be treated as Passive NFFEs because most policies will not have Cash Value.

Products

Based upon the guidance and definitions provided elsewhere in this Guidance Note, the following chart provides specific examples of products and their likely classification:

General Category	Financial Account	Not a Financial Account
Individual Life	Whole life Interest Sensitive Whole Life Universal Life Variable Life Endowment	Cash Value < $50,000 Certain Term Life policies
Accident & Health	Refundable policies, where amounts payable upon	Policies without Cash Value, which generally are: Critical Illness

	termination exceed the total premiums paid	Personal Accident (incl. AD&D) Individual Medical Short-term Disability Credit Life Refundable policies, where amounts payable upon termination do not exceed the total premiums paid
Reinsurance	Reinsurance arrangements involving cash value insurance contracts under which the company becomes solely liable for payment of future benefits under the contracts assumed or has assumed all administration of the underlying contracts	An indemnity reinsurance contract between two insurance companies
Retirement	Fixed Annuities Variable Annuities Immediate Annuities	Immediate life annuities that monetizes certain pension or disability benefits, if it is non-investment linked, nontransferable, and issued to an individual Retirement products that meet certain exemptions
Group	Group Universal Life Group Term Life when amounts payable upon termination or surrender of contract exceed total premiums paid	Insurance Contracts with Cash Value < $50,000

For purposes of the table above, please see the general definitions provided below.

"Credit Life" means a policy designed to pay off a borrower's debt if that borrower dies.

"Endowment" insurance means a policy which provides for the payment to a person other than the person whose life is insured if death occurs within a specific period of time, after which point the policy becomes payable to the person whose life is insured.

"Group Universal Life" means Universal Life that is offered on a group basis.

"Group Term Life" means term life insurance that is offered on a group basis.

"Fixed Annuities" are annuities that provide for a fixed payment, and do not provide protection against inflation.

"Immediate Annuity" means an annuity in which payments start within 12 months of the date of purchase, which is purchased with a single premium, and which makes payments at least annually.

"Interest Sensitive Whole Life" or "ISWL" is a Whole Life Policy where changes to prevailing interest rates change the rate at which the investment component accrues value.

"Universal Life" is a Whole Life policy where, subject limits, premiums are placed into the investment component of the policy and deductions are periodically made to pay the mortality deduction charge based on current mortality expenses.

"Variable Annuities" mean annuities for which payments change depending upon the performance of an underlying investment.

"Variable Life" or "VUL" is a life insurance policy with an investment component where the policy value and cash value are expressed in terms of units that increase or decrease in value depending upon the performance of underlying investments.

"Whole Life" is a life insurance contract with level premiums that has both an insurance and an investment component.

Procedures

The UAE IGA may also require that Insurance Companies revise their procedures. Although Insurance Companies often have contact with clients at a certain time (for instance, when policies are written, upon a change of circumstance, or upon a claim), the UAE IGA generally requires reporting on an annual basis. Furthermore, because the UAE IGA requires that withholding certificates are generally only valid for three years, Insurance Companies may need to revise existing procedures to ensure that required information is timely collected and reported.

3.2 CHAPTER 3 – PART 2 - APPLICATION OF FATCA TO REGULATED ENTITIES

3.2.1 OUTLINE OF THIS PART

This Part outlines how certain types of entities regulated by IA may be classified under the UAE IGA. However, the classification of each entity regulated by IA is a fact specific test and this outline is not conclusive of any such classification. Consequently, any likely classification noted in this Part 2 should be interpreted only as a guide.

3.2.2 CONTENTS OF THIS PART

The IA governs the insurance industry in the UAE, including insurance companies, insurance agents, re-insurers, insurance brokers, and others in the industry. There are several legal authorities applicable to the IA. **Federal Law No. 6 of 2007**, is the implementing regulation which created the IA, and sets out the terms of operation of the IA. It also sets out details of who may act as an insurance company and the types of insurance business to which the regulations apply, and it also sets out the obligations of insurance companies in undertaking insurance business. **Insurance Authority Board of Directors Resolution No. 15 of 2013** concerns the regulation of Insurance Brokers in the UAE. **Decision No (58) of 2013 Concerning the Implementation of Insurance Authority Board of Directors Resolution No. 15 of 2013 concerning Insurance Brokerage Regulations** acts as an implementing resolution concerning insurance brokers in the UAE, and acts to supplement Resolution No. 15 referenced above, and also provides additional detail on the regulation of brokers.

This Part contains an example analysis for each of the following types of entities regulated by IA:

Section 1 – Life Insurance Company

Section 2 – Property and Casualty Insurance Company

Section 3 – Reinsurance Company

Section 4 – Insurance Broker

3.2.3 SECTION 1 - LIFE INSURANCE COMPANY

FACTS:

Life Insurance Company is regulated in the UAE as an insurance company and is established under UAE law. It has both local and non-local customers and offers "whole life" insurance policies (i.e., with no fixed term) where the named beneficiary of the policy holder is entitled to receive at the policy holder's death the full value in the policy holder's account. This account value is determined based on the amount of premiums paid over time by the policy holder and reflects the return upon investments made with the premiums. Depending on the performance of the investments, the account value may exceed the cumulative amount of premiums paid, and at least one such account has a value exceeding $50,000. At the election of the policy holder, the policy may be cancelled and the policy holder will receive in cash the account value.

ANALYSIS:

i. Is Life Insurance Company an Insurance Company?

Because Life Insurance Company is regulated as an insurance company under UAE law and is in the business of offering insurance products, it is an Insurance Company.

ii. Is Life Insurance Company a Specified Insurance Company?

Because the policy holder may surrender his or her policy in exchange for cash it has "Cash Value." It is not necessary to determine whether the cash value exceeds the amount of premiums previously paid because the insurance policy is a life insurance contract (and thus the second exception to Cash Value that may apply upon cancellation or termination does not apply). For each account where the Cash Value exceeds $50,000, there is a Cash Value Insurance Contract. Thus, the Insurance Company is a Specified Insurance Company.

iii. Is Life Insurance Company a Financial Institution?

The definition of Financial Institution includes a "Specified Insurance Company," (which, as explained above, is a category which includes an insurance company that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract). Because Insurance Company issues Cash Value Insurance Contracts, Insurance Company is a Specified Insurance Company. Therefore, Life Insurance Company is a Financial Institution.

iv. Is Life Insurance Company a Reporting or Non-Reporting Financial Institution?

Since Life Insurance Company determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities. Since Life Insurance Company does not have a purely local client base and does not otherwise qualify for an exemption, it is a Reporting Financial Institution.

v. Does Life Insurance Company maintain Financial Accounts?

Financial accounts specifically include "Cash Value Insurance Contracts". Because the whole life insurance policies do not fall within the exception for Term Life Insurance Contracts and may be surrendered for cash, they are Cash Value Insurance Contracts, so Life Insurance Company determines that it holds Financial Accounts.

vi. Does Life Insurance Company maintain US Reportable Accounts?

A Financial Account will be a reportable account where it is held by a US Person or an NFFE controlled by US persons. Life Insurance Company must follow the due diligence

procedures set out in Annex I of the UAE IGA and detailed in Section 5 and Section 6 of Part 1 of this Guidance Note in order to identify Account Holders and US Reportable accounts.

vii. What Compliance Procedures does Life Insurance Company need to follow?

Register on the IRS registration portal and obtain a GIIN.

- Undertake the necessary due diligence and make annual reports to the UAE IA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance to the US begins on 30 September 2015, and Financial Institutions will have to report to the UAE IA by date announced by the IA.

3.2.4 SECTION 2 – PROPERTY AND CASUALTY INSURER

FACTS:

Property and Casualty Insurance Company "PCI" is regulated in the UAE as an insurance company and is established under UAE law. It has both local and non-local customers and offers property insurance policies where the named beneficiary may make claims if property covered by the insurance policy is stolen or damaged. PCI does not offer life insurance or annuities. On a periodic basis, PCI evaluates the risk exposure of its insureds and makes refunds to policy holders if the risk exposure decreases. Over 50 percent of PCI's assets are investments it holds for reserve activities and over 50 percent of its income arises from reserve activities.

ANALYSIS:

i. Is PCI an Insurance Company?

Because PCI is regulated as an insurance company and is in the business of offering insurance products, it is an Insurance Company.

ii. Is PCI a Specified Insurance Company?

The policies offered by PCI only make payments to insureds if (1) the insured suffers an economic loss or (2) if there is a decrease in risk exposure during the period of the insurance contract. Thus, any cash received by the insured falls within an exception to "Cash Value." Because the policies do not have any Cash Value, they are not Cash Value Insurance Contracts. They are also not Annuity Contracts because the company does not offer annuities. Therefore, PCI is not a Specified Insurance Company.

iii. Is PCI a Financial Institution?

On the facts presented, PCI is not a Specified Insurance Company and also does not fall within any of the other categories of Financial Institution (Custodial Institution, Depository Institution, or Investment Entity). PCI is not a custodial institution because it does not hold financial assets for the account of others, it is not a Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as a business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iv. Is PCI an NFFE?

PCI determines that it is not a Financial Institution, so it must be an NFFE.

v. Is PCI an ACTIVE NFFE or PASSIVE NFFE?

An Active NFFE is one which derives less than 50 percent of its gross income for the preceding year from passive income and less than 50 percent of the assets held by the NFFE are assets held for the production of passive income. Passive income includes income from reserve activities.

PCI is a Passive NFFE because more than 50 percent of its assets are held to produce passive income.

vi. What Compliance Procedures does PCI need to follow?

PCI will not need to register with the IRS or obtain a GIIN.

PCI will need to be able to evidence its status as a Passive NFFE through an IRS Form W-8BEN-E or other self-certification, if requested, and certify that none of its controlling shareholders are Specified US Persons.

PCI may also need to consider its FATCA obligations for premiums referring US based risk, because such premiums may be considered a US source payment in whole or in part.

3.2.5 SECTION 3 – REINSURANCE COMPANY

FACTS:

Reinsurance Company "RC" is regulated in the UAE as an insurance company and is established under UAE law. It has both local and non-local customers, all of whom are insurance companies. The only product that RC offers is an indemnity reinsurance contract. Over 50 percent of RC's assets are investments it holds for reserve activities and over 50 percent of its income arises from reserve activities.

ANALYSIS:

i. Is RC an Insurance Company?

Because RC is regulated as an insurance company and is in the business of offering insurance products, it is an Insurance Company.

ii. IS RC a Specified Insurance Company?

Because RC does not offer annuities, it can only be a Specified Insurance Company if it offers Cash Value Insurance Contracts. The only product offered by RC is an indemnity reinsurance contract, which is by definition excluded from the term Cash Value Insurance Contract. Therefore, RC is not a Specified Insurance Company.

iii. Is RC a Financial Institution?

Although RC is not a Specified Insurance Company, it may still be a Financial Institution if it falls within one of the other categories of Financial Institution. RC is not a Financial Institution because it does not offer products or perform a business that would make it a Custodial Institution, Depository Institution, or an Investment Entity. It is not a Custodial Institution because it does not hold financial assets for the account of others, it is not a Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as a business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iv. Is RC an NFFE?

RC determines that it is not a Financial Institution, so it must be an NFFE.

v. Is RC an ACTIVE NFFE or PASSIVE NFFE?

An Active NFFE is one which derives less than 50 percent of its gross income for the preceding year from passive income and less than 50 percent of the assets held by the NFFE are assets held for the production of passive income. Passive income includes income from reserve activities.

RC is a Passive NFFE because more than 50 percent of its assets are held to produce passive income.

vi. What Compliance Procedures does RC need to follow?

RC will not need to register with the IRS or obtain a GIIN.

RC will need to be able to evidence its status as a Passive NFFE through an IRS Form W-8BEN-E or other self-certification, if requested, and certify that none of its controlling shareholders are Specified US Persons.

RC may also need to consider its FATCA obligations for premiums referring US based risk, because such premiums may be considered a US source payment in whole or in part.

3.2.6 SECTION 4 – INSURANCE BROKER

FACTS:

Insurance Broker "IB" is regulated in the UAE as an insurance broker and is established under UAE law. The only activity that IB conducts is mediation (brokerage) in insurance and reinsurance transactions between insurance companies and clients in return for a commission. Over 50 percent of IB's assets are active assets.

ANALYSIS:

i. Is IB an Insurance Company?

IB likely is not an Insurance Company. Although it is regulated by the IA, it is not regulated as an insurance company, it does not issue insurance polies, and it is not obligated to make payments with respect to an insurance policy.

ii. Is IB a Financial Institution?

If IB is not an Insurance Company, it is not a Specified Insurance Company. However, it may still be a Financial Institution if it falls within one of the other categories of Financial Institution. IB is not a Financial Institution because it does not offer products or perform a business that would make it a Custodial Institution, Depository Institution, or an Investment Entity. It is not a Custodial Institution because it does not hold financial assets for the account of others, it is not an Depository Institution because it does not accept deposits in the ordinary course of a banking business, and it is not an Investment Entity because it does not conduct as business (nor is it managed by one who conducts as a business) any investment activities for or on behalf of customers.

iii. Is IB an NFFE?

IB determines that it is not a Financial Institution, so it must be an NFFE.

iv. Is IB an Active NFFE or Passive NFFE?

An Active NFFE is one which derives less than 50 percent of its gross income for the preceding year from passive income and less than 50 percent of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.

IB determines that its income is active because its income is derived from fees paid from brokerage fees. Because over 50 percent of its income and assets are active income and active assets, IB is an Active NFFE.

v. What Compliance Procedures does IB need to follow?

IB does not need to register with the IRS or obtain a GIIN.

IB will need to be able to evidence its status as an Active NFFE through an IRS Form W-8BEN-E or other self-certification, if requested.

IB also may be asked to collect or forward evidence of an insurance company's FATCA status to a US person or US withholding agent, and may be asked by an insurance company to collect or forward evidence of the FATCA status of a person who controls or may benefit from an insurance policy, or to furnish a withholding allocation statement.

3.3 CHAPTER 3 - PART 3 - CHECKLIST OF COMPLIANCE PROCEDURES UNDER THE FOREIGN ACCOUNT TAX COMPLIANCE ACT

3.3.1 OUTLINE OF THIS PART

This Part provides a general checklist of the steps necessary for an entity to comply with FATCA and the due diligence and reporting deadlines that may need to be met with respect to its financial accounts. It should be used in conjunction with the UAE IGA and the detailed explanations contained herein.

Entities that are required to register with the IRS under FATCA can do so by visiting: www.irs.gov/fatca-registration.

Obligations of Financial Institutions

Type of Financial Institution	Obligations
Non-Reporting Financial Institution	• "Registered deemed compliant FFIs" must register on the IRS website; all other Non-Reporting Financial Institutions general do not need to register under FATCA
Reporting FI that does not maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca/ ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**
Reporting FI that does maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Perform due diligence procedures described in Section 6 of Part 1 to determine if such Financial Accounts are "US Reportable

	Accounts" that must be reported to the UAE Ministry of Finance as described in Section 7 • Due diligence with respect to high value pre-existing individual accounts must be completed by 30 June 2015; note, however that US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Due diligence on low value pre-existing individual accounts and entity accounts must be completed by 30 June 2016 and US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • New individual and entity accounts must be subject to new account procedures in accordance with the due diligence requirements of Annex I and US Reportable Accounts must be reported to the relevant regulator annually. • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca/ ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**

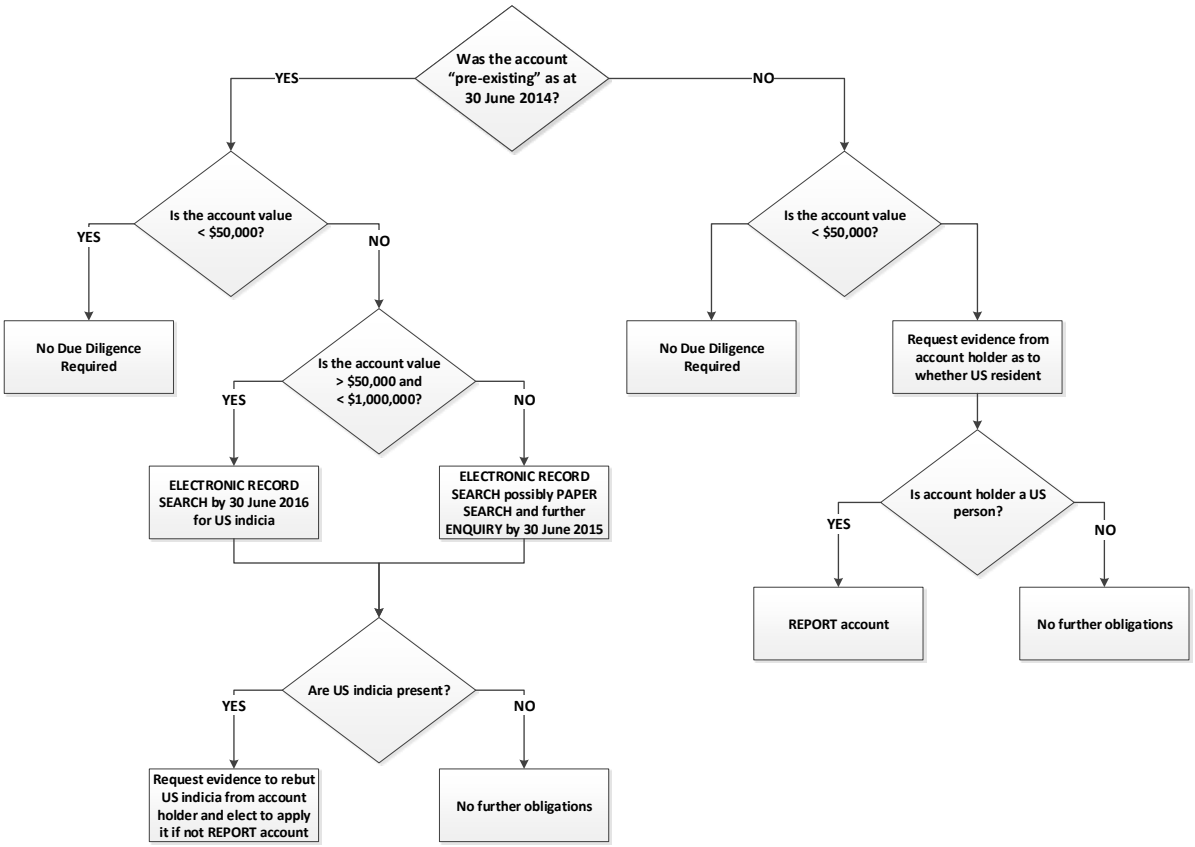
Obligations of NFFEs

Type of NFFE	Obligations
Active NFFE	• No requirement to register on the IRS website • • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request

Passive NFFE	• No requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification that includes information about any substantial US owners to withholding agents upon request
Direct Reporting NFFE	• Requirement to register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Generally subject to same obligations as a Reporting Financial Institution

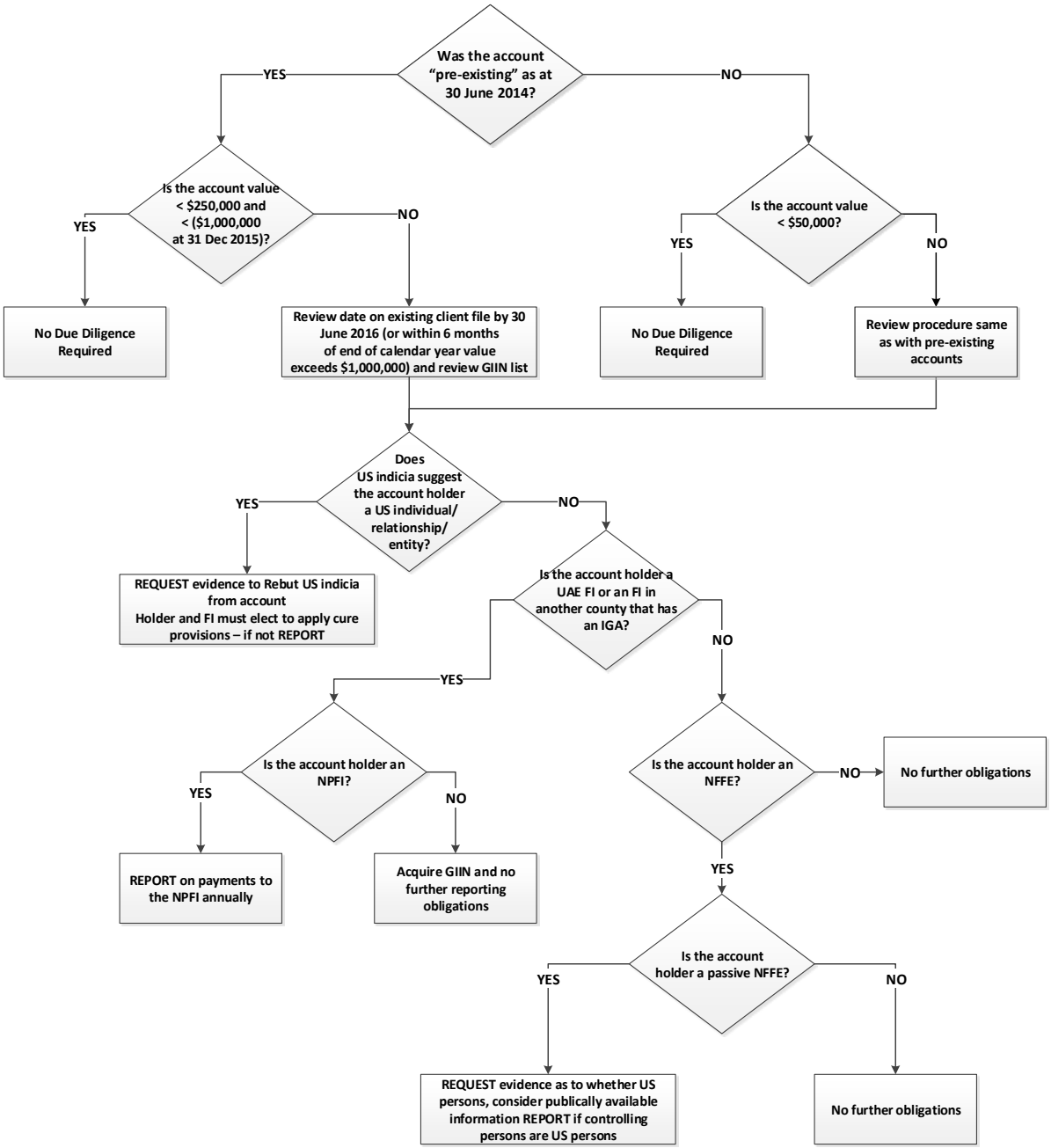
3.4 CHAPTER 3 - PART 4 – DUE DILIGENCE

3.4.1 Flowchart 3 – For Assessing Due Diligence Obligations for Individual Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

3.4.2 Flowchart 4 – For Assessing Due Diligence Obligations for Entity Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

Due Diligence Checklist

Type of Account	Obligations
Individual Accounts	
• Pre-existing (Part 1, section 6.1(a))	
Value < $50,000	No Due Diligence required
Value >$50,000 <$1,000,000	Electronic Record Search for US indicia
Value >$1,000,000	Electronic Record Search
	Paper record search and enquire of Relationship Manager where required
• New (Part 1, section 6.1(b))	
Value <$50,000	No Due Diligence required
Value >$50,000	Request evidence (such as W-8) from account holder as to residence status
Entity Accounts	
• Pre-existing (Part 1, section 6.2(a))	
Value < $250,000	No Due Diligence required
Value >$250,000	Review Anti Money Laundering/Know Your Client documents for US indicia
• New (Part 1, section 6.2(b))	
Value <$50,000	No Due Diligence required
Value >$50,000	Review Anti Money Laundering/Know Your Client documents for US indicia

US indicia includes (see Part 1, section 5.3):

1. Identity of the account holder as a US citizen or resident;
2. Unambiguous indication of a US place of birth;
3. A current US mailing or residence address, including a US post office box;
4. A current US telephone number;
5. Standing instructions to transfer funds to an account maintained in the US;
6. A currently effective power of attorney or signatory granted to a person with a US address;
7. A US "in care of", or "hold mail" address, that is the sole address on file.

Note: For determining USD equivalent, use the spot rate on 31 December of the previous year.

Please note that this checklist presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

3.5 CHAPTER 3 - PART 5 – REGISTRATION

3.5.1 SECTION 1 – REGISTRATION OVERVIEW

The following entities will not need to register and obtain a GIIN:

- Exempt Beneficial Owners
- Non-Reporting Financial Institutions
- Active or Passive NFFE (excluding direct reporting NFFEs)
- Deemed Compliant Financial Institution, except for:
    - Registered Deemed Compliant Financial Institutions
    - Financial Institutions with a Local Client Base that has Reportable Accounts
    - Sponsored Investment Entities with Reportable Accounts
- Owner Document FFIs

The following will have to register and obtain a GIIN:

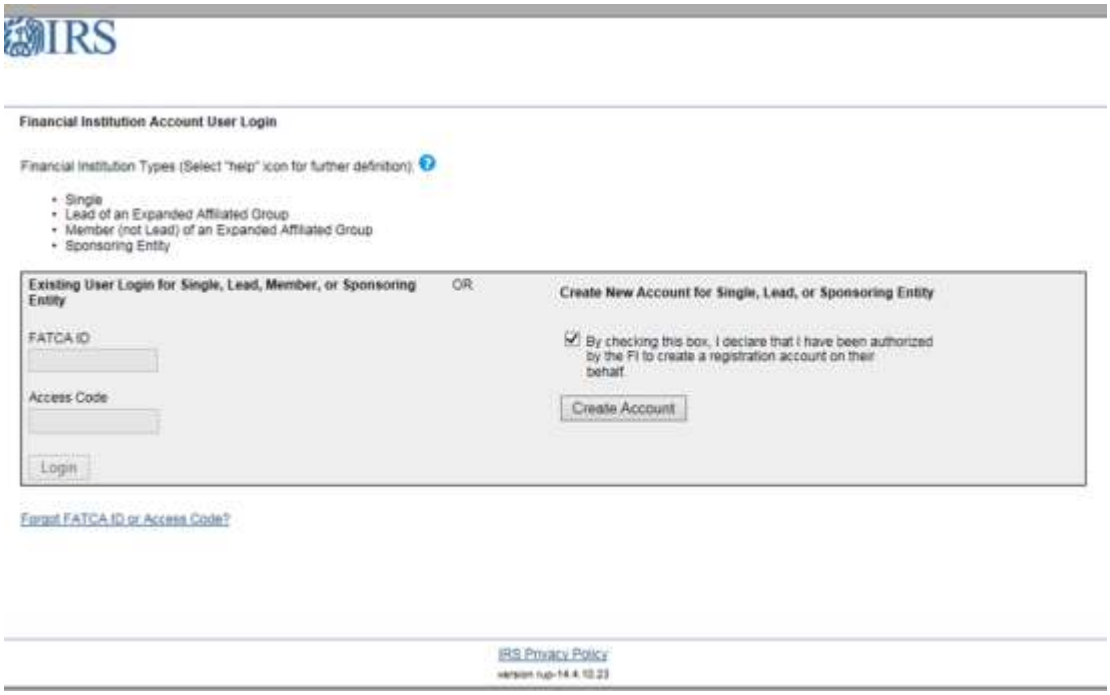
- Reporting Financial Institutions
- Registered Deemed Compliant Financial Institutions
- Sponsors of Sponsored Investment Vehicles or Sponsored Closely Held Investment Vehicles.
- The trustee of a Trustee Documented Trust.

3.5.2 SECTION 2 – REGISTRATION WALKTHROUGH

FATCA Registration should be undertaken via the IRS online registration portal.

The registration system can be accessed here: www.irs.gov/fatca-registration. The following is intended only to provide an overview of the registration process. For more detailed assistance on registration, an online user guide can be found at the following link: http://www.irs.gov/pub/irs-pdf/p5118.pdf. The preceding link provides access to IRS Publication 5118, User Guide: Foreign Account Tax Compliance Act (FATCA).

You will then be taken to an account set up page.



There are then 4 key steps to registration:

STEP 1: CREATE ACCOUNT

The user may register either as:

A **Single Financial Institution**- broadly this is a Financial Institution that does not have any other group member Financial Institutions that it is registering for or on behalf of.

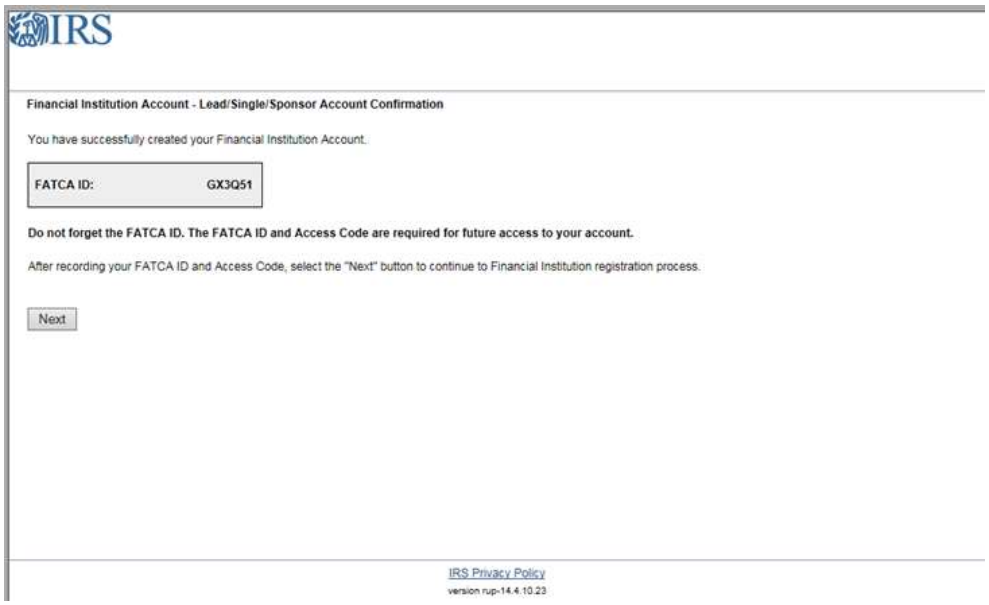
A **Lead Financial Institution**- broadly this is a Financial Institution that fulfils the requirements to be so and will initiate the FATCA Registration for any other group Financial Institutions that authorize it to do so.

A **Member Financial Institution**- broadly this is a Financial Institution that is registering as a member of a group for the FATCA registration process. A Member Financial Institution will need to obtain its FATCA ID from its Lead Financial Institution. Note that the FATCA ID is used to identify the Member Financial Institution for purposes of registration and is not the same number as the GIIN.

A **Sponsoring Entity**- broadly this is an entity that will perform the due diligence, withholding, and reporting obligations of one or more Sponsored Investment Entities or Controlled Foreign Institutions (see Part 1 Section 11).

The user will be asked to create two challenge questions for extra security and an access code for future log-ins.

A FATCA ID will then be created to establish the online FATCA account with access code.



*this is an example only

STEP 2: COMPLETE REGISTRATION FORM

There are 4 parts to the application form which ask a series of short questions about the Financial Institution.

Part 1: This must be completed by all Financial Institutions providing basic identifying information.

Part 2: This should be completed only by a "Lead Financial Institution" who will identify each Member Financial Institution for which it is acting for as a Lead Financial Institution.

Part 3: This should be completed only by a Financial Institution acting as a Qualifying Intermediary, withholding foreign partnerships, or withholding foreign partnership that is currently using an issued Employer Identification Number (EIN) to establish its applicable status. More information about Qualifying Intermediaries and other such agreements can be found at www.irs.gov/fatca and the in the FATCA User Guide (IRS Publication 5118).

Part 4: This must be completed by all Financial Institutions and requires a Financial Institution to certify that the information provided in the FATCA Registration form is accurate and complete and to agree and confirm that it will comply with its FATCA obligations.

A paper version of what will be required during the online registration process can be viewed in advance here: http://www.irs.gov/pub/irs-pdf/f8957.pdf

STEP 3: SUBMISSION

Once satisfied that the information provided is accurate and complete the form can be submitted through the online account.

STEP 4: APPROVAL

Once the information is approved, the user will be issued with a Global Intermediary Identification Number (GIIN).

3.5.3 SECTION 3 – COMPLIANCE

Minor errors.

In the event that the information reported is corrupted or incomplete, the US will notify the UAE Ministry of Finance. The UAE Ministry of Finance will contact the Reporting UAE Financial Institution to resolve the problem. Examples of minor errors could include:

a) Data fields missing or incomplete;
b) Data that has been corrupted; and
c) Use of an incompatible format.

Where this leads to the information having to be resubmitted this will be via the relevant regulator's portal.

Compliance measures may be exercised by the relevant regulator if the error is considered to contravene the UAE IGA.

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

Significant non-compliance

Significant non-compliance may be determined by the IRS or the UAE Ministry of Finance. In any event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the Financial Institution must resolve the non-compliance.

Where the UAE Ministry of Finance is notified of or identifies significant non-compliance by a Reporting UAE Financial Institution, the UAE Ministry of Finance may exercise any compliance measures under the FATCA Regulations or UAE law.

The UAE Ministry of Finance through the relevant regulator will also engage with the Reporting UAE Financial Institution to:

- discuss the areas of non-compliance;
- discuss remedies/solution to prevent future non-compliance; and
- agree to measures and a timetable to resolve its significant non-compliance.

The UAE Ministry of Finance will inform the US of the outcome of these discussions. The following are examples of what may be regarded as significant non-compliance:

- Repeated failure to file a return or repeated late filing.
- Ongoing or repeated failure to register 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.

In the event that the issues remain unresolved after a period of 18 months then the Reporting UAE Financial Institution will be treated as a Non-Participating Financial Institution under the UAE IGA.

Chapter 4

Guidance Notes for Financial Services Sector

4 CHAPTER 4 – Guidance Notes for Financial Services Sector

4.1 CHAPTER 4 – PART 1 - DETAILED GUIDANCE NOTES

4.1.1 OUTLINE OF THIS PART

This Part outlines how entities will be classified under the UAE IGA. It outlines the circumstances in which entities will need to carry out due diligence procedures, or reporting obligations, under the UAE IGA. It also includes some procedural guidance; a list of compliance procedures is contained in Part 3 – the Checklist.

When determining an entity's FATCA obligations, a good starting point is to determine if the entity is a **"Financial Institution"** because this will help determine the specific obligations that the entity has under FATCA. See Section 1 regarding Financial Institutions.

Any reference in this Part to a "Section" is to one of the other Sections within this Part.

4.1.2 CONTENTS OF THIS PART

This Part contains:

Flowchart 1 - For assessing the obligations of "Financial Institutions" under the UAE IGA.

Flowchart 2 - For assessing the obligations of "NFFEs" under the UAE IGA.

Section 1 - Is the entity a "Financial Institution"?

Section 2 - Is a Financial Institution a "Reporting" Financial Institution?

Section 3 - Is a Financial Institution a "Non-Reporting" Financial Institution?

Section 4 - Does the Financial Institution maintain "Financial Accounts"?

Section 5 - Are the Financial Accounts "US Reportable Accounts"?

Section 6 - What Due Diligence Requirements need to be met?

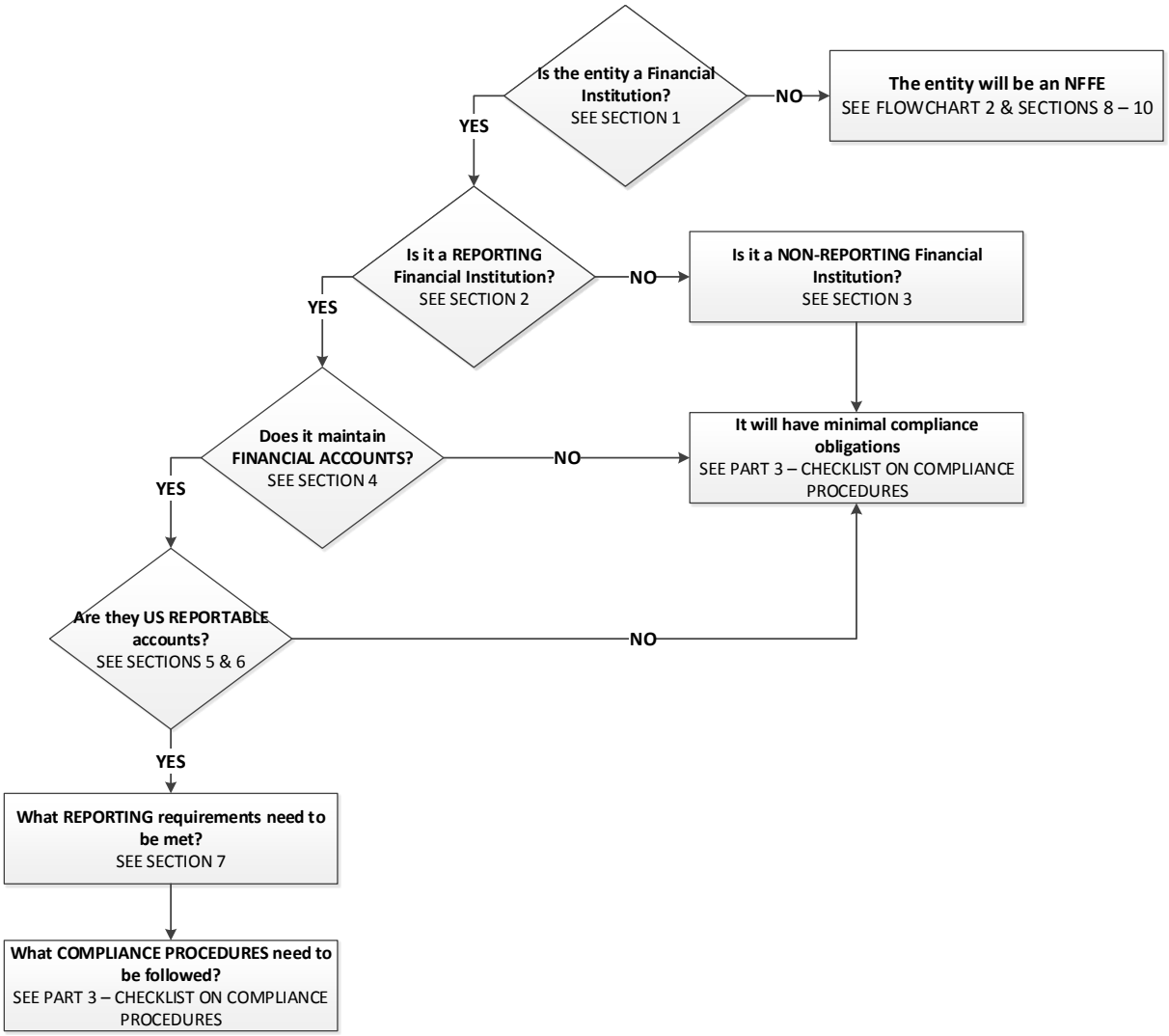
Section 7 - What Reporting Requirements need to be met?

Section 8 - Is the entity a "NFFE"?

Section 9 - Is it an "Active" NFFE?

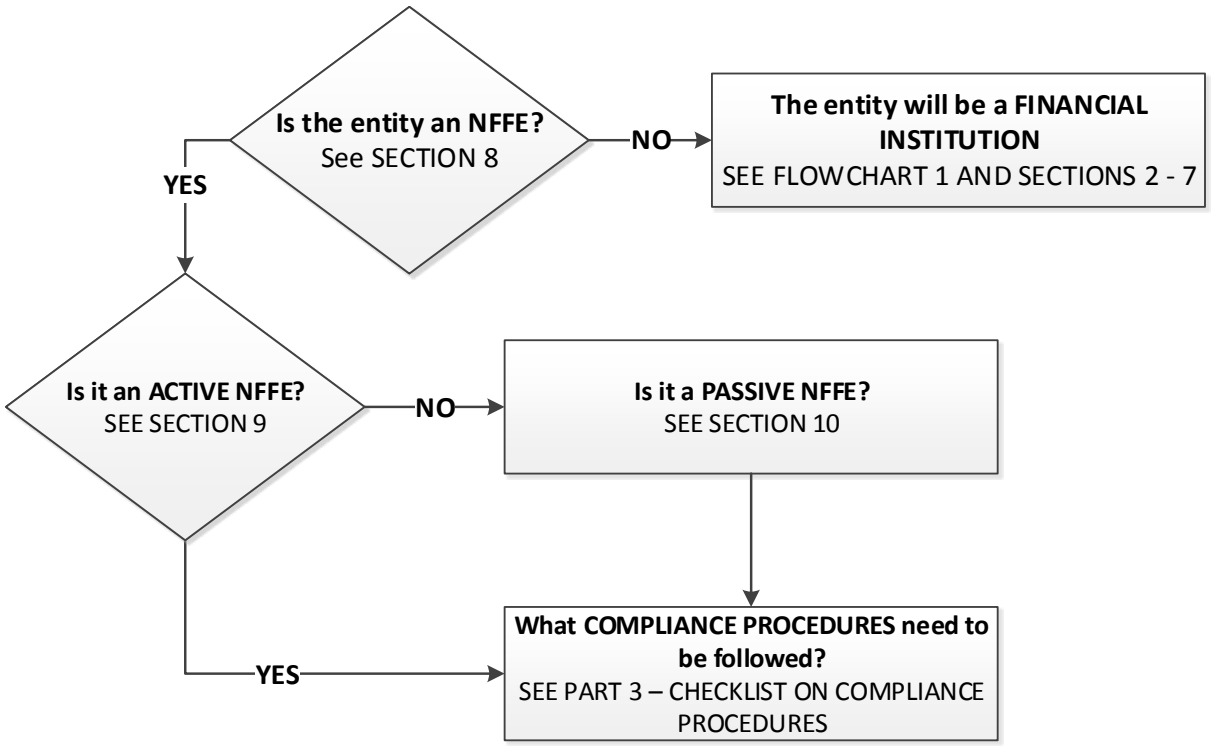
Section 10 - Is it a "Passive" NFFE?

4.1.3 Flowchart 1 – For Assessing the Obligations of Financial Institutions



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

4.1.4 Flowchart 2 – For Assessing the Obligations of NFFEs



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Guidance Note and the UAE IGA for a more complete explanation of the FATCA rules.

4.1.5 SECTION 1 - IS THE ENTITY A FINANCIAL INSTITUTION

The UAE IGA imposes certain due diligence, reporting and other obligations on Financial Institutions.

A "Financial Institution", for these purposes:

- Meets certain residence requirements – see Section 1.1 below; and
- Is a certain type of entity, as defined in the UAE IGA – see Section 1.2 below.

4.1.5.1 Residence requirements

The UAE IGA will apply to:

a) Financial Institutions, as defined below, organized under the laws of the UAE; and
b) branches, located in the UAE, of non-UAE Financial Institutions.

It will not apply to branches of UAE Financial Institutions located outside of the UAE.

For these purposes, organized under the laws of the UAE means the following:

- For a company, if the company is incorporated in the UAE.
- For a partnership, if the partnership is established in the UAE.

4.1.5.2 Type of entity

An entity will be a UAE Financial Institution if it is one of the following types of entities:

a) **Depository Institution** – means any entity that accepts deposits in the ordinary course of a banking or similar business. Depository institutions are usually banks or similar institutions. An entity is not considered to be engaged in a banking or similar business if it solely provides asset based finance services or accepts deposits solely from persons as collateral or security pursuant to a sale or lease of property, a loan secured by property, or pursuant to similar financing arrangements between that entity and the person making the deposit.

   The following would not be expected to fall within the definition of Depository Institution:

   - Insurance brokers
   - Attorneys at law
   - Factoring or invoice discounting businesses
   - Entities that complete money transfers by instructing agents to transmit funds

b) **Custodial Institution** – means any entity that holds, as a "substantial portion" of its business, financial assets for the account of others. Custodial institutions can include custodial banks, trust companies or brokers, in certain circumstances.

   An entity will hold financial assets for the account of others as a "substantial portion" of its business if its gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of its total gross income over, in general terms, a specified 3-year period (or over the period that the entity has been in existence, if that is less than 3 years). The relevant three year period is the entity's accounting period.

   The term income attributable to holding financial assets and related financial services means custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to financial assets held in custody by the entity (or acquired

through such extension of credit); income earned on the bid-ask spread of financial assets; fees for providing financial advice with respect to financial assets held in (or potentially to be held in) custody by the entity; and fees for clearance and settlement services.

An execution only broker that simply executes trading instructions, or receives and transmits such instructions to another executing broker, will not hold assets for the account of others and should not be a custodial institution (although it is possible that it could be an investment entity).

Entities that only provide advice, do not hold, and will not hold financial assets; and therefore have no financial accounts should not be treated as custodial institutions. As noted above, the term "income attributable to holding financial assets" from financial assets is limited to providing financial advice with respect to financial assets held in (or to be held in) custody by the entity.

c) **Investment Entity** – means any entity that:
   i. primarily conducts a business (or is managed by an entity that conducts a business) of one or more of the following activities or operations, for or on behalf of a customer:
      - trading in money market instruments (such as checks, bills, certificates of deposit and derivatives), foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading;
      - individual and collective portfolio management; or
      - otherwise investing, administering, or managing funds or money on behalf of other persons, or
   ii. the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company or an Investment Entity described in (a) above. For this paragraph (c), "primarily" means such income exceeds 50 percent of the entity's gross income during the shorter of the prior three year period or the period in which the entity has been in existence.

      Investment entities can include investment funds and other fund structures, in certain circumstances. Generally, entities that are professionally managed will be treated as Investment Entities because its managing entity is an Investment Entity.

d) **Specified Insurance Company** – means any insurance company (or the holding company of such insurance company) that issues (or writes) or is obliged to make payments in respect of a Cash Value Insurance Contract or an Annuity Contract.
   - "insurance company" means (under the Treasury Regulations) an entity or arrangement:
     1. that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business;
     2. the gross income of which (for example, gross premiums and gross investment income) arising from insurance, reinsurance, and annuity contracts for the immediately preceding calendar year exceeds 50 percent of total gross income for such year; or
     3. the aggregate value of the assets of which associated with insurance, reinsurance, and annuity contracts at any time during the immediately preceding calendar year exceeds 50 percent of total assets at any time during such year.

4.1.5.3 Definitions from FATCA Regulations

In accordance with Article 4 paragraph 7 of the UAE IGA, the UAE permits Financial Institutions to use a definition in the FATCA Regulations in lieu of a corresponding definition in the UAE IGA, provided that such application would not frustrate the purposes of the UAE IGA.

4.1.6 SECTION 2 - IS A FINANCIAL INSTITUTION A REPORTING FINANCIAL INSTITUTION

4.1.6.1 Overview

The concept of a "**Reporting Financial Institution**" is designed to identify Financial Institutions that must identify, and report on, certain of their accounts and account holders (those that have a relevant connection to the US (for details, see 2.1.9)).

A Financial Institution is a "UAE Reporting Financial Institution" if it does not fall within any of the exceptions in 2.1.7, which deals with "**Non-Reporting Financial Institutions**". In other words, Financial Institutions are Reporting Financial Institutions, UNLESS they are Non-Reporting Financial Institutions.

UAE Reporting Financial Institutions will generally have to register with the IRS for a **Global Intermediary Identification Number ("GIIN").** A summary of the registration process is at Part 5, Registration, and at Part 3, the Checklist on compliance requirements and procedures.

Most of the subsequent due diligence, reporting and compliance obligations imposed by the UAE IGA fall on UAE Reporting Financial Institutions (rather than Non-Reporting Financial Institutions). See Sections 4 – 7 and Part 4 for details on Due Diligence and Part 3, the Checklist, for compliance requirements and procedures.

4.1.6.2 Related entities

a) IGA

In accordance with the UAE IGA, an Entity is a "Related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control (the "**related entity group**"). For this purpose, control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, the UAE Ministry of Finance will not treat an Entity as a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 471(e)(2) of the Code.

b) Exceptions

Interaffiliate FFIs. Pursuant to Annex I, Art. VI(4)(i), an "**Excepted NFFE**" is not a Financial Institution. Excepted NFFEs include, but are not limited to, an "Excepted inter-affiliate FFI." An entity that is a member of a related entity group will not be a Financial Institution if:

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- The entity does not hold an account with or receive US source withholdable payments from any withholding agent other than a member of its related entity group;
- The entity does not make US source withholdable payments to any person other than to members of its related entity group that are not limited FIs or limited branches; and
- 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 Financial Institution, including a member of its related entity group.

Investment entities. Investment Entities which have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the UAE IGA. In general, a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes of establishing a performance record before selling interests in the entity to unrelated investors, or for purposes otherwise deemed appropriate by the manager.

Specifically, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest in excess of 50 percent of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; and
- in the case of an equity interest that has been held for over three years, its value is less than 50 percent of the total value of the stock of the Investment Entity.

c) Why do related entities matter?

Related Entities are relevant in the context of the obligations placed on UAE Financial Institutions, in respect of any Related Entities that are Non-Participating Financial Institutions ("**NPFI**").

Where a UAE Financial Institution has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UAE Financial Institution must treat the related entity as an NPFI and fulfill obligations in respect of that NPFI as set out in Article 4 of the UAE IGA.

4.1.7 SECTION 3 - IS THE FINANCIAL INSTITUTION A NON-REPORTING FINANCIAL INSTITUTION?

The concept of a "**Non-Reporting Financial Institution**" is designed to identify Financial Institutions that do not have the characteristics, or hold the accounts with which FATCA and the implementing IGAs are most concerned.

Consequently, most Non-Reporting Financial Institutions will have no, or will have few, obligations under the UAE IGA.

Non-Reporting Financial Institutions are either Financial Institutions, or certain other legal persons or legal arrangements that are resident in the UAE, that fall into one of two categories:

- "Annex II" Non-Reporting Financial Institutions – those that are listed in Annex II of the UAE IGA – see 3.1 below; or
- "FATCA Regulations" Non-Reporting Financial Institutions – those that meet certain criteria under the FATCA Regulations – see 3.2 below.

Exempt Beneficial Owners and most Non-Reporting UAE Financial Institutions will not need to register with the IRS or obtain a GIIN (save for certain limited exceptions listed herein). They will need to provide certain documentation to withholding agents to certify their status.

Some Non-Reporting UAE Financial Institutions, referred to as Registered Deemed Compliant, will be obliged to register with the IRS and obtain a GIIN.

See Part 5, Registration, for further details.

4.1.7.1 Non-Reporting Financial Institutions

A Non-Reporting UAE Financial Institution is any UAE Financial Institution that falls within the exemptions of Annex II of the UAE IGA or of the FATCA Regulations or one which otherwise qualifies as:

- An Exempt Beneficial Owner (Section 3.1(a))
- A Deemed Compliant Financial Institution (Section 3.1(b))
- An Owner Documented Financial Institution (Section 3.3)

There are two main types of Non-Reporting Financial Institutions contained in Annex II. These are:

a) "**Exempt Beneficial Owners**", which include Non-Fund and Fund Exempt Beneficial Owners:
   i. Non-Funds. Annex II, Article I.
      - The UAE Government – at a national, state or local level – or any of its wholly owned agencies (including "integral parts", "controlled entities" (in certain circumstances), and political subdivisions of the UAE);
      - Certain international organizations and intergovernmental organizations;
      - The UAE Central Bank;

   The first three types of Exempt Beneficial Owners will not be treated as such with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.

   ii. Funds. Annex II, Article II.

- UAE retirement funds that are established to provide retirement, disability or death benefits to employees, and that meet specified participation, contribution, regulatory and tax requirements in the UAE;
- Certain pension funds established in the UAE by an Exempt Beneficial Owner; and
- Investment Entities wholly owned by Exempt Beneficial Owners. Investment Entities are Exempt Beneficial Owners in circumstances in which each direct holder of an equity interest is an Exempt Beneficial Owner and each direct holder of a debt interest is either a Depository Institution or an Exempt Beneficial Owner (see Section 4.1 below, for the meaning of equity and debt interests).

b) "**Deemed-Compliant Financial Institutions**", which include certain small or limited scope Financial Institutions and certain Investment Entities, as listed below:

Certain Small or Limited Scope Financial Institutions. Annex II Article III.

i. Financial Institutions with a Local Client Base.

These are Financial Institutions that are based and regulated in the UAE, that generally do not solicit non-UAE clients and, with effect from 1 July 2014, have procedures in place, consistent with those outlined in Annex I of the UAE IGA, to identify various accounts that must be reported or disclosed under the UAE IGA.

Annex II lists the classification criteria for Local Client Base Financial Institutions in detail. The criteria are lengthy and complex; any institution that may think it falls within the criteria should seek specific professional advice. See UAE Annex II, Article III(A) for specific requirements.

A Financial Institution with a Local Client Base that has a reporting obligation, because it has some Reportable Accounts, will require a GIIN and will need to register.

ii. Local UAE regulated banks.

These are Local UAE regulated banks that do not hold more than $175 million in assets on their balance sheets (or more than $500 million on consolidated balance sheets with related entities) and that generally do not solicit non-UAE clients. See UAE Annex II Article III(B) for specific requirements;

iii. Certain UAE Financial Institutions that have only low-value accounts.

In order to qualify, the Financial Institution must satisfy three requirements:

1. it must not be an Investment Entity (as defined in Section 1);
2. no Financial Account maintained by the Financial Institution or any related entity has a balance or value in excess of $50,000, applying certain rules for aggregating account values and translating currencies; and
3. the Financial Institution does not have more than $50 million in assets on its balance sheet, and the Financial Institution and any related entities, taken together, do not have more than $50 million in total assets on their consolidated or combined balance sheets.

Companies that would otherwise be "Specified Insurance Companies" may qualify for this exception if they satisfy the three requirements listed above.

When calculating account balances, an Annuity Contract should be treated as a Financial Account unless it is one of certain noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit. See Section 4.1 for more details on Financial Accounts.

iv. Qualified Credit Card Issuer.

Certain UAE Financial Institutions that are Financial Institutions solely because they issue credit cards (and such institutions implement policies and procedures to prevent a customer deposit in excess of $50,000 or to ensure any amount in excess of $50,000 is returned to the customer within 60 days).

Certain Investment Entities. Annex II Article IV.

In addition, there are further special rules that apply to certain Financial Institutions that are Investment Entities (as defined in 2.1.5). In general terms, an Investment Entity may be treated as Deemed-Compliant as follows:

v. Trustee-Documented Trust.

The Entity has a trustee that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity

vi. Sponsored Investment Entity and Controlled Foreign Corporation.

The Entity has a sponsor, or parent company that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

A Sponsored Investment Entity must be registered by its sponsor if it has Reportable Accounts.

vii. Sponsored. Closely Held Investment Vehicle.

The Entity has a sponsor that registers with the IRS to carry out all necessary obligations under the FATCA Regulations or the UAE IGA on behalf of the Entity.

viii. Investment Advisors and Investment Managers.

The entity only provides investment advisory services, or investment management services, to customers, for the purposes of their investments deposited with other qualifying Financial Institutions (which would themselves be expected to comply with the FATCA Regulations and the UAE IGA).

An Investment Entity will qualify if it (1) renders investment advice to, or on behalf, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

ix. Collective Investment Vehicle.

Certain UAE-regulated collective investment schemes established in the UAE that are regulated as collective investment vehicles, and that are held by certain classes of owners.

These rules, particularly those relating to collective investment schemes, are detailed and complex. Any Investment Entity that believes it may qualify under

the rules, as a Deemed-Compliant Financial Institution, should seek specific professional advice.

4.1.7.2 Registered Deemed Compliant Financial Institutions

The "Registered Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Non-reporting members of Participating FFI groups. See FATCA Regulations § 1.1471-5 (f)(1)(i)(B).
b) Qualified Collective Investment Vehicles. See FATCA Regulations § 1.1471-5(f)(1)(i)(C))
c) Restricted Funds. See FATCA Regulations § 1.1471-5(f)(1)(i)(D)).
d) Qualified credit card issuers. See FATCA Regulations § 1.1471-5(f)(1)(i)(E).
e) Sponsored Investment Entities. See FATCA Regulations § 1.1471-5(f)(1)(i)(F).

4.1.7.3 Certified Deemed Compliant Financial Institutions

The "Certified Deemed Compliant" categories noted in this section are inserted from the FATCA Regulations:

a) Limited life debt investment entities. See FATCA Regulations § 1.1471-5(f)(2)(iv).

4.1.7.4 Owner Document Financial Institution

See FATCA Regulations § 1.1471-5(f)(3)).

This category is intended to reduce the burden of meeting the obligations under FATCA for closely held passive investment vehicles that fall within the definition of Investment Entity. It is not, however, restricted to those cases.

In order to qualify as an "Owner Document Financial Institution", the Investment Entity must satisfy the following:

- It must not maintain a Financial Account for any Non-Participating Financial Institution;
- It must not be owned by, nor be a member of, a group of Related Entities with any member that is a Depository Institution, Custodial Institution or Specified Insurance Company (i.e. it can only be affiliated to other Investment Entities); and
- It must provide the required documentation regarding its owners and agree to notify any changes in its circumstances to the Financial Institution that is undertaking the reporting obligations on its behalf.

4.1.8 SECTION 4 - DOES THE FINANCIAL INSTITUTION MAINTAIN FINANCIAL ACCOUNTS?

The concept of "**Financial Accounts**" is broadly defined and may include products or obligations that would not normally be regarded as an "account" under UAE law or in everyday commercial use, but which could act a substitute for an "account". The definition is designed to require Financial Institutions to monitor their customer accounts.

A Financial Institution, unless otherwise exempt, must identify:

- Whether it maintains any Financial Accounts
- The Type of Financial Accounts maintained
- Whether the account holder of those Financial Accounts is a Specified US Person or a Passive NFFE with one or more Controlling Persons who are Specified. US Persons.

However, not all accounts held by a Financial Institution will be Financial Accounts for these purposes. Some products are exempt from the definition of Financial Account. See Section 4.2.

Where accounts are held by persons that have a relevant connection to the US (for details, see 2.1.9) at any point during the reportable period, Financial Institutions will be obliged to report them (for details, see 2.1.11).

If a Financial Institution:

- does not maintain any Financial Accounts – as defined below in Section 4.1; or
- only maintains accounts that are "Exempt Accounts" under Annex II of the UAE IGA – see Section 4.2 below;

then, once it has obtained a GIIN, it will generally have minimal further compliance obligations under the FATCA Regulations or the UAE IGA (see Part 3, the Checklist, for details on compliance requirements and procedures); however, **nil reporting is required** (i.e., Financial Institutions will be required to report that it does not maintain any Financial Accounts or only maintains Exempt Accounts).

4.1.8.1 "Financial Accounts"

"Financial Accounts" are generally any accounts maintained by a Financial Institution.

The type of Financial Institution (defined at 2.1.5) may determine the type of Financial Account:

a) "Depository Accounts" broadly include commercial or savings accounts, or other debts, maintained by a Financial Institution in the ordinary course of its business;
b) "Custodial Accounts" broadly include accounts that hold, for the benefit of another person, financial instruments, such as shares, loan notes, bonds, options and derivative instruments, and may include other arrangements pursuant to which an obligation exists to return cash or assets to another;
c) Financial Accounts, for Financial Institutions that are Investment Entities, will include "equity or debt interests" – generally shares or debt interests – in the Financial Institution, other than interests that are regularly traded on certain established security markets.

   An interest is "regularly traded" if there is a meaningful volume of trading with respect to that interest on an ongoing basis. Any interest treated as "regularly traded" pursuant to FATCA Regulations §1.1471-5(b)(3)(iv) shall be treated as regularly traded for purposes of the UAE IGA.

In the case of partnerships, "equity interest" means either a capital or profits interest in the partnership. In the case of trusts, "equity interest" means certain interests held by persons over some, or all, of the trusts, or by persons controlling the trusts. (For Financial Institutions that are not Investment Entities, equity or debt interests in the Financial Institutions will only be Financial Accounts in certain limited circumstances.)

d) Financial Accounts, for Financial Institutions that are Specified Insurance Companies, will generally include Cash Value Insurance Contracts (in short, insurance contracts that have a cash value greater than $50,000) and Annuity Contracts (in short, contracts under which payments are made, over a period of time, based on the life expectancy of specified persons). However, a non-investment linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded under Annex II is not considered a financial account.

- "Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than $50,000. The term "Cash Value" generally means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract.
- Notwithstanding the foregoing, the term Cash Value does not include an amount payable under an Insurance Contract as:
    1. a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
    2. a refund to the policyholder of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
    3. Solely by reason of the death of an individual insured under a life insurance contract;
    4. As a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph 1 above;
    5. As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract; and
    6. Death benefits are excluded from cash value.
- Once a policy becomes subject to a claim, it does not become a New Account.
- The term "Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

- Pension annuities, immediate needs annuities, periodic payment orders and reinsurance of annuity contracts between two insurance companies are excluded from this definition.

4.1.8.2 "Exempt Accounts"

Certain types of accounts are exempt, under Annex II of the UAE IGA, from the definition of Financial Accounts. If the accounts are exempt under Annex II, the Financial Institution will need to report that it only maintains Exempt Accounts. "Exempt Accounts" include:

a) Certain savings accounts maintained in the UAE, including savings, retirement and pension accounts, that all meet specified regulatory and tax conditions;

   Consideration should be given to the criteria set out in Annex II of the UAE IGA in relation to savings, retirement and pension accounts. There are currently no tax favored accounts or products identified as being exempt. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

b) Certain term life insurance contracts maintained in the UAE;

   More specifically, Exempt Accounts include a life insurance contract maintained in the UAE with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

   (1) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
   (2) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
   (3) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
   (4) the contract is not held by a transferee for value.

c) Accounts maintained in the UAE that are held solely by an estate, if the documentation for the account includes a copy of a will or death certificate;
d) Certain escrow accounts maintained in the UAE, established in connection with any of the following:
   (1) a court order or judgment
   (2) a sale, exchange or lease of real or personal property, provided that the account satisfies the following requirements:
      a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
      b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
e) The account is not associated with a credit card account.

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

e) Certain accounts, maintained in the UAE, that are excluded from the definition of Financial Account, under an agreement between the US and another country to implement the FATCA Regulations in that country, and that meet certain further conditions.

This exception is meant to capture accounts or products that are excluded under another country's IGA and for which the UAE has internal regulations that provide equal assurance that the account or product presents a low-risk of tax evasion. There are currently no accounts or products identified by the UAE as being exempt under this exception. Should accounts or products be identified as potentially qualified, the UAE Ministry of Finance should be notified and will consider including such accounts or products in this section.

4.1.9 SECTION 5 - ARE THE FINANCIAL ACCOUNTS US REPORTABLE ACCOUNTS?

Under the UAE IGA, a Financial Institution needs to report Financial Accounts that are "**US Reportable Accounts**". These are, broadly, accounts held by persons that have a relevant connection with the US. The details that need to be reported are at 2.1.11.

A "US Reportable Account" is a Financial Account maintained by a Reporting Financial Institution and held:

- by one or more "**Specified US Persons**" – see Section 5.1 below; or
- by a "**Non-US Entity**" that is controlled by one or more Specified US Persons – see Section 5.2 below.

An account may be established as being a "US Reportable Account" if, after necessary due diligence is carried out on the account (for details, see 2.1.10 and Part 4), US indicia (which are, essentially, broad indications of connections to the US) are uncovered – see Section 5.3 below.

4.1.9.1 Financial Accounts held by "Specified US Persons"

The term "**Specified US Person"** is broad and will essentially cover any "US Person", which is defined as a:

a) US citizen or resident individual;
b) partnership or corporation organized in the US, or under the laws of the US (or any of its States); or
c) trust, if, in general terms, a US court has jurisdiction over it and it is controlled by US persons.

Accounts held by any one or more of those persons, will generally be reportable.

Certain persons are specifically excluded from being "Specified US Persons", so accounts held by them will not be reportable. These include:

Companies whose stock is regularly traded on an established securities market and, in general terms, members of their corporate groups;

a) the US, or any of its States or specified US Territories, or wholly owned governmental agencies or organizations;
b) certain:
   - tax exempt organizations;
   - retirement plans;
   - banks, real estate trusts, regulated investment companies, tax exempt trusts and common trust funds; and
   - securities, commodities or derivatives dealers or brokers;

   all as specifically defined under relevant provisions of the Code and FATCA Regulations, and as set forth in the UAE IGA.

4.1.9.2 Financial Accounts held by a "Non-US Entity" where one or more Controlling Persons are Specified US Persons

The objective behind these provisions is to identify Financial Accounts that are controlled by US persons, even if they are actually held by non-US persons. If so, they will generally be reportable.

A "**Non-US Entity**" is any legal person (such as an individual, or a corporation), or legal arrangement (such as a trust), that is not a US Person.

A "**Controlling Person**" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012) (which provide that a controlling ownership interest depends on the ownership structure of the company). It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 percent). Accordingly, if a non-US Financial Account has a Controlling Person who is a US natural person, it will generally be reportable.

4.1.9.3 Financial Accounts with US indicia discovered after due diligence

As noted above, a Financial Institution must carry out necessary due diligence procedures on its accounts. Section 6 outlines the details of the due diligence procedures required in relation to the size and date of creation of various accounts. Part 4, Due Diligence, gives a summary of the obligations outlined at section 6 in the form of two flowcharts and a checklist.

If, after carrying out relevant due diligence into an account, the Financial Institution discovers any US indicia, it may need to (depending on the size and date of creation of the account) report the account. Any of the following US indicia may make the account reportable:

a) Identity of the account holder as a US citizen or resident;
b) Unambiguous indication of a US place of birth;
c) Indication of incorporation or organization in the US with respect to entities;
d) A current US mailing or residence address, including a US post office box;
e) A current US telephone number;
f) Standing instructions to transfer funds to an account maintained in the US;
g) A currently effective power of attorney or signatory granted to a person with a US address; or
h) A US "in care of", or "hold mail" address, that is the sole address that the Reporting Financial Institution has on file for the Account Holder.

The effect of the use of these US indicia is to considerably broaden the ambit of the FATCA Regulations and the UAE IGA, so that they can apply even if account holders have fairly loose or historic connections with the US. Even if an account holder is not specifically a US citizen or resident individual (defined at Section 5.1 above), the account may be reportable if any of these US indicia are found and not cured.

4.1.10 SECTION 6 - WHAT DUE DILIGENCE REQUIREMENTS MUST BE MET?

Annex I of the UAE IGA lists the due diligence obligations of Financial Institutions.

The broad purpose is to ensure that Financial Institutions identify Financial Accounts that are US Reportable Accounts (that are held by persons that have a relevant connection to the US (for details, see 2.1.9)), in order to be able to report on them where necessary.

The due diligence obligations fall into two main categories:

- Procedures for individual accounts (accounts held by human persons) – see Section 6.1 below and Flowchart 3 at Part 4; and
- Procedures for entity accounts (accounts held by legal persons, such as companies and partnerships) – see Section 6.2 below and Flowchart 4 at Part 4.

The due diligence processes for identification of account holders require one or more of these three processes to be carried out by Financial Institutions with respect to its accounts:

- Indicia search: searching for relevant indicia by reference to documentation or information held or collected in accordance with opening or maintaining an account (for details, see Section 5.3).
- Self-certification or documentary evidence: requesting self-certification from an account holder or a Controlling Person of a Passive NFFE where applicable.
- Publicly available information (for entities only).
- The due diligence procedures are very significant and very detailed. Financial Institutions should seek specific professional advice on how the rules will apply to them; the information in this Section is a general summary only. Financial Institutions may also want to consider collecting additional information (including, for example, tax residence, date of birth and place of birth) from account holders in anticipation of the implementation of the OECD Common Reporting Standard.

As detailed below, Financial Institutions should not report any accounts that fall below the thresholds set forth in Annex I of the UAE IGA.

4.1.10.1 Due diligence procedures for individual accounts (Flowchart 3)

The due diligence procedures for individual accounts aim to identify accounts that are held by human persons with a relevant connection to the US (for details, see 2.1.9).

To carry out the due diligence correctly, a Financial Institution will need to group its individual accounts into 2 general categories:

- "Pre-existing Individual Accounts", which are accounts held by individuals as of 30 June 2014 – see (a) below; and
- "New Individual Accounts", which are accounts opened by individuals on or after 1 July 2014 – see (b) below;

a) Pre-existing Individual Accounts

Pre-existing Individual Accounts can be divided into 3 categories:

- Small accounts, which have a balance or value of $50,000 or less (or $250,000 or less, in the case of cash value insurance contracts or annuity contracts) as of 30 June 2014.

  These do not need to be reviewed, identified or reported, unless the accounts later become High Value Accounts.

- "Lower Value Accounts", which have a balance or value that exceeds $50,000 (or $250,000, in the case of cash value insurance contracts or annuity contracts) and that does not exceed $1,000,000 as of 30 June 2014.

  On these accounts, a Financial Institution must carry out, by 30 June 2016, an electronic record search, to identify US indicia. If no US indicia are found after the electronic record search, no further action is required (unless the account becomes a High Value Account or is later associated with one or more US indicia). If any one of the US indicia is discovered, then the account is, in principle, reportable (under the procedures at 2.1.11) and self-certification should be requested from the account holder.

  Even so, the Financial Institution may elect not to report the account, if the account holder provides various documents, certificates and evidence (i.e., self-certification, which may be on an IRS Form W-8 or W-9) about his/her status, essentially to prove that he/she is in fact not a US citizen or US resident for tax purposes. The UAE IGA contains detailed rules on the evidence that the Financial Institution must require from the account holder.

- "High Value Accounts", which are accounts with a balance or value that exceeds $1,000,000 on 30 June 2014, or on 31 December of any subsequent year.

  On these accounts, a Financial Institution must carry out an electronic records search to find any of the US indicia listed above. If the Financial Institution's electronic search does not capture all of the required information, the Financial Institution must also review specified historic paper records, for the previous 5 years (including Anti-Money Laundering and "Know Your Client Information"). The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last five years: (i) the most recent documentary evidence collected with respect to the account, (ii) the most recent account opening contract or documentation, (iii) the most recent documentation obtained by the Financial Institution for AML/KYC procedures or for other regulatory purposes, (iv) any power of attorney or signature authority forms currently in effect, and (v) and standing instruction to transfer funds currently in effect. These should be reviewed for any US indicia.

  The Financial Institution must also find out, from the account holder's relationship manager, whether the relationship manager actually knows that the account holder is a US person as actual knowledge by the relationship manager will override the results of any inconclusive electronic/paper search. Records of electronic searches, requests made and responses to the relationship manager inquiries should be retained for six years following the end of the year in which the due diligence was undertaken.

  If no US indicia are found, following all of these searches, then the Financial Institution will not need to report the account (unless the account is later associated with one or more US indicia).

  If US indicia are found, the account will be a US Reportable Account unless the Financial Institution requests and receives specified evidence from the account holder that he/she is not a US citizen or US tax resident. Where the indicia found is an unambiguous US place of birth then the account needs to be reported unless the Financial Institution obtains or currently maintains a record of all of the following: (i) a self-certification showing that the account holder is neither a US citizen nor a US

resident for US tax purposes, (ii) evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification) and (iii) a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of the reason the account holder does not have such a certificate or the reason the account holder did not obtain US citizenship at birth.

Where the indicia includes a current US mailing or residence address, or one or more US telephone numbers that are the only telephone numbers associated with the account, then the account must be reported unless the Financial Institution obtains or currently maintains a record of: (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes *and* (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

Where the indicia found contains standing instructions to transfer funds to an account maintained in the United States (but has a non-US telephone number also associated with the account), the account must be reported unless the Financial Institution obtains or currently maintains a record of (i) self-certification that the account holder is neither a US citizen nor a US resident for tax purposes *or* (ii) a form of acceptable documentary evidence which establishes the account holder's non-US status.

The review of High Value Accounts must be carried out by 30 June 2015, unless the accounts later become High Value Accounts, in which case, the accounts must be reviewed, broadly, within 6 months after the end of the calendar year in which they became High Value.

b) New Individual Accounts

Unless a Financial Institution elects to do so, it will not generally need to perform a due diligence review with respect to New Individual Accounts with a value of $50,000 or less at the end of any calendar year, or other appropriate reporting period. Accounts below this threshold should not be reported.

For all other New Individual Accounts, the Financial Institution must, on opening the account, obtain self-certification from the account holder, to determine whether the individual is US tax resident. The Financial Institution must also confirm the reasonableness of the self-certification.

If the self-certification establishes that the account holder is a US tax resident, then the Financial Institution must report the account. If, as a result of a change of circumstances, the Financial Institution knows, or has reason to know, that the original self-certification has become inadequate, or unreliable, the Financial Institution must seek further self-certification. If it is then unavailable, the Financial Institution must report the account.

4.1.10.2 Due diligence procedures for entity accounts (Flowchart 4)

The due diligence procedures for entity accounts (those held by legal persons such as companies and partnerships) are more complex than the procedures for accounts held by individuals.

In particular, the UAE IGA creates several categories of entities, based on definitions in the FATCA Regulations.

In general terms, to carry out the due diligence correctly, a Financial Institution will need to group its entity accounts into two categories:

- "Pre-existing Entity Accounts", which are accounts held by entities as of 30 June 2014 (or 31 December 2014, with certain conditions)– see (a) below; and
- "New Entity Accounts", which are accounts opened by entities on or after 1 July 2014 – see (b) below.

a) Pre-Existing Entity Accounts

Pre-existing Entity Accounts can be divided into the two categories below. (For these purposes, Annex I and Notice 2014-33 allow an Entity Account that is issued, opened or executed on or after 1 July 2014, and before 1 January 2015, to be treated as a pre-existing account (with certain conditions), at the discretion of the Financial Institution).

The two categories of Pre-Existing Entity Accounts are:

- Small accounts, which have a balance or value of $250,000 or less, as of 30 June 2014.
- These do not need to be reviewed until the account balance exceeds $1,000,000.

All other entity accounts, which must be reviewed. These will consist of accounts:

- with a balance or value that exceeds $250,000 as of 30 June 2014 – which must be reviewed by 30 June 2016; or
- with a balance or value that does not exceed $250,000 as of 30 June 2014 but that does exceed $1,000,000 on certain specified dates going forward – which must be reviewed within 6 months after the end of the calendar year in which the account exceeded $1,000,000.

The specified review procedures differ from those specified for individual accounts. For pre-existing entity accounts, the Financial Institution must, for example, review information maintained for regulatory or customer relationship purposes (including Anti-Money Laundering or "Know Your Client" information). Beyond that, the review procedures will vary, depending on the account holder, so Financial Institutions should seek specific professional advice on the exact review procedures they must follow.

The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

- **Accounts held by Specified US Persons** (essentially, all US persons, with some exceptions, as outlined in Section 2.1.9.1 above).

  If the review suggests that the account holder is a Specified US person, the Financial Institution must report the account, unless the account holder self-certifies that the account holder is not a Specified US person, or the Financial Institution reasonably determines (based on information in its possession or publicly available information) that the account holder is not a Specified US person.

- **Accounts held by Financial Institutions**

  If the review indicates that the account holder is a Financial Institution, and details of its GIIN are confirmed, the account will not need to be reported.

- **Accounts held by "Nonparticipating Financial Institutions"**

The definition of "Nonparticipating Financial Institution" is detailed and refers to the FATCA Regulations. Essentially, such an institution is "nonparticipating", because it has failed to comply with FATCA.

If the review indicates that an account holder is a Financial Institution treated by the IRS as a UAE Nonparticipating Financial Institution, the Reporting FI will need to annually report on payments made to it.

If the review indicates that an account holder is a Financial Institution, but not a UAE Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then it should be treated as a "nonparticipating", unless the entity provides a self-certification stating that it is a Certified Deemed Compliant Financial Institution or an Exempt Beneficial Owner, or unless the Financial Institution is able to verify that the entity is a participating Financial Institution or Registered Deemed Compliant Financial Institution, for instance from its GIIN.

This is to allow the IRS to monitor institutions that are not complying with FATCA and to watch the payments being made to them.

- **Accounts held by NFFEs**

  The meaning of NFFEs is outlined in detail at Section 8 below. Essentially, NFFEs are entities that are not US entities and are not Financial Institutions, under the relevant definitions.

  NFFEs can be "Active" or "Passive". The details of the difference are outlined in Sections 8 – 10.

  If the review indicates that an account holder is a Passive NFFE, the Financial Institution must investigate the persons that control it to determine if there are any Controlling Persons who are Specified US Persons (as determined under the procedures specified in the UAE IGA, which generally requires direct or indirect control of 25 percent of the entity). If those persons are US persons, the account must be reported.

- **New Entity Accounts**

  There are several categories of New Entity Accounts, some of which are defined in the FATCA Regulations. Any Financial Institution opening New Entity Accounts must take specific professional advice on its due diligence obligations.

  In general, New Entity Accounts will be:

  - Small accounts, which are certain credit card or revolving credit facility accounts with a balance or value of $50,000 or less (and that cannot exceed $50,000).

    These accounts do not need to be reviewed.

  - All other New Entity Accounts, which must be reviewed.

    The objective of the review is to identify a number of different types of account holders; once they are identified, specified procedural steps may need to follow:

- Accounts held by Specified US Persons (essentially, all US persons, with some exceptions, as outlined in Section 5.1 above)

  These accounts are reportable.

- Accounts held by UAE Financial Institutions, or Financial Institutions of other countries that have an IGA with the US to implement FATCA

  These are generally not reportable (as the Financial Institutions will themselves be complying with FATCA pursuant to an IGA).

- Accounts held by "Participating" or "Deemed-Compliant Foreign Financial Institutions", or "Exempt Beneficial Owners"

  These terms are defined in the UAE IGA or the FATCA Regulations, as applicable. Essentially, they describe institutions that are complying with the FATCA Regulations or the IGA. The accounts are not reportable.

- Accounts held by Active or Passive NFFEs

  Active and Passive NFFEs are defined in detail at Sections 8 – 10.

  Active NFFE accounts are not generally reportable. Passive NFFE accounts are only generally reportable if they are controlled (as determined under the procedures specified herein) by US persons.

- Accounts held by "Nonparticipating Financial Institutions"

  As noted above, "Nonparticipating Financial Institutions" are institutions that are "nonparticipating", because they have consistently failed to comply with the FATCA Regulations.

  If the review indicates that a New Entity Account holder is a UAE Nonparticipating Financial Institution, the account will not specifically be reportable. However, the Financial Institution will need to annually report on payments made to it.

4.1.10.3 Self-Certification; Documentary Evidence; and Aggregation.

This Section 6.3 applies to both individual and entity accounts.

a) Self-Certification

A self-certification must be signed and dated by the account holder and solicit the following information: (i) name, (ii) residence address for tax purposes, (iii) jurisdiction(s) of residence for tax purposes (note that a US citizen is considered a US tax resident even if the person is also a tax resident of another jurisdiction), (iv) taxpaying identification number ("TIN") (if taxpayer has a US TIN and a non-US TIN, the US TIN must be provided, and the non-US TIN may be provided), (v) in the case of an entity, the entity's FATCA status and (iv) in the case of a Passive NFFE, the name, residence address for tax purposes, and TIN with respect to a Controlling Person that is a Specified US person.

The self-certification can include other information required for other purposes such as AML due diligence and can be in paper or electronic format. There will be no

specific template for self-certification issued by the UAE Ministry of Finance. Self-certifications and other documentary evidence provided by account holders to Financial Institutions should be retained for six years following the end of the year in which the account holder's tax status was established.

IRS Forms W-8 and W-9 are acceptable to establish an account holder's status. A pre-FATCA W-8 form may be accepted in lieu of obtaining an updated W-8 until such time as the W-8 needs to be reviewed.

A self-certification cannot be relied upon if a Financial Institution has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status. A Financial Institution receiving a self-certification must consider other information it has obtained concerning the account holder, including any documentation collected pursuant to AML/KYC procedures, to check whether the self-certification is reliable. In instances where there is an apparent conflict, the Financial Institution is required to make further inquiries.

b) Documentary Evidence

Financial Institutions may need to request documentary evidence from account holders where any US indicia are present. Acceptable documentary evidence includes: (i) a certificate of residence issued by an authorized government body of the jurisdiction in which the account holder claims to be a resident, (ii) with respect to an individual, any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes, (iii) with respect to an entity, any official documentation issued by an authorized government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which the entity was incorporated or organized, and (iv) any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report.

Documentation is required to support the status of each Financial Account held. However, documentation obtained by a Financial Institution may be used in relation to more than one Financial Account in certain circumstances. For example, documentation furnished by a customer may be relied on for another account if both accounts are held at the same branch location and both accounts are treated as a single account or obligation. A Financial Institution may also rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or a branch location of a related entity of the Financial Institution if the Financial Institution treats all accounts that share documentation as a single account or obligation or as held by the same account holder and the Financial Institution and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to systematically retrieve all other accounts of the customer. Lastly, a Financial Institution may rely on documentation provided by a customer for an account held at another branch location of the same Financial Institution, or at a branch location of a member of the expanded affiliated group of the Financial Institution if the Financial Institution treats all accounts that share documentation as consolidated accounts or as held by the same account holder and the Financial Institution and the other branch location or expanded affiliated group member share an information system, electronic or otherwise, as described in the FATCA Regulations.

c) Aggregation and Currency Translation

To identify whether Financial Accounts are reportable, and the extent to which enhanced review procedures are required in respect of High Value Accounts, a Financial Institution will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

A Financial Institution is required to aggregate all Financial Accounts, belonging to an individual or entity, maintained by it or a Related Entity, but only to the extent that the Financial Institution's current computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to aggregated. If an individual, who holds an account in his or her own name, is also a Controlling Person of an entity, then the accounts of the individual and the entity for which they are a Controlling Person should not be aggregated.

An inquiry should also be made to the account holder's relationship manager, if applicable, to determine if the relationship manager knows, or has to reason to know, of other Financial Accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person. In such cases and for the purposes of determining a High Value Account all such accounts should be aggregated.

For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the US dollar, Financial Institutions must convert the US dollar threshold amounts described below into such currency using a published spot rate determined as of the last of the calendar year preceding the year in which the Financial Institution is determining the balance or value.

d) Change in Circumstances

If there is a change in circumstances with respect to a Financial Account that causes the Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Financial Institution must redetermine the status of the account in accordance with the due diligence procedures described in this Section.

A change in circumstance includes any change to or addition of information in relation to the account holder's account (including the addition, substitution or other change of account holder) or any change to or addition of information to any account associated with such account. Associated accounts are those accounts that are associated through the aggregation rules or where a new account is treated as a pre-existing obligation.

If a Financial Institution does not report Financial Accounts where US indicia is present but are subsequently "cured", then the Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the US, the Financial Institution is required to treat the new address as a change in circumstances and is required to obtain the appropriate documentation from the account holder.

4.1.11 SECTION 7 - WHAT REPORTING REQUIREMENTS MUST BE MET?

Once a Financial Institution has identified accounts as US Reportable Accounts, it must report on those accounts (or report that it does not have any such accounts).

The UAE IGA allows UAE Financial Institutions to supply the information to the UAE Ministry of Finance instead, who will then supply it to the IRS. This information will first be provided to the relevant regulator, at the following links:

- CB: Central Bank Services Portal (private network)
- IA: http://fatca.ia.gov.ae/fatca
- SCA: https://scafatca.sca.ae/fatca/
- DIFC/RoC: https://portal.difc.ae
- MoF: https://moffatca.mof.gov.ae/fatca/

Please also consult these links for additional details on reporting, including what account holder details are required; what account information is required; what information is required on US persons; how to report on joint accounts; how to report on payments to non-participating financial institutions; how to report on recalcitrant accounts; the data format; how to transmit data; and the deadline for filing with the relevant regulator.

The information required to be reported, in relation to any US Reportable Account (defined at Section 5) includes:

- Details of the account holder:
    - Where an account is held by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US Taxpayer Identification Number ("TIN") of the Specified US Person.
    - Where an account is held by a Non-US Entity that is controlled by a Specified US Person (as defined in Section 2.1.9.2), the name, address and US TIN (if any) of the Non-US Entity and each Specified US Person.
    - If the Financial Institution has no TIN on record for any particular individual, it can provide a date of birth instead, for accounts maintained as of June 30, 2014 (subject to further limitations provided in the IGA).
- The account number.
- The name and identifying number of the Reporting Financial Institution.
- The account balance or value at the end of the relevant calendar year (or certain other specified time periods). The account balance or value includes, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value.
- For an Insurance Contract or an Annuity Contract, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting, including the aggregate amount of any redemption payments made to the policy holder.

After the first year of reporting, additional information will need to be reported annually, which generally relates to income or capital earned in the account, or arising from assets held in the account. The first year of reporting will occur in 2015, at which time information related to 2014 information must be reported.

4.1.12 SECTION 8 - IS THE ENTITY AN NFFE?

The concept of an "**NFFE**" aims to identify entities that are neither US entities nor Financial Institutions (as defined in the UAE IGA). It generally includes foreign entities that are not engaged in banking or investment management business activities.

As noted above, most of the obligations under the UAE IGA fall on Financial Institutions that are "Reporting Financial Institutions" (see above, Section 2). So the rules are generally only concerned with non-financial entities to the extent that they are not actively trading, hold mostly passive income (such as dividends, interest, rents) and are controlled by US persons. Such entities will usually fall within the definition of "Passive" NFFEs (see 2.1.14), which may be reportable if they are controlled by US persons (see above, 2.1.11). NFFEs that are not "Passive" are generally "Active", not engaged in banking or investment activities or earning mostly passive income, and therefore carry fewer obligations under the FATCA Regulations and the UAE IGA.

The definitions of Active and Passive Non-Financial Foreign Entities are outlined at Sections 9 and 10, respectively.

4.1.13 SECTION 9 - IS IT AN ACTIVE NFFE?

An "**Active NFFE**" is, essentially, an NFFE that is not engaged in banking or investment activities, is not earning largely passive income, and does not largely hold passive assets. Passive income generally includes dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort. The FATCA Regulations provide that amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts are passive income, and such income should also be treated as passive income under the UAE IGA. Passive assets include assets that produce or are held for the production of passive income.

More specifically, an NFFE will be "Active" if it meets any of the following criteria:

a) Less than 50 percent of its gross income for the preceding year is passive and less than 50 percent of its assets during the preceding year are assets that produce passive income. As noted in Annex I, Art. VI(B)(4)(a), the term "preceding year" refers to the preceding calendar year or other appropriate reporting period (e.g., a fiscal year);
b) The stock of the NFFE (or a Related Entity) is regularly traded on an established securities market;
c) The NFFE is organized in a US territory (which means certain territories connected to the US, such as American Samoa, Guam, the Commonwealth of Puerto Rico and the US Virgin Islands) and all of the owners of the payee are residents of that territory;
d) The NFFE is a non-US government organization (at national, state, or local level), a public body performing governmental tasks, a government of a US territory, an international organization, a central bank, or an entity wholly owned by any of them;
e) Substantially all the activities of the NFFE consist of holding shares in, or providing financing services to, subsidiaries engaged in trade or businesses, other than the business of a Financial Institution. (The entity must not function as, or hold itself out as, an investment fund or investment holding structure however, which holds interests in companies as investments, as it will then become conceptually similar to a Financial Institution);
f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution (this criterion will not apply after the first 2 years of the initial organization of the NFFE);
g) The NFFE was not a Financial Institution in the past 5 years and is in the process of liquidating its assets, or reorganizing its business, with the intent of continuing/recommencing operations in a business other than that of a Financial Institution;
h) The NFFE primarily engages in financing or hedging transactions with certain Related Entities that are not Financial Institutions and does not provide such services to entities that are not Related Entities – as long as the overall group does not carry on the business of a Financial Institution;
i) The NFFE is an "**excepted**" NFFE under the FATCA Regulations (which broadly includes publicly-traded companies, certain US territory entities, certain non-financial holding companies, start-up companies, non-financial entities that are liquidating, the hedging or financing centers of non-financial groups and certain not-for-profit organizations); or
j) The NFFE meets all of the following requirements:
    - It is established and operated in its jurisdiction of residence exclusively for specified non-profit purposes (such as religious or charitable organizations, chambers of commerce, or civic leagues);
    - It is exempt from income tax in its jurisdiction of residence;

- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, do not permit any income or assets to be applied for the benefit of a private person or non-charitable entity (with some exceptions, such as payments that are reasonable compensation for services rendered, or property purchased); and
- The applicable laws of the NFFE's jurisdiction of residence, or the NFFE's formation documents, require that, upon liquidation, all its assets are distributed to governmental entities, or other non-profit organizations.

Please see Annex I of the UAE IGA for the specific requirements of each of the "Active NFFE" requirements.

4.1.14 SECTION 10 - IS IT A PASSIVE NFFE?

As noted above, FATCA and the UAE IGA are mostly concerned about requiring Financial Institutions to report on accounts held by persons with a relevant connection to the US (for details, see 2.1.9).

The rules are generally less concerned about NFFEs, which are, broadly, non-US entities that are not Financial Institutions. However, where an NFFE is "**Passive**", rather than "Active", accounts held by it will need to be reported to payors or other withholding agents in certain circumstances.

The object of the rules is, broadly, to identify NFFEs that earn largely passive income (such as dividends, interest, rents, or other income that can be passively earned, on a regular basis, without additional effort) and that have Controlling Persons (as determined under the rules) who are Specified US persons. Accounts held by Passive NFFEs that are controlled by US persons are reportable in certain circumstances (see 2.1.11).

A "Passive NFFE" is an NFFE that is NOT:

a) an Active NFFE (see 2.1.13);
b) a "withholding foreign partnership" under the relevant Regulations; or
c) a "withholding foreign trust" under the relevant Regulations.

These partnerships and trusts are, broadly, entities that have entered into withholding agreements with the IRS, which require them to withhold US tax on certain payments made to foreign persons from the US.

Direct Reporting NFFEs

In Notice 2013-69 and subsequent changes to the FATCA Regulations, a new category of Passive NFFE was introduced - a "**Direct Reporting NFFE**". A Direct Reporting NFFE is described at FATCA Regulation §1.1472-1T(c)(3) and will be treated as an Excepted NFFE. It is a Passive NFFE that elects to report certain information about its direct or indirect substantial US owners directly to the IRS as opposed to providing such information to the UAE Financial Institution at which an account is held.

The Direct Reporting NFFE will also be required to register with the IRS to obtain a GIIN.

The US Regulations also allow an entity to serve as a sponsor for one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs), which will require the sponsoring entity to report information about a Sponsored Direct Reporting NFFE's direct or indirect substantial US owners directly to the IRS.

4.2 CHAPTER 4 - PART 2 - APPLICATION OF FATCA TO REGULATED ENTITIES

4.2.1 OUTLINE OF THIS PART

This Part outlines how certain types of entities regulated by SCA may be classified under the IGA. However, the classification of each entity regulated by SCA is a fact specific test and this outline is not conclusive of any such classification. Consequently, any likely classification noted in this Part 3 should be interpreted only as a guide.

4.2.2 CONTENTS OF THIS PART

This Part contains an example analysis for each of the following types of entities regulated by SCA:

Section 1 - Exchange

Section 2 - Securities Broker

Section 3- Commodities Broker Firm

Section 4 - Securities Custodian

Section 5 - Investment Manager

Section 6 - Financial Consultation and Financial Analysis Firm

Section 7 - Fund Administrator

4.2.3 SECTION 1 - EXCHANGE

FACTS:

Exchange was established under local law the provisions of which vest Exchange with independent legal personality, independent finance and management, and give Exchange the necessary supervisory and executive powers to exercise its functions.

Exchange provides services for stock brokers and traders to buy or sell stocks, bonds, and other securities. Exchange's income is comprised of fees received from stock brokers and traders based on a percentage of each trade executed on Exchange.

ANALYSIS:

i. **Is Exchange a Financial Institution?**

The definition of a Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" the investing, administering or managing of funds or money on behalf of other persons.

Exchange does not invest, administer or manage funds or money on behalf of other persons. Instead, Exchange serves as an intermediary for brokers and investors to buy and sell stocks, bonds and other securities.

Exchange determines it does not fall within the definition of any other category of Financial Institution.

ii. **Is Exchange an NFFE?**

Assuming Exchange determines it is not a Financial Institution, it must be an NFFE.

iii. **Is Exchange an ACTIVE NFFE or a PASSIVE NFFE?**

An Active NFFE is one which derives less than 50 percent of its gross income for the preceding year from passive income and less than 50 percent of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.

Exchange determines it is an Active NFFE as its income is derived from the receipt of fees based on a percentage of each trade executed on the exchange.

iv. **What Compliance Procedures does Exchange need to follow?**

As an Active NFFE, Exchange would not need to register with the IRS or obtain a GIIN.

Exchange will be required to evidence its status as an Active NFFE through an IRS Form W-8BEN-E or other self-certification, if requested.

4.2.4 SECTION 2 - SECURITIES BROKER

FACTS:

Securities Broker ("SB") is a corporate person licensed by SCA in accordance with Board Decision No. 27 of 2014 ("Decision 27") to purchase or sell securities in the market in the name and for the account of a third party or in its own name and for its own account. Under Decision 27, a securities broker may act as a Trading Member or a Trading and Clearing Member, a Trading Member will never deal in client funds or operate segregated bank accounts on behalf of its clients.

SB, a Trading and Clearing Member, holds segregated accounts on behalf of its clients and its clientele includes both local and non-UAE persons. SB's gross income attributable to the holding of financial assets and related financial services exceeds 20 percent of SB's gross income on an annual basis.

ANALYSIS:

i. Is SB a Financial Institution?

The definition of Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets" for the accounts of others.

The IGA provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Therefore, because SB acts as a Trading and Clearing Member, it determines that it is classified as a Custodial Institution.

ii. Is SB a Reporting or Non-Reporting Financial Institution?

Since SB determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II non-reporting entities or under the FATCA Regulations (see Section 3 of Part 1). Since SB does not have a purely local client base, it did not determine that it fell within one of the Annex II exempt entity categories.

iii. Does SB maintain Financial Accounts?

Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets).

SB determined that it does hold Financial Accounts.

If any of such Financial Accounts are "Exempt Accounts" (see Section 4.2 of Part 1), SB would not have to perform any due diligence with respect to those accounts.

iv. Does SB maintain US Reportable Accounts?

A Financial Account will be a Reportable Account where it is held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. SB must follow the due diligence procedures set out in Annex I of the IGA and detailed in Section 6 of Part 1 of this Guidance Note in order to identify US Reportable Accounts.

v. What Compliance Procedures does SB need to follow?

Register on the IRS registration portal and obtain a GIIN.

- Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance begins on 30 September 2015, and Financial Institutions will have to report to SCA by date announced by the SCA.

4.2.5 SECTION 3 – COMMODITIES BROKER FIRM

FACTS:

Commodities Broker Firm ("CBF") is a corporate person licensed by SCA in accordance with Board Decision No. 157/R of 2005 to act as an intermediary in the purchase or sale transactions of commodities, options contracts or futures in the market in accordance with the provisions of these Regulations.

CBF holds segregated accounts on behalf of each beneficial owner and its clientele includes both local and non-UAE persons. CBF's gross income attributable to the holding of financial assets and related financial services exceeds 20 percent of CBF's gross income on an annual basis.

ANALYSIS:

i. Is CBF a Financial Institution?

The definition of Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets" for the accounts of others.

The IGA provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Therefore, CBF determines that it is classified as a Custodial Institution.

ii. Is CBF a Reporting or Non-Reporting Financial Institution?

Since CBF determines that it meets the conditions above, it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or under the FATCA Regulations (see Section 3 of Part 1).

Since CBF does not have a purely local client base, it did not determine that it fell within one of the Annex II exempt entity categories.

iii. Does CBF maintain Financial Accounts?

Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets).

CBF determined that it does hold Financial Accounts.

If any of such Financial Accounts are "Exempt Accounts" (see Section 4.2 of Part 1), CBF would not have to perform any due diligence with respect to those accounts.

iv. Does CBF maintain US Reportable Accounts?

A Financial Account will be a Reportable Account where it is held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. CBF must follow the due diligence procedures set out in Annex I of the IGA and detailed in Section 6 of Part 1 of this Guidance Note in order to identify US Reportable accounts.

v. What Compliance Procedures does CBF need to follow?

Register on the IRS registration portal and obtain a GIIN.

Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance begins on 30 September 2015, and Financial Institutions will have to report to SCA by date announced by the SCA.

4.2.6 SECTION 4 – SECURITIES CUSTODIAN

FACTS:

Securities Custodian ("SC") is a corporate person licensed by SCA pursuant to Board of Directors Decision No. (29/R) of 2009 to practice custody of securities. Securities are defined as stocks, bonds and Sukuk issued by public joint stock companies; bonds and notes issued by the Federal Government, local governments, public authorities, and public institutions in the United Arab Emirates; investment units issued by investment funds; and any other domestic or foreign securities or financial instruments so designated by SCA.

SC holds assets directly and on behalf of its customers. SC's gross income attributable to the holding of financial assets and related financial services exceeds 20 percent of SC's gross income on an annual basis.

ANALYSIS:

i. **Is SC a Financial Institution?**

The definition of a Financial Institution includes "Custodial Institutions". A "Custodial Institution" is an entity that holds, as a "substantial portion of its business", "financial assets", for the account others. It therefore covers a nominee arrangement.

The IGA provides that an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Therefore, SC determines that it is classified as a Custodial Institution.

ii. **Is SC a Reporting or Non-Reporting Financial Institution?**

SC determines it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or under the FATCA Regulations (see Section 3 of Part 1). Since SC does not have a purely local client base, it does not determine that it falls within one of the Annex II exempt entity categories.

iii. **Does SC maintain Financial Accounts?**

Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debentures stock (together with a wide range of other financial assets).

SC determines that it does hold Financial Accounts.

iv. **Does SC maintain US Reportable Accounts?**

A Financial Account will be a Reportable Account where it is held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. SC must follow the due diligence procedures set out in Annex I of the IGA and detailed in Section 6 of Part 1 of this Guidance Note in order to identify US Reportable Accounts.

v. **What Compliance Procedures does SC need to follow?**

Register on the IRS registration portal and obtain a GIIN.

Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance begins on 30 September 2015, and Financial Institutions will have to report to SCA by date announced by the SCA.

4.2.7 SECTION 5 – INVESTMENT MANAGER

FACTS:

Investment Manager ("IM") is a legal person licensed by SCA pursuant to Board Decision No. 1 of 2014 to practice the activity of Investment Management in accordance with the provisions of this Decision.

Investment Management is defined as the management of securities portfolios for the account of third parties or the management of mutual funds in accordance with investment objectives and policy defined in the investment management agreement signed between the IM and its clients including individuals, establishments or mutual funds.

IM is permitted and does hold accounts on behalf of its investors.

ANALYSIS:

i. Is IM a Financial Institution?

The definition of a Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" individual and collective portfolio management or otherwise investing, administering or managing of funds or money on behalf of other persons.

IM manages the funds it holds on behalf of other persons. IM will be regarded as conducting these activities "as a business" if at least 50 percent of its gross income is attributable to such activities – broadly, over a 3 year period (or since IM's existence, whichever is shorter).

IM determines that it meets these conditions and thus will be classified as an Investment Entity and therefore a Financial Institution.

ii. Is IM a Reporting or Non-Reporting Financial Institution?

IM determines that it will be a Reporting Financial Institution unless it meets the conditions of one of the Annex II exempt entities or is otherwise a non-reporting financial institution (see Section 3 of Part 1). Since IM does not have a purely local client base, it did not determine that it falls within one of the Annex II exempt entity categories.

iii. Does IM maintain Financial Accounts?

Financial Accounts specifically include "Custodial Accounts". These are accounts held for the benefit of another person, that hold any "financial instrument" or contract held for investment. "Financial Instrument" specifically includes shares and loan/debenture stock (together with a wide range of other financial assets).

IM determines that it does hold "Custodial Accounts".

If any of such Financial Accounts are "Exempt Accounts" (see 2.1.8.2 of Part 1), IM would not have to perform any due diligence with respect to those accounts.

iv. Does IM maintain US Reportable Accounts?

A Financial Account will be a Reportable Account where it is held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. IM must follow the due diligence procedures set out in Annex I of the IGA and detailed in Section 6 of Part 1 of this Guidance Note in order to identify US Reportable Accounts.

v. What Reporting Requirements must IM meet?

Register on the IRS registration portal and obtain a GIIN.

Undertake the necessary due diligence and make annual reports to SCA (which it will then forward to the UAE Ministry of Finance). The first reporting obligation for the UAE Ministry of Finance begins on 30 September 2015, and Financial Institutions will have to report to SCA by date announced by the SCA.

4.2.8 SECTION 6 – FINANCIAL CONSULTATION AND FINANCIAL ANALYSIS FIRM

FACTS:

Financial Consultation and Financial Analysis Firms ("FCAF") provides opinions and recommendations based on economic and financial research, studies and analyses concerning the feasibility studies and determining the anticipated current or future values of the securities, commodities, commodity contracts and companies to clients or published to the public in any of the various means of publication and communication.

FCAF is a pure advisory company and does not otherwise invest or manage funds on behalf of its customers.

ANALYSIS:

i. **Is FCAF a Financial Institution?**

The definition of Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity established in the UAE that is a Financial Institution solely because it administers or manages funds or money on behalf of other persons.

However, FCAF solely renders investment advice. FCAF does not otherwise undertake investment services or maintain financial accounts, and does not otherwise administer, manage funds or money or in any other way fall within the definition of an Investment Entity.

FCAF determines that it will not fall within the definition of any other Financial Institution category and thus will not be treated as a Financial Institution.

ii. **Is FCAF a NFFE?**

FCAF determines that it is not a Financial Institution, so it must be a NFFE.

iii. **Is FCAF an ACTIVE NFFE or PASSIVE NFFE?**

An Active NFFE is one which derives less than 50 percent of its gross income for the preceding year from passive income and less than 50 percent of the assets held by the NFFE are assets held for the production of passive income. Passive income includes dividends, interest, rents, etc.

FCAF determines it is classified as an Active NFFE as its income is derived from fees for its advisory services and at least 50 percent of its assets are non-passive assets.

iv. **What Compliance Procedures does FCAF need to follow?**

FCAF will not need to register with the IRS or obtain a GIIN.

FCAF will need to be able to evidence its status as an Active NFFE through an IRS Form W-8BEN-E or other self-certification, if requested.

4.2.9 SECTION 7 – FUND ADMINISTRATOR

FACTS:

Fund Administrator's ("FA") sole responsibilities are to (i) maintain the register of the shareholders or members of a collective investment vehicles and processing the issuance and transfer of interests in such collective investment vehicles, (ii) disseminate the net asset value of a collective investment vehicle's interests in accordance with the governing documents, (iii) process requests for redemption of interests, (iv) keep books and records of a collective investment vehicle and (v) perform other services necessary in connection with the administration of a collective investment vehicle.

The FA acts for a collective investment vehicle established in the UAE that satisfies the requirements for a "**Collective Investment Vehicle**" as described in Annex II, Art. IV(E) of the UAE IGA, essentially, one that is regulated as a collective investment vehicle where all interests are held by or through one or more exempt beneficial owners, Active NFFEs, US Persons other than Specified US Persons, or Financial Institutions other than Nonparticipating Financial Institutions.

FA provides the services listed above for UAE and non-UAE clients. FA's income is comprised of fees received for its administrative services.

ANALYSIS:

i. **Is FA a Financial Institution?**

The definition of Financial Institution includes "Investment Entities". The definition of "Investment Entity" includes an entity that "conducts as a business" one or more of certain activities or operations for or on behalf of a customer, including (a) "individual and collective portfolio management" and (b) "otherwise investing, administering, or managing funds or money on behalf of other persons."

FA determines that it is a Financial Institution.

ii. **Is FA a Reporting or Non-Reporting Financial Institution?**

After review of the IGA, FA determines that its reporting obligations are deemed fulfilled pursuant to Annex II, Art. IV(F) because: (a) the Financial Accounts for which FA provides services are Financial Accounts in a Collective Investment Vehicle that is deemed compliant pursuant to Annex II, Art. IV(E) of the UAE IGA, and (b) no interests in the Collective Investment Vehicle are held through FA.

Furthermore, FA determines that it is an Investment Entity solely because it manages portfolios for, and acts on behalf of a customer for the purpose of investing, managing, or administering funds deposited in the name of a customer with a Financial Institution other than a Non-Participating Financial Institution; and FA determines that it will be treated as a deemed compliant Financial Institution pursuant to Annex II of the UAE IGA (Investment Advisors and Investment Managers).

iii. **What Compliance Procedures does FA need to follow?**

FA does not need to register with the IRS or obtain a GIIN.

FA will need to be able to evidence its status as a Nonreporting IGA FFI through an IRS Form W-8BEN-E or other self-certification, if requested.

4.3 CHAPTER 4 - PART 3 – CHECKLIST OF COMPLIANCE PROCEDURES UNDER THE FOREIGN ACCOUNT TAX COMPLIANCE ACT

4.3.1 OUTLINE OF THIS PART

This Part provides a general checklist of the steps necessary for an entity to comply with FATCA and the due diligence and reporting deadlines that may need to be met with respect to its financial accounts. It should be used in conjunction with the UAE IGA and the detailed explanations contained herein.

Entities that are required to register with the IRS under FATCA can do so by visiting: www.irs.gov/fatca-registration.

Obligations of Financial Institutions

Type of Financial Institution	Obligations
Non-Reporting Financial Institution	• "Registered deemed compliant FFIs" must register on the IRS website; all other Non-Reporting Financial Institutions generally do not need to register under FATCA
Reporting FI that does not maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca/ ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**
Reporting FI that does maintain Financial Accounts	• Register on the IRS website • Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request • Perform due diligence procedures described in Section 6 of Part 1 to determine if such

	Financial Accounts are "US Reportable Accounts" that must be reported to the UAE Ministry of Finance as described in Section 7 • Due diligence with respect to high value pre-existing individual accounts must be completed by 30 June 2015; note, however that US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Due diligence on low value pre-existing individual accounts and entity accounts must be completed by 30 June 2016 and US Reportable Accounts must be reported to the relevant Regulator by date announced by the Regulator (and annually thereafter). • New individual and entity accounts must be subject to new account procedures in accordance with the due diligence requirements of Annex I and US Reportable Accounts must be reported to the relevant regulator annually. • Report to the relevant Regulator by date announced by the Regulator (and annually thereafter). • Please see the following links: ○ CB: Central Bank Services Portal (private network) ○ IA: http://fatca.ia.gov.ae/fatca ○ SCA: https://scafatca.sca.ae/fatca ○ DIFC/RoC: https://portal.difc.ae ○ MoF: https://moffatca.mof.gov.ae/fatca/ • **Nil reporting required**

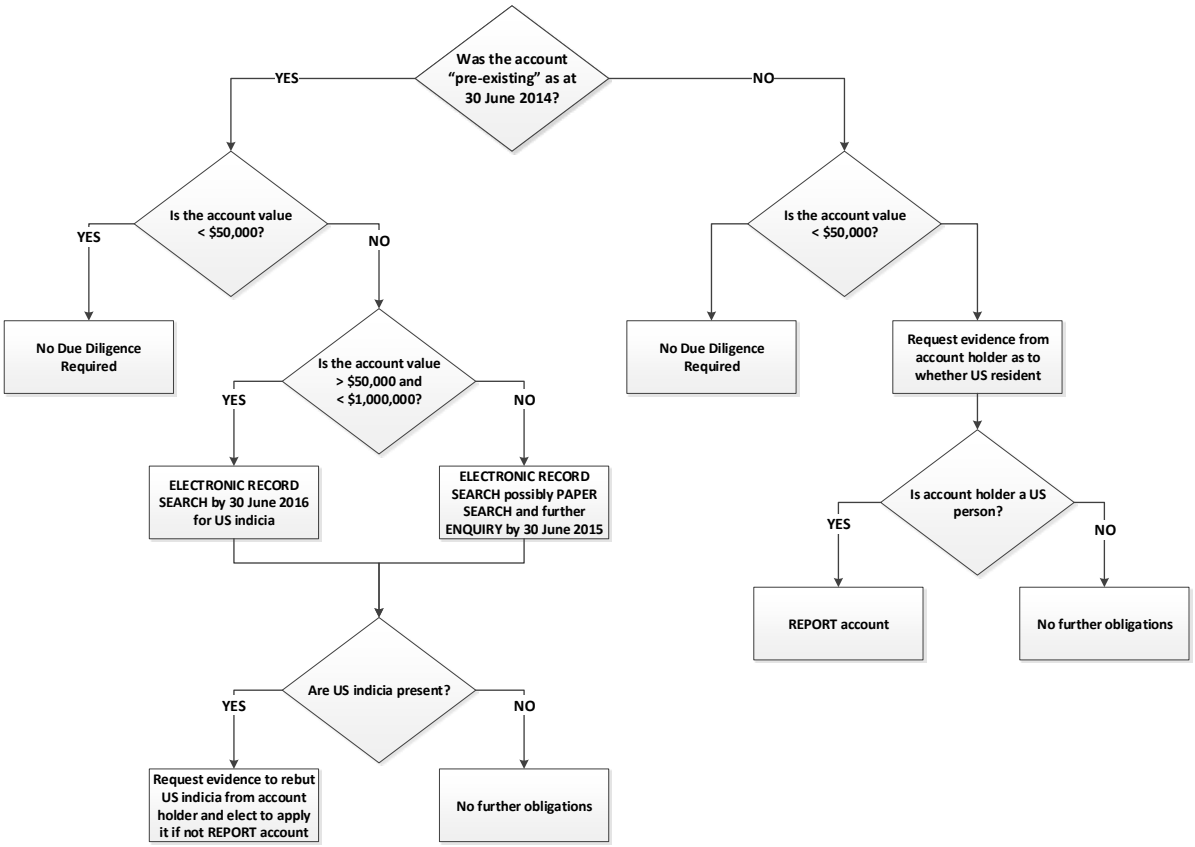
Obligations of NFFEs

Type of NFFE	**Obligations**
Active NFFE	No requirement to register on the IRS website

	Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request
Passive NFFE	No requirement to register on the IRS website Provide a completed IRS Form W-8BEN-E or other form of self-certification that includes information about any substantial US owners to withholding agents upon request
Direct Reporting NFFE	Requirement to register on the IRS website Provide a completed IRS Form W-8BEN-E or other form of self-certification to withholding agents upon request Generally subject to same obligations as a Reporting Financial Institution

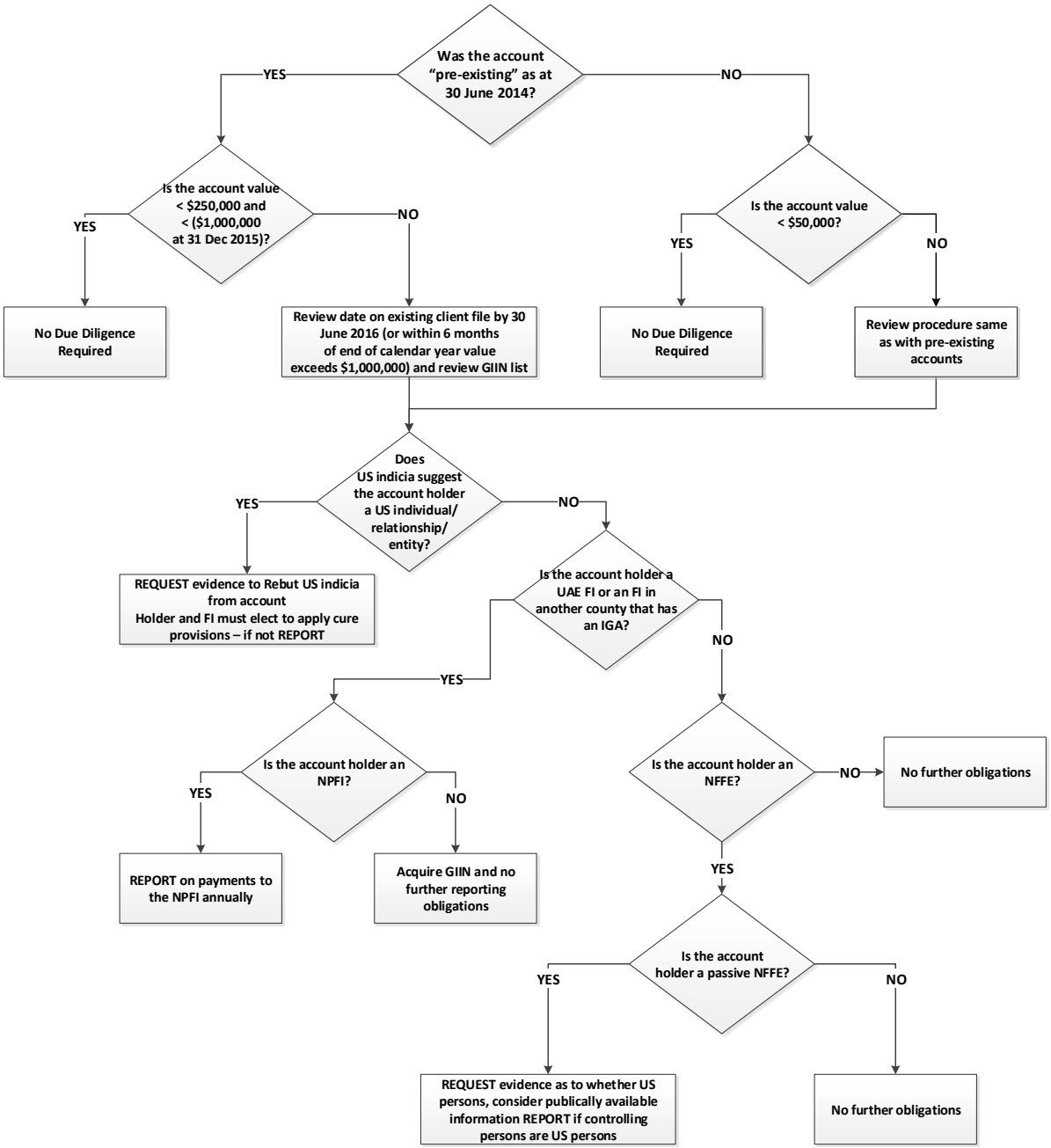
4.4 CHAPTER 4 - PART 4 – DUE DILIGENCE

4.4.1 Flowchart 3 – For Assessing Due Diligence Obligations for Individual Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

4.4.2 Flowchart 4 – For Assessing Due Diligence Obligations for Entity Accounts



Please note that this flowchart presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

4.4.3 Due Diligence Checklist

Type of Account	Obligations
Individual Accounts • Pre-existing (Part 1, section 6.1(a)) Value < $50,000 Value >$50,000 <$1,000,000 Value >$1,000,000 • New (Part 1, section 6.1(b)) Value <$50,000 Value >$50,000	 No Due Diligence required Electronic Record Search for US indicia Electronic Record Search Paper record search and enquire of Relationship Manager where required No Due Diligence required Request evidence (such as W-8) from account holder as to residence status
Entity Accounts • Pre-existing (Part 1, section 6.2(a)) Value < $250,000 Value >$250,000 • New (Part 1, section 6.2(b)) Value <$50,000 Value >$50,000	 No Due Diligence required Review Anti Money Laundering/Know Your Client documents for US indicia No Due Diligence required Review Anti Money Laundering/Know Your Client documents for US indicia

US indicia includes (see Part 1, section 5.3):

1. Identity of the account holder as a US citizen or resident;
2. Unambiguous indication of a US place of birth;
3. A current US mailing or residence address, including a US post office box;
4. A current US telephone number;
5. Standing instructions to transfer funds to an account maintained in the US;
6. A currently effective power of attorney or signatory granted to a person with a US address;
7. A US "in care of", or "hold mail" address, that is the sole address on file.

Note: For determining USD equivalent, use the spot rate on 31 December of the previous year.

Please note that this checklist presents a simplified analysis for illustrative purposes. Consult the text of this Note and the UAE IGA for a more complete explanation of the FATCA rules.

4.5 CHAPTER 4 - PART 5 – REGISTRATION

4.5.1 SECTION 1 – REGISTRATION OVERVIEW

The following entities will not need to register and obtain a GIIN:

- Exempt Beneficial Owners
- Non-Reporting Financial Institutions
- Active or Passive NFFE (excluding direct reporting NFFEs)
- Deemed Compliant Financial Institution, except for:
    - Registered Deemed Compliant Financial Institutions
    - Financial Institutions with a Local Client Base that has Reportable Accounts
    - Sponsored Investment Entities with Reportable Accounts
- Owner Document FFIs

The following will have to register and obtain a GIIN:

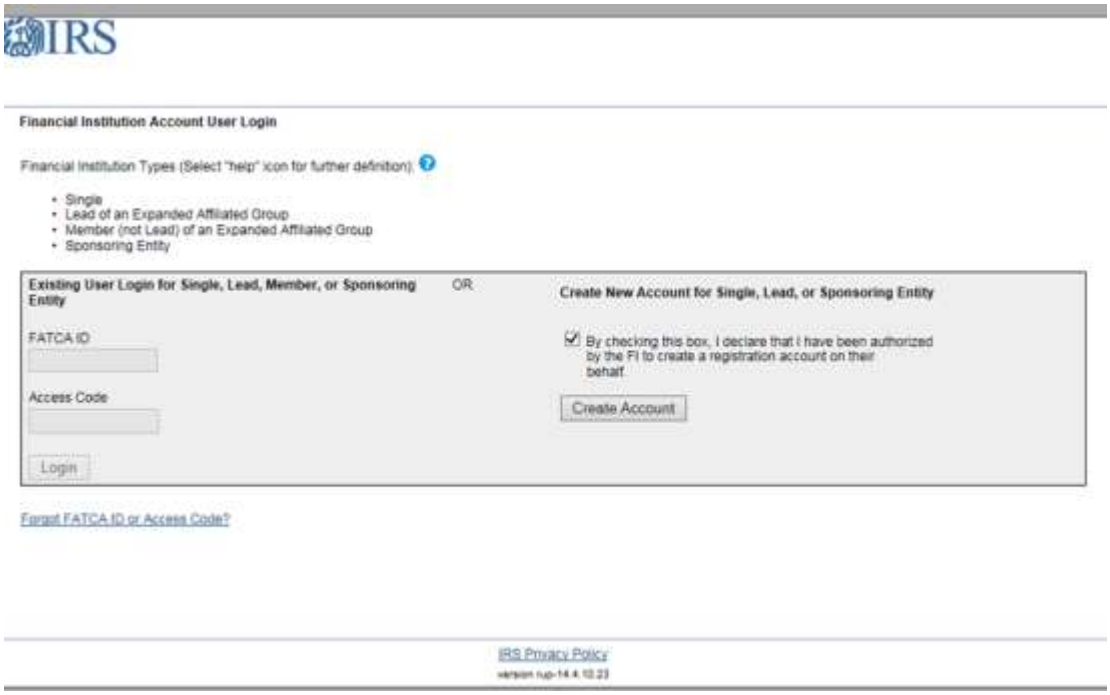
- Reporting Financial Institutions
- Registered Deemed Compliant Financial Institutions
- Sponsors of Sponsored Investment Vehicles or Sponsored Closely Held Investment Vehicles.
- The trustee of a Trustee Documented Trust.

4.5.2 SECTION 2 – REGISTRATION WALKTHROUGH

FATCA Registration should be undertaken via the IRS online registration portal.

The registration system can be accessed here: www.irs.gov/fatca-registration. The following is intended only to provide an overview of the registration process. For more detailed assistance on registration, an online user guide can be found at the following link: http://www.irs.gov/pub/irs-pdf/p5118.pdf. The preceding link provides access to IRS Publication 5118, User Guide: Foreign Account Tax Compliance Act (FATCA).

You will then be taken to an account set up page.



There are then 4 key steps to registration:

STEP 1: CREATE ACCOUNT

The user may register either as:

A **Single Financial Institution**- broadly this is a Financial Institution that does not have any other group member Financial Institutions that it is registering for or on behalf of.

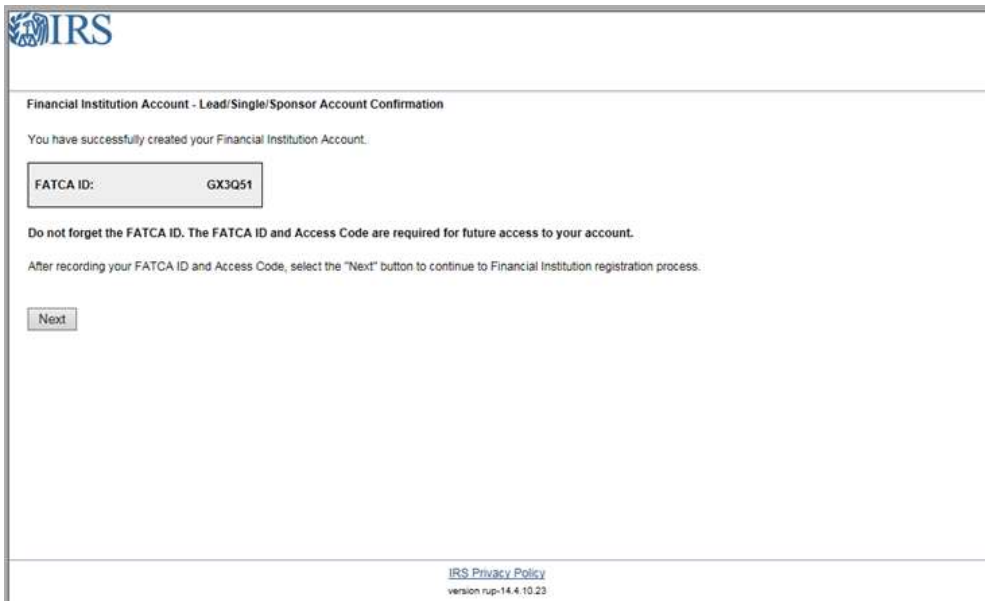
A **Lead Financial Institution**- broadly this is a Financial Institution that fulfils the requirements to be so and will initiate the FATCA Registration for any other group Financial Institutions that authorize it to do so.

A **Member Financial Institution**- broadly this is a Financial Institution that is registering as a member of a group for the FATCA registration process. A Member Financial Institution will need to obtain its FATCA ID from its Lead Financial Institution. Note that the FATCA ID is used to identify the Member Financial Institution for purposes of registration and is not the same number as the GIIN.

A **Sponsoring Entity**- broadly this is an entity that will perform the due diligence, withholding, and reporting obligations of one or more Sponsored Investment Entities or Controlled Foreign Institutions (see Part 1 Section 11).

The user will be asked to create two challenge questions for extra security and an access code for future log-ins.

A FATCA ID will then be created to establish the online FATCA account with access code.



*this is an example only

STEP 2: COMPLETE REGISTRATION FORM

There are 4 parts to the application form which ask a series of short questions about the Financial Institution.

Part 1: This must be completed by all Financial Institutions providing basic identifying information.

Part 2: This should be completed only by a "Lead Financial Institution" who will identify each Member Financial Institution for which it is acting for as a Lead Financial Institution.

Part 3: This should be completed only by a Financial Institution acting as a Qualifying Intermediary, withholding foreign partnerships, or withholding foreign partnership that is currently using an issued Employer Identification Number (EIN) to establish its applicable status. More information about Qualifying Intermediaries and other such agreements can be found at www.irs.gov/fatca and the in the FATCA User Guide (IRS Publication 5118).

Part 4: This must be completed by all Financial Institutions and requires a Financial Institution to certify that the information provided in the FATCA Registration form is accurate and complete and to agree and confirm that it will comply with its FATCA obligations.

A paper version of what will be required during the online registration process can be viewed in advance here: http://www.irs.gov/pub/irs-pdf/f8957.pdf

STEP 3: SUBMISSION

Once satisfied that the information provided is accurate and complete the form can be submitted through the online account.

STEP 4: APPROVAL

Once the information is approved, the user will be issued with a Global Intermediary Identification Number (GIIN).

4.5.3 SECTION 3 – COMPLIANCE

Minor errors.

In the event that the information reported is corrupted or incomplete, the US will notify the UAE Ministry of Finance. The UAE Ministry of Finance will contact the Reporting UAE Financial Institution to resolve the problem. Examples of minor errors could include:

a) Data fields missing or incomplete;

b) Data that has been corrupted; and

c) Use of an incompatible format.

Where this leads to the information having to be resubmitted this will be via the relevant regulator's portal.

Compliance measures may be exercised by the relevant regulator if the error is considered to contravene the UAE IGA.

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

Significant non-compliance

Significant non-compliance may be determined by the IRS or the UAE Ministry of Finance. In any event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the Financial Institution must resolve the non-compliance.

Where the UAE Ministry of Finance is notified of or identifies significant non-compliance by a Reporting UAE Financial Institution, the UAE Ministry of Finance may exercise any compliance measures under the FATCA Regulations or UAE law.

The UAE Ministry of Finance through the relevant regulator will also engage with the Reporting UAE Financial Institution to:

- discuss the areas of non-compliance;
- discuss remedies/solution to prevent future non-compliance; and
- agree to measures and a timetable to resolve its significant non-compliance.

The UAE Ministry of Finance will inform the US of the outcome of these discussions. The following are examples of what may be regarded as significant non-compliance:

- Repeated failure to file a return or repeated late filing.
- Ongoing or repeated failure to register 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.

In the event that the issues remain unresolved after a period of 18 months then the Reporting UAE Financial Institution will be treated as a Non-Participating Financial Institution under the UAE IGA.

CHAPTER 5

GLOSSARY

5 CHAPTER 5 - GLOSSARY

For ease of reference, certain terms (or summaries of terms) found in the FATCA Regulations, the UAE IGA, and its annexes have been listed below. Please be sure to also consult the UAE IGA and the FATCA Regulations, as appropriate.

Account Holder: means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term "Financial Institution" does not include a Financial Institution organized or incorporated in a US Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

Active NFFE: means an **NFFE** which derives less than 50 percent of its gross income from passive investments and holds less than 50 percent of its assets for the production of passive income such as dividends, interest, certain rents, and annuities.

Annuity Contract: means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an **Annuity Contract in** accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

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

a) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
b) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
c) a policyholder dividend based upon the underwriting experience of the contract or group involved.

Cash Value Insurance Contract: means an **Insurance Contract** (other than an indemnity reinsurance contract between two insurance companies) that has a **Cash Value** greater than $50,000.

CB: means UAE Central Bank.

Code: means the US Internal Revenue Code of 1986, as amended.

Controlling Persons: means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the term "beneficial owner" as described in Recommendation 10 and the Interpretive Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012) (which provide that a controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 percent).

Deemed-Compliant Financial Institutions: means a Financial Institution meeting the requirements of Annex II of the UAE IGA including those with a local client base or meeting the requirements under the **US Treasury Regulations** including a registered deemed compliant or a certified deemed compliant Financial Institution.

Entity: means a legal person or a legal arrangement such as a trust.

Excepted NFFE: means an **NFFE** that is excepted under the **US Treasury Regulations** which include: publicly traded corporations, certain affiliated entities of publicly traded corporations, certain US territory entities, **Active NFFE**s, excepted non-financial entities such as certain holding companies, treasury or finance centers companies, start-up companies, entities that are liquidating from bankruptcy and non-profit organizations.

Exempt Beneficial Owners: means a foreign government, any political subdivision of a foreign government or any wholly owned agency of a foreign government; any international organizations and any wholly owned agency of an international organization; any foreign central bank; certain retirement funds; and entities wholly owned by exempt beneficial owners.

FATCA Partner: means the relevant country that is complying with its FATCA obligations under the relevant IGA.

FATCA Regulations: means the US Treasury Regulations issued under the FATCA provisions of the Code.

Financial Accounts: means an account maintained by a Financial Institution and includes any commercial or savings account (**Depository Account**), accounts held for the benefit of others (**Custodial Account**), and any equity or debt interest in a Financial Institution, other than interests that are regularly traded on an established securities market. Annex II excludes certain accounts from this definition (Exempt Accounts) such as certain savings accounts (including retirement and pension accounts) that meet the requirements with respect to tax treatment and the type and amount of contributions.

Financial Institution: means any entity that (i) accepts deposits in the ordinary course of a banking or similar business (a **Depositary Institution**), (ii) holds financial assets for the account of others as a substantial portion of its business (a **Custodial Institution**), (iii) is engaged primarily in the business of investing, reinvesting, trading securities, partnership interests, commodities or similar financial instruments (an **Investment Entity**) or (iv) issues or makes payments in respect of insurance or annuity contracts (a **Specified Insurance Company**).

Global Intermediary Identification Number ("GIIN"): means a number allocated to a Financial Institution by the IRS to identify that it is registered under FATCA.

IA: means the UAE Insurance Authority.

Insurance Contract: means a contract (other than an **Annuity Contract**) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

Intergovernmental Agreement ("IGA"): means an agreement between the United States and the FATCA Partner enabling FIs to report information on US account holders either to their national tax authorities, who in turn will report to the IRS (**Model 1 IGA**) or directly to the IRS (**Model 2 IGA**). **Model 1A** IGAs are reciprocal. **Model 1B** IGAs are nonreciprocal.

IRS: means the US Internal Revenue Service.

New Entity Accounts: means accounts that are opened by entities on or after 1 July 2014.

New Individual Accounts: means accounts that are opened by individuals on or after 1 July 2014.

NFFE: means a non-US entity that is not a Financial Institution.

Nonparticipating Financial Institutions: means a Financial Institution that has not agreed to comply with its FATCA obligations.

Non-Reporting Financial Institution: means a Financial Institution that falls within Annex II of the UAE IGA or a Financial Institution that otherwise qualifies as a deemed-compliant or an exempt beneficial owner under relevant US Treasury Regulations.

Non-US Entity: means any legal person (such as an individual, or a corporate) or legal arrangement (such as a trust) that is not a US Person.

OECD Common Reporting Standard: means the information standard for the automatic exchange of information (AEoI), developed in the context of the Organization for Economic Co-operation and Development (OECD).

Owner Document Financial Institution. See Section 3.3.

Partner Jurisdiction means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.

Passive NFFE: means an **NFFE** that is not:

a) An Active NFFE;
b) a "withholding foreign partnership" under the relevant US Treasury Regulations; or
c) a "withholding foreign trust" under the relevant US Treasury Regulations.

Pre-existing Entity Account: means any account held by an entity as of 30 June 2014, or in certain circumstances, prior to 31 December 2014.

Pre-existing Individual Account: means any account held by an individual as of 30 June 2014.

Recalcitrant Account Holder: means an account holder who fails to comply with FI requests for information to confirm identity, or fails to provide a waiver allowing disclosure of information to the IRS where such disclosure is otherwise prevented by local law.

Related Entity of another Entity means: if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, the UAE Ministry of Finance will not treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the Code.

Reporting Financial Institution: means a Financial Institution that is not a **Non Reporting Financial Institution** and must therefore identify and report certain accounts to comply with its FATCA obligations.

SCA: means the Securities and Commodities Authority of the UAE.

Specified Insurance Company: means any **Entity** that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a **Cash Value Insurance Contract** or an **Annuity Contract**.

Specified US Person: means, subject to certain exceptions, a US citizen or resident individual, privately owned US corporation or partnership or certain trusts over which the United States has jurisdiction.

Sponsoring Entity: means the sponsor of a Sponsored Investment Entity, Sponsored Closely Held Investment Entity, or Controlled Foreign Corporation, as the context requires.

Substantial US Owner: means any US owner that has a more than 10 percent interest in a Passive NFFE.

Treasury: means the US Department of the Treasury.

US Reportable Account: means a **Financial Account** maintained by a **Reporting Financial Institution** held by a **Specified US Person** or by a **Non-US Entity** that is controlled by one or more **Specified US Persons**.