

# FATCA explanatory booklet for Entities

## Self-Declaration forms

### Introduction

This booklet is intended to provide general information and guidance in relation to the self-certification forms for entities (attached to the account opening forms) for the purposes of the US Foreign Account Tax Compliance provisions of the Hiring Incentives to Restore Employment Act (FATCA).

This booklet is intended as general guidance only and does not contain sufficient information for you to determine your FATCA classification. In this regard, you should seek independent professional advice. You should not place any reliance on this booklet in making a decision on your classification under FATCA. By reading this booklet, the reader and any entity for or on whose behalf the reader is acting, accept and agree that under no circumstances shall ENBD, its employees or its contractors be liable for any direct, indirect, incidental, special, punitive or consequential damages that may result in any way from your reliance on the information provided herein.

This document was not intended, or written to be used, for the purposes of avoiding United States federal, state or local tax penalties.

**(THIS IS THE NEW REVISED VERSION 1.1 REPLACING PREVIOUS VERSION 0.1)**

## **Classification of entities under FATCA**

For the purposes of FATCA and on the instructions of the Central Bank of UAE all entities must be classified into specific categories. We have set up below a general overview of certain classifications relevant to entities.

### **1. Financial Institution as that term is defined for FATCA purposes**

#### **a. FI in an IGA country**

Broadly, a financial institution (FI) in a country that has entered into a FATCA intergovernmental agreement (IGA) is one that falls within one of more of the following categories:

##### **(i) Depository institution**

An entity that accepts deposits in the ordinary course of a banking or similar business.

##### **(ii) Custodial institution**

An entity that holds, as a substantial portion of its business, financial assets for the account of others (20% gross income test for the three preceding calendar years).

##### **(iii) Investment entity**

An entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities for or on behalf of a customer:

- 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.

##### **(iv) Specified Insurance Company**

An entity that is an insurance company (or the holding of an insurance company) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.

b. FI in a non-IGA country

Broadly, a financial institution (FI) in a country that has not entered into an IGA is one that falls within one of more of the following categories:

(i) Depository institution/custodial institution/specified insurance company

Broadly the definition of these entities is similar to the one set up under 1.a. above.

(ii) Investment entity

In general terms, an entity would be an investment entity, if it falls within any **one or more** of the following categories:

a) An entity that primarily conducts as a business one or more of the following activities on behalf of a customer:

- 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.

b) The entity's gross income is primarily attributable to investing, re-investing or trading in financial assets and the entity is managed by a depository institution, a custodial institution, a specified insurance company or an investment entity described at (i) above.

c) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, re-investing or trading in financial assets.

(iii) Holding company or treasury centre

Broadly, in order to be a foreign financial institution, the holding company or treasury centre must be part of an expanded affiliated group (see Appendix 3) that includes a depository institution, custodial institution, specified insurance company or an investment entity under b) or c) above, or is formed in connection with or availed by, among others, a collective investment vehicle, mutual fund or PE fund or similar investment vehicle.

A holding company is one whose primary activity consists of holding (directly or indirectly) all or part of the outstanding shares in one or more members of its expanded affiliated group.

A treasury centre is an entity which primary activity is to enter into investment, hedging and financing transactions with or for members of its expanded affiliated group for certain specified purposes.

- c. Non-reporting financial institutions as defined in the UAE IGA

See Appendix 1

- d. deemed compliant under FATCA Regulations

See Appendix 2

## **2. Specified U.S. Person**

You will be a “Specified U.S. Person” if you are:

- a. A partnership or corporation organized in the United States or under the laws of the United States or any State of the United States,

- b. A trust if:

- (i) A court within the United States would have authority to render orders or judgments concerning substantially all issues regarding administration of the trust, and

- (ii) One or more U.S. persons have the authority to control all substantial decisions of the trust,

Or

- c. An estate of a decedent that is a citizen or resident of the United States.

You will not be a “Specified U.S. Person” in any of the following circumstances:

- a. You are a corporation the stock of which is regularly traded on one or more established securities markets. See Appendix 3.

- b. You are a corporation and a member of the same expanded affiliated group as a corporation whose stock is regularly traded on an established securities market.
- c. You are a wholly owned agency or instrumentality of the United States.
- d. You are a State of the United States, the District of Columbia, a U.S. territory, a political subdivision or any wholly owned agency or instrumentality of a U.S. State or Territory.
- e. You are any organization exempt from taxation under Section 501(a) of the U.S. Internal Revenue Code (broadly U.S. charities) or an individual retirement plan as defined in section 7701(a) (37) of the U.S. Internal Revenue Code.
- f. A bank as defined in section 581 of the U.S. Internal Revenue Code (broadly, a U.S. bank).
- g. A real estate investment trust (REIT) as defined in section 856 of the U.S. Internal Revenue Code.
- h. A regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or an entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940.
- i. Any common trust fund as defined in section 584(a) of the U.S Internal Revenue Code.
- j. Any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or is described in 4947(a) (1) of the U.S. Internal Revenue Code.
- k. A dealer in securities, commodities or derivative financial instruments that is registered as such under the laws of the United States or any State of the United States.
- l. A broker as defined in section 6045(c) of the U.S. Internal Revenue Code.
- m. A tax-exempt trust under a plan that is described in sections 403(b) or 457(b) of the U.S. Internal Revenue Code.

### 3. Exempt beneficial owner

We have set out below the categories of exempt beneficial owner. Note that the below does not set out all of the conditions that must be met in order for exempt beneficial owner status to apply. If you intend to sign a self-certification form on the basis that you are an exempt beneficial owner, you must satisfy yourself that you fall within one of the relevant categories and that all of the applicable requirements have been met. This may necessitate obtaining advice from a professional adviser.

#### a. Governmental Entity

Any non-U.S. government, any political subdivision of a non-U.S. government, (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a non-U.S. government or any one or more of the foregoing.

This category is comprised only of the integral parts, controlled entities (broadly, entities that are 100% owned and controlled by a non-U.S. government or a government entity), and political subdivisions of a non-U.S. government.

#### b. International organisation

Any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) that meets all of the following conditions:

- (i) It is comprised primarily of non-U.S. governments,
- (ii) It has in effect a headquarters agreement with the UAE or other foreign government or is recognized as an intergovernmental or supranational organization under foreign law, and
- (iii) The income of the organisation does not inure to the benefit of private persons.

#### c. Central bank

A bank that is by law or government sanction the principal authority, other than the government of the UAE itself, issuing instruments intended to circulate as currency.

#### d. Treaty qualified retirement fund

A fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such income tax

treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

e. Broad participation retirement fund

A fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered. Note: a list of conditions must be met to qualify under this category, one of which is that no single beneficiary has a right to more than 5% of the fund's assets.

f. Narrow participation retirement fund

A fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered. Note: a list of conditions must be met to qualify under this category, one of which is that the fund must have 50 or fewer participants.

g. Pension fund of an exempt beneficial owner

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

h. Investment entity wholly owned by exempt beneficial owners

An Entity that is a Financial Institution solely because it is an investment entity, provided that each direct holder of an equity interest in the entity is an exempt beneficial owner, and each direct holder of a debt interest in such entity is either a depository institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

i. Governments of U.S. territories

A person or entity which constitutes a government of a U.S. territory (i.e. one of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands).

- j. Fund formed under a plan similar to a section 401(a) plan

A fund formed under a pension plan that would meet the requirements of section 401(a) of the U.S. Internal Revenue Code otherwise than the requirement that the plan be funded by a trust created or organized in the United States.

- k. Investment vehicles exclusively for retirement funds

A fund established exclusively to earn income for the benefit of one or more retirement funds described at d, e, f or j.

## **4. Non-financial foreign entity (NFFE)**

### **4.1 Definition**

An NFFE is an entity which is either:

- (i) A non-U.S. entity that is not a “foreign financial institution” under the U.S. FATCA Regulations or is not a financial institution established in the UAE or a country which has signed a FATCA intergovernmental agreement, or
- (ii) Broadly an entity established and operated exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes, or is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare. Other conditions also apply – see 4.2 (xi).

We have described below, in broad terms, the three types of NFFEs under FATCA

### **4.2 Active NFFE**

We have set out below the categories of active NFFE under the UAE IGA. Broadly, an entity will be an active NFFE under the UAE IGA if it falls within one the following categories:

- (i) Less than 50% of the entity’s gross income for the preceding calendar year is passive income and less than 50% of the entity’s assets held during the preceding calendar year are assets that produce or are held for the production of passive income.
- (ii) The entity’s stock is regularly traded on an established securities market.



- (iii) The entity is a Related Entity (see Appendix 3) of an entity which is traded on an established securities market.
- (iv) The entity is organised in a U.S. Territory (i.e. one of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands) and all of the entity's owners are bona fide residents of that U.S. Territory.
- (v) The entity is one of the following:
  - The entity is a government (other than the U.S. government), a political subdivision of such a government, or a public body performing a function of such government or a political subdivision thereof.
  - A government of a U.S. Territory (i.e. one of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands).
  - An international organisation.
  - A non-U.S. central bank of issue.
  - An entity wholly owned by one or more of the entities described in this paragraph (v).
- (vi) Substantially all of the entity's activities consist of holding (in whole or in part) the outstanding shares of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution. The entity must not function or hold itself out as an investment fund (e.g. 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.
- (vii) The entity is not yet operating a business and has no prior operating history, but is investing capital into assets with the intention of operating a business other than that of a financial institution; provided that the NFFE will not qualify for under this category 24 months after its date of initial organization.
- (viii) The entity has not been a financial institution in the last five years, and is in the process of liquidating its assets, or the entity is reorganising with the intention to continue or recommence operations in a business other than that of a financial institution.

- (ix) The entity primarily engages in financing and hedging transactions with or for Related Entities that are not financial institutions, and the entity does not provide financing or hedging services to any entity that is not a Related Entity. The entity must not be part of a group of Related Entities that is primarily engaged in a business of a financial institution.
- (x) The entity is an excepted NFFE as defined in the U.S. FATCA Regulations (see Appendix 4).
- (xi) The entity meets all of the following requirements:
  - (a) Either:
    - The entity is established and operates in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes, or
    - The entity is established and operates in its jurisdiction of residence and is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operating exclusively for the promotion of social welfare.
  - (b) The entity is exempt from income tax in its jurisdiction of residence
  - (c) The entity is has no shareholders or members who have a proprietary or beneficial interest in its income or assets.
  - (d) Neither the laws of the country where the entity is resident or its formation documents permit any of its income or assets to be distributed to or applied for the benefit of any private person or non-charitable entity, other than:
    - Pursuant to the conduct of its charitable activities,
    - As payment of reasonable compensation for services rendered, or
    - As payment representing the fair market value of property it has purchased.
  - (e) The applicable laws of the country where the entity is resident or its formation documents require that, on its liquidation or dissolution, all of its assets are distributed to a government entity or other non-profit organization, or are transferred to the government of its jurisdiction of residence or any political subdivision thereof.

#### **4.3 Direct reporting non-financial foreign entity (NFFE)**

Broadly, a direct reporting NFFE is a NFFE that has elected to register for FATCA purposes directly with and reporting information regarding its owners to the U.S. Internal Revenue Service and obtained a Global Intermediary Identification Number (GIIN).

#### **4.4 Passive NFFE**

An entity is a passive NFFE if it is neither:

- a. An active NFFE or a direct reporting NFFE,  
Nor
- b. A withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

An entity that is a passive NFFE is required to disclose to Emirates NBD certain details of its U.S. Controlling Persons (if any). U.S. Controlling Persons means the natural U.S. persons who exercise control over an entity. Please note the following:

- a. In the case of a trust, a Controlling Person means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust.
- b. In the case of a legal arrangement other than a trust, a Controlling Person will mean the persons in equivalent positions to those described at c above.

#### **5. The entity does not fall within any of the above categories**

An example of why an entity may not fall within any of the above categories includes where an entity is a U.S. person falling within any of the following:

- a. A corporation the stock of which is regularly traded on one or more established securities markets.
- b. Any corporation that is a member of the same expanded affiliated group as a corporation described in (a) above.
- c. The United States or any wholly owned agency or instrumentality thereof.
- d. Any State of the United States, the District of Columbia, 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.

- e. 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.
- f. Any bank as defined in section 581 of the U.S. Internal Revenue Code.
- g. Any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code.
- h. 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).
- i. Any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code.
- j. 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.
- k. 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.
- l. A broker as defined in section 6045(c) of the U.S. Internal Revenue Code.

## Appendix 1

### **Non-reporting financial institution under Annex II of the UAE IGA**

The following is a list of non-reporting financial institutions (other than exempt beneficial owners) which are treated non-reporting financial institutions, i.e. qualify as deemed compliant entities, under Annex II of the UAE IGA.

Please note that there are conditions which must be met in order for any of the following to apply. If you self-certify as a non-reporting financial institution, you should ensure, together with your professional advisers where appropriate, that the relevant conditions (not all of which are set out below) are met.

#### **1. Financial institution with a local client base**

A number of conditions must be met in order to fall within this category including a requirement that the financial institution is licensed and regulated as a financial institution in the UAE, must not have any place of business (including Related Entities with certain exceptions) outside the UAE and must not solicit customers outside the UAE.

In addition, the financial institution must be required under UAE law to identify resident account holders for certain purposes. Further, at least 98% of financial accounts by value must be held by UAE residents. The institution must also not have policies and procedures that discriminate against opening accounts for certain U.S. persons who are UAE residents.

#### **2. Local Bank**

The financial institution must satisfy a number of conditions including being regulated under UAE law as a bank or a non-profit cooperative credit or organization. Its business must consist primarily of receiving deposits from and making loans to unrelated retail customers. Further the institution must have no fixed place of business (including a Related Entity outside the UAE) and must not solicit customers outside the UAE. In addition, the institution must not have more than US\$175 million on its balance sheet, and, total assets of the institution and its related entities must not exceed US\$500 million.

#### **3. Financial institution with only low value accounts**

A number of conditions must be met, in order to qualify for this status. An overview of these conditions is set out below.

The institution must be established in the UAE and may not be an Investment Entity (as defined under FATCA). Further, no financial account maintained by the institution or any Related Entity may have a balance or value in excess of US\$50,000. In addition, the institution must not have more than \$50 million in assets on its balance sheet, and the

institution and any Related Entities (see Appendix 3), taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

#### **4. Qualified credit card issuer**

A number of conditions must be met, in order to qualify for this status. An overview of these conditions is set out below.

The institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer.

Further, beginning on or before 1 July 2014, the Financial Institution must implement policies and procedures to either prevent a customer deposit in excess of US\$50,000, or to ensure that any customer deposit in excess of US\$50,000 is refunded to the customer within 60 days.

#### **5. Trustee documented trust**

A UAE established trust to the extent that the trustee is a reporting U.S. financial institution, reporting Model 1 FFI or participating FFI, and such trustee conducts all required FATCA reporting.

#### **6. Sponsored investment entity**

This category applies to an investment entity established in the UAE that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust under U.S. Treasury Regulations. Another entity must have agreed with investment entity to act as a sponsoring entity.

The sponsoring entity must have registered as such with the IRS and must be authorized to act on behalf of the sponsored entity for FATCA purposes. Further the sponsored entity must perform all due diligence, withholding, reporting and other FATCA requirements on behalf of the sponsored entity. In addition, the sponsoring entity must register the sponsored entity when required.

#### **7. Sponsored controlled foreign corporation**

A controlled foreign corporation is an entity established under UAE law where more than 50% of the total combined voting power of its shares or the total value of the shares in the company is considered owned by U.S. shareholders on any day during the taxable year of the entity and the entity is wholly owned, directly or indirectly, by a reporting U.S. financial institution that agrees to act or causes an affiliate to act as a sponsoring entity with respect to the entity. This category does not apply where the entity is a qualified intermediary,

withholding foreign partnership, or withholding foreign trust under U.S. Treasury Regulations.

In addition, the controlled foreign corporation has to share a common electronic account system with the sponsoring entity enabling it to obtain certain FATCA relevant information.

The sponsoring entity must have registered as such with the IRS and must be authorized to act on behalf of the sponsored entity for FATCA purposes. Further the sponsored entity must perform all due diligence, withholding, reporting and other FATCA requirements on behalf of the sponsored entity. In addition, the sponsoring entity must register the sponsored entity when required.

## **8. Sponsored closely held investment vehicle**

A sponsored closely held investment vehicle is a financial institution which qualifies as such solely because it is an investment entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust under U.S. Treasury Regulations.

Further, the sponsoring entity must be a reporting U.S. financial institution, reporting Model 1 FFI or a participating FFI authorized to act on behalf of the financial institution. Further the sponsored entity must perform all due diligence, withholding, reporting and other FATCA requirements on behalf of the sponsored entity. In addition, the sponsoring entity must register the sponsored entity when required.

A sponsored closely held investment vehicle must not hold itself out as an investment vehicle for unrelated parties. Further, in order to qualify as a sponsored closely held investment vehicle, broadly, no less than 20 individuals should own all of the debt interests and equity interests in the financial institution.

## **9. Investment advisers and investment managers**

This category applies to an investment entity established in UAE that qualifies as a financial institution solely because it manages portfolios, renders investment advice to and acts on behalf of, or manages portfolios for, and acts on behalf of, customers for the purposes of investing, managing, or administering funds in the name of the customer with a financial institution other than a non-participating financial institution.

## **10. Collective investment vehicle**

This category applies to an investment entity established in UAE that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through one or more of the following: exempt beneficial owners, active NFFEs, U.S. persons that are not specified U.S. persons, or financial institutions that are not non-participating financial institutions.

## Appendix 2

### Deemed compliant entities under the U.S. FATCA Regulations

Entities listed below and meeting the relevant requirements, should qualify as deemed compliant entities for FATCA purposes.

Please note that there are conditions which must be met in order for any of the following to apply. If you self-certify as a non-reporting financial institution, you should ensure, together with your professional advisers where appropriate, that the relevant conditions (not all of which are set out below) are met.

#### 2.1 Registered deemed compliant entities

a. Local FFI

Broadly the same conditions apply under the FATCA Regulations as under the UAE IGA for financial institutions with a local client base (see Appendix 1 category 1).

b. Non-reporting members of participating FFI groups

An FFI that is a member of a participating FFI group is described in this paragraph if it meets certain requirements including implementing policies to ensure that it transfers accounts held by U.S persons, recalcitrant account holders or non-participating FFIs to an affiliate that falls within one of a number of specified FATCA categories, closes the account or becomes a participating FFI.

c. Qualified collective investment vehicles

A number of conditions must be met in order to fall within this category including that the FFI must be an FFI solely because it is an investment entity, and it is regulated as an investment fund or its manager is regulated in respect of the investment fund. Further, each holder of record of direct debt interests in the FFI in excess of \$50,000, and of any direct equity interests in the vehicle must fall within one of a number of specified entities or individuals.

In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group have to fall within certain categories.

d. Restricted funds

This category applies to an entity that meets certain requirements including:



- The entity is a financial institution solely because it is an investment entity, and it is regulated as an investment fund or its manager is regulated in respect of the investment fund.
- Interests issued directly by the fund are redeemed by or transferred by the fund rather than sold by investors on any secondary market.
- Interests that are not issued directly by the fund are sold through specific entities and according to specific requirements.

In addition, the entity has to comply with certain requirements regarding account opening and management. In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group have to fall within certain categories.

e. Qualified credit card issuer

The conditions to be a qualified credit card issuer are similar to those under the UAE IGA (see Appendix 1 category 4). However, there is no requirement for the credit card issuer to be a UAE entity.

f. Sponsored investment entity and sponsored controlled foreign corporations

The conditions to be a sponsored investment entity or a sponsored controlled foreign corporation are similar to those under the UAE IGA (see Appendix 1 categories 6 and 7). However, under the FATCA Regulations, there is no requirement for the sponsored entities to be established in the UAE.

## 2.2 Certified deemed compliant entities

a. Non-registering local bank

The conditions to be a non-registering local bank are similar to those under the UAE IGA (see Appendix 1 category 2). However, there is no requirement that the entity is licensed and regulated under UAE law.

b. FFIs with low value accounts

The conditions to be an FFI with low value accounts are similar to those under the UAE IGA (see Appendix 1 category 3). However, there is no requirement that the entity is established under UAE law.

c. Sponsored, closely held investment vehicles

The conditions to be an FFI with low value accounts are similar to those under the UAE IGA (see Appendix 1 category 8). However, there is no requirement that the entity is established under UAE law.

d. Limited life debt investment entities

In order to fall in this category an entity must be an investment entity which existed on 17 January 2013 and which was formed and operated for the purpose of purchasing specific types of debt interests and holding those assets subject to reinvestment only under prescribed circumstances until maturity. A trust indenture or similar agreement must require the entity to pay to its investors all amounts that they are due to receive no later than a set date or period following the maturity of the last asset.

Further, substantially all assets must be debt instruments or interests in such instruments and all payments to investors must be cleared or transferred through an entity that is FATCA compliant.

This deemed compliant status only applies where the trustee or another person is not authorized to fulfill the obligations of a participating FFI on behalf of the entity.

e. Investment advisers and investment managers

This category applies to an investment entity that qualifies as a financial institution and does not maintain financial accounts.

## Appendix 3

### Expanded Affiliated Group

Broadly, an expanded affiliated group means one or more chains of entities connected through ownership with a common parent, provided that: (i) the common parent corporation owns directly more than 50% of the total voting power and value of the stock of at least one other corporation; and (ii) stock representing more than 50% of the total voting power and value the stock of each other corporation is owned directly or indirectly by one or more of the other corporations. An expanded affiliated group also includes any entity that is not treated as a corporation for U.S. federal income tax purposes if members of the group own more than 50% (by value) of the capital or profits interest (in the case of a partnership) or more than 50% (by value) of the beneficial interests (in the case of a trust) of the entity.

### Regularly traded on an established securities market

Broadly, under the FATCA Regulations, interests of a company are treated as "regularly traded on an established securities market" if more than 50% of the company's voting shares and total shares must be listed on an exchange that is officially recognized and supervised by a governmental authority in which the market is located during the previous calendar year and trades in the company's shares must take place (other than in *de minimis* quantities) on at least 60 days in the previous calendar year and total number of shares in each class traded during the year must be at least 10% of average number of shares in that class.

Broadly, under the UAE IGA, interests of a company are treated as "regularly traded on an established securities market" if there is a meaningful volume of trading with respect to the interests on an ongoing basis on an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

### Related Entities

An Entity is a "Related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote or value in an Entity. Notwithstanding the foregoing, the UAE may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group under FATCA.

## Appendix 4

### Excepted NFFEs under the U.S. FATCA Regulations

An overview of entities that will be treated as “excepted NFFEs” under U.S. FATCA Regulations is set out below.

Please note that there are conditions which must be met in order for any of the above to apply. You should ensure, together with your professional advisers where appropriate, that these conditions are met and that, in fact, you qualify for one of the below Excepted NFFE categories.

1. An NFFE that is a Qualified Intermediary, Withholding Partnership or a Withholding Trust, as these terms are defined for U.S. tax purposes.
2. A company whose shares are regularly traded on one or more established securities markets for the calendar year.
3. A corporation in the same expanded affiliated group of an entity at 2 above.
4. An entity that is incorporated or organized under the laws of any U.S. territory and which is directly or indirectly owned by one or more *bona fide* residents of the U.S. territory of which the entity is organized.
5. An Active NFFE as defined in the U.S. FATCA Regulations. Broadly, an Active NFFE is an NFFE if less than 50% of the entity’s gross income for the preceding taxable year is passive income and less than 50% of the assets held by the entity during the preceding taxable year are assets that produce or are held for the production of passive income.
6. The entity is a holding company, treasury centre or captive finance company that is a member of a nonfinancial group (as defined under FATCA), or is a start-up company, an entity liquidating or emerging from bankruptcy, or is a non-profit organisation. In all cases, certain conditions must be met to be treated as an entity qualifying under this paragraph 6.
7. The entity is a direct reporting NFFE, i.e. registers with and, among others, provides information to the IRS on its substantial U.S. owners.
8. The entity is a sponsored direct reporting NFFE, i.e. one that is a direct reporting NFFE and another entity has agreed to act as a sponsoring entity for FATCA purposes.

Please note that there are conditions which must be met in order for any of the above to apply. You should ensure, together with your professional advisers where appropriate, that these conditions are met and that, in fact, you qualify for one of the above Excepted NFFE categories.