



Association of the Luxembourg Fund Industry
Association Luxembourgeoise des Fonds d'Investissement

FATCA Q & A

Important

This Q&A document was prepared by ALFI's implementation working groups for the U.S. Foreign Account Tax Compliance Act (FATCA). The working groups comprise representatives of asset managers, management companies, securities service providers, audit firms, law firms, the Luxembourg Pension Funds Association and document and information management firms.

ALFI hopes that this document will serve its members as a reference document when implementing FATCA. It represents the view of a group of market participants and is not binding for the Luxembourg Tax Authorities or the national regulator. The Q&A has been submitted to and discussed with them, but it has not been validated by anyone. The document does not diminish the responsibility of management companies or investment companies to comply with national law or regulation. It must not be relied upon as advice and is provided without any warranty of any kind and neither ALFI nor its members who contributed to this document accept any liability whatsoever for any action taken in reliance upon it.

The answers are not necessarily definitive and they might not be suitable for every circumstance. The document may be amended without prior notice to incorporate new material and to amend previously published material where the working group considers it appropriate. ALFI will publish amended copies of this document to its members, showing marked-up changes from the immediately preceding copy.

ALFI's members are welcome to submit a question to the working group, who will review it and consider whether to respond to it in a future copy of this document. Please send your questions to info@alfi.lu. We will acknowledge receipt of each question but we regret that we may be unable to reply individually to each one.

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Key documents:

The following documents are important references for the implementation of FATCA:

H.R. 2847 (111th): Hiring Incentives to Restore Employment Act of 18 March 2010

IRS Notice 2010-60 of 27 August 2010

IRS Notice 2011-34 of 8 April 2011

IRS Notice 2011-53 of 14 July 2011

IRS announcement 2012-42 of 25 October 2012

17 January 2013: Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

IRS Notice 2013-43 of 12 July 2013

IRS Notice 2013-69 of 29 October 2013

IRS REG-134361-12, REG-130967-13, TD 9657 and TD 9658 of 6 March 2014

A list of model intergovernmental agreements (IGAs) and signed bilateral agreements is available on the website of the U.S. Treasury (FATCA resource centre): <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>

The IRS also provides a dedicated website offering guidance for the implementation of FATCA: <http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-28> FATCA 29

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Definitions

Account holder

The term account holder means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account, and such other person is treated as holding the account.

Active Non-Financial Foreign Entity (NFFE)

The term Active NFFE means any NFFE which meets any of the following criteria:

- a) Less than 50 per cent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- i) The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations (This category includes essentially certain retirement funds); or
- j) The NFFE meets all of the following requirements:
 - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural

- organization, civic league or an organization operated exclusively for the promotion of social welfare;
- ii. It is exempt from income tax in its jurisdiction of residence;
 - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
 - v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

Beneficial owner The term beneficial owner means the person who is the owner of the income and who beneficially owns that income for tax purposes.

Chapter 4 status The term Chapter 4 status means the status of a person or entity which is identified in line with the Chapter 4 / FATCA Regulations. Most common Chapter 4 or FATCA statuses are:

- 1) a person's status as a U.S. person
- 2) a Specified U.S. Person
- 3) an individual that is a foreign person
- 4) a participating FFI
- 5) a (certified or registered) deemed-compliant FFI
- 6) a restricted distributor
- 7) an exempt beneficial owner
- 8) a non-participating FFI
- 9) a territory financial institution
- 10) an excepted NFFE
- 11) a passive NFFE
- 12) An active NFFE
- 13) a Non-Reporting FFI under IGA Model 1
- 14) a Reporting FFI under IGA Model 1.

Custodial account The term custodial account means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a non-financial index, a notional principal contract, an insurance or annuity contract, and any option or other derivative instrument).

Deemed-compliant FFI The term deemed-compliant FFI means,

Under the IRS Regulations:

- 1) A registered deemed-compliant FFI
- 2) A certified deemed-compliant FFI
- 3) An owner-documented FFI
- 4) A QI branch of a U.S. financial institution that is a reporting FFI under IGA Model

Under the Luxembourg IGA (concerning investments funds)

- 1) Sponsored Investment Entity and Sponsored Controlled Foreign Corporation
- 2) Sponsored, Closely Held Investment Vehicle
- 3) Investment Advisors and Investment Managers
- 4) Collective Investment Vehicles
- 5) Restricted Fund

Custodial Institution The term Custodial Institution means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 per cent of the entity's gross income during the shorter of:

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

Depository account The term depository account means a commercial, checking, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

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

Documentary Evidence The term documentary evidence means documents, other than a withholding certificate or written statement that a withholding agent is permitted to rely upon to determine Chapter 4 status of a person.

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

1. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.
4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

The Luxembourg attachment to the QI agreement provides that Luxembourg QIs are allowed to use the following specific documentary evidence to comply with their documentation obligations

For natural persons:

1. Passport
2. National Identity card, or
3. Driving license
4. E.U. residence permit issued by a government that is a member of the European Union
5. Identity card for foreigners issued to nationals of non E.U. countries issued by a government that is a member of the European Union

For legal persons:

1. Copies of the certificate of corporation, articles of association, or other organizational documents, or
2. Copies of extracts from public registers.

Effective date of the FFI agreement

The term effective date of the FFI agreement means the date on which the IRS issues a GIIN to the participating FFI. For participating FFIs that receive a GIIN on or before June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

Electronically Searchable Information

The term electronically searchable information means information that an FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

Entity

The term entity means a legal person or a legal arrangement such as a trust.

Entity account

The term entity account means an account held by one or more entities.

Exempt Beneficial Owner

The following Entities shall be treated as Exempt Beneficial Owners:

- 1) Exempt Beneficial Owners other than Funds.
 - a. Governmental Entity.
 - b. b. International Organization.
 - c. c. Central Bank.
- 2) Funds that Qualify as Exempt Beneficial Owners
 - a. Treaty-Qualified Retirement Fund
 - b. Broad Participation Retirement Fund
 - c. Narrow Participation Retirement Fund
 - d. Pension Fund of an Exempt Beneficial Owner
 - e. Investment Entity Wholly Owned by Exempt Beneficial Owners

Under the Luxembourg IGA, with respect to funds:

- 3) SEPCAVs
- 4) ASSEPs,
- 5) Pension funds subject to the supervision of the Commissariat aux Assurances.

6) Investment Entity Wholly Owned by Exempt Beneficial Owners

Financial Institution (FI)

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

Foreign Financial Institution (FFI)

The term FFI or foreign financial institution means, with respect to any entity that is not resident in a country that has in effect a Model 1 IGA or Model 2 IGA, any financial institution that is a foreign entity. With respect to any entity that is resident in a country that has in effect a Model 1 IGA or Model 2 IGA, an FFI is any entity that is treated as a Financial Institution pursuant to such Model 1 IGA or Model 2 IGA.

FFI agreement

The term FFI agreement means an agreement pursuant to procedures prescribed by IRS.

An FFI agreement includes:

- 1) A Qualified Intermediary agreement, a withholding partnership agreement, a withholding trust agreement that is entered into by an FFI (other than an FFI that is a registered deemed-compliant FFI or a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014
- 2) A Qualified Intermediary agreement that is entered into by a foreign branch of a U.S. financial institution (other than a branch that is a reporting Model 1 FFI) and that has an effective date or renewal date on or after June 30, 2014.

GIIN (Global Intermediary Identification Number)

The term GIIN or Global Intermediary Identification Number means the number that is assigned to a participating FFI or registered deemed-compliant FFI or a reporting Model 1 FFI for purposes of identifying such entity to withholding agents. All GIINs will appear on the IRS FFI list.

IGA (Intergovernmental agreement)

An agreement or arrangement between the United States of America or the U.S. Treasury and a foreign government or one or more agencies to implement FATCA. At this stage two models of the IGA have been developed: Model 1 and Model 2 (see below for more details).

Individual account

The term individual account means an account held by one or more individuals.

Investment Entity

The term Investment Entity means any entity that primarily conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

- 1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- 2) individual and collective portfolio management; or
- 3) otherwise investing, administering, or managing funds or money on behalf of other persons.

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

IRS FFI list

The term IRS FFI list means the list published by the IRS in its website (<http://www.irs.gov/Businesses/Corporations/FATCA-Registration>) that contains the names and GIINs for all participating FFIs, registered deemed-compliant FFIs, and reporting Model 1 FFIs. Such a list will regularly be updated.

Model 1 IGA

The term Model 1 IGA means an agreement between the United States and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by

automatic exchange of the reported information with the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 1 IGA.

Model 2 IGA	The term Model 2 IGA means an agreement between the United States and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 2 IGA.
NFFE	An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity as described in the Annex I to Model 1 or Model 2 agreement, and also includes any Non-U.S. Entity that is established in Luxembourg or another Partner Jurisdiction and that is not a Financial Institution.
Non-Participating Financial Institution	The term “Non-Participating Financial Institution” means an FI, which is neither a Participating FFI, nor a Deemed Compliant FFI, nor an Exempt Beneficial Owner. The definition includes a Luxembourg Financial Institution or other Partner Jurisdiction Financial Institution treated as a Non-participating Financial Institution pursuant to subparagraph 2(b) of Article 5 of the Luxembourg IGA or the corresponding provision in an agreement between the United States and a Partner Jurisdiction. Pursuant to subparagraph 2(b) of Article 5 of the Luxembourg IGA, a Non-participating Financial Institution is a Financial Institution that has not solved its non-compliance within a period of 18 months after notification of significant non-compliance is first provided.
Non-Reporting Financial Institution	The term “Non-Reporting Financial Institution” means any Financial Institution, or other Entity resident in a FATCA Partner jurisdiction that is described in Annex II as a Non-Reporting Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations in effect on the date of signature of the relevant Intergovernmental Agreement.
Non-U.S. account	The term non-U.S. account means an account that is not a U.S. account and that does not have an account holder that is a non-participating FFI or recalcitrant account holder.
Passive NFFE	A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.
FATCA Partner	The term FATCA Partner means a country that has signed an Intergovernmental Agreement with the government of the U.S.
Participating FFI	The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI.
Pre-existing account	The term pre-existing account means a financial account as of June 30th 2014.
Pre-existing entity account	The term pre-existing entity account means a pre-existing account held by one or more entities.
Recalcitrant Account holder	Under the IRS regulations, the term recalcitrant account holder means any holder of a financial account maintained by an FFI if <ol style="list-style-type: none">1) such account holder is not an FFI (or presumed to be an FFI),2) the account does not meet the requirements of the exception to U.S. account status for depositary accounts with a balance of 50,000 U.S.D or less and

- 3) the account does not qualify for any other exceptions from the documentation requirements
- 4) the account holder fails
 - a. To comply with FFI requests for documentation or information that is required for determining the status of such account as a US account or other than a US account or
 - b. The account holder fails to provide a valid Form W-9 upon request from the FFI or fails to provide a correct name and TIN combination upon request from the FFI when the FFI has received notice from the IRS indicating that the name and TIN combination reported by the FFI for the account holder is incorrect
 - c. If foreign law would (but for a waiver) prevent reporting by the FFI (or branch or division thereof) with respect to such account the account holder (or substantial U.S. owner of an account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver to permit such reporting; or
- 5) The account holder provides the documentation to establish its status as a passive NFFE (other than a WP or WT) but fails to provide the information regarding its owners

In Luxembourg, the account referred to in points b. and c. should in principle be treated as US reportable accounts

**Registered
Deemed-compliant
FFI**

Under the IRS Regulations, the term registered deemed-compliant FFI, means an FFI registers with the IRS to declare its status, and includes:

- 1) Local FFIs
- 2) Non-reporting members of participating FFI groups
- 3) Qualified collective investment vehicles
- 4) Restricted funds
- 5) Qualified credit card issuers
- 6) Sponsored investment entities and controlled foreign corporations.

Under the Luxembourg IGA, there are not registered deemed compliant statuses, all deemed compliant status are non-reporting and therefore do not need to register with the IRS.

**Reporting Financial
Institution**

The term "Reporting Financial Institution" means a Reporting FATCA Partner Financial Institution or a Reporting U.S. Financial Institution, as the context requires.

In the context of the Luxembourg IGA and these Q&A means a Reporting Luxembourg Financial Institution ("Luxembourg FI").

**Reporting FATCA
Partner Financial
Institution**

The term "Reporting FATCA Partner Financial Institution" means any Financial Institution of a Partner jurisdiction that is not a Non-Reporting Financial Institution.

Sponsored FFI

The term sponsored FFI means any entity that qualify as

- 1) sponsored investment entities, or
- 2) sponsored controlled foreign corporations, or
- 3) sponsored, closely held investment vehicles.

Specified Insurance Company	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.
Specified US person	The term Specified U.S. Person means a U.S. Person, other than: <ol style="list-style-type: none">1) a corporation the stock of which is regularly traded on one or more established securities markets;2) any corporation that is a member of the same expanded affiliated group as a corporation described in clause (i) above;3) the United States or any wholly owned agency or instrumentality thereof;4) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;5) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;6) any bank as defined in section 581 of the U.S. Internal Revenue Code;7) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;8) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C 80a-64);9) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;10) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;11) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or12) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code
Sponsoring entity	The term sponsoring entity means an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more sponsored entities.
TIN	The term TIN means the tax identifying number assigned to a person.
U.S. Reportable account	The term US Reportable Account means a Financial Account maintained by a Reporting FI and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.
U.S. indicia for Individuals accounts	The term U.S. indicia means the ensemble of items used to identify the Account Holder as a U.S. citizen or resident; <ol style="list-style-type: none">1) Unambiguous indication of a U.S. place of birth;2) Current U.S. mailing or residence address (including a U.S. post office box);3) Current U.S. telephone number;4) Standing instructions to transfer funds to an account maintained in the United States;5) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or6) An "in-care-of" or "hold mail" address that is the sole address the Reporting Financial Institution has on file for the Account Holder. In the case of a Pre-existing

Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States or “hold mail” address shall not be treated as U.S. indicia.

U.S. withholding agent

The term U.S. withholding agent means a withholding agent that is either a U.S. person or a U.S. branch of a participating FFI or registered deemed-compliant FFI that is treated as a U.S. person.

U.S. Source Withholdable payment

The term “U.S. Source Withholdable Payment” means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.

Withholding

The term withholding means the deduction and remittance of tax at the applicable rate from a payment.

Withholding agent

The term withholding agent means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment or foreign pass thru payment.

1) Introductory note

The Foreign Account Tax Compliance Act ("FATCA") is part of the United States Hiring Incentives to Restore Employment Act (the "HIRE Act"), enacted on 18 March 2010. The HIRE Act added Chapter 4 of Subtitle A to the U.S. Internal Revenue Code.

FATCA aims to reduce tax evasion by U.S. persons (individuals and entities) by obliging reporting to the U.S. Internal Revenue Service ("IRS") of all U.S. persons' income from financial assets held outside the United States.

All non-U.S. financial institutions (the "foreign financial institutions" - including banks, brokers, custodians, management companies and investment funds) shall either (i) report to the IRS certain data on U.S. accounts they hold, or (ii) suffer a 30% U.S. withholding tax on certain payments to foreign financial institutions or with respect to the so called "recalcitrant accounts".

Please refer to the Key Documents section for the list of documents issued by the IRS and the U.S. Treasury implementing FATCA.

a) Intergovernmental Agreement

Further to the enactment of FATCA, the U.S. Treasury published the model intergovernmental agreements (the "IGA") to improve tax compliance and to implement FATCA in order to facilitate the compliance with the provisions of FATCA for Partner Jurisdictions entering into such an agreement.

As the date of the initial publication of this Q&A, there are two IGA models, which are themselves subdivided in the below sub-categories:

- Reciprocal Model 1A Agreement, Pre-existing TIEA¹ or DTC
- Nonreciprocal Model 1B Agreement, Pre-existing TIEA or DTC
- Nonreciprocal Model 1B Agreement, No TIEA or DTC
- Model 2 Agreement, Pre-existing TIEA or DTC
- Model 2 Agreement, No TIEA or DTC
- Annex I to Model 1 Agreement
- Annex I to Model 2 Agreement
- Annex II to Model 1 Agreement
- Annex II to Model 2 Agreement

For the latest versions of these documents, please refer to the following website:

<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>

Luxembourg, like many other countries, has entered into the Reciprocal Model 1 IGA: press release dated 21 May 2013 of the Luxembourg Minister of Finance.

The main difference between the two Models is that the IGA Model 1 specifically provides that the reporting to the IRS will not be carried out by every Luxembourg financial institution within the scope of FATCA, but by the Reporting Luxembourg FI only. In addition, such a reporting will be made indirectly; i.e. through the Luxembourg tax authorities that will collect the required information from the Luxembourg Reporting FI and then cooperate with the IRS in order to transmit the information in accordance with the methods to be agreed upon between Luxembourg tax authorities and the IRS. Consequently, Reporting Luxembourg FI do not need to enter into a contractual relationship with the IRS, as would be the case under IGA Model 2, but only to register if they qualify as Luxembourg Reporting FI.

The template IGA Model 1, published on the IRS website, comprises three parts:

- The **core part** is comprised of 10 Articles and contains the main Definitions (Article 1), the rules on the Obligations to obtain and exchange information with respect of reportable accounts resting

¹ TIEA: Tax Information Exchange Agreement; DTC: Direct Tax Code

on the signatory partner jurisdiction (Article 2), the time and manner of exchange of information (Article 3), the Application of FATCA to Luxembourg Financial Institutions (Article 4), the Collaboration on compliance and enforcement (Article 5), the Mutual commitment to continue to enhance the effectiveness of information exchange and transparency (Article 6), the Consistency in the application of FATCA to Partner Jurisdictions (Article 7), the Consultations and amendments (Article 8) the Annexes (Article 9) and the Term of the Agreement (Article 10);

- **Annex I** describes the obligations of each foreign financial institution with regard to identification of account holders within the meaning of FATCA and the due diligence relating thereto: it is expected that this annex will vary little from one IGA to another (all signatory States should follow the same rules for the sake of consistency in FATCA implementation). Annex I is comprised of 6 sections: Section I General, Section II Pre-existing Individual Accounts, Section III New Individual Accounts, Section IV Pre-existing Entity Accounts, Section V New Entity Accounts, section VI Special Rules and Definitions;
- **Annex II** specifies the legal entities of the partner jurisdiction that will qualify as Non-Reporting FI, either as exempt beneficial owners or deemed-compliant financial institutions.
- In addition and as other IGAs already signed, the Luxembourg IGA includes a **Memorandum of Understanding** relating to the procedure applicable to the exchange of letters interpreting the terms of double taxation conventions entered into by Luxembourg.

On 28 March 2014 the Grand Duchy of Luxembourg has signed the IGA Model 1, which will be implemented into Luxembourg law according with the terms of the IGA. Please refer to the Ministry of Finance website: http://www.mf.public.lu/actualites/2014/03/facta_280314/index.html.

Please note that even if from comparing Annex II to IGAs already signed and publicly available there is a clear willingness for an harmonisation, Annex II is specific to each signatory State and, therefore, Annex II of the Luxembourg IGA contains the specificities granted to the Luxembourg funds industry, which for certain aspect are unique to the Luxembourg funds industry.

FATCA applies to any Financial Institution, which is defined under FATCA as either a:

- ✓ Depository Institution, or
- ✓ Custodial Institution, or
- ✓ Specified Insurance Company, or
- ✓ Investment Entity.

[For the first three categories.](#) Please refer to the ABBL Guidance notes on the implementation of FATCA rules in Luxembourg, [to be released on or about the 15th of May 2014, according to the currently available information for the first three categories.](#)

As Investment Entities are concerned, the term is interpreted very broadly by the U.S. Treasury Regulations, and includes management companies, investment managers, central administration, etc.

In order to avoid multiple reporting obligations by several entities with respect to the same account, the Luxembourg IGA has (i) classified investment managers and investment companies as Non-Reporting FI and (ii) allowed that the fulfilment of the FATCA obligations by a fund or another Investment Entity or person, fulfils the FATCA obligations of all the others involved entities with respect to such account. See section on Investment Adviser and Investment Managers for more details.

As for the specificities granted to the Luxembourg fund industry, the FATCA status provided by the Luxembourg IGA can be summarised as it follows:

A Luxembourg FI can be either a

- ✓ **Reporting FI**, which reports certain data to the Luxembourg tax authority on reportable accounts and have no restrictions on its shareholding. Such a Reporting FI has to register with the IRS, will identify its shareholding, in accordance with Annex I of the Luxembourg IGA, or a

- ✓ **Non-Reporting FI**, which has no duty to report or withhold, but has to identify its shareholding, in accordance with Annex I of the Luxembourg IGA, in order to check its compliance with the requirements permitting it to fit in one of the Non reporting categories of the Luxembourg IGA.

A **Non-Reporting Luxembourg FI** may fit in one of the following FATCA status provided for by the Luxembourg IGA for Investment Entities:

- ✓ **Exempt Beneficial Owner**, those are Luxembourg pension funds (SEPCAV, ASSEP of pension savings associations subject to the supervision of the Commissariat aux Assurances);
- ✓ **Investment Entity Wholly Owned by Exempt Beneficial Owners** that are investment entity whose investors are all exempt beneficial owners; e.g. governments, international organizations or certain pension funds.
- ✓ **Sponsored Investment Entity and Sponsored Controlled Foreign Corporation** that are investment entities for which another entity, i.e. the "Sponsoring Entity", agrees to fulfil the FATCA obligations on its behalf. The Sponsoring entity would register as such with the IRS; however it would not be required to register the investment funds it sponsors, unless the fund had a U.S. reportable account.
- ✓ **Sponsored, Closely Held Investment Vehicle**, which is similar to the "Sponsored Investment Entity" described above, except that it is limited to individual investors and the maximum number of such investors is 20. A registration of the funds, however, is not required, even if it has a U.S. reportable account.
- ✓ **Investment Advisors and Investment Managers** as such and including management companies are non-reporting FI. They would need to register as Sponsoring Entity only in case they provide the services of Sponsoring entity to a fund.
- ✓ **Collective Investment Vehicles**, which is a fund that has no direct individual investors at the register and is solely distributed through FATCA compliant financial institutions. This status may prove to be efficient for funds that have no direct distribution, but are exclusively distributed through nominees or a global certificate.
- ✓ **Restricted Fund**, which excludes certain U.S. investors from its shareholding. A Restricted Fund can have both individual and entities as its investors and even certain U.S. Persons. It is to be noted that the Restricted Fund status has to be found on both the IGA and the U.S. Treasury Regulations.

In addition to the statuses listed in Annex II, certain statuses listed in the U.S. Treasury Regulations are available to Luxembourg FI:

- ✓ **Exempt beneficial owner**, which are those included in the U.S. Treasury Regulations,
- ✓ Deemed compliant FFI, including
 - **Non Reporting members of a participating Foreign Financial Institution Group,**
 - **Limited life debt investment entities,**
 - **Qualified collective investment vehicle,**
 - **Owner Documented FFI,**
 - **Restricted Fund.**

These latter statuses are to be applied in accordance with the U.S. Treasury Regulations and as provided for in the Luxembourg IGA at article 1.1.q). For avoidance of doubt; none of these statuses will require registration.

Please note that both Reporting and Non-Reporting FI have to perform their identification checking in order for the Reporting FI to report the U.S. reportable accounts, and for the Non-Reporting FI to verify that the FATCA status of their investors does not jeopardize their own FATCA status. Only the Exempt Beneficial Owners are totally exempted from FATCA.

In order to comply with FATCA requirements, an Investment Entity should verify its own structure and shareholding to decide whether to access a Non-Reporting or a Reporting status and among the Non-Reporting statuses, which one would better fit its structure and shareholding.

For this reason, this Q&A will follow in its Section 2 "**FATCA status and registration requirements under Annex II**" the structure highlighted above and will describe more in detail each status and the requirement applicable to each status.

Section 3 **Due Diligence** will cover the identification requirements that are common to both Reporting and (certain) Non-Reporting Statuses.

However, please note that some details on the FATCA implementation are still under clarification; further editions of these Q&A will answer to the questions left unanswered. Further on, two more sections will be added focusing on **Withholding and Reporting**.

b) Most Favoured nation clause

The IGA Model 1 includes a most favour nation clause (article 7, Consistency in the application of FATCA to partner jurisdiction). This clause is contained in any IGA Model 1 and would benefit therefore to any jurisdiction signing such agreement including, but not limited to, Luxembourg.

The scope of this clause is however limited to the more favourable terms agreed under article 4 (application of FATCA to FATCA partner financial institution) and Annex I. Its application to Annex II which will list the Luxembourg entities that can benefit from the status of non-reporting financial institutions is therefore excluded.

c) Reliance on, applicability of the FATCA regulations

IGA provisions are implemented into Luxembourg law. As a consequence, the U.S. Treasury Regulations should in principle not be applicable to Luxembourg financial institutions, unless Luxembourg law explicitly refers to them. In particular, Art. 4 (7) of the Luxembourg IGA and its Annexe I allow that a Luxembourg financial institution apply definitions and procedures according to the U.S. Treasury Regulations instead of following the Luxembourg IGA, under certain conditions.

As mentioned above, Luxembourg FI will have the choice among the statuses described under Annex II of the Luxembourg IGA, as well as to some other statuses under the U.S. Treasury Regulations as per provisions of article 1.1 q) of the Luxembourg IGA.

It should be noted that an entity opting for a FATCA deemed compliant status outside Annex II of the Luxembourg IGA shall not have to register with the IRS as it would not be required to do any reporting to the U.S. Tax Authorities, since its status will be in all cases a Non-reporting FI status.

d) Interpretation of rules under Luxembourg law or the regulation

The legislation transposing the Luxembourg IGA into Luxembourg law, as well as any circular that may be issued by Luxembourg Tax Authorities shall deal with the implementation in Luxembourg of the IGA. As a general principle, U.S. law or regulation should not apply, unless this is clearly provided for in the IGA, the Luxembourg implementing law or any circular that may be issued by the Luxembourg Tax Authorities. The interpretation of the IGA as transposed in Luxembourg law and any rule will be done in accordance with Luxembourg laws and regulations and not FATCA Regulations, excepted when expressly provided otherwise in the IGA.

For example, article 4.7 of the IGA provides that Luxembourg may allow the use of definitions provided in the relevant U.S. Treasury Regulations instead of those contained in the IGA.

e) Prevailing FATCA Provisions

The FATCA related provisions applicable to a financial institution shall depend first and foremost to its country of domicile. As a result, for a Luxembourg FI, the applicable provisions will derive from the Luxembourg IGA, as implemented in Luxembourg law.

As provided by the Luxembourg IGA, any reporting to the IRS will be done through the Luxembourg Tax Authority; consequently, the IRS will not be entitled to contact directly any Luxembourg Reporting FI.

Regarding branches of Luxembourg FI located outside Luxembourg, the applicable FATCA rules shall be reviewed on a case by case basis considering (i) the FATCA related provisions, as enacted in the jurisdiction in which the branch is set up and to which legislation the branch is subject, as well as (ii) the relevant FATCA provisions applicable to Luxembourg FI branches.

It should be highlighted that the Luxembourg IGA provides for the application of U.S. Treasury Regulations in some respects; this is for example the case for the amount and characterization of payments to be made with respect to Luxembourg Reportable Account (IGA, article 3.1). You may also wish to refer to article 4.7 "Coordination of Definitions with U.S. Treasury Regulations" of the IGA.

f) Need of registration with the IRS

As a general rule, all Reporting FI need to be registered with the IRS, whilst Non-Reporting FI, both Exempt Beneficial Owners and Deemed Compliant status do not need to register with the IRS. The only exception to this rule is when a Sponsored Investment Entity maintains an U.S. reportable account, in which case it needs to register. Please refer to each particular status below for more details.

Q.1 What are the main advantages and disadvantages of being reporting or not-reporting FI?

Reporting FI shall register with the IRS. Registering will have the main advantage of eliminating the need of providing to the fund counterparties a proof of its FATCA status; the GIIN number will suffice and the fund counterparty can check it on the IRS list of GIIN numbers. However, Luxembourg FIs, being established in an IGA country are able to rely on KYC documentation and other publicly available information, whilst U.S. withholding agents will require the GIIN or a W-8 form. (See section due diligence for more details)

However, registering may have the disadvantage of exposing the Investment Entity or its Point of Contact (see more detail under Reporting FI section) to U.S. rules, since the registration itself is regulated by U.S. rules.

A part from that, a Reporting FI has to comply with all identification, reporting and withholding obligations, as applicable, since the non-reporting statuses are incompatible with registration and vice versa. It is possible that the Luxembourg tax authorities, like the UK HMRC, require a "nil report" in case there is nothing to report.

Non-reporting FI, and therefore non-registered FI, will have the advantage of not having to go through the process of registering and no to have any reporting and withholding obligations.

The disadvantage may be the need to prove the status through the appropriate form, depending on the status chosen (please refer to the question on the proof of status within each status section for more details). However, this would be true as well for all exempted and deemed compliant status (as well under the U.S. Treasury Regulations). (Please refer to each status section for more details)

Please note that a Luxembourg FI, which would qualify as a Non-Reporting Luxembourg FI might voluntarily chose to obtain the status of Reporting FI; it will then have to register and obtain a GIIN and assume all FATCA obligations deriving from such a status of Reporting FI (identification, reporting and withholding obligations).

~~It is worth to note that, a Luxembourg standard self-certification form is being drafted and can be used by all Luxembourg FIs (Please refer to section proof of status for more details).~~

g) Expanded Affiliated Group (“EAG”)

An Expanded Affiliated Group is the group of entities connected together through control and ownership. The same mother company shall own more than 50% of the equity and voting rights of at least one of the entities in the EAG, and more than 50% of the equity and voting rights of the other entities within the EAG shall be owned by one of the other entities within the EAG.

Luxembourg IGA requires 50% equity or 50% voting rights, whereas the U.S. Treasury Regulations required 50% equity and 50% voting rights. The Luxembourg IGA follows the IGA template with the “and test”.

An entity shall be treated as member of the EAG, if it is owned for at least 50% by one of the other entities within the EAG or the mother company of the EAG.

Such an EAG will very rarely appear for funds that are widely distributed; please refer to the ABBL Guidance notes on the implementation of FATCA rules in Luxembourg for more details on the notion of EAG.

2) FATCA status and Registration requirements under Annex II

a) Luxembourg Reporting FIs

i) Description

Q.1 What is a Luxembourg Reporting FI?

The term “Reporting FI” means a Financial Institution, which reports certain data on U.S. reportable accounts to the relevant tax authority.

The term Reporting FI also includes a foreign branch (i.e. a Non U.S. entity) of a U.S. Financial Institution that is treated as a Reporting FI under the terms of an IGA.

More specifically, in the context of the Luxembourg IGA, the term Luxembourg Reporting FI means any Luxembourg Financial Institution (“Luxembourg FI”) that is not:

- A Luxembourg FI, or any other entity resident in Luxembourg that is described in Annex II of the Luxembourg IGA as a Non-Reporting Luxembourg FI; i.e. Deemed compliant FFI or Exempt Beneficial Owner; or
- A Luxembourg FI that otherwise qualifies as a deemed-compliant FFI or as an Exempt Beneficial Owner under relevant U.S. Treasury Regulations in effect on the date of signature of the Luxembourg IGA.

As briefly discussed in the introductory note, the term Financial Institution includes an Investment Entity, which may be any kind of fund, but as well a management company or an investment manager. We will therefore use indifferently the term Financial Institution and Investment Entity from now on.

Q.2 Which data need to be reported?

Please refer to section II of these Q&A for the details of the reporting obligations.

Q.2.1 Can reporting duties be delegated?

Yes, each Luxembourg Reporting FI may use third party service providers to fulfil its reporting obligations (see IGA, article 5.3).

Under the “sponsor” concept, reporting duties (but also due diligence and withholding obligations) of an Investment Entity (that is not a U.S. Qualified Intermediary, Withholding Foreign Partnership or Withholding Foreign Trust) are delegated to the sponsoring entity.

In addition and to avoid several reporting on the same accounts, Annex II of the Luxembourg IGA specifies that with respect to interests in a Luxembourg Investment Entity, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity is reported by such Investment Entity or another person. Therefore, in a fund universe, the fact that one Investment Entity reports on such fund’s account will fulfil the obligations of all other FIs related to the fund.

Q.2.2 In case of delegation, who has the ultimate reporting responsibility?

In case of delegation, the ultimate reporting responsibility shall remain with the Luxembourg Reporting FI (see IGA, Article 5.3).

Under the “sponsor” concept, the sponsored FI remains liable for any failure of its sponsoring entity in the reporting process. (For more details please refer to questions on Sponsored Investment Entity, Sponsored Controlled Foreign Corporation and Sponsored, closely Held Investment Entity below).

The IRS has clarified that a sponsoring entity will not be jointly and severally liable for the sponsored FI’s obligations, unless the sponsoring entity is also a withholding agent that is separately liable for such obligations.

Q.3: Which investors can invest into a Luxembourg Reporting FI?

There are neither restrictions under the Luxembourg IGA nor under the U.S. Treasury Regulations as for the categories of investors that can invest in a Luxembourg Reporting FI. As a result, all kind of investors may invest in a Luxembourg Reporting FI as permitted by the Luxembourg Reporting FI offering documentation.

Q.3.1 Direct individual investors logged in the register of the Luxembourg Reporting FI?

All types of individuals can invest into a Luxembourg Reporting FI and be registered as a result in the shareholders register or unit holders’ register of the relevant Luxembourg Reporting FI, to the extent permitted by the offering documents of the Luxembourg Reporting FI. Two categories can however be distinguished:

- U.S. reportable account, to be reported, and
- Non-U.S. reportable account, which shall not be reported.

Q.3.2 Direct entity investors logged in the register of the Luxembourg Reporting FI?

All types of entities can directly invest into a Luxembourg Reporting FI and be registered as a result in the shareholders register or unit holders’ register of the relevant Luxembourg Reporting FI, to the extent permitted by the offering documents of the Luxembourg Reporting FI.

For each entity in the register of the Luxembourg Reporting FI and in order to progress the required FATCA reporting, the Luxembourg Reporting FI would need to ensure that an adequate FATCA status is assigned to such entity, such as but not limited to:

- U.S. reportable account, to be reported,
- Non-participating FFI, to be reported, and
- All other accounts that shall not be reported.

It should be noted that the above-mentioned classification is indicative only. In fact, while it is advisable to use the classification which will be required by the Luxembourg Tax Authority for the FATCA reporting; in its absence, the classification may vary depending on systems constraints.

Q.3.3. Indirect investors via nominees?

To the extent permitted by the offering documents of the Luxembourg Reporting FI, all types of investors can invest into a Luxembourg Reporting FI through an entity acting as nominee and therefore registered in the register of the Luxembourg Reporting FI as shareholder of record but which is acting on behalf of investors (that are themselves not registered in such a register).

If the entity acting as nominee is a Reporting entity, it will comply with its own FATCA requirements regarding its underlying investors and as a result, its status should not impact the own FATCA status of the Luxembourg Reporting FI in which it invests as a nominee.

Please refer to the section related to the specific Non-Reporting status, for more details on Luxembourg Non-Reporting entity acting as nominee.

If the entity acting as nominee is a Non-Participating FFI (therefore is neither a Participating FFI, a Deemed Compliant FFI, a Exempt Beneficial Owner, or in a situation of non-compliance for more than 18 months), the Luxembourg Reporting FI needs to report and potentially ensure that appropriate withholding is applied on US source payment.

Q.4: What is the impact of investments for Luxembourg Reporting FIs?

Q.4.1 Direct or indirect investments into assets generating U.S. source revenues?

Direct or indirect investments into assets generating U.S. revenues present the Reporting FI with the risk of suffering from 30% withholding tax in case of use of any Non-Participating FFI that would be located upstream in the payment chain and consequently a possible negative impact on its performance. Additionally, such investments would also trigger a need for update of relevant documentation (e.g. disclosure to investors regarding risk of suffering an indirect withholding).

Q.4.2 What is the impact of investments into OTC derivatives under an ISDA agreement?

OTC derivative transactions may fall within FATCA scope and trigger FATCA withholding. In order to clarify the duties of the ISDA parties, there will be a need for update of the relevant ISDA documentation. An option would be to adhere to the ISDA 2012 FATCA Protocol issued by the ISDA.

This ISDA 2012 Protocol is open to ISDA members as well as to non-ISDA members and aims to clarify the entity to be in charge of FATCA withholding. Further information can be found on the ISDA website (<http://www2.isda.org/functional-areas/protocol-management/protocol9>).

Q.5: What is the impact of the FATCA status of certain third parties on a Luxembourg Reporting FI?

Q.5.1 Impact of the FATCA status of a custodian

From the point of view of a Luxembourg Investment Entity, to prevent adverse tax implications for itself and potentially for its clients, any company domiciled in Luxembourg providing custodial services to investment funds should be compliant with FATCA requirements. A Luxembourg Investment Entity may also demand that its custodian ensures that its sub-custodians have a compliant FATCA status. This could otherwise have a negative impact on the performance of the Luxembourg Investment Entity.

In fact, if the custodian and all its sub custodians of the Luxembourg Investment Entity are FATCA compliant, this status should allow the Luxembourg Investment Entity to receive any U.S. source payment free of any FATCA withholding. If the custodian and its sub-custodians do not comply with FATCA requirements, U.S. source payment to which a Luxembourg Investment Entity is entitled could be subject to a withholding of 30%.

Q.5.2 Impact of the FATCA status of a transfer agent

From the point of view of a Luxembourg Investment Entity, the entity acting as transfer agent (including Registrar, Administrative Agent or Client Communication Agent functions, as per the Luxembourg Law of 5 April 1993 on the financial sector) should qualify as either a Reporting, non-Reporting FI or as NFFE (non- financial foreign entity, depending on the services provided to the investment fund. Its status should neither adversely impact the investment fund own FATCA status nor its assets.

Q.5.3 What is the impact of the scope of services provided by management companies to a Luxembourg Investment Entity?

The situations contemplated here relate to Luxembourg management companies providing effectively ancillary services under article 101 (3) of the law of 17 December 2010 on undertakings for collective investments, as amended, such as safe-keeping in relation to units of UCIs and discretionary portfolio management or under the law of 12 July 2013 on alternative investment funds managers and therefore holding or likely to hold Custodial Accounts as per the definitions under the Luxembourg IGA.

Please note that what will be important to review is whether the service is effectively provided and not the sole fact that the management company has the relevant licence to provide such a service.

Depending on the portion of the business of the management company that such an activity can represent, the company could qualify as "Custodial Institution" under the Luxembourg IGA and therefore qualify as Luxembourg Reporting FI.

The Luxembourg IGA (article 1.1.h)) contains rules to apply to determine if these ancillary activities may be deemed substantial from a FATCA perspective:

"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 per cent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence."

The qualification of Reporting FI will in such case have to be assessed on a case by case basis.

- ii) Registration need and steps

Q.6 Does a Luxembourg Reporting FI need to register?

Yes, the Luxembourg Reporting FI needs to comply with the applicable registration requirements on the IRS FATCA registration website (IGA, article 4, 1) to obtain a GIIN and to authorize one or more points of contact to receive information related to registration on the Luxembourg Reporting FI's behalf.

Further, each Luxembourg Reporting FI shall be treated as complying with, and not subject to withholding under section 1471 of the U.S. Internal Revenue Code provided, among other conditions, it complies with the registration requirements. Luxembourg Reporting FIs that are at the same time "Withholding QIs" can have withholding responsibilities.

Q.7 How can registration be performed?

Registration can be performed on the IRS online registration portal or via written means (by completing Form 8957).

The FATCA registration website is a secure web-based system that enables FIs to register electronically from anywhere in the world without the need to print, complete and mail paper forms. FIs are encouraged to register online. The online registration is split into four main steps:

- Creation of an account for the FI
- Completion of the FATCA registration
- Final submission of the registration via the portal
- Reception of the approval containing GIIN

For more details, please refer to the IRS website (www.irs.gov/Businesses/Corporations/FATCA-Registration) where instructions, user guide and other material explaining the process have been posted.

Q.8 What are the registration deadlines?

~~Reporting FI from countries signing an IGA Model 1 have as a deadline to register prior to year end in order to appear on the last FFI list of 2014 and they shall be considered as compliant with the relevant IGA and FATCA requirements.~~

The rules on registration do not indicate an actual deadline. Except that Reporting FIs need to register on the IRS portal on or before the (i) 5th of May 2014 in order to ensure their inclusion on the first IRS FFI list to be published on the 2nd of June 2014 and on or before the (ii) 25th of May to get a GIIN before the 30th of June and be on the second IRS FFI list to be published on the 2nd of July.

~~Apart from this time constraint, there is no formal deadline to register even though it is advisable to register as soon as possible. However, since Reporting FIs (under Model 1 IGA) need to be able to furnish their GIIN number for any received payments made on or after January 1st, 2015 (to avoid the risk of a withholding tax on withholdable payments to be applied), they have more time until the 22nd of December 2014 to register and be on the third IRS FFI list to be published on the 1st of January 2015.~~

~~Any information entered into the FATCA online registration system prior to January 1st, 2014 will not be treated as a final submission. As a result, on or after January 1st, 2014 each FI should review and finalise its information and submit such information as final.~~

Registering on paper forms is possible, but it is expected that the processing of such a filing will be slower than the online registration and might have an impact on the GIIN delivery timing.

~~Apart from this time constraint, there is no formal deadline to register even though it is advisable to register as soon as possible. However, since Reporting FIs (under Model 1 IGA) need to be able to furnish their GIIN number for any received payments made on or after January 1st, 2015 to avoid the risk of a withholding tax on withholdable payments to be applied, they have more time to register.~~

Q.9 Who needs to register?

All Reporting FIs will need to register. Non-reporting FIs are not eligible to register.

Q.10 At which level does the registration need to be performed?

In case of investment funds structured as umbrella funds (i.e. having multiple sub-funds), the choice to be registered at the Umbrella level or at the Sub-Fund level is left to the fund and/or the management company.

When making such a decision, an attentive analysis of the advantages and disadvantages of each route should be performed and discussed with the service providers of the fund to verify its actual technical feasibility.

Q.11 Can the registration work be delegated to third parties?

Yes, the registration work can be delegated, as the registering FI is allowed to pass on the access details of its online registration account (please refer to the IRS registration user guide); however, the designated Point of Contact ("PoC") of the Registering FI will need to certify the correctness of the information given and handle the final submission.

More generally, Reporting FI may use third party service providers to fulfil the FATCA obligations arising from the Luxembourg IGA, but the Reporting FI will retain the responsibility of complying with FATCA obligations.

Q.12 Is the registration valid for unlimited time?

The registration as Reporting FI shall remain valid as long as the FATCA status of the FI has not changed. Otherwise, the FI will have 6 months to update its status on the FATCA portal.

Further, in the case where significant non-compliance is detected and where enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the Reporting FI shall be treated as a Non-participating Financial Institution.

iii) Role and responsibilities of the person of contact (PoC)

Q.1 As a reporting FI, do I need to designate a PoC?

Yes, the indication of a designated PoC is mandatory during the registration process.

Note that the concept of Responsible Officer, present in the U.S. Treasury Regulations, does not appear in the Luxembourg IGA. Under the Luxembourg IGA, there is no formal requirement of having a FATCA responsible officer. However, in order to register the FI a PoC would still need to be appointed. In such case, the PoC will be only responsible for the correctness of the information submitted.

Q.2 What is the duty of the PoC?

A PoC is an individual authorized by the FI to receive FATCA-related information regarding the FI and to take other FATCA-related actions on behalf of the FI.

The PoC needs to click the following box:

"By checking this box, I, _____, certify that, to the best of my knowledge, the information submitted above is accurate and complete and I am authorized to agree that the Financial Institution (including its branches, if any) will comply with its FATCA obligations in accordance with the terms and conditions reflected in regulations, intergovernmental agreements, and other administrative guidance to the extent applicable to the Financial Institution based on its status in each jurisdiction in which it operates."

Q.3 Where and when does a Luxembourg Reporting FI need to specify the PoC?

The designated PoC will need to be indicated during the registration process either via the IRS FATCA online registration portal or via written means (completed Form 8957).

Q.4 What is the responsibility of the PoC?

No legal responsibilities have been assigned to the status of the PoC under Luxembourg IGA. (Note that this constitutes a main alleviation compared to the status of Responsible Officer foreseen under the Final Regulations). The PoC has the responsibility to receive FATCA-related information regarding the FI and to take other FATCA-related actions on behalf of the FI. Any sanction for inaccurate information provided by the PoC on behalf of the Reporting FI shall be administered under the Luxembourg IGA, as implemented by Luxembourg law and/or regulations.

b) Non-reporting FIs

- i) Distinction between compliant status and exempt status

Q.1 What is the difference between the status of Deemed Compliant and Exempt Beneficial Owner?

Under the U.S. Treasury Regulations, an exempt beneficial owner (EBO) is totally exempted from FATCA, whilst a deemed compliant status includes certain FATCA obligations. For instance a registered deemed compliant status for an entity in a non-IGA country implies the obligation to register with the IRS, a restricted fund status implies, among other obligations, a limitation of its shareholding.

Under the Luxembourg IGA, the registered deemed compliant status disappears, and is replaced with the deemed compliant status. Both deemed compliant and EBO status are treated as Non-Reporting FFI and essentially in the same way; both have not to register or report. However, some exceptions to this rule are detailed below in the relevant section for certain deemed compliant status; whilst EBO are totally exempted from FATCA obligations, to access certain deemed compliant status a review of the set up and shareholding of the fund is needed.

Q.2 With respect to the FATCA status, what happens if there is a "change in circumstances"?

Is considered as a change in circumstances an event that jeopardizes the maintaining of the chosen FATCA status. For instance, if an investment entity has chosen the status of collective investment vehicle and at one point a change in its shareholding includes an individual, then its status is jeopardized. In such a circumstance the investment entity has to decide whether either to change its FATCA status or correct the situation. The decision may be also driven by the costs to be incurred to remedy the situation and/or change its FATCA status.

Depending on the status chosen, several situations may occur, please refer to each status sections for more details.

(1) Exempt Beneficial Owners and Investment Entity Wholly Owned by Exempt Beneficial Owners - Description

Q.1 What an Exempt beneficial Owner is?

Exempt Beneficial Owners have no reporting or registration requirements in relation to any Financial Accounts that they maintain; they are exempt from FATCA.

Luxembourg reporting Financial Institutions are neither required to review, nor report or withhold on accounts held by Exempt Beneficial Owners. They only need to obtain necessary documentation from EBOs (please refer to section Due Diligence).

Most of the EBO are financial institutions such as central banks, or international organizations, therefore are not covered in these Q&A; please refer to the ABBL Guidance notes on the implementation of FATCA rules in Luxembourg for a complete list of EBO.

(a) Luxembourg Retirement Funds – Pension Fund (Fonds de Pension)

Q.1 Which funds are considered as EBO under the Luxembourg IGA?

The following Luxembourg entities are treated as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

1. Pension savings companies with variable capital (sociétés d'épargne-pension à capital variable – SEPCAV) subject to the supervision of the Commission de surveillance du secteur financier (“CSSF”) and incorporated by virtue of the Law of 13 July 2005 relating to institutions for occupational retirement provisions in the form of pension savings companies with variable capital (sepcav) and pension savings associations (assep), as amended (Loi du 13 juillet 2005 relative aux institutions de retraite professionnelle sous forme de société d'épargne-pension à capital variable (sepcav) et d'association d'épargne-pension (assep) et portant modification de l'article 167, alinéa 1 de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu), telle que modifiée) (the “2005 Law”);
2. Pension savings associations (associations d'épargne-pension– ASSEP) subject to the supervision of the CSSF and incorporated by virtue of the 2005 Law;
3. Pension funds (fonds de pension) subject to the supervision of the Luxembourg Insurance Control Authority (Commissariat aux assurances - “CAA”) and incorporated by virtue of the Law of 6 December 1991 on the insurance sector, as amended (Loi du 6 décembre 1991 sur le secteur des assurances) (the 1991 Law).

This will include all Luxembourg

1. Pension saving companies with variable capital (“SEPCAV”) and all Pension savings associations (“ASSEP”) registered by the CSSF, and
2. Pension funds registered by the Commissariat aux assurances (“CAA”).

(b) Investment Entity Wholly Owned by Exempt Beneficial Owners

Q.2 What is the Investment Entity Wholly Owned by Exempt Beneficial Owners?

If each direct holder of an Equity Interest in any Luxembourg Investment Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Luxembourg Investment Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner, the Investment Entity qualifies as an Investment Entity Wholly Owned by EBO and it is exempt from FATCA obligations.

(c) Registration needs for Exempt Beneficial Owners

Q.3 Does an Exempt Beneficial Owners need to register?

Luxembourg EBOs are not required to register and thus do not need to obtain a GIIN.

(d) Role and responsibilities of the responsible officer person of contact

Q.4 Which are the roles and the responsibilities of the responsible officer/person of contact

Since Luxembourg EBOs are exempt from FATCA obligations there is neither a role for the responsible officer or person of contact neither responsibilities.

Q.5 Which documents can prove the EBO status?

A Luxembourg Financial Institution can accept a form W-8, a self-certification or documentary evidence to support the Exempt Beneficial Owner status of a Luxembourg retirement fund or the Investment Entity Wholly Owned by EBO status of another Luxembourg investment entity, provided that the documentation meets one of the following criteria:

1. A withholding certificate issued by the IRS such as a Form W-8 in which the retirement fund certifies that it meets the requirements to be an Exempt Beneficial Owner, or an Investment Entity Wholly Owned by EBO status, or
2. A certificate issued by the Commissariat aux Assurances, or the Commission de surveillance du secteur financier, or
3. A copy of its Articles of Association.

See section Due Diligence for more details.

(2) Investment Entities – Description

Under Annex I of the Luxembourg IGA, the term “Investment Entity” is defined as any Entity that conducts as a business (or is managed by an entity that conducts as a business) on behalf of a customer one of the following activities:

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

The fact that the definition includes the terms “or is managed by an entity that conducts as a business” enlarges the scope of FATCA to all types of funds.

Very importantly, the Luxembourg IGA states that the definition “shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.”

Please refer to ABBL Guidance notes on the implementation of FATCA rules in Luxembourg for more details.

Luxembourg Investment Companies fit within this definition, however, the Luxembourg IGA provides for the status of Non-Reporting FI for these entities. Please refer to paragraph Investment Advisors and Investment Managers for more details.

The Luxembourg IGA provides for (i) several types of entities that are considered as Non-Reporting Luxembourg FI and treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code, and (ii) additional special rules applicable to a Luxembourg Investment Entity. These latter notably simplify the burden of FATCA on an Investment Entity.

(a) Sponsored Investment Entity

Q.1 What is a Sponsored Investment Entity?

The Sponsored Investment Entity status is described in the Annex II of the IGA and is an investment entity that has chosen to be sponsored by a sponsoring entity, which has agreed to comply with FATCA requirements on behalf of the sponsored entity.

A Financial Institution may be a sponsored investment entity if it is an Investment Entity established in Luxembourg that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

Q.2 What is a Sponsored Controlled Foreign Corporation?

A Financial Institution is a sponsored controlled foreign corporation if

- ✓ the Financial Institution is a controlled foreign corporation² organized under the laws of Luxembourg that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
- ✓ the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and
- ✓ the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

Q.3 What is a qualified intermediary, withholding foreign partnership, withholding foreign trust?

A qualified intermediary (QI) is an eligible person that enters into a QI Agreement with the IRS pursuant to Rev. Proc. 2000-12, 2000-4 I.R.B. 387, and that acts as a QI under such Agreement.

A withholding foreign partnership (WP) is any foreign partnership that has entered into a WP withholding agreement with the IRS and is acting in that capacity.

A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WT withholding agreement with the IRS and is acting in that capacity.

Q.4 What are the requirements for the Sponsoring Entity?

The sponsoring entity needs to comply with the following requirements:

- ✓ it acts on behalf of the sponsored Financial Institution to fulfil the registration requirements applicable to the latter;
- ✓ it has registered as a sponsoring entity pursuant to applicable registration requirements;

² A "controlled foreign corporation" means any foreign corporation if more than 50 per cent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 per cent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

- ✓ If it identifies any U.S. Reportable Accounts with respect to the sponsored entity, it will register the sponsored entity pursuant to applicable registration requirements on or before the later of December 31st, 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified;
- ✓ it agrees to perform, on behalf of the sponsored entity, all due diligence, withholding, reporting, and other requirements that the sponsored entity would have been required to perform if it were a Reporting Luxembourg Financial Institution;
- ✓ it identifies the sponsored entity and includes its identifying number in all reporting completed on the sponsored entity behalf; and
- ✓ it has not had its status as a sponsor revoked.

Q.5 Is there any specificity linked to the Sponsoring Entity status of a controlled Foreign Corporation (compared to the status of Sponsoring Entity of a Sponsored Investment Entity)?

The Financial Institution that is a Sponsored Controlled Foreign Corporation and the Sponsoring Entity need to share a common electronic account system. This enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

Compliance of this type of setup (requiring full access to customer information in the USA) with Luxembourg law will need to be checked by Luxembourg legal advisor.

Q.6 What does the sponsoring status imply (e.g. the sponsoring entity acts on behalf of the Financial Institution)?

The sponsoring status implies that the sponsoring entity will perform, in the name of the sponsored entity, but under the conditions defined above, the sponsored entity obligations under FATCA: registration, due diligence, reporting and withholding, where applicable.

The Financial Institution is not required to have a written contractual arrangement with a Sponsoring Entity. It is advisable, however, to analyse with a legal advisor in which cases such an agreement is needed (detailing for instance the role and responsibilities of the Sponsoring Entity towards the IRS and towards the Financial Institution).

Q.7 Who is liable for any failure of the sponsoring entity to comply with the FATCA obligations?

A sponsored entity remains liable for any failure of its sponsoring entity.

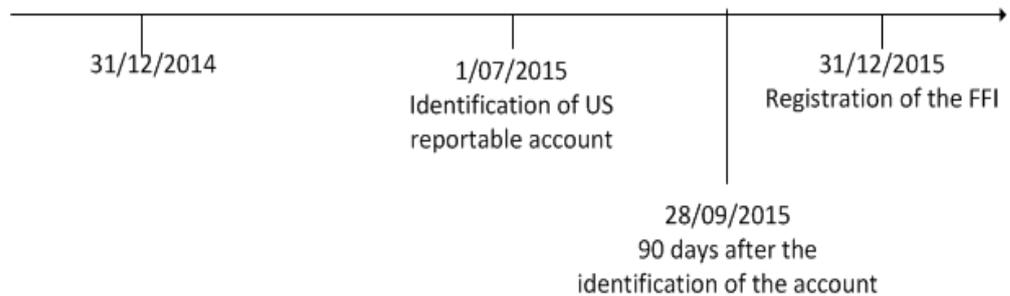
Q.8 What will be the registration requirements of sponsoring entities?

The sponsoring entity will need to register as a sponsoring entity (second registration, if the sponsoring entity is already registered as reporting FFI/ participating FFI) in accordance with applicable registration requirements (in addition to its own independent FFI registration, where relevant).

Q.9 What will be the registration requirements of Sponsored Investment Entities?

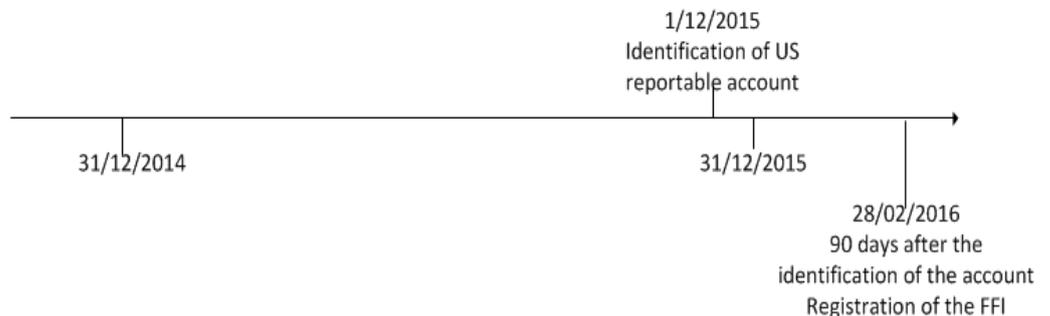
The sponsoring entity will need to register the Sponsored Investment Entity on or before the later of December 31st, 2015 or 90 days after identifying either a U.S. Reportable Account, or a Non-Participating Foreign Financial Institution (“NPFFI”) Account or a Recalcitrant Account (e.g. non-documented account).

Example 1:



In this example, the sponsored investment entity has to register by 31st December 2015 at the latest.

Example 2:



In this example, the sponsored investment entity has to register by 28 February 2016 at the latest.

Q.10 Can a Luxembourg management company classified as a Non-Reporting Financial Institution be the sponsoring entity of Sponsored Investment Entities?

A Luxembourg management company identified as a Non-Reporting Financial Institution can act as a sponsoring entity, under the conditions that (i) it agrees to act as sponsoring entity and (ii) it registers as a sponsoring entity to be able to comply with the FATCA requirements on behalf of the sponsored entity.

Q.11 In this doing will the management company loose its Non-reporting status?

No. In fact, in such case the management company has 2 activities that need to be treated separately. For its own activity as management company, it will still be Non-reporting FI. Separate from this, it acts as sponsoring entity for the sponsored entity, and therefore it needs to register as sponsoring entity.

Q.12 Can a NFFE (e.g. an individual trustee, corporate director or transfer agent) become a sponsoring entity?

A NFFE can become a sponsoring entity.

Q.13 Can a foreign sponsor act as sponsoring entity for a Luxembourg investment fund?

A foreign sponsor can act as sponsoring entity for a Luxembourg investment fund. The sponsoring entity will however need to act on behalf of each of its Sponsored Investment Entities independently, taking into account the Luxembourg local law and registration regarding registration, due diligence, withholding and reporting requirements of the Luxembourg investment fund. Thus, the foreign sponsor will notably need to report on the fund's investor to the Luxembourg tax authorities and follow applicable Luxembourg rules.

On the other hand, a Luxembourg entity may act as sponsoring entity for foreign funds and will need to take into account the local FATCA rules as applicable in each funds jurisdiction (either based on Model 1, Model 2 IGAs or on the final regulations depending on the funds' jurisdiction).

Q.14 How will due diligence procedures on the Sponsored Investment Entities' investors and aggregation rules apply?

Where a sponsor acts on behalf of a range of funds, the classification of an account as New or Pre-existing can be done by reference to whether the account is new to the sponsor (e.g. fund manager) and not the fund. The same applies for aggregation rules, where the sponsor uses the same computerized systems to link the accounts. If the sponsor uses different service providers (e.g. different transfer agents) regarding due diligence procedures, an aggregation of the accounts would only be required at the level of the service provider (transfer agent).

For more details please refer to section Due Diligence below.

(b) Sponsored, [eClosely Held Investment Vehicle](#)

Q.1 Which entities can qualify as Sponsored, Closely Held Investment Vehicle?

The entity must be a Financial Institution solely because it is an Investment Entity. If the Financial Institution performs several types of activities, one qualifying as Investment Entity and another qualifying as Custodial Institution, Depository Institution or Specified Insurance Company, it cannot be a Sponsored, Closely Held Investment Vehicle.

In addition, the Financial Institution cannot be a qualified intermediary, withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

The Financial Institution is not required to enter into a contractual arrangement with a Sponsoring Entity, it is advisable, however to have one to define all the details of the relationship.

Q.2 Is this category applicable to regulated or non-regulated entities?

This category is applicable to regulated and non-regulated entities.

Q.3 What is a qualified intermediary, withholding foreign partnership, withholding foreign trust?

A qualified intermediary (QI) is an eligible person that enters into a QI Agreement with the IRS pursuant to Rev. Proc. 2000-12, 2000-4 I.R.B. 387, and that acts as a QI under such Agreement.

A withholding foreign partnership (WP) is any foreign partnership that has entered into a WP withholding agreement with the IRS and is acting in that capacity.

A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WT withholding agreement with the IRS and is acting in that capacity.

If the Financial Institution has not signed such an agreement with the IRS, it can qualify as a Sponsored, Closely Held Investment Vehicle provided that the other conditions are met.

Q.4 Can the Financial Institution hold itself out as an investment vehicle for unrelated parties?

According to the Luxembourg IGA, a Sponsored, Closely Held Investment Vehicle cannot hold itself out as an investment vehicle for unrelated parties. The Regulations also provide for a similar category (as certified deemed-compliant FFI).

Neither the Luxembourg IGA nor the Regulations give a definition of the term "unrelated parties". The Luxembourg IGA definition for a "related entity" (Art. 1, 1.jj) cannot be used for interpretation as it refers to entities which are related via capital or voting rights whereas a Sponsored, Closely Held Investment Vehicle is supposed to have rather natural persons than entities as investors. [The concept has been clarified by the newly issued U.S. Treasury Temporary Regulations by detailing that by "related" is meant that the parties have a relationship described in section 267\(b\) of the Internal Revenue Code. Therefore, unrelated parties have not the relationship described in the abovementioned section 267 \(b\).](#)

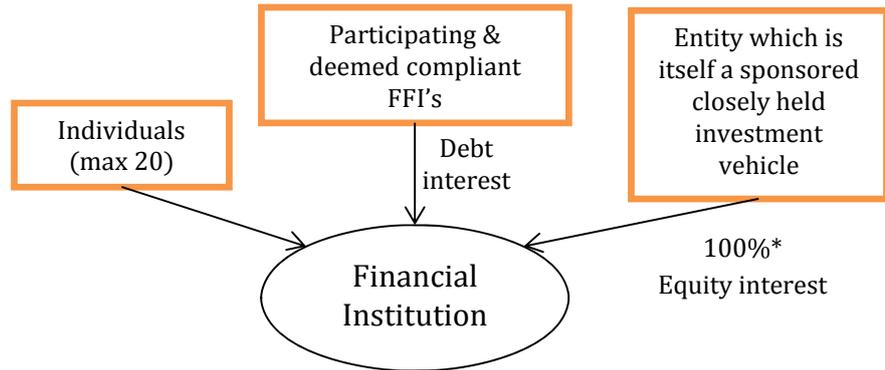
This category is targeted to investment vehicles with a limited number of investors and closed-end character. Requirements to be met for meeting the closed-end conditions are unclear.

From a practical perspective, a Sponsored, Closely Held Investment Vehicle might be used for family type investment structures for which change of investors is very restricted. Similar categories are the Sponsored Investment Entity and the Owner-documented FFI. For a high-level comparison, refer to questions below.

Q.5 What types of investors can invest into a Sponsored, Closely Held Investment Vehicle?

Twenty or fewer individuals own all of the debt interest and equity interest in the Financial Institution (disregarding debt interest owned by Participating FFIs and deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100% of the equity interest in the Financial Institution and is itself a sponsored, closely held Financial Institution).

Example 1

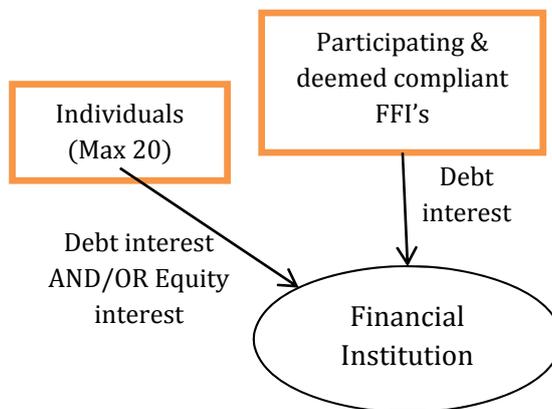


*if entity holds 100% of equity, individuals can only hold debt instruments.

In this scenario, the Financial Institution qualifies for a Sponsored, Closely Held Investment Vehicle.

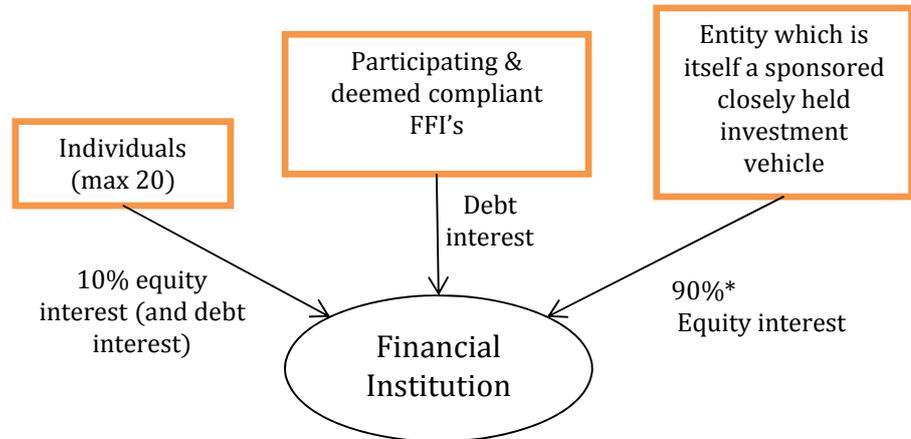
If the entity holding 100% of the equity would itself not be a Sponsored, Closely Held Investment Vehicle, the Financial Institution would not qualify.

Example 2



In this scenario, the Financial Institution qualifies for a Sponsored, Closely Held Investment Vehicle.

Example 3



In this scenario, the Financial Institution does not qualify for a Sponsored, Closely Held Investment Vehicle as the entity holding equity interest does not hold 100%.

Q.6 Who can be a sponsoring entity for a Sponsored, Closely Held Investment Vehicle?

Under the Luxembourg IGA, the sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution all due diligence, withholding, reporting, and other requirements that the Sponsored, Closely Held Investment Vehicle would have been required to perform if it were a reporting Luxembourg FI.

However, for entities being resident in a non-IGA country, the Regulations require that the Sponsoring entity is a participating FFI, a reporting Model 1 FI or U.S. FI that agrees to fulfil all due diligence, withholding, and reporting responsibilities that the Sponsored, Closely Held Investment Vehicle would have assumed if it were a participating FFI.

Q.7 What does "authorize to act on behalf" mean?

Although the Luxembourg IGA wording requires that the sponsoring entity is "authorized to act on behalf" of the Sponsored, Closely Held Investment Vehicle, the provisions under the Regulations are different and less demanding. Therefore, "authorized to act" should be interpreted in accordance with the Regulations, i.e. it means that the sponsoring entity agrees to fulfil the Sponsored, Closely Held Investment Entity obligations. There is not an obligation to having a contractual agreement regarding the obligations under FATCA, even though it is advisable to have one detailing each party rights and obligations.

Q.8 What are the requirements for the sponsoring entity?

The sponsoring entity agrees to perform, on behalf of the Sponsored, Closely Held Investment Vehicle, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Luxembourg FI.

The sponsoring entity has to register as sponsoring entity. It should register by submitting a FATCA Registration application via the FATCA Registration Website. It does not need to register the Sponsored, Closely Held Investment Vehicle.

The sponsoring entity should retain documentations collected with respect to the Financial Institution for a period of 6 years.

The sponsoring entity has to identify the Sponsored, Closely Held Investment Vehicle in all reporting completed on the Investment Vehicles behalf.

The sponsored entity has not had its status as sponsor revoked.

Q.9 What are the key differences comparing a Sponsored, Closely Held Investment Vehicle with a Sponsored Investment Entity?

A Sponsored Investment Entity can have all types of investors whereas a Sponsored, Closely Held Investment Vehicle can only have certain type of investors (see above).

The sponsoring entity needs to register the Sponsored Investment Entity if it identifies any U.S. reportable account with respect to the Sponsored Investment Entity. A Sponsored, Closely Held Investment Vehicle does not need to be registered.

The rules on Sponsored Investment Entities do not specifically provide for a retention period for documentation collected.

The interpretation in particular of the “closed-end” requirement for a Sponsored, Closely Held Investment Vehicle is unclear. For investment structures being clearly closed-end and meeting the investor restrictions under this category, the Sponsored, Closely Held Investment Vehicle might be an interesting category.

However, in borderline situations or where the investor restrictions are not met, the Sponsored Investment Entity might be preferable.

Q.10 What are the key differences comparing a Sponsored, Closely Held Investment Vehicle with an Owner-documented FFI?

An Owner-documented FFI needs to agree with a “designated withholding agent” that such withholding agent agrees to undertake the additional due diligence and reporting required under FATCA. In practice, like the Sponsored, Closely Held Investment Vehicle, the Owner-documented FFI might potentially be interesting for family type of investment structures.

Comparing both statuses, the Owner-documented FFI requires a strong link between the FFI and its designated withholding agent (e.g. its bank). There are other requirements to be met by the Owner-documented FFI, but in brief, the practical issue of that category are mainly the burdensome documentation requirements (including, documentation of all U.S. and non-U.S. investors, auditors’ certification that the documents provided reflect the correct FATCA status of the investors, etc.).

For both categories, registration is not required.

If the investor restrictions for the Sponsored, Closely Held Investment Vehicle are not met, the Owner-documented FFI might be an alternative status.

(c) Investment Advisors and Investment Managers

Q.1 What are the Luxembourg Financial Institutions that fall under the Investment Advisor or Investment Managers category?

Would fall under this category an Investment Entity established in Luxembourg that is considered as a Financial Institution under FATCA solely because it renders investment advice to a customer, and acts on behalf of a customer, or manages portfolios and acts on behalf of a customer, always for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Non-participating Financial Institution.

Q.2 What will be the registration requirements of Investment Advisors and Investment Managers?

As a Non-Reporting Financial Institution under Annex II of the Luxembourg IGA, Investment Advisors and Investment Managers are not required to register.

Q.3 What are the impacts of ancillary activities (as described in article 101 (3) of the Law dated December 17, 2010) realised by the Luxembourg management companies?

Luxembourg management companies will be able to fall under the Investment Advisors and Investment Managers category.

One exception relates to situations where the management company would act as an intermediary / custodian of certain assets: the management company would in this case need to be classified as a reporting FFI. (Please refer to question 5.3 of section Reporting FI above for more details)

(d) Collective Investment Vehicles ("CIV")

Q.1 What is a Collective Investment Vehicle under FATCA?

A CIV is a regulated fund established in Luxembourg, provided that all of its interests (including debt interests in excess of \$50,000) are held by or through one or more

- ✓ Exempt Beneficial Owners,
- ✓ Active NFFEs as described in the Annex I of the Luxembourg IGA,
- ✓ U.S. Persons that are not Specified U.S. Persons,
- ✓ or Financial Institutions that are not Non-participating Financial Institutions.

According to the Luxembourg IGA, the reporting obligations of any CIV (other than a Financial Institution through which its interests are held) shall be deemed fulfilled. Therefore, a CIV has not reporting or withholding obligations.

Q.2 Does the Luxembourg IGA provide for other Special Rules preventing reporting overlapping?

Under the IGA, overlapping of reporting is avoided by ensuring that CIV of a Partner Jurisdiction and a qualified collective investment vehicle (QCIV) under relevant U.S. Treasury Regulations will be treated in a similar way than Luxembourg CIV, meaning that the reporting obligations of those entities (other than a Financial Institution through which the interests in the entity are held) shall be deemed fulfilled as well.

A QCIV, under the U.S. Treasury Regulations is a regulated fund established in Luxembourg, provided that all of its interests (including debt interests in excess of \$50,000) are held by one or more:

- ✓ Participating FFI,
- ✓ Registered Deemed Compliant FFI,

- ✓ Certain Retirement Plans,
- ✓ Certain Non Profit Organisations,
- ✓ Not Reporting IGA FFI,
- ✓ Exempt Beneficial Owners,
- ✓ U.S. Persons that are not Specified U.S. Persons.

Q.3 Does the Luxembourg IGA provide similar rules for other categories of investment funds?

The Luxembourg IGA provides as well that for other Investment Entities that are not CIV or QCIV, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity with respect to such interests is reported by such Investment Entity or another person.

Q.4 What will be the registration requirements of Collective Investment Vehicles?

As a Non-Reporting Financial Institution under Annex II of the Model 1 IGA signed by Luxembourg, Collective Investment Vehicles shall not register.

Q.5 What are the main features of the Collective Investment Vehicles category?

The primary purpose of this status is to provide relief for those regulated investment vehicles which are solely held by or through an exclusive list of "qualified entities or persons". Eligible holder will typically be those which either have to comply with FATCA rules themselves or are regarded as low risk entities / persons. The status would e.g. not be available if one or more of the holder would be non-participating FFIs or certain direct investors (in particular individuals and passive NFFE).

In case the investment entity has issued bearer shares, the status of Collective Investment Vehicle may still be available if certain additional criteria are met. (See below under section Treatment of Bearer Shares).

Q.6 Which Collective Investment Vehicles would be regarded as regulated?

All funds that are regulated under Part 1 or Part 2 of the Law on Undertaking for collective investment of 17 December 2010 (UCITS and UCI), the Law on Specialized Investment Funds of 13 February 2007 (SIF), and the Law relating to the Investment company in risk capital of 15 June 2004 (SICAR) are regulated investment vehicles.

Under the Special Rules applicable to funds classified as Restricted Funds under relevant U.S. Treasury Regulations, it is also specified that an Investment Entity will also be considered regulated as an investment fund under the laws of Luxembourg if its manager is regulated with respect to the fund in Luxembourg or another EU Member State.

Q.7 Who is regarded as "the holder of (equity or debt) interest" in a Collective Investment Vehicle?

Holders of interest are the investors who appear on the fund register (e.g. distributor acting as nominee, but not individuals, holders of global certificates issued by central depository).

In case of debt interest any other holder of interest would be allowed to the extent that the interest does not exceed \$50.000.

Q.8 By when a Collective Investment Vehicle has to check the FATCA status of its holders of equity interest?

Annex I of the Luxembourg IGA provides the review of the pre-existing accounts; i.e. those account held before 30 June 2014, be done as follows:

- ✓ Individual Lower Account by 30 June 2016
- ✓ Individual High Account by 30 June 2015
- ✓ Entity Account by 30 June 2016

However, the U.S. Treasury Regulation provides that a QCIV must comply with all the requirements of its status at the time of its registration.

Under the Luxembourg IGA the CIV is of a Non-Reporting FFI and it has to apply the identification procedures of Annex II, as described above.

There is then a discrepancy between the two timelines; i.e. being fully compliant at the time of accessing the status of QCIV or within the Luxembourg IGA timeline described above.

The approach could be to apply the Luxembourg IGA Annex I procedures and timelines for the identification of the pre-existing account holders and request to those account holders, which are not covered by an IGA, to provide a declaration or the W8-BEN-E form to indicate which FATCA status they intend to have, whilst completing the relevant identification procedures within the Luxembourg IGA timeline described above.

Q.9 What is the impact of seed money on this status?

U.S. Treasury Regulations provide that equity interests owned by Specified U.S. Persons acquired with seed capital may be disregarded if the seed capital so acquired it will not be held by the Specified U.S. Persons for more than three years.

Q.10 Which consequences may have the change in FATCA status of a holder of interest?

If the change in the holder of interest status implies the losing of the Collective Investment Vehicle status, the Investment Entity has to either change its own FATCA status from Non-Reporting FI to Reporting FI or cure the non-compliance within certain time frame.

Please refer to section Due Diligence for more details.

(e) Restricted Funds

The status of Restricted funds is not detailed by the Luxembourg IGA, but in the U.S. Treasury Regulations. The Luxembourg IGA provides instead for a lightening of the otherwise stricter requirements provided by the U.S. Treasury Regulations. The main feature is that to access this status a fund has to prohibit the investment by certain U.S. investors and the Non-Participating FI, as detailed below.

Under the Luxembourg IGA a Restricted Fund is a Non-Reporting Financial Institution. For a better understanding of the Restricted Fund status, each question is answered by explain the status under the U.S. Treasury Regulation and highlighting the lightened requirements granted to the Investment Entities by the Luxembourg IGA.

Q.1 To which investment funds may the Restricted Fund Status apply?

1. The investment entity either:

- ✓ is regulated as an investment fund under the laws of Luxembourg, or
- ✓ its manager is regulated with respect to the fund in Luxembourg or in another EU Member State.

Therefore, are included in this definition funds regulated under:

- ✓ Part 1 or Part 2 of the Law on Undertaking for collective investment of 17 December 2010 (UCITS and UCI),
- ✓ the Law on Specialized Investment Funds of 13 February 2007 (SIF),
- ✓ the Law relating to the Investment company in risk capital of 15 June 2004 (SICAR), as well as
- ✓ the funds to which the rules of the law of 15 July 2013 on Alternative Investment Managers would apply (AIF).

The fact that the fund is considered as regulated if its manager is regulated has as a result that almost all funds will potentially fit in this status. Since the enactment of the AIFM Law, those structures that are currently non-regulated will be considered as regulated for FATCA purposes if its manager is considered as regulated under AIFM Law.

In addition, the interests issued directly by the fund shall be redeemed by or transferred by the fund rather than sold by investors on any secondary market. It is important to note that being listed on the stock market will not prevent the fund to access the status of Restricted Fund.

Q.2 Is there a difference between interests held by a nominee and those held by a distributor?

A characteristic of the Restricted Fund status is that a difference is made between the distributors that act as nominees and those that are not in chain of legal ownership. In fact:

- ✓ Interests issued by the fund through a transfer agent or distributor that does not hold the interests as a nominee of the account holder will be considered to have been issued directly by the fund.
- ✓ a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement with the FFI, in the distribution of securities and holds interests in the FFI as a nominee.

This implies that FATCA obligations in term of identification stop at the level of the nominee; it is the responsibility of the nominee to identify its client for FATCA purposes. Whilst, in case of distributors, not being nominees, the identification responsibility stays within the fund.

Q.3 To which investors the interests in a Restricted Fund can be sold?

In order to access the Restricted Fund status, a fund shall sell its interest in accordance with the following:

- ✓ Interests may both be distributed by, and held through a reporting FFI and non-reporting FFI under IGA Model 1, participating FFI, registered deemed compliant FFI, non-registering local bank or restricted distributor, acting as a nominee, pursuant to an contractual arrangement, and
- ✓ Interests that are issued directly by the Fund shall not be sold directly to
 - a. Specified U.S. Persons,
 - b. non-participating FFIs, or
 - c. passive NFFEs with one or more substantial U.S. owners ~~or U.S. controlling persons.~~

In sum, the requirement is twofold; on one side, fund's interests shall be sold through a nominee which is FATCA compliant, and, on the other side, the fund shall prohibit the selling of fund's interests directly or through a distributor, which does not act as a nominee to the categories above under a), b) and c).

Please note however that Specified U.S. Persons, non-participating FFIs, or passive NFFEs with one or more substantial U.S. owners ~~or U.S. controlling persons~~ can only invest in a Restricted Fund through a Participating FFI (See question 5 below).

Q.4 Which entity is considered as Restricted Distributor?

The notion of Restricted Distributor is not mentioned in the IGA. A restricted distributors is a very small distributor (less than 30 customers of which at least half are related persons), which acts locally; i.e. it has not a fixed place of business outside

its country of incorporation. For a full definition, please refer to the U.S. Treasury Regulations at "definition of a restricted distributor".

Q.5 Can individuals or U.S. entities directly invest in Restricted Funds?

Yes, individuals can directly invest in Restricted Funds; unless they are Specified US Persons.

Specified US Persons can only invest in a Restricted Fund through Participating FFI. The reason is that the Participating FFI will run all the reporting to the IRS and, therefore, reach the goal of FATCA.

Yes, U.S. entities can directly invest in Restricted Funds, unless they are Specified U.S. Persons.

It is advisable, however, to seek legal advice on the opportunity to accept U.S. entities with respect to other sections of the Dodd Frank Act dealing with the status of foreign management companies selling foreign funds to U.S. residents.

In addition, the prohibition of selling to Specified U.S. Persons and passive NFFEE with one or more substantial U.S. ownership ~~or U.S. controlling Person~~ shall be carefully drafted in the prospectus of the funds, since once inserted, it has to be fully complied with.

Q.6 Does the review of the accounts of a Restricted Fund follows different due diligence rules that those provided in Annex I of the IGA?

Yes, if the fund prospectus included an explicit prohibition of selling the fund to U.S. entities and resident individuals, the fund has not an obligation to review all those pre-existing individuals accounts opened when such a prohibition was in place. Therefore an investment funds that has included such a prohibition in its prospectus is completely exempted from reviewing its pre-existing individuals shareholding, since the time of such prohibition has been included in the Prospectus. It has, however, to comply with all the others requirements, in particular documentation and due diligence of new investors.

The question of exposing the fund to regulatory non-compliance with the Prospectus can be asked, since the CSSF will certainly request that all the fund's shareholders be in full compliance with the Prospectus; i.e. not only the new shareholders or accounts. However, in the normal process of reviewing the KYC documentation of the existing accounts, such a check shall be done and the shareholders that may found non-compliant with respect to the fund status of Restricted Fund shall be identified and their status cured. The fund has 6 months' time from discovery to cure the situation.

Q.7 How the requirements provided by the IGA are lighter than those of the U.S. Treasury Regulations?

U.S. Treasury Regulations provides that by the later of December 31st, 2014, or six months after the date the FFI registers as a deemed-compliant FFI each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the FFI (other than interests that are both distributed by and held through a participating FFI) to Specified U.S. Persons, non-participating FFIs, or passive NFFEs with one or more substantial U.S. owners.

The Luxembourg IGA provides instead that:

- ✓ A Subscription or Application Form is considered a distribution agreement, which is a contractual arrangement that governs the distribution of debt or equity interest in the Investment Entity.

This rule allows avoiding the exclusion of those distributors that have only signed the application subscription form and therefore facilitates the access to the Restricted Fund status.

- ✓ The distribution agreement will be treated as prohibiting sales and other transfers of debt or equity interests in the Investment Entity (other than interests that are both distributed by and held through a participating FFI) to Specified U.S. Persons, non-participating FFIs, or passive NFFEs with one or more substantial U.S. owners, if the agreement includes an explicit obligation to comply with the Investment Entity's prospectus and the Investment Entity's prospectus includes an explicit prohibition of sale and other transfer of debt or equity interests in the Investment Entity (other than interests that are both distributed by and held through a participating FFI) to Specified U.S. Persons, non-participating FFIs, or passive NFFEs with one or more substantial U.S. owners;

This means that a Fund shall not need to amend all its distribution agreements to access the Restricted Fund status, provided that the agreements refer to the Prospectus, which in turn includes the prohibition mentioned above. Moreover, the same applies to those interests that are sold through an Application or Subscription form (i.e. sold without a distribution agreement).

In addition, there is no time requirement since the Non Reporting FFI Deemed Compliant status under IGA 1 status does not imply registration with the IRS.

It is, however, advisable to amend the distribution agreements, the application and subscription forms in order to cover the risk linked to FATCA (see section Change of Documentation for more details).

By 30 June 2014, the FFI's prospectus and marketing material must, thus, indicate the relevant restrictions in order to access the Restricted Fund status.

See as well the section on Treatment of Bearer Shares below.

Q.8 What procedures shall be followed in case of change of the distributor Chapter 4 status?

U.S. Treasury Regulations provide that by the later of December 31st, 2014, or six months after the date the FFI registers as a deemed-compliant FFI, each agreement that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's Chapter 4 statuses within 90 days from the change.

The Luxembourg IGA provides instead that the distribution agreement (as well as the Subscription or Application Form) will be treated as requiring the distributor to notify the Investment Entity of a change in the distributor's Chapter 4 status within 90 days from the change, if

- ✓ the agreement includes an explicit obligation to comply with the Investment Entity's prospectus and
- ✓ the Investment Entity's prospectus requires the distributor to notify the Investment Entity of a change in the distributor's Chapter 4 status within 90 days of the change.

Therefore, a Fund has to ensure that its prospectus includes the following:

- ✓ the possibility to sell its interest through a nominee (by entering into a distribution agreement or an Application or Subscription Form) which is a participating FFI, registered deemed compliant FFI, non-registering local bank or restricted distributor,
- ✓ the prohibition to sell its interests to or through any Specified U.S. Persons, non-participating FFIs, or passive NFFEs with one or more substantial U.S. owners, and
- ✓ that a distributor acting as nominee has to notify the fund within 90 days in case of change of its Chapter 4 status.

Q.9 Are there other obligations if a distributor change its FATCA status?

U.S. Treasury Regulations provides that the FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a nominee compliant with FATCA under the Restricted Fund rules, the FFI will terminate its distribution agreement with the nominee, or cause the distribution agreement to be terminated, within 90 days of notification of the nominee's change in status and, with respect to all debt and equity interests of the FFI issued through that nominee, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another nominee within 6 months of the nominee's change in status.

The Luxembourg IGA does not include specific wording on this subject, however, since all relationships under IGA I is between the local tax authorities and the FFI, such a certification is not required.

Still the Restricted Fund has to redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another nominee within 6 months from the nominee's change in status.

As for the need to monitoring the register of the fund to be sure that it complies with the Restricted Fund requirement on on-going basis, a Restricted Fund will do so through performing the policy and procedure mentioned in Question 10 of this section.

The Restricted Fund being under the Luxembourg IGA a non-reporting status and therefore not registered with the IRS, no annual or every three years certification of its status is needed.

Q.10 Are there other obligations to access the Restricted Fund status?

U.S. Treasury Regulations provide that by the later of June 30th, 2014, or the date that it registers as a deemed-compliant FFI, the FFI implements the policies and procedures to ensure that it either (i) does not open or maintain an account for, or make a withholdable payment to, any Specified U.S. Person, non-participating FFI, or passive NFFE with one or more substantial U.S. owners and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the FFI had reason to know the account holder became such a person; or (ii) withholds and reports on any account held by, or any withholdable payment made to, any Specified U.S. Person, non-participating FFI, or passive NFFE with one or more substantial U.S. owners to the extent and in the manner that would be required under if the FFI were a participating FFI.

The Luxembourg IGA does not include specific wording on this subject; therefore, a fund that wants to access a Restricted Fund status shall implement the policies and procedures under (i) above within this question.

On the contrary, policy and procedure under (ii) above within this question shall not apply, since the Restricted Fund status under the Luxembourg IGA is a Non Reporting status.

In addition, the definition of U.S. Person, as used before FATCA is not necessarily the same as the FATCA definition. A careful wording shall then be inserted in the Prospectus to avoid such an issue. (please refer to the section Change in documentation for more details).

Q.11 Can a Restricted Fund be part of an Expanded Affiliated Group?

U.S. Treasury Regulations provides that for an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group are participating FFIs, registered deemed-compliant FFIs, sponsored FFIs, non-reporting IGA FFIs, or exempt beneficial owners.

The Luxembourg IGA provides no modification of this rule.

(f) Treatment of Bearer Shares

Q.1 Does a fund may access one of the FATCA statuses even though it has issued bearer shares?

Luxembourg IGA states that an investment entity can qualify as deemed compliant even though it has issued bearer shares provided that:

- ✓ It has not issued, and does not issue, any physical shares in bearer form after March 31st, 2013;
- ✓ It retires all such shares upon surrender;
- ✓ It (or its reporting entity, either as its agent or as its sponsor) performs the due diligence procedures set forth in Annex I of the IGA and reports any information required to be reported pursuant to the Agreement with respect to any such shares when such shares are presented for redemption or other payment; and
- ✓ It has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible and in any event prior to January 1st, 2017.

In fact, bearer shares and their related dividend coupons are usually held in global bearer shares and global dividend coupons omnibus accounts, respectively, and therefore inaccessible to direct redemption or payment. Any presenter of bearer shares or dividend coupons needs to open an account with the institution and undergo a full AML/KYC identification including FATCA identity checks, unless he has already an existing fully documented account with the institution where he is presenting the bearer shares or dividend coupons. The redemption of the bearer shares or the payment of a coupon dividend can be then only made after all the FATCA identification checks are performed; only then, the presenter can redeem his shares, which have been transformed into registered shares, or receive the related dividend payment.

It is important to note that the two requirements of (i) not issuing bearer shares after March 31st, 2013, and (ii) put in place procedures and policies to immobilize or redeem such shares prior to January 1st, 2017, shall be complied with. For the remaining requirements, the current usual procedure described above will comply with the FATCA requirement on the immobilization of bearer shares.

(g) Proof of FATCA status

For all Non-reporting FATCA Status, the following documents should be used:

- ✓ For FIs established in IGA countries, it is sufficient for the payer inside an IGA country to rely on KYC documentation or publicly available information to determine if a counterparty is an FI and if it is established in an IGA country. A GIIN or other proof should not be required, unless there is a doubt, or
- ✓ A withholding certificate issued by the IRS such as a Form W-8 in which the investment entity certifies that it meets the requirements to be Non-reporting FFI under IGA Model 1, or
- ✓ A standard Form as being published by the Luxembourg Tax authority/ABBL/ALFI/ACA.

(3) *Change in documentation*

In order to comply with the chosen FATCA status, a fund shall carefully define the change in its constitutional or commercial documentation, since each status has its own requirements.

Please refer to the following tables on change in documentation to find out which documents may be considered for modification according to the chosen FATCA status. It is of course advisable to seek proper advice from your legal counsel before modifying the funds documentation or the distribution agreements to properly cover all issues.

Reporting Financial Institutions				
Document Type	Fund, Sub-Fund FATCA status	Distribution Network	Reporting	Investor/Distributor change in FATCA Status
Prospectus	to inform investors of the fund, sub-fund FATCA status	to inform that investors, distributors, nominee either are FATCA compliant or suffer reporting/withholding	N/A	to ensure correct reporting
Articles of Incorporation	N/A	N/A	N/A	N/A
Application or Subscription form	to inform investors of the fund, sub-fund FATCA status	N/A	to ensure correct reporting	to ensure correct reporting
Distribution agreements (except for advice only)	to inform investors of the fund, sub-fund FATCA status	to inform that investors, distributors, nominee either are FATCA compliant or suffer reporting/withholding	to ensure correct reporting	to ensure correct reporting

Restricted Funds				
Document Type	US Persons definition	Fund, Sub-Fund FATCA status	Distribution network	Investor/Distributor change in FATCA Status
Prospectus	to adapt US Persons definition to FATCA and inform on the (new) definition of US Persons investors	to inform investors of the fund, sub-fund FATCA status	to inform that only certain distributors are accepted	to inform of the possibility of forced redemptions for US Persons within 6 months from discovery or within 90 days from change in status
Articles of Incorporation	N/A	N/A	N/A	to provide for forced redemptions for US Persons within 6 months from discovery and within 90 days from investor's change in status and treatment of bearer shares
Application or Subscription form	not needed if reference to Prospectus	to inform investors of the fund, sub-fund FATCA status	to inform that only certain distributors are accepted	to inform of the possibility of forced redemptions for US Persons within 6 months from discovery or within 90 days from change in status
Distribution agreements (except for advice only)	not needed if reference to Prospectus	N/A	to inform that only certain distributors are accepted	to inform on forced redemption within 90 days from change in status

Qualified Collective Investment Vehicles				
Document Type	US Persons definition	Fund, Sub-Fund FATCA status	Distribution	Investor/Distributor change in FATCA Status
Prospectus	to adapt US Persons definition to FATCA and inform on the prohibition of certain	to inform investors of the fund, sub-fund FATCA status	to inform that distributors, nominee must be FATCA compliant	to prevent non-compliance

	categories of investors			
Articles of Incorporation	to provide for forced redemptions for US Persons and within 90 days from investor's change in status and treatment of bearer shares	N/A	N/A	forced redemption
Application or Subscription form	to adapt US Persons definition to FATCA and inform on the prohibition of certain categories of investors	to inform investors of the fund, sub-fund FATCA status	need of knowing status of distributor, nominee, client under FATCA	forced redemption
Distribution agreements (except for advice only)	reference to Prospectus	to inform investors of the fund, sub-fund FATCA status	need of knowing status of distributor, nominee, client under FATCA	to inform on forced redemption within 90 days from change in status

(4) Distribution Channels

Most investment funds use a variety of distribution channels – which bring a different challenge to the implementation of FATCA. To identify the duties and responsibilities with respect to FATCA, each investment fund should review as well its structure of distribution. In this document, a variety of distribution options were grouped into types of distribution channels and analysed to determine the various FATCA responsibilities and the impact these distribution channel groups would have:

Q.1 Considering that the Fund (or the Management Company of the Fund) is responsible for the AML/KYC of its investors, who will actually do the FATCA identification, reporting and withholding?

Who is responsible for which FATCA duties considering the different types of distribution channels? i.e.:

- 1 a) For different Types of Distributors / Intermediaries
- 1b) For technical Order Routing Platforms
- 1c) For NSCC (US Order Routing & Cash Settlement Platform)
- 1d) For different Types of Holders of Record

- 1e) For Fund Distribution Platforms
- 1f) For Product Packages
- 1g) For different Types of CSDs / ICSDs
- 1h) For Paying Agents
- 1i) For Stock Exchanges
- 1j) For Providers using the Post Ident Procedure

The Fund being the FFI is always responsible for its FATCA obligations, but can and will probably delegate some of the tasks to service providers.

The following table is to be understood as general guidance and potential market practice only. It is not supposed to be understood as having legally binding consequence.

1 a) For different Types of Distributors / Intermediaries:

<p>Distributor / Intermediary Type</p>	<p><u>Nominee including Identification</u></p> <ul style="list-style-type: none"> • Nominee A: Legal holder of record at TA • TA: AML/KYC checks on Nominee A and its AML/KYC procedures • Nominee: AML/KYC checks on underlying sub-holders of record • Nominee: potentially advises sub-holders of record and receives commission for such advice 	<p><u>Advice and Identification</u></p> <ul style="list-style-type: none"> ▪ Legal holder of record at TA: "Investor" C (holder of record, not necessarily final beneficiary) ▪ Distributor B: AML/KYC checks "Investor" C ▪ Fund or its Management Company: Check Distributor B's AML/KYC procedures, have access to records at Distributor B ▪ Distributor: potentially advises "Investor" C and receives commission for such advice 	<p><u>Advice Only</u></p> <ul style="list-style-type: none"> ▪ Legal holder of record at TA: "Investor" E (holder of record, not necessarily final beneficiary) ▪ TA: AML/KYC checks on "Investor" ▪ TA: Check of "Investor's" AML/KYC procedures – if not final beneficiary but holder of sub-records ▪ "Investor" as holder of sub-records: AML/KYC checks on potential sub-holders of record
<p>Example: Processing Agents, Nominee Type of Distributors</p>			
<p>FATCA Identification Duties</p>	<p>AML / KYC will be executed by same party as today by delegation of the fund, with the change of including "FATCA identification / compliance":</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate AML/KYC duties including FATCA identification review to the Transfer Agent. <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will potentially need to enrich application forms with new FATCA info • Will include FATCA checks to AML/KYC review on Nominee A (and review AML/KYC & FATCA procedures where applicable) <p><u>Nominee A (if FATCA compliant):</u></p> <ul style="list-style-type: none"> • Will include FATCA checks to AML/KYC review of any (sub-) holders of record within his register 	<p>The AML / KYC checks will be executed by the same party as today by delegation of the fund, with the change of including "FATCA identification / compliance":</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will delegate within the distribution agreement the AML / KYC duties including FATCA identification to Distributor B • Will be responsible to review Distributor B's AML/KYC procedures including 	<p>AML / KYC will be executed by same party as today by delegation of the fund, with the change of including "FATCA identification / compliance":</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate AML/KYC duties including FATCA identification review to the Transfer Agent. <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will potentially need to enrich application forms with new FATCA info • Will include FATCA checks to AML/KYC review on Investor C • If Investor E holds a sub-register, will review his AML/KYC procedures including FATCA procedures

		<p>FATCA procedures</p> <ul style="list-style-type: none"> • Will potentially enrich the fund's application form) <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will potentially need to enrich application forms with new FATCA info (if TA's global application form) <p><u>Distributor B:</u></p> <ul style="list-style-type: none"> • The Distribution Agreement should include FATCA and AML/KYC duties to be performed by Distributor B. • Will potentially need to enrich application forms with new FATCA info. • Will include FATCA checks to AML/KYC review of any Investor he will bring to the fund 	<p><u>Distributor D:</u></p> <ul style="list-style-type: none"> • Does not seem to be involved in direct FATCA obligations
<p>FATCA Reporting Duties</p>	<p>FATCA reporting will most likely be delegated by the Fund to the compliant record keeper closest to the holder of the legal title. This means in this case:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will be delegated to do the FATCA reporting for the account holders on file following FATCA regulation • Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if U.S. or recalcitrant) • Will report Nominee A if recalcitrant or NPFFI <p><u>Nominee A:</u></p> <ul style="list-style-type: none"> • If FATCA compliant will report on his sub-register • If not FATCA compliant will be reported by Transfer Agent 	<p>FATCA reporting will most likely be delegated by the Fund to the compliant record keeper closest to the holder of the legal title. This means in this case:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will be delegated to do the FATCA reporting for the account holders on file following FATCA regulation • Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if U.S. or recalcitrant) • Will report any "FATCA data" that would need to 	<p>FATCA reporting will most likely be delegated by the Fund to the compliant record keeper closest to the holder of the legal title. This means in this case:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will be delegated to do the FATCA reporting for the account holders on file following FATCA regulation • Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if U.S. or recalcitrant) • Will report any "FATCA data" that would need to

		<p>following FATCA regulation</p> <ul style="list-style-type: none"> Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if U.S. or recalcitrant) Will report Investor C's data as on file according to identification done by Distributor B <p><u>Distributor B:</u></p> <ul style="list-style-type: none"> Will most likely not be involved in the FATCA reporting process 	<p>be reported on Investor E</p> <p><u>Distributor D:</u></p> <ul style="list-style-type: none"> We do not see any FATCA reporting Distributor D would need to do in this case
<p>FATCA Withholding Duties</p>	<p>FATCA withholding (if any) will most likely be delegated by the Fund (or its Management Company) to the compliant payer closest to the final investor:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will in most cases delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated in most cases the FATCA withholding duty for any non-FATCA compliant holders of record on file Will withhold on Nominee A if he is not FATCA compliant <p><u>Nominee A:</u></p> <ul style="list-style-type: none"> If not FATCA compliant will be withheld upon by the Transfer Agent If FATCA compliant will withhold on any holder of record on his sub-register if they are not FATCA compliant 	<p>FATCA withholding (if any) will most likely be delegated by the Fund (or its Management Company) to the compliant payer closest to the final investor:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will in most cases delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated in most cases the FATCA withholding duty for any non-FATCA compliant holders of record on file Will withhold on Investor C if he is not FATCA compliant <p><u>Distributor B:</u></p> <ul style="list-style-type: none"> Will most likely not be involved in the FATCA 	<p>FATCA withholding (if any) will most likely be delegated by the Fund (or its Management Company) to the compliant payer closest to the final investor:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will in most cases delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated in most cases the FATCA withholding duty for any non-FATCA compliant holders of record on file Will withhold on Investor E if he is not FATCA compliant <p><u>Distributor D:</u></p> <ul style="list-style-type: none"> Will most likely not be involved in the FATCA withholding process

		withholding process	
Additional Fund documentation potentially impacted	<ul style="list-style-type: none"> Comfort letters where applicable 	<ul style="list-style-type: none"> Comfort letters where applicable 	

1 b) For technical Order Routing Platforms:

Order Routing	<ul style="list-style-type: none"> Order Routing only technically routing orders between order giver and order receiver The order giver and receiver do not hold an account with the Order Router There is no identification or intervention involved So any AML/KYC identification is between the order giver and the order receiver <p>Examples: FundSquare, SWIFT, etc.</p>
FATCA Identification Duties	<p><u>Order Giver and Receiver:</u></p> <ul style="list-style-type: none"> If FATCA compliant, will potentially need adapt their AML/KYC procedures to include FATCA identification and compliance If not FATCA compliant will be considered recalcitrant or NPFFI <p><u>Order Router: If only technical order router:</u></p> <ul style="list-style-type: none"> Not involved in the AML/KYC process, does not hold accounts, therefore not in the FATCA identification of account holders However, as a technical facilitator of Order Routing will need to enrich his platform to transmit new FATCA information This information will could include the PPP, the actual FATCA tax amount withheld, certain identification fields etc.
FATCA Reporting Duties	<p><u>Order Giver and Receiver :</u></p> <ul style="list-style-type: none"> If FATCA compliant will report on his sub-register (if existing) If not FATCA compliant will be considered recalcitrant or NPFFI <p><u>Order Router: If only technical order router:</u></p> <ul style="list-style-type: none"> Not be involved in the FATCA reporting process However, as a technical facilitator of Order Routing will need to enrich his platform to transmit new FATCA information This information will could include the PPP, the actual FATCA tax amount withheld, certain identification fields etc.
FATCA Withholding Duties	<p><u>Order Giver and Receiver:</u></p> <ul style="list-style-type: none"> If FATCA compliant will withhold FATCA tax according to local legislation If not FATCA compliant will be considered recalcitrant or NPFFI <p><u>Order Router:</u></p> <ul style="list-style-type: none"> If only technical order router: will not be involved in the FATCA withholding process However, as a technical facilitator of Order Routing will need to enrich his platform to transmit new FATCA information This information will could include the PPP, the actual FATCA tax amount withheld, certain identification fields etc.

1 c) For NSCC (US Order Routing & Cash Settlement Platform):

NSCC	<ul style="list-style-type: none"> Fund / Management Company: AML/KYC checks on Distributor incl. procedures Distributor legal holder of record at TA Distributor: AML/KYC checks on underlying sub-holders of record DTCC: Indicate they will only accept FATCA compliant Distributors and Funds DTCC: order router & cash settlement agent Only considering Network Level 3 (broker controlled accounts), as mainly used
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<p>FATCA Identification Duties</p>	<p>AML / KYC will be executed by same party as today, with the change of including "FATCA identification / compliance":</p> <p><u>DTCC / NSCC (assuming they only accept fully FATCA compliant & certified participants/members):</u></p> <ul style="list-style-type: none"> • Currently identified necessary systems amendments: see under other impacts • Will need to provide data in case any participant / member should become non-compliant • Although assuming that all members need to be PFFI or equivalent need to be prepared in case a member becomes NPFFI • <u>Open:</u> Which chapter 4 statuses will be allowed and what documentation needed to certify such status (from FFIs and USFIs) <p><u>NSCC Distributor/Nominee DN (assuming Network Level 3 and FATCA compliant (PFFI, DCFI...)):</u></p> <ul style="list-style-type: none"> • <u>Assumption:</u> As NSCC distributors are FATCA compliant, they and their sub-network identify all underlying account holders <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Deciding on distributor acceptance. • Will verify AML/KYC procedures including FATCA identification and document their duties in the Distribution Agreement. • <u>Assumption:</u> As NSCC Distributors and their sub-broker network need to be FATCA compliant, the fund can rely on their identification of underlying account holders. <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Potentially receives comfort letter from Fund or its Management Company to certify that NSCC Distributors have been identified • If information is received that any distributor is non-compliant, will be delegated by the Fund to treat him as such • Usually not involved in identification, as Networking Level 3 accounts, all accounts are broker controlled
<p>FATCA Reporting Duties</p>	<p>FATCA reporting will be delegated by the Fund to the closest compliant record keeper to the final investor. This means in this case:</p> <p><u>DTCC / NSCC (assuming they only accept fully FATCA compliant & certified participants/members):</u></p> <ul style="list-style-type: none"> • Currently identified necessary systems amendments: see under other impacts • Although assuming that all members need to be PFFI or equivalent need to be prepared in case a member becomes NPFFI <p><u>NSCC Distributor/Nominee DN (assuming Network Level 3 and FATCA compliant (PFFI, DCFI...)):</u></p> <ul style="list-style-type: none"> • <u>Assumption:</u> As FATCA compliant, NSCC distributors and their sub-network handle FATCA reporting on all underlying account holders <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Deciding on distributor acceptance. • Will verify FATCA procedures including reporting and document their duties in the Distribution Agreement. • <u>Assumption:</u> As NSCC Distributors and their sub-broker network need to be FATCA compliant, the fund can rely on their FATCA reporting of underlying account holders. <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • No need to report any FATCA compliant NSCC distributor / nominee (PFFI, DCFI etc.) • Should any distributor become non-compliant (NPFFI), Fund / Man Co will delegate FATCA reporting to Transfer Agent • <u>Assumption:</u> USFIs do not need to be withheld upon as they have PFFI equivalent obligations
<p>FATCA Withholding Duties</p>	<p>FATCA withholding will be delegated by the Fund to the closest compliant payor to the final investor. This means in this case:</p> <p><u>DTCC / NSCC (assuming they only accept fully FATCA compliant & certified participants/members):</u></p> <ul style="list-style-type: none"> • Currently identified necessary systems amendments: see under other impacts • Although assuming that all members need to be PFFI or equivalent need to be prepared in case a member becomes NPFFI <p><u>NSCC Distributor/Nominee DN (assuming Network Level 3 and FATCA compliant (PFFI, DCFI...)):</u></p> <ul style="list-style-type: none"> • <u>Assumption:</u> NSCC distributors and their sub-network handle FATCA tax withholding on underlying account holders <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Deciding on distributor acceptance. • Will verify FATCA procedures including FATCA withholding and document their duties in the Distribution Agreement. • <u>Assumption:</u> As NSCC Distributors and their sub-broker network need to be FATCA compliant, the fund can rely on their FATCA tax withholding for underlying account holders.

	<p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • No need to withhold any FATCA compliant NSCC distributor / nominee (PFFI, DCFPI etc.) • Should any distributor become non-compliant (NPFFI), Fund / Man Co will delegate FATCA tax withholding to Transfer Agent • <u>Assumption:</u> USFIs do not need to be withheld upon as they have PFFI equivalent obligations
<u>Other Impacts</u>	<p>Currently identified minimum necessary NSCC systems amendments:</p> <ul style="list-style-type: none"> • No change to 401, B50/51 required • Daily price file will need to include PPP to enable FATCA compliance to distributors • Confirm / Corporate Actions / Dividend / Re-confirmation / corrections /Dividend correction Files need to include Withholding Tax applied and the PPP • Trailer Fee files out of scope

1 d) For different Types of Holders of Record:

	<u>Nominee Type of Holders of Record</u>	<u>Direct Holder of Record (registered shares)</u>	<u>Bearer Shares</u>
Holder of Record (HoR) Type	<ul style="list-style-type: none"> • Legal holder of record at TA: Nominee • TA: AML/KYC checks on Nominee • TA: Check Nominee's AML/KYC procedures • Nominee: AML/KYC checks on underlying sub-holders of record • Nominee: potentially advises sub-holders of record and receives commission for such advice 	<ul style="list-style-type: none"> ▪ Legal holder of record at TA: Direct HoR ▪ TA: AML/KYC checks on Direct HoR 	<ul style="list-style-type: none"> ▪ TA: Holds global Bearer Share account ▪ Presenter of Bearer Shares: presents shares ▪ TA: Opens new register a/c for Presenter of Bearer Shares with full AML/KYC identification ▪ TA: Once a/c open and fully documented transforms bearer into regular registered shares ▪ Afterwards normal handling of registered shares
	Examples: CTA, Sub-TA, LTA, Banca Corrispondente (IT), Agent Centralisateur (FR)	Examples: Direct retail investor, direct entity investor, Post Ident Procedure	
FATCA Identification Duties	<p>AML / KYC will be executed by same party as today by delegation of the fund, including "FATCA identification / compliance" (similar to Nominee/Distributor case):</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate AML/KYC duties including FATCA identification review to the Transfer Agent. <p><u>Transfer Agent:</u></p>	<p>The AML / KYC checks will be executed by the same party as today by direct delegation of the fund to its service providers, with the change of including "FATCA identification / compliance":</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will delegate the AML/KYC duties including FATCA identification to Transfer Agent • Will potentially enrich the fund's application form 	<p>AML / KYC will be executed by same party as today by delegation of the fund, with the change of including "FATCA identification / compliance":</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate AML/KYC duties including FATCA identification review to the Transfer Agent. <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will identify the presenter of the Bearer Shares in

	<ul style="list-style-type: none"> Will enrich application forms with new FATCA info Will include FATCA AML/KYC review on Nominee A (and review AML/KYC & FATCA procedures where applicable) <p><u>Nominee Holder of Record (if FATCA compliant):</u></p> <ul style="list-style-type: none"> Will include FATCA checks to AML/KYC review of any (sub-) holders of record within his register <p>Open remaining questions see under "Other Impacts"</p>	<p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will potentially need to enrich application forms with new FATCA info (if TA's global application form) Will include FATCA checks to AML/KYC review of any Investor being directly registered with the TA 	<p>the same way like any other new investor or Holder of Record</p> <ul style="list-style-type: none"> Will include FATCA checks to AML/KYC review on Presenter of Bearer Shares Same process will be applied for the presentation of Coupons for Dividend payments <p>Open remaining questions see under "Other Impacts"</p>
<p>FATCA Reporting Duties</p>	<p>FATCA reporting will most likely be delegated by the Fund to the compliant record keeper closest to the holder of the legal title (similar to Nominee/Distributor case):</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated to do FATCA reporting HoR on file Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if US or recalcitrant) Will report Nominee A if recalcitrant or NPFFI <p><u>Nominee Holder of Record:</u></p> <ul style="list-style-type: none"> If FATCA compliant will report on his sub-register If non-compliant will be reported by Transfer Agent <p>Open remaining questions see under "Other Impacts"</p>	<p>FATCA reporting will most likely be delegated by the Fund to the compliant record keeper closest to the holder of the legal title. This means in this case:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated to do the FATCA reporting for the direct holders of record following FATCA regulation Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if US or recalcitrant) 	<p>FATCA reporting will be delegated by the Fund to the compliant record keeper closest to the holder of the legal title. Once Bearer Shares or Coupons have been presented and the presenter has been identified as described above the reporting will follow the normal FATCA reporting process:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will delegate reporting duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated to do the FATCA reporting for the account holders on file following FATCA regulation Will report such data according to the chain of distribution and FATCA regulation (only reporting of direct holders of record if US or recalcitrant) Will report any "FATCA data" that would need to be reported on the presenter of Bearer Shares / Coupons

			Open remaining questions see under "Other Impacts"
FATCA Withholding Duties	<p>FATCA withholding (if any) will be delegated by the Fund to the compliant payor closest to the final investor:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated the FATCA withholding duty for any non-FATCA compliant HoR on file Will withhold on NPFFI / recalcitrant Nominee HoR <p><u>Nominee HoR:</u></p> <ul style="list-style-type: none"> If recalcitrant or NPFFI will be withheld upon If FATCA compliant will withhold on any holder of record on his sub-register as applicable <p>Open remaining questions see under "Other Impacts"</p>	<p>FATCA withholding (if any) will most likely be delegated by the Fund (or its Management Company) to the compliant payor closest to the final investor:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will in most cases delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated in most cases the FATCA withholding duty for any non-FATCA compliant holders of record on file 	<p>FATCA withholding (if any) will most likely be delegated by the Fund (or its Management Company) to the compliant payor closest to the final investor. Once Bearer Shares or Coupons have been presented and the presenter has been identified as described above, the withholding will follow the normal FATCA withholding process:</p> <p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> Will delegate withholding duties to its service providers <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> Will be delegated FATCA withholding duty for any non-FATCA compliant HoR on file Will withhold on any non-FATCA compliant presenter of Bearer Shares / Coupons <p>Open remaining questions see under "Other Impacts"</p>
Other Impacts	<p>Open questions:</p> <ul style="list-style-type: none"> <u>Banca Corresponsente:</u> The Banca Corresponsente usually delegates the AML/KYC to underlying distributors, various Processing Agents who are often Banks themselves <u>Banca Corresponsente:</u> Who will be the FFI? The Banca Corresponsente or the distributor? Will the FATCA compliance be documented in the distribution agreements or verified directly with the Banca Corresponsente? 		

1 e) For Fund Distribution Platforms:

Distribution Platforms	<ul style="list-style-type: none"> Platform: Legal holder of record at TA TA: AML/KYC checks on Platform and its AML/KYC procedures Platform: AML/KYC checks on underlying sub-holders of record Platform: potentially advises sub-holders of record and receives commission for such advice
	Examples: Fund Platforms offering single account to invest in multiple investment funds

FATCA Identification Duties	Same conclusions like for Distributor type "Nominee" under 1a).
FATCA Reporting Duties	
FATCA Withholding Duties	

1 f) For Product Packages:

Product Packages as Holders of Record (HoR)	<ul style="list-style-type: none"> • Legal Package HoR at TA: Custodian or Product itself • TA does AML/KYC checks on Package HoR at TA and its AML/KYC procedures • Package HoR: AML/KYC checks on pot. underlying sub-holders of record
FATCA Identification Duties	Same conclusions like for "Holders of Record – Nominee Type" under 1d).
FATCA Reporting Duties	
FATCA Withholding Duties	
Other Impacts	<p>Remarks:</p> <ul style="list-style-type: none"> • For Fund of Funds the HoR is usually the Custodian of the Fund of Funds • Unit linked Product Providers would also follow the Nominee Type of Holders of Record Concept

1 g) For different Types of CSDs / ICSDs:

CSD Type	<p>FundSettle – Nominee Structure:</p> <ul style="list-style-type: none"> ▪ FundSettle: legal Holder of Record (HoR) at TA ▪ Accounts have designation e.g. FundSettle/ABC ▪ TA: AML/KYC checks on FundSettle ▪ TA: Check FundSettle's AML/KYC procedures ▪ TA: No checks on FUS underlying HoR, just blacklist review including designations ▪ FundSettle: AML/KYC checks on underlying HoR ▪ Cash payments between TA and FundSettle 	<p>FundSettle – Direct Registration:</p> <ul style="list-style-type: none"> ▪ Model used where no contract between FundSettle & Fund or TA ▪ FundSettle underlying Client: legal (HoR) at TA, FundSettle handling the entire registration process for the Client (based on POA) ▪ Accounts have designation e.g. FundSettle/ABC ▪ TA: AML/KYC checks on FundSettle underlying HoR, but all docs provided by FundSettle ▪ FundSettle: AML/KYC checks on underlying HoR ▪ Cash payments between TA and FundSettle

FATCA Identification Duties	Same conclusions like for Distributor type "Nominee" under 1a).	<ul style="list-style-type: none"> • Euroclear would prefer to handle the full FATCA identification of the investor, reporting and withholding to follow only 1 streamlined process for all their clients with the TAs
FATCA Reporting Duties		<ul style="list-style-type: none"> • As the investor is directly registered with the TA, the TA will also require the full FATCA documentation and based on that potentially want to follow <u>his</u> streamlined process on FATCA identification, reporting and withholding
FATCA Withholding Duties		<ul style="list-style-type: none"> • So question is: Based on which contractual clause can the FATCA identification, withholding & reporting be outsourced?
Additional Fund documentation potentially impacted	<ul style="list-style-type: none"> • Potentially SLA FundSettle - TA 	<ul style="list-style-type: none"> • Operational procedures to be updated
Other:	<ul style="list-style-type: none"> • Where FundSettle is used for Order Routing only: Same conclusions like for Order Routing apply (see analysis of Aug 2, 2012 session) • Euroclear FundSettle Nominee is a subsidiary of Euroclear Bank. AML is outsourced to Euroclear Bank. • To be clarified: Will Euroclear FundSettle Nominee and Euroclear Bank both need to be PFFIs or are they considered an EAG or ...? • For the current discussion assume they will both be PFFI or equivalent. 	

CSD Type	Vestima: <ul style="list-style-type: none"> ▪ Clearstream/Vestima: Legal HoR at TA, ▪ TA: AML/KYC checks on Clearstream and its procedures ▪ TA: No checks on Clearstream's underlying HoR ▪ Clearstream: AML/KYC checks on underlying HoR ▪ Cash payments between TA and Clearstream ▪ TA receives orders directly from Vestima 	CSD "Classic" (Clearstream / Euroclear): <ul style="list-style-type: none"> ▪ CSD legal HoR at TA ▪ TA: AML/KYC on CSD (incl. procedures) ▪ TA: Basic AML/KYC on Order Givers (GAFI equ., not for 2ndary market) ▪ TA: Full AML/KYC on Order Givers (non-equ., not for 2ndary market) ▪ CSD: AML/KYC on participant (incl. procedures) ▪ CSD: All payments are issued to the direct participants (so TA and direct CSD HoR)
FATCA Identification Duties	Same conclusions like for Distributor type "Nominee" under 1a).	<p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate AML/KYC duties including FATCA identification <p><u>Transfer Agent:</u></p> <ul style="list-style-type: none"> • Will include FATCA checks to AML/KYC review on CSD (and review AML/KYC & FATCA procedures where applicable) <p><u>CSD (if PFFI):</u></p> <ul style="list-style-type: none"> • Will include FATCA checks to AML/KYC review of any participants and verify if they are PFFI

<p>FATCA Reporting Duties</p>		<p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate reporting duties to its service providers <p><u>Transfer Agent (if delegated reporting by the fund):</u></p> <ul style="list-style-type: none"> • Will report on CSD if applicable (no reporting on underlying participants or Order Givers) <p><u>CSD:</u></p> <ul style="list-style-type: none"> • If FATCA compliant will report on his sub-register • If not FATCA compliant will be reported by Transfer Agent
<p>FATCA Withholding Duties</p>		<p><u>Fund or its Management Company:</u></p> <ul style="list-style-type: none"> • Will in most cases delegate withholding duties to its service providers <p><u>Transfer Agent (if delegated withholding by the fund):</u></p> <ul style="list-style-type: none"> • If CSD is PFFI: pay full amount to CSD. If CSD is NPFFI: Withhold on CSD <p><u>CSD if PFFI:</u></p> <ul style="list-style-type: none"> • Will withhold on any participant which is NPFFI
<p>Additional Fund documentation potentially impacted</p>	<ul style="list-style-type: none"> • Operational procedures to be updated • On boarding clients procedures to be updated with FATCA clauses • SLA where applicable 	
<p>Other:</p>	<ul style="list-style-type: none"> • Please note: All payments are issued only to direct participants of the CSD (no payments from CSD to underlying Order Givers) • CSD's might consider to impose on Order Givers (who are authorized to use the participant's CSD account) 	

1 h) For Paying Agents:

<p>Paying Agent Type</p>	<p>Luxembourg Definition of Paying Agent:</p> <ul style="list-style-type: none"> ▪ Paying Agent as Cash Correspondent of the Fund's TA ▪ TA: Instructs Payments via Paying Agent ▪ Paying Agent: Facilitates / executes Payments ▪ Paying Agent: has no information on payee, all information is with payer (TA), no AML/KYC responsibility 	
<p>FATCA Identification Duties</p>	<ul style="list-style-type: none"> • Paying Agent will not have any Identification, Reporting or Withholding responsibility as he will not have any information on the payee 	
<p>FATCA Reporting Duties</p>	<ul style="list-style-type: none"> • All Identification, Reporting and Withholding Duties will stay with the Payor • Paying Agent has pure payment execution role and is otherwise passive • Please note that this analysis is focusing on the Luxembourg Definition of a Paying Agent 	

FATCA Withholding Duties	
Other:	<u>Note:</u> This analysis is not considering other Definitions of Paying Agent like Representative Agent, Banca Corrente (Italy), Facilities Agent (UK) – these are covered in other sections of this analysis, as they would follow the same logic like Nominee/Distributor section of this analysis

1 i) For Stock Exchanges:

Stock Exchanges – All Fund Types	Stock Exchanges – ETFs (Exchange Traded Funds) / non-ETFs: <ul style="list-style-type: none"> ▪ ETF / non-ETF listed via Stock Exchange ▪ Market Maker or its Custodian: Direct HoR at TA ▪ Final Investor’s Bank (or Bank’s Custody): HoR at TA ▪ Market Maker and Final Investor’s Bank trade via Stock Exchange ▪ All Stock Exchange Activity settles via CSD / ICSD
FATCA Identification Duties	<ul style="list-style-type: none"> • All cash settles via CSDs / ICSDs, similar to CSD / ICSD analysis • So please refer to CSD and ICSD section of this document for all FATCA duty analysis
FATCA Reporting Duties	
FATCA Withholding Duties	
Other:	<u>Note:</u> ETF’s / non-ETF’s settling direct with the Transfer Agent and not the Stock Exchange / CSD are identified and handled as direct holders with the Transfer Agent

1 j) For Providers using the Post Ident Procedure:

Post Ident Procedure	Post Ident Procedure <ul style="list-style-type: none"> ▪ Post office in Germany are authorized to identify ID documentation (normally only relevant for retail clients) ▪ Post Office co-signs Application Form to confirm the proper client identification ▪ The co-signed Application Form is then passed over
FATCA Identification Duties	<ul style="list-style-type: none"> • Similar to the “Advice & Identification” Distributor Case (See earlier section) • Post office takes over review of original identification documentation • Will potentially need to amend the Application Form for the investor to confirm he is not US (indicia or actual green card) – this section would need to be signed by the investor
FATCA Reporting Duties	
FATCA Withholding Duties	
Other Impacts	<u>Note:</u> Overall case of Post Ident Procedure similar to “Advice & Identification” Distributor Case

3) Due Diligence

Please note that Due Diligence rules apply to Reporting and Non-Reporting FI, unless otherwise specified, on any new individual or new entity accounts (i.e. opened on or after 1st July 2014) as well as on pre-existing ones, according to defined thresholds.

a) The Minimis Rule

Q.1 What is the so-called "de Minimis Rule"?

Annex I of the Luxembourg IGA provides a threshold below which Financial Institutions may elect not to perform the account's holder identification. This applies to the pre-existing obligations; i.e. those accounts held as of 30 June 2014,

Pre-existing obligation (accounts)	Balance or Value
Individual	≤50.000 USD until it reaches 1MIO US
Entity	≤250.000 USD until it reaches 1MIO USD

There are other thresholds applicable for certain specific types of financial accounts (insurance contracts, depository accounts, etc.), which are not mentioned here due to limited relevance for the fund industry. Please refer to the ABBL Guidance notes on the implementation of FATCA rules in Luxembourg for more details.

i) Individual

(1) New Individual account

Q.1 What must be considered as new individual account?

We must consider as new individual account any new account which is opened for a new individual client on or after 1 July 2014.

If an account holder holds at least one pre-existing account, the new account will be linked to the pre-existing one(s) and considered as a single pre-existing account. In this case, no further due diligence is therefore required, provided pre-existing accounts rules are applied (including change of circumstances).

All new individual accounts that do not fit the above definition must be identified without any ambiguity and fully documented.

Q.2 How the account opening for individual accounts must be handled on or after July 1, 2014?

The Financial Institution must obtain a self-certification which may be part of the account opening documentation that allows it to determine whether the account holder is a U.S. citizen or resident in the United States for tax purposes.

The Financial Institution must confirm the reasonableness of such self-certification based on the information obtained in connection with the account opening, including any documentation collected for regular AML/KYC purposes.

If the self-certification establishes that the account holder is a U.S. citizen or resident in the U.S. for tax purposes, the Reporting Financial Institution must:

- treat the account as a U.S. Reportable account
- obtain a self-certification that includes the account holder's U.S. TIN (Tax Identification Number) which may be an IRS Form W-9 or other similar agreed form.

Failing to obtain this certification, the Reporting Financial Institution must report the client's name and his/her date of birth.

If the self-certification does not attest a U.S. status, the Reporting Financial Institution can rely on an enhanced account opening form (see paragraph 3) b. (v) Self-certification and validity of documentation – question 3) or on a form W-8 BEN.

The self-certification must be provided at the account opening or within the 90 days after the end of the calendar year in which the account exceeds for the first time the de minimis threshold, namely 50.000 U.S.D (if the Financial Institution has opted to apply the de minimis rule)

Once a self-certification is obtained from a client, there is no need to obtain a self-certification for each new subsequent account provided that there is an appropriate procedure to track any change in circumstance and the client commits itself to notify the Financial Institution of any change in circumstances which may affect his U.S. or non U.S. status.

Q.3 How should a new account which fails to provide the necessary documentation be treated?

An account holder who does not provide the required documentation will be considered as U.S. reportable.

(2) Closing account – Dormant account – Recalcitrant Account

Q.1 What is the definition of a dormant account?

A Financial Institution may apply its regular AML/KYC operating procedures to determine whether an account is deemed dormant. If technically possible, then the Financial Institution could classify an account as dormant when:

- ✓ the account holder has not initiated a transaction on the account, or any other linked account belonging to the same investor, in the period defined in the Financial Institution's internal dormant account procedure, and
- ✓ the account holder has not communicated with the Financial Institution within the period defined in the Financial Institution's internal dormant account procedure at the time of the review of the account(s).

Q.2 What is the relevance of a dormant account for a fund domiciled in Luxembourg?

It is not necessary to distinguish a dormant account from an active account, as a dormant account will be subject to the same FATCA due diligence procedures as the active account.

Q.3 What is the definition of a recalcitrant account?

A recalcitrant account is an account of a pre-existing individual investor who fails to provide sufficient self-certification or official documentation to determine whether the account is a U.S. reportable account or not, as a result of the FATCA due diligence procedures. Furthermore, it includes an investor whose classification may change due to change of circumstances and who fails to provide information mentioned in the previous sentence.

Typically, what is defined as a recalcitrant account under the FATCA final regulations is defined as a U.S. reportable account under the Model 1 IGA of Luxembourg. With respect to new accounts, the FFI cannot accept an individual investor who fails to provide sufficient information and documentation at account opening.

Q.4 What is the relevance of a recalcitrant account for a fund domiciled in Luxembourg?

Under article 4 of the Luxembourg IGA the Reporting Financial Institution is not required to withhold tax on or to close a recalcitrant account, providing that such account be treated as U.S. reportable account.

Q.5 When must a registered account of a fund domiciled in Luxembourg be closed?

The Luxembourg IGA does not require that a Reporting Financial Institution domiciled in Luxembourg closes any recalcitrant accounts it holds, providing that such accounts are treated as U.S. reportable accounts.

Providing that the binding legal documents of a fund that has accessed one of the Non-Reporting FI statuses specify precisely the types of investor allowed to subscribe into the fund, it may be possible for the fund to close the U.S. reportable accounts; this will allow the fund to retain the status of a Non-Reporting FI.

(3) *U.S. indicia*

Q.1 What are the Due Diligence obligations to identify any new U.S. investor? Which Due Diligence steps have to be performed?

General rule:

The Reporting Financial Institution must detect any of the following "U.S. indicia" within the information collected for FATCA purposes (e.g. self-certification) or for other regulatory purposes (AML / KYC) at the opening or maintenance of each account:

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

Q.2 What are the indicia that are required for New Individual Accounts that will drive U.S. status?

If any U.S. indicia are discovered during a due diligence process, the Reporting Financial Institution must treat the account as "reportable".

If during the account holder identification process, any U.S. indicia are detected but the account holder claims not to be a U.S. person, additional documentation may be collected from the account holder as described in the U.S. Treasury Regulations to proof U.S. status (W9 or equivalent) or non- U.S. status (e.g. declaration why U.S. citizenship has not been accepted although place of birth in the United States etc.).

Please refer to section Self-Certification and validity of documentation below for more details.

(4) *Aggregation and Thresholds*

Q.1 When do the aggregation rules apply?

Under the Luxembourg IGA, pre-existing individual accounts with an aggregate balance, which does not exceed U.S.D 50,000 as of 30 June 2014 are exempt from review (optional de minimis approach), irrespective of the presence of documentation evidencing U.S. status.

Application of the aggregation rules should allow applying the relevant due diligence procedure applicable to the account.

In the case of Lower Value Account (defined as accounts with a balance of more than U.S.D 50,000, but which does not exceed U.S.D 1 million), the due diligence approach follow the electronic record searches.

In the case of High Value Accounts (defined as accounts which does exceed U.S.D. 1 million), different identification due diligence procedures must be applied in order to determine whether the account holder is U.S. or not.

All financial accounts maintained by the Reporting Financial Institution or by a Related Entity should only be aggregated to the extent existing computerized systems allow for the aggregation of accounts.

The fund / management company can decide to review

- ✓ its investors' entire base, whatever their account holdings' amount is or
- ✓ only the investors whose holdings are above the FATCA de minimis thresholds (U.S.D 50,000 as of 30 June 2014) for an individual.

Therefore, during this review, the fund or the management company may request the Transfer Agent to look in detail at each investor to identify possible "U.S. indicia" and their holdings.

(5) *Self-certification and validity of documentation*

Q.1 Can self-certification be relied upon under the Luxembourg IGA and in order to establish the U.S. status of pre-existing individual account holders?

Self-certification is an integral part of the process of identification of the U.S. status of the individual account holder.

When performing a review of pre-existing individual account holders, self-certification can cure certain U.S. indicia found, provided it is supported by official documentary evidence of the account holder's foreign status.

Official documentary evidence is generally understood to be a certificate of residence or a valid and signed identification document issued by a governmental body.

Depending on the identified U.S. indicia, further documentary evidence of the account holder's non-U.S. status will be required.

Please refer to the table below

U.S. Indicia	Documentation Required
<i>U.S. citizenship or lawful permanent resident</i>	<p>1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W 8 form or other similar agreed form)</p> <p>and</p> <p>2. Non-U.S. passport or other government-issued identification establishing foreign citizenship.</p> <p>US citizenship can only be cured by a copy of the Certificate of Loss of U.S. nationality.</p> <p>Permanent residence can only be cured in case of change of circumstances where the Account holder is re-documented accordingly.</p>
<i>U.S. birth place</i>	<p>1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8 or other similar agreed form);</p> <p>and</p> <p>2. Non-U.S. passport or other government-issued identification establishing foreign citizenship.</p> <p>US citizenship can only be cured by a copy of the Certificate of Loss of U.S. nationality</p> <p>and</p> <p>3. 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 U.S. citizenship at birth.</p>
<i>U.S. residence or mailing address</i>	<p>1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8; or other similar agreed form);</p> <p>and</p> <p>2. Non-U.S. passport or similar Documentary evidence establishing non-U.S. status</p>
<i>Current U.S telephone number being the only phone number associated with the account</i>	<p>1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8 or other similar agreed form);</p> <p>and</p> <p>2. Documentary evidence establishing non-U.S. status.</p>
<i>Current U.S telephone number but there is also a non-U.S. phone number associated with the account</i>	<p>1. Obtain W-8; or other similar agreed form (self-certification);</p> <p>or</p>

U.S. Indicia	Documentation Required
	2. Documentary evidence establishing non-U.S. status
<i>Standing instructions to transfer funds to an accounts maintained in the U.S.</i>	1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8 or other similar agreed form); and 2. Documentary evidence establishing non-U.S. status
<i>Only address on file is "in care of" or "hold mail" or U.S. P.O. Box</i>	1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8; or other similar agreed form); or 2. Documentary evidence establishing non-U.S. status
<i>Power of Attorney or signatory authority granted to person with U.S. address</i>	1. Obtain a self-certification that the investor is neither a U.S. citizen nor U.S. resident for tax purposes (W-8 or other similar agreed form); or 2. Documentary evidence establishing non-U.S. status

Examples of acceptable "documentary evidence" as mentioned in the above table are;

- a) certificate of residence issued by a public body in the country where the account holder claims to be resident;
- b) a non-U.S passport, **or**
- c) an equivalent non- U.S identification document establishing foreign citizenship, **or**
- d) any document listed into Luxembourg KYC attachment to QI Agreements approved by the IRS.

Q.2 What is the required format of the self-certification?

The format of self-certification can be:

- ✓ an official IRS form, e.g. W8-BEN, W9 etc. or "Substitute" of such form recognized by the IRS or,
- ✓ an equivalent statement duly signed and dated by the individual, which provides the following minimum information:
 - ✓ Name and permanent residential address of the individual
 - ✓ Place of birth
 - ✓ Clear indication of the country or countries where the individual is resident for tax purposes including the relevant tax identification number(s)

The information on foreign tax residency can prove useful in light of future reporting requirements for other jurisdictions.

Q. 3 Will there be an official template for a self-certification?

Currently there is no agreed official template for self-certification in Luxembourg as an alternative to the IRS W8-BEN form.

Therefore, Financial Institutions should independently assess what is the format they intend to choose, provided this bears sufficient and reliable information on the account holder's identity, tax residency and on his U.S. or no U.S. status.

Q.4 How can self-certification be achieved for new account holders?

For new individual accounts, self-certification may be obtained by including new declaration fields within the account opening form to provide additional confirmations on non-residence in the U.S. for tax purposes, non-U.S. citizenship, non-U.S. place of birth, etc.

Although not specifically required by FATCA for non-U.S. citizens, it is recommended to obtain the account holder's country of taxation and tax identification number.

Q.5 Under what conditions can self-certification be accepted? How long is it valid?

Self-certification can only be relied upon if it does not conflict with any other information held by the Financial Institution through the relationship manager or collected as part of its due diligence and AML/KYC processes, and provided the FI does not have "reason to know" that it is incorrect..

It is expected that self-certification used as part of the FATCA due diligence process will not be subject to expiration as long as the FI has:

- ✓ No knowledge, **and**
- ✓ "no reason to know" that they are no longer reliable, **and**
- ✓ no U.S. indicia have been identified as part of the on-going monitoring of the account holder status, or
- ✓ obtained new written notification (through an updated IRS form or equivalent) of change in status from the account holder.

For joint accounts, self-certification should be obtained from all parties.

Once a Financial Institution has applied enhanced review procedures to a High Value Account, such account is not required to be subject to the annual threshold review. However, it is important to note that change in circumstances, regular AML/KYC refresher programs or other circumstances can of course trigger new reviews of such accounts.

(6) *Annual review*

Q.1 Are Financial Institutions obliged to perform a review of the status of pre-existing individual accounts annually?

The IGA does not specifically require such a review of each account's status. However, an annual review of thresholds is required to identify any previously Low Value Accounts or accounts below U.S.D 50.000 threshold that may have reached the U.S.D 1.000.000 threshold and have to be subject to the High Value Accounts review procedures.

A pre-existing individual account that the Reporting Financial Institution decided not to review and to classify as a non-reportable account³ will have to be reviewed only when the balance as of December 31, 2015 or any subsequent calendar year exceeds U.S.D 1.000.000. The Reporting FI will have 6 months to complete its enhanced review procedures. The account should then be considered as a High Value Account.

Once a Reporting Financial Institution has applied the enhanced review procedures to a High Value Account, it is not required to repeat the annual review. However the Reporting Financial Institution should always obtain a confirmation from the Relationship Manager for these accounts on an annual basis.

Q.2 What are the annual obligations concerning new individual accounts?

No New Individual Accounts that own interests in an Investment Entity are exempt from being reviewed and identified upon opening (e.g. even if below USD 50.000). No annual review is needed for other new individual accounts.

(7) *Change in circumstances*

Q.1 What is a change in circumstances?

A change in circumstances can be identified by the Reporting Financial Institution when:

- ✓ Receiving documentation during the on-going or periodic review
- ✓ Receiving information from the investor or from public source
- ✓ Performing annual threshold re-testing
- ✓ Relationship manager becomes aware of any information leading the Reporting Financial Institution to identify at least one U.S. indicia

Q.2 What event qualifies as a change in circumstances for an individual account?

Change of:

- ✓ Citizenship
- ✓ Tax residence
- ✓ Unambiguous indication of place of birth
- ✓ Mailing or residence address
- ✓ Care of or hold mail address
- ✓ Telephone number
- ✓ Standing instructions to transfer funds
- ✓ Power of attorney or signatory authority

Q.3 How should investors be informed about the timeline for providing the required documentation in case of change in circumstances?

The mandatory timelines for the submission of information and any relevant documentation by the investor should be included in the application form to be read and signed by the client.

³ Pre-existing individual account =< USD 50.000 as of June 30, 2014 and Cash Value Insurance Contract or Annuity Contract =< 250.000 as of June 30,2014

Q.4 What are the specific timelines and actions required under a change in circumstances?

The investor should notify the Reporting Financial Institution within 30 days of such change in circumstances (as per U.S. Treasury Regulations, page 217), if the change makes any information in a certificate or other documentation incorrect.

The Reporting Financial Institution has 90 days to obtain the relevant documentation after being notified or having identified the change in circumstances.

Note that for pre-existing accounts that were not previously High Value Accounts and where the threshold exceeds \$1M; the Reporting Financial Institution has 6 months to perform an enhanced review, including if necessary by obtaining the relevant documentation, following the last day of the calendar year in which the account becomes a High Value Account.

Q.5 What are the consequences if the Reporting FI is notified of a change in circumstances more than 90 days after the change occurred?

The Reporting Financial Institution will take into consideration the notification date to trigger the change in circumstances timeline.

Q.6 Should the account be blocked when a change in circumstances has been identified and until reception of the pending documentation?

No, FATCA rules do not require the account to be blocked when documentation is pending.

Q.7 What are the consequences if the investor fails to provide the required document(s) within the defined timeline?

The investor's account should be treated as a U.S. reportable account.

Nevertheless, it is recommended to inform the Fund / Management Company of any account becoming U.S. reportable account due to non-reception of the documentation for decision on how to handle the investor and any further action that may be required.

In addition, should the Fund wish to obtain or maintain a Non-Reporting Financial Institution status, an account being assessed as U.S. reportable may be obstructive. In such case the Fund/Management Company might decide to close this account or to update the Fund status.

Q.8 In case the Reporting Financial Institution sets up a new account for an existing investor currently assessed as out of scope/non U.S. account, and where U.S. indicia is identified, should the Reporting Financial Institution consider the latter to be a change in circumstances applicable to all existing accounts?

Yes; the change in circumstances is applicable to all existing accounts owned by the investor and is subject to the relevant procedure to be followed in such cases.

Q.9 In case a non U.S. account/out of scope account places a subscription of more than \$1M, or if there is a dividend distribution or the market causes the account to breach the above mentioned threshold during the year, is the reporting FI required to act immediately and apply the change in circumstances procedure or can it wait for the annual threshold re-testing change in circumstances?

Annual re-testing is sufficient.

(8) Escalation management

Q. 1 When should the Transfer Agent (TA) report clients to the Fund / Management Company?

In general terms the Fund / Management Company should conduct regular oversight and monitoring of its client base and the TA and receive regular reporting of all clients and their classification.

Cases of escalation of individual or exceptional cases by the TA for decision should be minimal. These may include scenarios where the TA holds incomplete details or conflicting information or evidence and is unable to determine the client status.

Typically these cases will become reportable clients; however the Fund / Management Company may want to be notified. The need to escalate is important as the Fund / Management Company acting as the Reporting Financial Institution is held liable in the event of any irregularities or failure to meet requirements. Consequently it should be ensured that the TA has a contractual obligation to escalate any ambiguous or exceptional cases.

Likewise the Fund / Management Company should ensure it has a clear Service Level Agreement or other legal agreement in place with the TA to help meet its obligations.

This should include:

- ✓ Precise details on the type of cases the TA should escalate and when;
- ✓ Any restrictions on client types not permitted to invest under the FATCA status chosen by the fund;
- ✓ Requirements for regular reporting; i.e. what categories or classification of clients does the Fund / Management Company want to be notified of and review itself (absence of client response / reportable clients, etc.);
- ✓ Fund / Management oversight of TA Procedures and controls and oversight / monitoring of the TA;
- ✓ Process for contacting individual clients; e.g. does the Fund or the Management Company require prior notification?

b) Entity

i) New Entity account

Q.1 What should be considered as a new entity account?

We must consider as new entity account any new account which is opened by for a new entity client on or after 1 July 2014.

If an account holder holds at least one pre-existing account, the new account with the same FFI will be linked to the pre-existing one(s) and considered as a single pre-existing account. In this case, no further due diligence is therefore required, provided pre-existing accounts rules are applied (including change of circumstances).

Q.2 How should the account opening be handled as from July 1, 2014?

Specified U.S. Person

If the entity account holder is a U.S. person based on U.S. indicia (U.S. address, place of incorporation etc.), the Reporting Financial Institution must obtain a self-certification and verify whether the account holder is or not a Specified U.S. Person.

The self-certification can be a W9 and, in any case, should bear a U.S. Tax identification number.

If the account holder is a Specified U.S. Person, the account will need to be reported as a U.S. account. If it is not a Specified U.S. Person then the account is not reportable.

A FATCA partner Financial Institution or an Foreign Financial Institution which is compliant under the U.S. Treasury Regulations

In order to identify a FATCA Partner Financial Institution or other Partner Jurisdiction Financial Institution, the Reporting Financial Institution can rely on the account holder's GIIN or other information that is publicly available or is in the possession of the Reporting Financial Institution.

If the account holder is a Financial Institution that provides a GIIN, the Financial Institution must check the GIIN number on the published IRS Foreign Financial Institution list.

If it is a Financial Institution located in an IGA Model 1 or 2 country, no other action is required and the account is not subject to reporting unless the Financial Institution is treated by the IRS as a Non-Participating Financial Institution due to significant non-compliance.

For all other cases when the information maintained indicates that the entity accounts holder is a FFI, (PFFI, DCFFI, etc. under final regulations) the Financial Institution must obtain a self-certification from the account holder.

An active or passive NFFE

In order to identify an active NFFE, the Financial Institution can rely on information that is publicly available or in possession of the Financial Institution (e.g. local activity codes) that clearly indicates that the NFFE is engaged in an active trade or business other than that of a Financial Institution.

If the account holder is neither a U.S. person, nor a Financial Institution nor an active NFFE, it is likely either an exempted beneficial owner or a passive NFFE. In both cases, a self-certification must be obtained to determine the final status.

If the account holder is a passive NFFE, the Financial Institution must identify the controlling person as determined under AML/KYC local procedures and must determine whether any such person is a citizen or resident of the United States on the basis of their self-certification.

If at least one controlling person is a U.S. person, the passive NFFE becomes reportable (i.e. a "U.S. Reportable Account").

A NPFFI

An account held by a NPFFI cannot be considered as a U.S. reportable account. Nevertheless, payments made in favour of this NPFFI will have to be reported.

Taking all of the above, where the information maintained indicates that the entity accounts holder is a FFI, the entity must be treated as a NPFFI.

ii) Closing account – Dormant account – Recalcitrant Account

Please refer to section ii) above within section Due Diligence, as the answers there apply equally to entity accounts.

iii) U.S. indicia

New entities can be classified in various categories, depending on their activity and location. Their identification can be based on publicly available or internal information (active NFFE, IGA Financial

Institutions), the GIIN for PFFI, or on a self-certification to be received from client and assessed by the Financial Institution, depending on their FATCA status.

The is no notion of “de minimis” rule regarding new entities

Q.1 Which Pre-existing accounts are not required to be reviewed identified or reported?

Entity account holders with aggregated balances below \$ 250,000 as of June 30th 2014 can benefit from the de Minimis rule.

Q.2 Which Pre-existing accounts are required to be reviewed identified or reported?

To be reviewed and identified:

- ✓ Accounts in excess of \$ 250,000 as of June 2014
- ✓ Accounts not exceeding \$ 250,000 as of June 2014 but exceeding \$ 1,000,000 as at the end of 2015 or any subsequent calendar year.

To be reported:

- ✓ U.S. reportable account: held by one or more Specified U.S. Persons or by a Passive NFFE with, at least one U.S. resident or citizen controlling person or held by a Non-Participating FI.

Q.3 Which new accounts do not require review, identification or reporting?

There are no threshold exemptions. However, where a Financial Institutions maintains credit card accounts, those are excluded if and only if policies and procedures are implemented to prevent an account balance to exceed \$ 50,000.

Q.4 Why are new “other” accounts required to be reviewed, identified or reported?

To determine if account holder is:

- ✓ A Specified U.S. Person,
- ✓ A FATCA Partner Financial Institution or other Partner Jurisdiction Financial Institution.
- ✓ A PFFI, a deemed-compliant Financial Institution or an exempt beneficial owner
- ✓ An active NFFE or Passive NFFE (and, if passive, whether it has any Controlling Person who are U.S. citizen or resident)
- ✓ An NPFFI

All the above based on GIIN or other publicly available documentation or a self-certification

Q.5 What type of documentation is required for an FFI?

New entities can be classified in various categories, depending on their activity and location. Depending on their FATCA status, identification can be based on publicly available or internal information (Active NFFE, IGA Financial Institution, GIIN for PFFI and RDCFFI, or on a self-certification to be received from client

(See section v) Self- certification and validity of documentation) (See section (i) New entity Accounts, Q2 FATCA partner FI or an FFI which is compliant under the U.S. Treasury Regulation).

iv) Aggregation and Thresholds

Q.1 When do the aggregation rules apply?

Under the Luxembourg IGA, pre-existing accounts with an aggregate balance below U.S. \$ 250,000 for entities are exempt from review (optional “de minimis” approach), irrespective of the existence of documentation evidencing U.S. status.

Application of the aggregation rules under both the contractual and IGA approach should allow for the relevant due diligence procedure to be followed in line with the account status as of 30 June 2014 (which we shall call “de minimis”, Lower Value Accounts defined as accounts with a balance of more than U.S. \$ 250,000 or Higher Value Accounts of U.S. \$ 1 million and more). If the account benefits from the de minimis rule, there are no requirements to identify or report it until it has become a High Value Account upon second threshold reviews. For lower value or high value accounts, identification due diligence procedures must be applied in order to determine whether the account holder is U.S. or not. The aggregation rules must be applied where existing computerized systems cater for the aggregation of accounts.

The fund / management company can decide to review their entire investor database, irrelevant of the level of the account holding, or only select those investors whose holdings are above the FATCA de minimis thresholds (U.S. \$ 50,000 for a pre-existing individual account, U.S. \$ 250,000 for a pre-existing entity account). This means that the fund or management company may request the TA to perform a detailed review of all investors to identify possible “U.S. indicia” and NPFIs.

v) Self- certification and validity of documentation

Q.1 Can self-certification be relied on under IGA Model 1 in order to establish the U.S status of pre-existing entity account holders or of the controlling person of a passive NFFE?

Self-certification is required in certain cases in order to verify the U.S status of pre-existing entity accounts or of controlling persons of entities, and can be used in conjunction with other information avoidable to the FI in other cases.

In particular, it is used to:

- a) Verify the “Specified U.S person” status or “non-specified U.S. person” of the entity account holder, when indicia have been identified during the review exercise of pre-existing accounts;
- b) If the account holder is an Financial Institution in an IGA country , verify the Financial Institution is on the IRS official list and if yes the entity is an reporting participating Financial Institution or Non-Reporting FI
- c) If the account holder is an Financial Institution in a non-IGA country, a GIIN should be asked or self-certification to be obtained
- d) If the entity is an NFFE, self-certification may be used to determine whether the NFFI is passive and if so, self-certification is required to determine whether there is a U.S. controlling person, if the account exceeds 1 million thresholds.

Q.2 What is the required format of self-certification for new entity accounts?

IRS Form or other similar agreed forms

Q.3 How long self-certification remain valid?

It is intended that all forms of self-certification than a Financial Institution uses as part of its FATCA due diligence process will not be carry an expiration date, as long as :

- ✓ the Reporting FI has no knowledge and “no reason to know” that they are no longer reliable and

- ✓ there is no U.S. indicia being identified as part of the on-going monitoring of the account holders status, **or**
- ✓ there is a written notification (through an updated IRS form or equivalent) of the status change from the authorised representatives/controlling person of the entity account holder.

vi) Annual review

Q.1 Is the Financial Institution required to perform an annual review of pre-existing entity accounts?

A pre-existing entity account that the Reporting Financial Institution decides not to review and to classify as a non-reportable account⁴ will need to be reviewed only when the balance as of December 31, 2015 or any subsequent calendar year end exceeds U.S. \$ 1.000.000. The Reporting Financial Institution will have 6 months to complete the review procedures applicable to pre-existing entity accounts.

No annual review applies to other pre-existing entity accounts. The Luxembourg IGA does not explicitly require obtaining a self-certification from a Passive NFFE with an account balance or value that does not exceed U.S. \$ 1.000.000 as of June 30, 2014 but that would exceed that threshold afterwards.

Q.2 Do new entity accounts require an annual review?

No annual review is required as no threshold exemptions apply to new entity accounts; no annual review of the threshold is required either.

vii) Change in circumstances

Q.1 What is a change in circumstances?

A change in circumstances can be identified by the Reporting Financial Institution when:

- ✓ A circumstance changes the entity's FATCA status, or potentially changes it (where the FI can no longer rely on the documentation or information previously relied upon).
- ✓ Receiving information from the client or from public sources which leads to the identification of at least one U.S. indicia or otherwise changes or potentially changes to entity's FATCA status;;
- ✓ Performing a review of the account triggered by an annual threshold review;
- ✓ Documentation provided has since expired.

Q.2 What should be considered as a change in circumstances for a company?

Change of:

- ✓ Place of incorporation
- ✓ Address
- ✓ FATCA status
- ✓ Ownership

Note that the breach of the year-end U.S.D 1.000.000 threshold, which changes or potentially changes the entity's FATCA status, for pre-existing accounts not reviewed under the "de minimis" rule, triggers the need for a review (although no per se a change of circumstances).

⁴ Account =< USD 250.000 as of June 30, 2014

Q.3 How should investors be informed about the change in circumstances timeline?

The mandatory timeline to receive information from the client of their change in circumstances and to obtain the relevant documentation should be clearly stated in the terms and conditions of in the application form and/or in the self-certification collected.

Q.4 What are the timelines and action to be observed where a change in circumstances?

The investor should notify the Reporting Financial Institution within 30 days of a change in circumstances if the change makes any information in a certificate or other documentation previously provided incorrect.

The Reporting Financial Institution has 90 days to obtain the relevant documentation after receiving notification from the investor or having identified the change in circumstances.

Note that for pre-existing accounts that were previously below the threshold for compulsory review,, if the threshold of USD 1,000,000 is exceeded at the subsequent year-end, the Reporting Financial Institution has 6 months from the last day of the calendar year in which the account becomes a high value account to perform the review, including if necessary to obtain the relevant documentation,

Q.5 What are the consequences if the Reporting Financial Institution is notified of the change in circumstances 90 days after the change occurred?

The Reporting Financial Institution will take into consideration the notification date (or earlier date at which the FI become aware of the change, if any) to trigger the change in circumstances timeline.

Q.6 What are the consequences if the investor does not provide the required document(s) within the defined timeline?

This depends from which new information has been received or discovered and if it has invalidated the documentation or information previously relied upon. For example, if the entity account presents now a U.S. entity indicia, it will be treated as a U.S. reportable account.

Nevertheless, it is recommended to inform the Fund / Management Company of any U.S. reportable account due to non-reception of the documentation, in order to obtain direction on how to handle the investor and any further steps that may be required.

In addition, in the event that the fund decides to obtain or maintain a Non-Reporting FI status, an account that is assessed as U.S. reportable account may be obstructive. In such case the Fund/Management Company might decide to close this account or to update the Fund/Management Company status.

If the entity now appears to be a FFI and there is insufficient evidence that it is not a FFI or that it is a compliant FFI, It will be treated as a NPFFI.

If the entity is a NFFE but there is no longer subject to evidence that it is active, it will be treated as passive and if there is insufficient evidence of it having no U.S. controlling person, it will be U,S, reportable.

Q.7 Should the account be blocked when a change in circumstances has been identified and the investor self-certification is pending?

No; U.S. Treasury Regulations and the Luxembourg IGA do not require that the account be blocked, however, the Reporting Financial Institution may nevertheless decide to do so.

Q.8 In case the reporting FI set up a new account for an existing investor currently assessed as out of scope/non U.S. account, and new U.S. indicia is identified, should the reporting FI consider this as a change in circumstances applicable to all existing accounts?

Yes; this information should be considered as a change in circumstances for all existing accounts belonging to the same investor.

Q.9 In case a non U.S. account/out of scope account place a subscription of more than \$1M or if there is a dividend distribution, or due to the market conditions an account breaches the above mentioned threshold during the course of the year, should the Reporting Financial Institution immediately apply its change in circumstances procedure or can it wait until the annual threshold re-testing review?

The Reporting Financial Institution may wait until it performs its annual re-testing.

Q.10 Should the Reporting Financial Institution implement an on-going check on the IRS list of Financial Institution status to detect a change in circumstances (PFFI to NPFFI and vice-versa) or wait for the information?

Under FATCA rules the Reporting Financial Institution may rely on the client's responsibility to provide notification of any change in circumstances.

However, if a change of status appears in the IRS list of FFIs, it may be considered that a reasonably prudent person would become aware of this within a reasonable time and that a Reporting FI would therefore have "reason to know" the change within a reasonable time. Regular checks would therefore be recommended.

Furthermore, the Management Company may nevertheless request the TA to a regular independent check against the IRS list.

viii) Escalation management

Please refer to section viii) Escalation management under section a) Individuals as the answer applies equally to entity and individual accounts.

ix) Nominees (Financial Institutions)

Definition of Nominee

In this section, the term 'nominee' refers to a distributor who is the registered holder of a 'nominee' account on behalf of its underlying clients. The distributor is responsible for verifying the identity of its underlying clients for AML purposes.

Please refer to section (3) Distribution Channels for questions and answers on nominee.

c) Roles and responsibilities

Q.1 Where the account is held in the name of the final investor, not the introducer, and the AML / KYC is performed by the introducer, can the FATCA due diligence be contractually delegated by the Financial Institution to the third party?

Please refer to section (3) Distribution Channels for the answer.

Q.2 Which entity is primarily responsible for implementing the FATCA compliance framework (i.e. FATCA processes/procedures and client checklists)?

Financial Institutions might make a use of service providers for the performance of various duties like Custody, Fund Accounting or Transfer Agency – in such scenario there might be agreements of delegation of certain duties. This might differ from case by case and is dependent on the offering of the service providers. In such delegation cases, the ultimate responsibility however will still remain with the Financial Institution (which in the case of Investment Funds will be either the fund itself or in certain cases its Management Company). A Financial Institution can rely on third party service providers to contractually perform FATCA duties on its behalf, but ensuring that the obligations are fulfilled remains the ultimate responsibility of the Financial Institution who remains liable for any failure to meet FATCA obligations.

Q.3 Which entity should develop the FATCA wording/clauses that will be included in the fund legal documentation and account opening forms (including self-certification)? Is it the fund /fund manager or shall the service provider assist?

It has to be noted that the owner of the fund's legal documentation is the fund or its Management Company – and as such the responsibility of any updates would be clear. As aforementioned, the Fund or the Management Company is responsible to fulfil its obligations under FATCA even though sponsoring/delegation to third parties is allowed. Therefore, it remains the responsibility of the board of the fund (where the fund has legal personality, e.g. a SICAV) or of the Management Company (where the fund is a FCP) to ensure that the appropriate FATCA wording/clauses are included in the Fund legal documentation and account opening forms. Where there is delegation of tasks to comply with FATCA rules to a third party, it is therefore recommended that the Fund / Management Company reviews and approves any wording or clauses that the service provider may propose. Note that any delegation should not conflict or exempt other legal or regulatory requirements or contractual arrangements.

Q.4 What should the Financial Institution do in case of conflict of information?

In case any details already held by a Financial Institution conflicts with any statements or self-certification, or the Financial Institution has reason to believe that the self-certification or other documentary evidence is incorrect, it may not rely on that evidence or self-certification. A Financial Institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts a reasonably prudent person would know this to be the case.

Q.5 Which are the responsibilities of the third party service provider holding nominees/ omnibus accounts?

Please refer to section (3) Distribution Channels for the answer.

Q.6 What are the fund managers vs. distributor (nominee) reporting responsibilities?

Please refer to section (3) Distribution Channels for the answer.