

## Compliance to Foreign Account Tax Compliance Act ("FATCA") and Common Reporting Standard ("CRS")

### 1. FATCA and CRS Compliance Provisions

#### 1.1 Provision of Information

- (a) The Customer must provide the Bank with the Customer's Personal Information, and where required by the Bank, the Personal Information of any Controlling Person, in such form and substance acceptable to the Bank and within such time, as the Bank may from time to time require. The Customer declare herein that all information and declaration provided by the Customer are true, correct and accurate in all respects in relation to the facts pertaining.
- (b) When there is a change or addition to the Personal Information (including but not limited to any change in circumstances which affect the U.S. indicia or tax residency status) of the Customer and (where applicable) any Controlling Person, the Customer must update the Bank promptly and provide the Bank with an updated Self-Certificate within thirty (30) days of such change in circumstances.
- (c) The Customer must, and, where applicable, procure such Controlling Person to, complete and sign such documents and do such things as the Bank may require from time to time for purposes of the Bank's compliance with the Applicable Laws and Regulations.
- (d) In the event that the Customer is signing on behalf of the Controlling Person, the Customer certifies that he/she is authorised by the Controlling Person to sign for the Controlling Person.
- (e) The Customer agrees that the Bank may directly require any Controlling Person to provide or confirm the accuracy of their Personal Information without involving the Customer if the Bank considers it appropriate.

#### 1.2 Disclosure of Information

- (a) The Customer irrevocably and unconditionally agrees that the Bank may disclose the Customer's Tax Information and the Tax Information of any Controlling Person to any Authority in any jurisdiction.
- (b) The Customer waives, and, where reasonably required by the Bank, agrees to procure any Controlling Person to waive, any applicable restrictions that would otherwise hinder The Bank's ability to disclose Tax Information to comply with Applicable Laws and Regulations, and in particular, to disclose Tax Information in the manner described in Clause 1.2 (a) above.
- (c) The Customer agrees that the Bank may directly require any Controlling Person to agree to the disclosure described in Clause 1.2 (a) above and/or waive any otherwise applicable restrictions on such disclosure, if the Bank reasonably considers it appropriate

#### 1.3 Failure to Provide Information

The Customer agrees that where the Customer or any Controlling Person fails to comply with its obligations under Clauses 1.1 or 1.2 above or where the Personal Information (regardless of whether such Personal Information is in relation to the Customer or any Controlling Person) is inaccurate, incomplete, misleading or is not promptly updated, the Bank may (a) refuse to provide new Banking Services to the Customer; (b) terminate and/or discontinue (entirely or in part) the Customer's account(s) and/or relationship with the Bank; (c) deduct or withhold from the Customer's account(s) maintained with the Bank such amount or otherwise make any payment on account of any tax or levy in any jurisdiction where the Bank is required to do so; and/or (d) such other actions deemed appropriate by the Bank, at any time as may be required by the Bank.

#### 1.4 Indemnity

In addition to and without prejudice to other powers, rights and remedies conferred on the Bank herein, the Customer shall indemnify the Bank against all and any loss or expenses (including but not limited to legal costs on a solicitor and client basis) which the Bank may sustain or incur as a consequence of any failure to provide information or where the information is inaccurate, incomplete, misleading or is not promptly updated by the Customer.

### 2. Customer Confirmations

By using or accepting the Banking Services, the Customer confirms and agrees that:

- (a) the Customer confirms that the Customer has read and understand the contents herein and irrevocably agrees to be bound;
- (b) any agreement, waiver, representation and/or confirmation given in, or to be given pursuant to, the CRS is irrevocable;
- (c) the Bank is not liable for any costs or loss that the Customer (or any Controlling Person) may incur because of the Bank taking any actions permitted by or exercising any powers under the contents herein;
- (d) any withdrawal or payment amount made by the Bank pursuant to any Banking Services shall be subject to the requirements stated herein;
- (e) the Customer must obtain or, where applicable, have obtained the requisite consent from each Controlling Person for the provision of his or her Tax Information to the Bank and the disclosure of any of such Tax Information by the Bank under the CRS and the Customer must inform each Controlling Person of the Bank's powers under this document;
- (f) this contents herein are without prejudice, and in addition, to the Bank's rights or powers under the terms and conditions governing the relationship between the Customer and the Bank.

### 3. Miscellaneous

- (a) In the event of any conflict or inconsistency between any of the contents of this document and other terms and conditions that govern the Customer's relationship with the Bank, the former shall prevail.
- (b) Notwithstanding any other terms and conditions that govern the Customer's relationship with the Bank, the Bank may amend, update, and revise the contents herein unilaterally at any time deemed appropriate in order to ensure its compliance with Applicable Laws and Regulations.
- (c) If all or any part of the contents herein is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability of such provision in any other jurisdictions or the remainder of the contents in that jurisdiction.
- (d) It is the Customer's and each Controlling Person's responsibility to obtain independent professional advice from adequately qualified legal or tax advisors on its obligations under and the consequences of CRS. The Bank do not provide tax or legal advice and are unable to advise the Customers and/or Controlling Persons regarding the income tax or other tax consequences that may be applicable to them in the Customer's (or the relevant Controlling Person's) particular circumstances.

- (e) The contents herein shall be binding upon and inure for the benefit of the assigns and successors in title of the Bank and the heirs, personal representatives and successors in title of the Customer.

#### 4. Definitions and Interpretation

For the purposes of this document as well as the Self-Certification Form, the capitalised terms have the following meaning:

**"Account Information"** means any information relating to any account of a Customer with the Bank including without limitation (and if applicable):

- the account number;
- account balance or value;
- currency denomination;
- gross receipts;
- withdrawals and payments to or from the account;
- the total gross amount of interest paid or credited to the account;
- the total gross amount of interest, dividends and other income generated with respect to the assets held in the account, in each case paid or credited to the account or with respect to the account;
- the total gross proceeds from the sale or redemption of property paid or credited to the account;
- the total gross amount paid or credited to the Customer with respect to the account, including the aggregate amount of any redemption payments made to the Customer; and
- such other information deemed appropriate by the Bank.

**"Active NFE"** An NFE is an Active NFE if it meets any of the criteria listed below. In summary, those criteria refer to:

- active NFEs by reason of income and assets;
- publicly traded NFEs;
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities;
- holding NFEs that are members of a nonfinancial group;
- start-up NFEs;
- NFEs that are liquidating or emerging from bankruptcy;
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

An entity will be classified as Active NFE if it meets any of the following criteria:

- less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- the NFE is not yet operating a business and has no prior operating history, (a "start-up NFE") but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- the NFE meets all of the following requirements (a "**non-profit NFE**") :
  - i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional 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;
  - ii) it is exempt from income tax in its jurisdiction of residence;
  - iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision.

**"Applicable Laws and Regulations"** mean any of the following that currently or in the future apply to the Bank (i) local or foreign laws, ordinances, regulations, demands, guidance, orders, guidelines, rules and codes of practice, including whether or not relating to an intergovernmental agreement between the governments or regulatory authorities of two or more jurisdictions; and (ii) any agreement between the Bank and any government or taxation authority in any jurisdiction; and including but not limited to FATCA and CRS.

**"Authority"** means any national, state, or local government, any political subdivision thereof, any agency, authority, instrumentality, whether judicial or administrative, regulatory or self-regulatory organisation, law enforcement body, court, central bank or tax or revenue authority in any jurisdiction whether within or outside of Malaysia.

**"Bank"** means Industrial and Commercial Bank of China (Malaysia) Berhad and shall include its successors and assigns.

**"Banking Services"**, in relation to a Customer, means, without limitation,

- (i) the opening, maintaining and closing of bank accounts;
- (ii) the provision of any banking or financial services and products (including without limitation, private banking services, credit facilities, credit card services, loans, services in respect of treasury products and financial derivatives transactions);
- (iii) relationship maintenance between the Bank and the Customer (including without limitation marketing and promoting banking or financial services or products); and
- (iv) any other acts or materials of the Bank ancillary to, in furtherance of or in connection with any of the (i) to (iii) above (including without limitation research and analysis).

**"Controlling Person"** means any natural person who exercises control over a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Person" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations. Where no natural person or persons is or are identified as exercising control of the entity through ownership interests, the controlling person of the entity is deemed to be the natural person who holds the position of senior managing official.

**"CRS"** means the Standard for Automatic Exchange of Financial Account Information in Tax Matters, developed by the Organisation for Economic Co-operation and Development and any associated similar or analogous legislation, treaty, regulation, instruction or other official guidance of any Authority in any jurisdiction.

**"Customer"** means the Person who has a relationship with the Bank in connection with the Services, whether alone or jointly with any other Person and, in the case of a corporation, shall include its successors and in the case of a partnership or other unincorporated entity consisting of two or more Persons, its successors, executors and personal representatives.

**"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. This is where the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

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

**"Entity"** means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation. This term covers any person other than an individual (i.e. a natural person).

**"FATCA"** stands for the U.S. provisions commonly known as the Foreign Account Tax Compliance Act, which were enacted into U.S. law as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. FATCA creates a new information reporting and withholding regime for payments made to certain non-U.S. financial institutions and other non-U.S. entities.

**"Investment Entity"** includes two types of Entities:-

- an Entity 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. Such activities or operations do not include rendering non-binding investment advice to a customer.
- The second type of "Investment Entity" ("**Investment Entity managed by another Financial Institution**") is any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets where the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity.

**"Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution"** means any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets if the Entity is (i) managed by a Financial Institution and (ii) not a Participating Jurisdiction Financial Institution.

**"Investment Entity managed by another Financial Institution"** An Entity is "managed by" another Entity if the managing Entity performs, either directly or through another service provider on behalf of the managed Entity, any of the activities or operations described in clause (i) above in the definition of 'Investment Entity'. An Entity only manages another Entity if it has discretionary authority to manage the other Entity's assets (either in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity, if any of the managing Entities is such another Entity.

**"NFE"** is any Entity that is not a Financial Institution.

**"Passive NFE"** Under the CRS a "Passive NFE" means any NFE that is not an Active NFE. An Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution is also treated as a Passive NFE for purposes of the CRS.

**"Personal Information"** in respect of a Customer and any Controlling Person, means:

- (i) where the Customer and any Controlling Person is an individual, his/her full name, date and place of birth, residential address, mailing address, hold mail instruction or in-care-of address, contact information (including telephone number), and any taxpayer identification number (or functional equivalent), (if applicable) social security number, citizenship(s), standing instructions to transfer funds to an account, power of attorney or signatory authority granted to any person, residency(ies) and tax residency(ies) or (if applicable) such other information as The Bank may reasonably require regarding such Customer and any Controlling Person;
- (ii) where the Customer and any Controlling Person is a corporate/entity, its full name, date and place of incorporation or formation, address, registered address, address of place of business, tax identification number (or functional equivalent), , tax status, tax residency, financial statements, registered address, address of place of business, certification of its CRS status/classification, whether it is a passive NFE (as that term is defined by Applicable Laws and Regulations) with one or more Controlling Persons, or (if applicable) such other information as The Bank may reasonably require regarding each of its substantial shareholders and controlling persons.

**"Person"** means an individual, corporation, company, partnership, joint venture, trust, estate, limited liability company, unincorporated organisation or other entity.

**"Tax Information"** in respect of a Customer and any Controlling Person, means: (i) any documentation or information (and accompanying statements, forms, representations, waivers and consents as the Bank may from time to time require or as the Customer and any Controlling Person from time to time give) relating, directly or indirectly, to the tax status of the Customer and any Controlling Person; (ii) Personal Information of the Customer and any Controlling Person; (iii) Account Information; and (iv) any other information received by the Bank in relation to the Customer.

**"TIN"** (including "functional equivalent") the term "TIN" means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Further details of acceptable TINs can be found at the OECD automatic exchange of information portal. Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for Entities, a Business/company registration code/number.

**"U.S. Person"** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph shall be interpreted in accordance with the U.S. Internal Revenue Code.