



Dubai International  
Financial Centre

# THE DIFC COMMON REPORTING STANDARD (DIFC CRS)

## GUIDANCE NOTES

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### 1. INTRODUCTION

- 1.1. This guidance (“Guidance”) is issued by the DIFC Registrar of Companies (“ROC”) pursuant to Article 11(3)(a)(iii) of the [Common Reporting Standards Law , DIFC Law No. 2 of 2018](#) (the “Law”) in relation to the information gathering and reporting obligations imposed on Reporting Financial Institutions under the Law and the [Common Reporting Standards Regulations 2018](#) (the “Regulations”), collectively referred to as the “DIFC CRS” throughout this Guidance. For informational purposes, the Law and Regulations were amended in July 2020 to ensure that the [Common Reporting Standard](#) (“Standard”) issued by the Organisation for Economic Cooperation & Development (“OECD”), is formally adopted in the DIFC and is being applied consistently across the UAE.
- 1.2. The ROC, for the purposes of the DIFC CRS is appointed as the Relevant Authority under Article 10(1) of the Law and administers the provisions of the Law for all DIFC entities. The Law also sets out the objectives, functions and powers of the ROC as the Relevant Authority under the DIFC CRS.
- 1.3. In addition, the [Operating Law, DIFC Law No. 7 of 2018](#) (the “Operating Law”), sets out the role, objectives, powers and functions of the ROC, which regulates all legal entities (both financial and non-financial) incorporated or registered in the DIFC, in accordance with the legislation administered by the ROC. The Operating Law refers to certain objectives and functions of the Registrar which relate to the exchange of information and are relevant to the DIFC CRS. Accordingly, one of the ROC’s objectives is to ensure that all DIFC firms comply with applicable laws relating to the exchange of information<sup>1</sup>, such as the DIFC CRS. Further, one of the functions of the ROC is to prescribe procedures and requirements relating to legislation administered by the ROC, including for regulation relating to the exchange of information<sup>2</sup>, under the DIFC CRS.
- 1.4. Although the reporting requirements under the DIFC CRS primarily apply to financial services entities that are regulated by the DFSA, because the ROC is the Relevant Authority under the DIFC CRS, certain non-financial services entities may also be required to report.
- 1.5. This Guidance may be updated from time to time. Any changes to this Guidance or the obligations of DIFC firms under the DIFC CRS will be notified via the DIFC CRS website. However, it is the responsibility of firms to keep themselves apprised of any relevant changes.
- 1.6. This Guidance seeks to assist DIFC firms with certain practical aspects of the DIFC CRS. It is only indicative in nature and is supplementary to the DIFC CRS and the OECD Standard and the Commentaries on the CRS (“Commentary”)<sup>3</sup>. Accordingly, this Guidance is not all encompassing and is subject to the discretion of the ROC, in accordance with the provisions of the DIFC CRS and applicable law.
- 1.7. A term that is not defined in this Guidance, has the same meaning it has under the Law or the Regulations, as applicable.

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<sup>1</sup> Please see Operating Law, Article 7(1)(e).

<sup>2</sup> Please see Operating Law, Article 7(3)(a)(iii).

<sup>3</sup> This is any explanatory material made and published by the OECD for the purpose of assisting with the interpretation of the CRS and provides extensive commentary on the Standard.

### 2. BACKGROUND

- 2.1 The Foreign Account Tax Compliance Act (“FATCA”) was enacted in 2010 by the United States (“US”) Congress to target non-compliance by US taxpayers using foreign accounts. FATCA requires Foreign Financial Institutions (“FFIs”) to report to the US Internal Revenue Service (“IRS”) information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.
- 2.2 The United Arab Emirates (“UAE”) entered into a FATCA Inter-Governmental Agreement (“IGA”) with the US on 17 June 2015 (the “UAE FATCA IGA”). The full text of the IGA is available on the US Treasury website and on the UAE [Ministry of Finance website](#).
- 2.3 Following ratification of the IGA by the UAE Government in 2016, the UAE Ministry of Finance issued certain [supporting guidelines](#) which are available on its website and cited throughout this Guidance document.
- 2.4 Following on from the above, the OECD developed the Common Reporting Standard as a global reporting standard for the automatic exchange of information. It allows tax authorities to obtain a clearer understanding of financial assets held abroad by their residents, for tax purposes. The relevant CRS information on the OECD website is available at this [link](#).
- 2.5 The OECD together with G20 countries, and in close cooperation with the EU and other stakeholders has developed the “Standard for Automatic Exchange of Financial Account Information” or “the Standard”. This is a standardised automatic exchange model which builds on the UAE FATCA IGA to maximise efficiency and minimize costs.
- 2.6 The [OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters \(Second Edition\)](#) consists of the following four key elements:
- The Common Reporting Standard (the “CRS”) that contains due diligence rules for financial institutions to follow to collect and then report the information, that underpin the automatic exchange of financial information;
  - The Model Competent Authority Agreement (the “CAA”) that links the CRS to the legal basis for the automatic exchange of information, specifying the financial information to be exchanged;
  - The Commentaries that illustrate and interpret the CAA and the CRS; and
  - Guidance on technical solutions, including an XML schema to be used for exchanging the information and standards in relation to data safeguards and confidentiality, transmission and encryption.
- 2.7 The detailed Commentary, is an integral part of the Standard and is intended to illustrate or interpret its provisions, to ensure consistency in application across jurisdictions. UAE-based Financial Institutions may consult the OECD-issued documentation for clarifications and guidance as follows:
- [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#)
  - [Standard for Automatic Exchange of Financial Account Information in Tax Matters - Implementation Handbook](#)
  - [CRS FAQs](#).
- The above [documents](#) and information is published on the [OECD Website](#)
- 2.8 Accordingly, DIFC has adopted and implemented the Law and Regulations, which came into effect 14 March 2018 and is intended to support the UAE’s implementation of CRS and alignment with the OECD CRS framework.
- 2.9 While FATCA and CRS reporting obligations have significant similarities, it is important to

understand the nature of the reporting obligations under each of FATCA and CRS, including any differences that impact the entity's particular reporting obligations and specific DIFC legislative requirements.

- 2.10 When using this Guidance, please consider the reporting obligations of your Firm under FATCA and the CRS. As was the case for previous years, reporting for FATCA and CRS is required to be actioned via the ROC portal designed specifically for this purpose. The DIFC Portal is available at this [link](#).
- 2.11 Authorised Firms should continuously assess their obligations under FATCA, CRS and any DIFC specific legislation, and ensure compliance. This Guidance is meant to aid entities in the DIFC that are required to report under the DIFC CRS in understanding the requirements in view of the CRS, the OECD Commentaries and related FAQs.
- 2.12 It should be noted that this Guidance does not replace the need to take independent professional advice on the implementation of the DIFC CRS. It is the responsibility of each Authorised Firm to consult and seek advice from their own appropriate legal and other professional advisers.

### 3 THE DIFC CRS

3.1 In drafting the DIFC CRS consideration has been given to what steps can be taken to ease the burden faced by financial institutions while not conflicting with the purpose of the OECD CRS.

3.2 The following are some key points from the DIFC CRS:

3.2.1 **Article 4 of the Law** indicates that the DIFC CRS applies to:

- (a) any Reporting Financial Institution ("RFI") subject to the supervision of the Relevant Authority under this Law;
- (b) any Account Holder of a Reportable Account<sup>4</sup> held with an RFI subject to the supervision of the Relevant Authority under this Law; and
- (c) any other person to whom a provision is specified to apply.

3.2.2 **Articles 10 and 11 of the Law** set out the role, objectives and functions of the Relevant Authority, which is the ROC. The key objectives and powers of the ROC included but are not limited to:

- (a) Promoting good practices and transparency
- (b) Prevent contravention of the DIFC CRS
- (c) Draft regulations and guidance
- (d) Assist the UAE Government in complying with obligations under International Treaty, i.e., the UAE FATCA IGA, or any other agreement relating to the CRS to which the UAE is a party.

3.2.3 **Article 12 of the Law** sets out collecting, reporting and record keeping obligations of the RFIs, the key requirements being:

- (a) Having used appropriate systems and procedures in order to comply with the

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<sup>4</sup> "Reportable Account" has the meaning given to the term in Section III(E)(6) of the DIFC CRS Regulations.

DIFC CRS, the RFI must collect and report to the UAE Competent Authority (the UAE Ministry of Finance, "MOF") the information required in the Regulations using the ROC portal in the manner and on the dates prescribed in the Regulations under Section I, General Reporting Requirements.

- (b) keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and measures to obtain those records that the RFI obtains or creates for the purpose of complying with this Law, as set out in the Regulations under Section II, General Due Diligence Requirements.
- (c) provide and English translation of any records as necessary, and retain records in an electronically readable format for a retention period of six (6) years after the date of reporting the information.
- (d) prior to 28 February each year provide any Reportable Persons (as defined in the law), information regarding its reporting requirements to MOF.

3.2.4 **Section II(E) of the Regulations** provides that an RFI may use a service provider to undertake the due diligence requirements and the reporting obligations but states that those obligations remain the responsibility of the RFI.

3.2.5 **Sections II through VII of the Regulations** sets out the obligations for specific account types that RFIs must review and report on as follows:

- (a) Due Diligence for pre-existing individual accounts
- (b) Due Diligence for new individual accounts
- (c) Due Diligence for pre-existing entity accounts
- (d) Due-Diligence for new entity accounts
- (e) Special Due Diligence rules

## 4 TYPES OF RFIs

4.1 The following are the types of RFIs set out in the Standard and in the Regulations. A high level summary of the four types of RFIs is provided below. The Regulations should be referred to for the complete definitions.

4.1.1 **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business Financial Assets for the account of others.

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

4.1.3 **"Specified Insurance Company"** means any Entity that is an insurance company (or the holding company of an **insurance** company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

4.1.4 **"Investment Entity" means any Entity that:**

- (a) primarily conducts a business involving managing, investing, reinvesting or trading in Financial Assets on behalf of a customer; or
- (b) if the Entity is managed by an RFI referred to in (a) above.

More information on Investment Entity is provided below in 4.2

4.2 The Definition of "**Investment Entity**" is more complex and has a number of components. As such, further information is provided below<sup>5</sup>.

4.2.1 The Regulations at Section VIII subparagraphs (A)(6)(a) and (b) define an Investment Entity as any entity:

- (a) *that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:*
  - (i) *trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;*
  - (ii) *individual and collective portfolio management; or*
  - (iii) *otherwise investing, administering, or managing Financial Assets or money on behalf of other persons<sup>6</sup>; or*
- (b) *the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).*

*An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because that Entity meets any of the criteria in subparagraphs D(9)(d) through (g).*

4.2.2 The Investment Entities referred to in 4.2.1(a) above refer to certain types of financial services firms regulated by the DFSA.

4.2.3 However, the reference to Investment Entities in 4.2.1(b) are to certain non- financial entities ("NFEs") regulated by the ROC, that meet the criteria summarised below and set out in more detail in Commentary on Investment Entities<sup>7</sup>:

- (a) a gross income that is primarily attributable (i.e. 50% or more) to investing, reinvesting, or trading in Financial Assets; and
- (b) the entity is managed by another entity that is a:
  - (i) Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity;

<sup>5</sup> Detailed information is provided on Investment Entities in paragraphs 15 – 22 of the [Commentary on Section VIII](#).

<sup>6</sup> The [Commentary on Section VIII](#) states that such activities or operations do not include rendering non-binding investment advice to a customer.

<sup>7</sup> See paragraphs 17-22 of the [Commentary on Section VIII](#) Concerning Defined Terms.

- (ii) that acts for or on behalf of customers; and
- (iii) has discretionary authority to manage the NFE's assets (in whole or in part).

Where an Entity is managed by a mix of Financial Institutions, NFE or individuals, it is considered to be managed by an Investment Entity where at least one of the managing entities is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph 4.2.1(a).

4.2.4 An Entity may be an Investment Entity if it functions or holds itself out as:

- a collective investment vehicle;
- a certain type of fund<sup>8</sup>; or
- any similar investment vehicle established for the purpose of investing, reinvesting, or trading in Financial Assets<sup>9</sup>.

4.2.5 On the other hand, an Entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a type of real estate investment trust, is not an Investment Entity.

4.2.6 The following are examples of Investment Entities:

- Example 1 (Investment advisor): Fund manager is an Investment Entity as defined in the Regulations. Fund manager, among its various business operations, organises and manages a variety of funds, including Fund A, a fund that invests primarily in equities. Fund manager hires Investment advisor, an Entity, to provide advice and discretionary management of a portion of the Financial Assets held by Fund A. Investment advisor earned more than 50% of its gross income for the last three years from providing similar services. Because Investment advisor primarily conducts a business of managing Financial Assets on behalf of clients, Investment advisor is an Investment Entity as defined in the Regulations Section VIII(A)(6)(a). However, only the Investment Entity maintaining the Financial Accounts will be responsible for the reporting and due diligence obligations with respect to such Financial Accounts<sup>10</sup>.
- Example 2 (Entity that is managed by a Financial Institution): The facts are the same as in Example 1. In addition, in every year since it was organised, Fund A has earned more than 50% of its gross income from investing in Financial Assets. Accordingly, Fund A is an Investment Entity under the Regulations Section VIII(A)(6)(b) because it is managed by fund manager and investment advisor and its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets.

Further examples can be found under Paragraph 22 of the [Commentary on Section VIII](#) Concerning Defined Terms, Paragraph A – RFIs.

4.2.7 The following additional information may assist an Entity in determining whether its activities or operations for or on behalf of customers may be classified as an Investment Entity for the purposes of the DIFC CRS. An Entity licensed by the DFSA as an Authorised Firm that conducts activities (as set out in 4.2.2 above) as part of being licensed to conduct one or more of the following Financial

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<sup>8</sup> See paragraph 20 of the [Commentary on Section VIII](#) Concerning Defined Terms, Paragraph A – RFIs, for more information about the types of funds.

<sup>9</sup> See paragraph 23 to 25 of the [Commentary on Section VIII](#) Concerning Defined Terms, Paragraph A – RFIs, for more information about Financial Assets.

<sup>10</sup> See paragraphs 57-65 of the [Commentary on Section VIII](#) Concerning Defined Terms, Paragraph C – Financial Accounts, regarding applicable types of financial accounts.



Services may be classified as an Investment Entity for the purposes of the CRS Regulations. Such Financial Services include but are not limited to:

- (a) Dealing in Investments as Principal
- (b) Dealing in Investments as Agent
- (c) Managing Assets
- (d) Managing a Collective Investment Fund
- (e) Managing a Profit Sharing Investment Account
- (f) Providing Fund Administration
- (g) Operating a Crowdfunding Platform
  - (i) Property Investment Crowd Funding Platform<sup>11</sup>
  - (ii) Investment Crowdfunding Platform<sup>12</sup>
- (h) Operating an Employee Money Purchase Scheme<sup>13</sup>
- (i) Acting as the Administrator of an Employee Money Purchase Scheme<sup>14</sup>
- (j) Providing Trust Services with regard to:
  - (i) acting as trustee of an express trust; and/or
  - (ii) the provision of Trust Administration Services in respect of an express trust, in relation to:
    - A. the Financial Assets or money of the trust; and/or
    - B. where the trust has gross income primarily attributable to investing, reinvesting, or trading in Financial Assets and is managed by another Entity that is a Financial Institution.
- (k) Acting as Trustee of a Fund

4.2.8 Certain non-regulated entities may fall within the definition of an Investment Entity (as set out in 4.2.3 above). Such entities may include but are not limited to:

- (a) Investment Fund Vehicles
- (b) Single Family Office
- (c) Holding Company
- (d) Proprietary Investment Company (ie an Entity with a Commercial Licence that includes one or more Proprietary Investment activities).

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<sup>11</sup> Involves an indirect interest in real property via an SPV and falls within Investment Entity.

<sup>12</sup> Involves an investment made via a Share, Certificates, Debentures or Sukuk and falls within Investment Entity.

<sup>13</sup> Will be an Investment Entity unless it can demonstrate it falls within Broad Participation Retirement Fund; a Narrow Participation Retirement Fund or a Pension Fund of a Governmental Entity, International Organisation or Central Bank.

<sup>14</sup> Will be an Investment Entity unless it can demonstrate it falls within Broad Participation Retirement Fund; a Narrow Participation Retirement Fund or a Pension Fund of a Governmental Entity, International Organisation or Central Bank.

**5 CRS OPTIONS**

- 5.1 The CRS includes a number of options to which reference is made on pages 12 to 17 in the [CRS Implementation Handbook](#). There are a number of areas where the Standard provides options for jurisdictions to implement as suited to their domestic circumstances in order to provide for easier implementation, and reduce burdens, without impacting on the purpose or effectiveness of the CRS.
- 5.2 The UAE has opted for the “widest approach”, under which RFIs are required to perform due diligence procedures and report information on all accounts held by an account holder who is resident for tax purposes in a jurisdiction other than the USA or the UAE. The USA is excluded because jurisdictions will be reporting to the USA under FATCA

**UAE CRS / DIFC CRS Options**

- 5.3 The following table, available in the UAE FATCA IGA and the UAE CRS Guidance, summarises the permitted options and whether or not they have been implemented by the UAE and likewise implemented via the DIFC CRS.

Option	Comments
Alternative approach to calculating account balances	NO (see Appendix 1 for further information)
Use of other reporting period	NO
Filing deadlines	30 <sup>th</sup> June
Filing Nil Returns	YES
Allowing third party service providers to fulfil the obligations on behalf of the financial institutions	YES
Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts	YES
Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts	YES
Residence address test for Lower Value Accounts	YES
Exclusion from Due Diligence for Pre-existing Entity Accounts of less than \$250,000	YES
Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts	YES
Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process	YES
Currency translation	USE USD \$
Allow an RFI to treat certain new accounts held by pre-existing customers as a Pre-existing Account for due diligence purposes	YES
Expanded definition of Related Entity for Investment Entities	YES
Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	Removed (see Appendix 1 for further information)
Phasing in the requirements to report gross proceeds	NO (see Appendix 1 for further information)
<b>END</b>	

- 5.4 Details of each option listed in the above table that was implemented in the UAE is set out as follows, and corresponds to the relevant sections of the Regulations. Section 4.5 sets out the options that were not implemented by the UAE and which are not included in the DIFC CRS.

### ***General Due Diligence Requirements (Section II of the Regulations)***

#### 5.4.1 Use of other reporting period<sup>15</sup>

Reporting on a calendar year basis as is the practice under the UAE FATCA IGA will be required as set out in the Regulations as well. Please see Appendix 1 for further information as provided for in the Commentary.

#### 5.4.2 Filing of nil returns

The DIFC CRS allows for the option of filing of a nil return by an RFI to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period. "Reportable Account" has the meaning given to the term in Section III(D)(1) of the Regulations.

### ***Due diligence (Sections II - VII of the Regulations)***

#### 5.4.3 Allowing third party service providers to fulfil the obligations on behalf of the financial institutions<sup>16</sup>

Section II(E) of the Regulations provides for the option of allowing a third party service provider to fulfil reporting obligations on behalf of RFIs. Regardless of whether a third party service provider is appointed or not, the RFI remains responsible for fulfilling its obligations under the Law and Regulations irrespective of any outsourcing arrangements.

#### 5.4.4 Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts<sup>17</sup>

Section II(F)(1) of the Regulations allows an RFI to apply the due diligence procedures for New Accounts to Pre-existing Accounts. This means, for example, an RFI may elect to obtain a self-certification for all Pre-existing accounts held by individuals consistent with the due diligence procedures for New Individual Accounts.

In accordance with the CRS, where an RFI applies the due diligence procedures for New Accounts to Pre-existing Accounts, it may elect to apply such exclusion with respect to (1) all Pre-existing Accounts; or (2) with respect to any clearly identified group of such accounts (such as by line of business or location where the account is maintained), however, the rules otherwise applicable to Pre-existing Accounts continue to apply.

#### 5.4.5 Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts<sup>18</sup>

Section II(F)(2) of the Regulations allows an RFI to apply the due diligence procedures for High Value Accounts to Lower Value Accounts.

An RFI may choose this option in order to avoid applying the due diligence procedure for High Value Accounts when the value of the account balance of a Lower Value Account exceeds \$1 million at the end of a subsequent calendar year.

**"Lower Value Account"** means a Pre-existing Individual Account with an aggregate balance or value as of 31 December 2016 that does not exceed USD1,000,000.

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<sup>15</sup> CRS Section 1, subparagraphs A(4) through (7); Commentary on Section 1, paragraph 15

<sup>16</sup> CRS: Section II, paragraph D; Commentary on Section II, paragraph 6-7

<sup>17</sup> CRS: Section II, paragraph E; Commentary on Section IV, paragraph 8

<sup>18</sup> CRS: Section II, paragraph E; Commentary on Section II, paragraph 8

“**High Value Account**” means a Pre-existing Individual Account with an aggregate balance or value that exceeds USD1,000,000 as of 31 December 2016, or 31 December of any subsequent year.

### 5.4.6 Residence address test for Lower Value Accounts<sup>19</sup>

Sections III(B)(1) and IX(A)(2) of the Regulations provides an RFI the option to determine an Account Holder’s residence based on the residence address provided by the account holder, as long as the address is current and based on Documentary Evidence.<sup>20</sup>

The DIFC CRS defines Documentary Evidence in Section VIII(E)(6) of the Regulations as any of the following:

- (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the Account Holder claims to be a resident;
- (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes;
- (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised; or
- (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator’s report.

If, however an RFI has relied on the residence address test described in Section IIIB(1) of the Regulations and there is a change in circumstances that causes the RFI to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the RFI must obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the RFI cannot obtain the self-certification and new Documentary Evidence within the relevant calendar year or 90 calendar days of discovering such change in circumstances (whichever is later), the RFI must apply the electronic record search procedure described in Section III B(2) – (6) of the Regulations.

### 5.4.7 Optional Exclusion from Due Diligence for Pre-existing Entity Accounts of less than \$250,000<sup>21</sup>

Section V(A) of the Regulations allow an RFI to exclude from its due diligence procedures, pre-existing Entity Accounts with an aggregate account balance/value of \$250,000 or less, as of a specified date. If the aggregate account balance/value exceeds \$250,000, at the end of a subsequent calendar year, the RFI must apply the due diligence procedures to identify whether the account is a Reportable Account, in accordance with Section V(B).

If this option is not adopted, an RFI must apply the due diligence procedures to all

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<sup>19</sup> CRS: Section II, paragraph E; Commentary on Section II, paragraph 8

<sup>20</sup> CRS Section III, subparagraph B(1); Commentary on Section III, subparagraph 7- 13

<sup>21</sup> CRS Section V, paragraph A; Commentary on Section V, subparagraph 2-4

Pre-existing Entity Accounts.

### 5.4.8 Alternative documentation procedure for certain cash value insurance contracts or annuity contracts<sup>22</sup>

Section VII(B) of the Regulations allow an RFI to treat a group Cash Value Insurance Contract or Annuity Contract that is issued to an employer or individual employees, as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee, certificate holder or beneficiary, provided that certain conditions are met.

These conditions are:

- (a) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five (25) or more employees/certificate holders;
- (b) the employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1 million.

This is provided because an RFI does not have a direct relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence.

The term "Group Cash Value Insurance Contract" means a cash value insurance contract that

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

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

### 5.4.9 Allowing financial institutions to make greater use of existing Standardised Industry Coding Systems for the due diligence process<sup>23</sup>

Section VIII(E)(6) of the Regulations states that with respect to a Pre-existing Entity Account, RFIs may use as Documentary Evidence any classification in the RFI's records with respect to the Account Holder that was determined based on a Standardised Industry Coding System, that was recorded by the RFI, consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the RFI prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the RFI does not know or does not have reason to know that such classification is incorrect or unreliable.

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<sup>22</sup> CRS: Section VII, paragraph 8; Commentary on Section VII, paragraph 13

<sup>23</sup> CRS: Commentary on Section VIII, paragraph 154

The term “Standardised Industry Coding System” means a coding system used to classify establishments by business type for purposes other than tax purposes, as provided for in the same Section of the Regulations referred to herein.

### 5.4.10 Currency translation<sup>24</sup>

Section VII(C)(4) of the Regulations provides that all amounts are to be stated in US dollars (\$), but the use of equivalent amounts in other currencies is permitted. For example, a lower value account is an account with an aggregate account balance or value of less than \$1 million. The inclusion of amounts that are equivalent (or approximately equivalent) in their currency to the US dollars amounts is permitted. This allows a multinational RFI to apply the amounts in the same currency in all jurisdictions in which they operate.

The Regulations further state that when determining the balance or value of an account not denominated in US dollars, the RFI shall translate the relevant US dollars threshold amount into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

### ***Definitions (Section VIII of the DIFC CRS Regulations)***

### 5.4.11 Expanded definition of Pre-existing Account<sup>25</sup>

Section VIII(C)(9)(b)(i) – (iii) of the Regulations modify the definition of Pre-existing Account, allowing and RFI to treat certain new accounts held by pre-existing customers as a Pre-existing Account for due diligence purposes. A customer is treated as pre-existing if it holds a Financial Account with the RFI or a Related Entity.

If a pre-existing customer opens a new account, an RFI may rely on the due diligence procedures it (or its Related Entity) applied to the customer’s Pre-existing Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the RFI must be permitted to satisfy its AML/KYC procedures for such account by relying on the AML/KYC performed for the Pre-existing Account and the opening of the account does not require new, additional, or amended customer information.

### 5.4.12 Related Entity and the expanded definition of Related Entity for Investment Entities<sup>26</sup>

Section VIII(E)(4) of the Regulations defines a Related Entity as : (1) where one entity controls another entity; or (2) where two or more entities are under common control. Control is defined to include direct or indirect ownership of more than 50 percent (50%) of the vote and value in an Entity.

The UAE has chosen to modify the definition of Related Entity so that a fund will also qualify as a Related Entity of another fund. This is done in Section VIII(E)(4) of the Regulations which provides that two (2) Investment Entities<sup>27</sup> are Related Entities, where both Entities are under common management and the management fulfils the due diligence obligations of both Investment Entities. As a result, a fund will qualify as a Related Entity of another fund where this modified definition of Related Entity for Investment Entities is met.

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<sup>24</sup> CRS: Section VII, subparagraph C(4); Commentary on Section VII, paragraph 20- 21

<sup>25</sup> CRS: Commentary on Section VIII, paragraph 82

<sup>26</sup> CRS Commentary on Section VIII, paragraph 82

<sup>27</sup> Described in Section VIII(A)(6)(b) of the Regulations. See section 3.2 of this Guidance for more information on Investment Entities

5.5 The CRS Options that were not implemented by the UAE and which are not contained in the DIFC CRS are set out in Appendix 1 in further detail. A brief reference to each such option, as per the table in 5.3, is set out below.

5.5.1 Phasing in the requirement to report gross proceeds

*CRS: Section 1, paragraph F; Commentary on Section 1, paragraph 35*

**The DIFC CRS does not offer this option. Please see Appendix 1 for further information as provided for in the Commentary.**

5.5.2 Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle

*CRS: Section VIII, subparagraph B(9)*

**This option is not offered in the DIFC CRS. For further information please see Appendix 1.**

5.5.3 Transitional challenge resulting from staggered adoption of CRS

**This option is not offered in the DIFC CRS. For further information please see Appendix 1.**

## 6 EXCLUDED ACCOUNTS

6.1 Certain financial accounts are considered to be a low risk of being used to evade tax and are specifically excluded from needing to be reviewed. These Excluded Accounts<sup>28</sup> include several of the categories of accounts excluded from the definition of Financial Accounts in the FATCA IGA. These non-reportable accounts are jurisdiction specific because what constitutes 'low risk' can vary from jurisdiction to jurisdiction.

The UAE FATCA IGA (and in turn the DIFC) has determined that the following are to be considered Excluded Accounts and therefore non-reportable accounts<sup>29</sup>:

- Certain savings accounts such as:
  - retirement and pension accounts
  - non-retirement tax favoured accounts
- Certain term Life Insurance contracts
- Estate accounts
- Escrow accounts
- Depository accounts due to not returned overpayments
- Other low risk excluded accounts

Details of the specific requirements necessary to qualify for the above categories can be found in Section VIII of the CRS Commentaries and Section VIII(C)(17) of the Regulations.

6.2 Low risk excluded accounts can be specified if the CRS criteria set out in the Commentary on Section VIII (para 97) and Section VIII(C)(17)(g) of the Regulations can be met.

6.3 Dormant accounts as defined in paragraph 9 of the CRS Commentary on Section III and in Section VIII(D)(1) of the Regulations will be viewed as Excluded Accounts if the annual balance does not exceed \$1,000.

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<sup>28</sup> "Excluded Account" has the meaning given to the term in Section VIII(C)(17) of the DIFC CRS Regulations.

<sup>29</sup> The IGA signed between the US and the UAE is available at this [link](#), and is based on Annex II to the Model 1 IGA:

### 7 NON-REPORTING FINANCIAL INSTITUTIONS

7.1 The concept of Non-Reporting Financial Institution is similar to that in FATCA whereby certain Financial Institutions are specifically excluded from being required to report while some are reported by other RFIs. A starting point in compiling a list of Non-Reporting Financial Institutions are those treated as such with respect to the UAE FATCA IGA<sup>30</sup>.

For the purposes of the DIFC, non-reporting financial institutions are defined in the Regulations Section VIII(B)(1) and Annex 1, which contains further information regarding the US Department of Treasury Model IGA, the list of non-reporting financial institutions would include but are not limited to the following<sup>31</sup>:

- 7.1.1 Governmental entities and related types of funds that qualify as exempt beneficial owners (such as certain, specified retirement funds)
- 7.1.2 International organisations
- 7.1.3 Central Banks
- 7.1.4 Small or limited scope FIs that qualify as “deemed-compliance”
  - FIs with a local client base
  - Local Banks
  - FIs with only low-value accounts
  - Qualified Credit Card Issuers
- 7.1.5 Investment Entities that Qualify as Deemed-Compliant FFIs (subject to special rules) including
  - Trustee documented Trusts
  - Sponsored Investment Entity and Controller Foreign Corporation
  - Exempt Collective Investment Vehicles
  - Certain Sponsored, Closely Held Investment Vehicle
  - Investment Advisors and Investment Managers
- 7.1.6 Other low risk Financial Institutions.

Details of the specific requirements necessary to qualify for the above categories are in Section VIII(B) of the Regulation as well as the Commentaries<sup>32</sup> and the UAE FATCA IGA.

### 8 PARTICIPATING JURISDICTIONS

- 8.1 The Regulations state that Participating Jurisdictions are the jurisdictions listed in this regard by the UAE Competent Authority (i.e., MOF) on its website from time to time.
- 8.2 The DIFC will exchange information with MOF, which will then follow its own procedures for exchange of information with Participating Jurisdictions.

### 9 EFFECTIVE DATES

- 9.1 The effective dates for due diligence on financial accounts and exchange of information are set out in the Law, Article 6:

<sup>30</sup> The UAE FATCA IGA is available at this [link](#), and is based on Annex II to the Model 1 IGA:

<sup>31</sup> Please see Annex II to the Model 1 IGA, available on the Department of Treasury website at this [link](#) and updated from time to time. Current version is from November 2014

<sup>32</sup> See paragraphs 45 – 51 of the Commentaries on Section VIII.



- (a) in respect of Pre-existing Accounts that are subject to due diligence requirements under this Law, the effective date is 31 December, 2016; and
- (b) in respect of New Accounts that are subject to due diligence requirements under this Law, the effective date is 1 January, 2017.
- 9.2 Based on the UAE CRS, the first reporting due date for the DIFC CRS is 30 June 2018 and consequently by 30 June of the year following each reporting period. Reporting is an annual event.
- 9.3 For information purposes, the following are the effective dates set out by the UAE CRS and therefore RFI's must have met these deadlines in order to remain compliant with DIFC CRS:
- Pre-existing Accounts to be subjected to due diligence procedures are those in existence as at 31 December 2016
  - New Accounts to be subjected to due diligence procedures are those opened on or after 1 January 2017
  - The first CRS reporting period ended on 31 December 2017
  - The review of Pre-existing High Value Individual Accounts at 31 December 2016 was to be completed by 31 December 2017
  - The Reportable Pre-existing High Value Accounts must have been reported by 30 June 2018
  - The review of Pre-existing Lower Value Individual Accounts at 31 December 2016 must have been completed by 31 December 2018
  - First exchanges of information by the MOF to the Reportable jurisdictions will occur on or after 30 September 2018

## **10 INFORMATION TO BE REPORTED**

- 10.1 For each reporting year the following information is required to be reported for each reportable person where a reportable person either holds a reportable account or is a controlling person of an entity account:

### 10.1.1 All accounts

- Name
- Address
- Jurisdiction of residence
- Tax Identification Number (TIN) or similar (see below)<sup>33</sup>
- Date of birth (and place of birth in case of an individual)
- Account number or functional equivalent
- Name and identifying number (if any) of RFI
- Account balance or value

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<sup>33</sup> A TIN is not required to be reported if a TIN is not issued by the relevant jurisdiction of residence, or where the DIFC CRS of the relevant Reporting Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction.

10.1.2 Custodial Accounts

- Total gross amount of interest
- Total gross amount of dividends
- Total gross amount of other income paid or credited to account
- The total gross proceeds from the sale or redemption of property paid or credited to the account

10.1.3 Depository Accounts

The total amount of gross interest paid or credited to the account in the calendar year or other reporting period

10.1.4 Other Accounts

The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

10.2 For further information please refer to paragraphs 25 to 32 of the Commentary on Section I and Section II(B – G) of the Regulations.

**11 SELF-CERTIFICATION**

**11.1 Self-certification for New Accounts**

RFIs have an obligation to maintain account opening processes that facilitate collection of a valid self-certification at the time a New Account is opened. Please note that an RFI that opens a New Account without obtaining a valid self-certification or fails to validate such self-certification is subject to fines for such contravention under the revised Law. Additionally, an Account Holder or Controlling Person<sup>34</sup> providing an inaccurate or incorrect self-certification to an RFI that the Account Holder or Controlling Person knew or ought to have known was inaccurate or incorrect will be in contravention of the Law and is also subject to newly introduced fines.

11.1.1 Section IV of the Regulations state that the following procedures apply with respect to New Individual Accounts:

- A. *With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.*
- B. *If the self-certification establishes that the Account Holder is*

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<sup>34</sup> "Controlling Persons" is defined in the Regulations as the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustees(s), the protectors(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural persons(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

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

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

11.1.2 Section(VI)(A)(1) of the Regulations state the following procedures apply with respect to New Entity Accounts:

- A. *Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.*
- B. *If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.*

11.1.3 Other self-certification requirements are listed in the Regulations. Of note is the requirement that if an RFI cannot obtain such self-certification (or Documentary Evidence), it must report the account as an undocumented account to the MOF, as stated in Section VII(A) of the Regulations.

### 11.2 Undocumented accounts

11.2.1 An undocumented account may arise when an RFI is unable to obtain information from an account holder in respect of Pre-existing or New Accounts. They may also arise where an RFI is unable to obtain from the account holder a valid self-certification following a "change in circumstances".

11.2.2 An "Undocumented Account" exists where the only evidence for the residence status for a Pre-existing Individual Account is a "hold mail" or "in-care-of address" and the Reporting Financial Institution has not been able to obtain a self-certification from the individual.

11.2.3 Financial Institutions with a disproportionate number of reported undocumented accounts may be subject to a compliance review by the ROC, once the review regime has been developed.

## 12 ADMINISTRATIVE MATTERS

### 12.1 Prevention of avoidance

The DIFC CRS include an anti-avoidance measure which is aimed at “arrangements” taken by any person to avoid the obligations placed upon them by the Law at Article 12(1). Avoidance prevention measures are set out in Articles 19(2) and (3). Enforcement for such contraventions are set out in Article 20, and include fines and other disciplinary actions.

### 12.2 **Regulatory Compliance procedures**

As required by the CRS, the Competent Authority (i.e., the MOF) may audit compliance with and implementation of the DIFC CRS.

**APPENDIX 1**

**CRS OPTIONS THAT THE DIFC CRS DID NOT ADOPT BASED ON THE APPROACH TAKEN BY THE UAE CRS**

**Alternative approach to calculating account balances**

A jurisdiction that already requires Financial Institutions to report the average balance or value of the account may provide for the reporting of average balance or value during the calendar year or other appropriate reporting period instead of the reporting of the account balance or value as of the end of the calendar year or other reporting period. This option is likely only desirable to a jurisdiction that has provided for the reporting of average balance or value in its FATCA IGA.

**Year other than calendar year**

A jurisdiction that already requires Financial Institutions to report information based on a designated reporting period other than the calendar year may provide for the reporting based on such reporting period. This option is likely only desirable to a jurisdiction that includes (or will include) a reporting period other than a calendar year in its FATCA implementing legislation.

**Definition of Related Entity**

Most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Pre-existing Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities.

**Grandfathering Rule**

With respect to an Exempt Collective Investment Vehicle, a jurisdiction may provide a grandfathering rule if the jurisdiction previously allowed collective investment vehicles to issue bearer shares. It also provides that a collective investment vehicle that has issued physical shares in bearer form will not fail to qualify as an Exempt Collective Investment Vehicle provide that:

- (1) it has not issued and does not issue any physical shares in bearer form after the date provided by the jurisdiction;
- (2) it retires all such shares upon surrender;
- (3) it performs the due diligence procedures and reports with respect to such shares when presented for redemption or payment; and (4) it has in place policies and procedures to ensure the shares are redeemed or immobilized as soon as possible and in any event prior to the date provided by the jurisdiction.

**Look through provision**

The CRS contains a so called “look-through” provision pursuant to which Reporting Financial Institutions must treat an account that is held by an Investment Entity which is not a Participating Jurisdiction Financial Institution as a Passive NFE and report the Controlling Persons of such entity that are Reportable Persons. This presents operational challenges given that certain jurisdictions have agreed to start exchanging information in 2017 or 2018. As such, Financial Institutions will need to manage entity account classifications on a jurisdiction by jurisdiction basis.

## **THE DIFC COMMON REPORTING STANDARD (DIFC CRS) GUIDANCE NOTES**

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The CRS provides an option for jurisdictions to address this transitional implementation issue by treating all jurisdictions that have publicly, and at government level, committed to adopt the CRS by 2018 as Participating Jurisdictions for a transitional period. This therefore means that any Investment Entity resident in a Schedule 3 jurisdiction will be treated as an RFI and not as a Passive NFE. As a result, RFIs will not be required to apply the due diligence procedures for determining the Controlling Persons of such Investment Entities or for determining whether such Controlling Persons are Reportable Persons.