



# **The TTSEC's Guidelines on the Implementation of the Tax Information Exchange Agreements (United States of America) Act, 2019**

**The purpose of these TIEAA Guidelines is to provide direction  
to the Applicable Registrants for the implementation of,  
and on-going compliance with, the reporting  
requirements under the TIEAA.**

**November 6, 2019 (DRAFT)**

Contents

GLOSSARY.....3

BACKGROUND..... 3

    General..... 3

    Trinidad and Tobago Intergovernmental Agreement..... 4

APPLICATION AND SCOPE ..... 5

PURPOSE OF THE TIEAA GUIDELINES..... 6

SECTIONS..... 6

    1. INTERPRETATION ..... 6

    2. CLASSIFICATION AND REGISTRATION REQUIREMENTS ..... 11

    3. KEY ELEMENTS OF A COMPLIANCE FRAMEWORK ..... 12

    4. DUE DILIGENCE REQUIREMENTS ..... 13

    5. REPORTING REQUIREMENTS ..... 13

    6. USE OF THIRD PARTY SERVICE PROVIDERS ..... 14

    7. RESPONSIBLE OFFICER ..... 15

    8. INTERNAL AND EXTERNAL AUDIT ..... 17

    9. RECORD KEEPING REQUIREMENTS ..... 17

    10. TRAINING OF STAFF ..... 18

    11. CONFIDENTIALITY OF CUSTOMER INFORMATION..... 18

    12. NON-COMPLIANCE AND ENFORCEMENT ..... 19

## GLOSSARY

BIR	Board of Inland Revenue
CBTT	Central Bank of Trinidad and Tobago
FATCA	Foreign Account Tax Compliance Act
FFIs	Foreign Financial Institutions
IGA	Inter-Governmental Agreement
IRS	Internal Revenue Service
NFFE	Non-Financial Foreign Entity
1989 TIEA	1989 Tax Information Exchange Agreement Act
TIEAA	Tax Information Exchange Agreements (United States of America) Act, 2017
TTSEC	Trinidad and Tobago Securities and Exchange Commission
U.S. / US	United States
SA / SA 2012	Securities Act, Chap.83:02 / Securities Act 2012

## BACKGROUND

### General

The Foreign Account Tax Compliance Act (“FATCA”) was enacted in March 2010, to ensure the collection of tax revenues for United States (U.S.) persons holding offshore accounts / portfolios with Foreign Financial Institutions (FFIs) which includes entities in the Securities Market.

The FATCA is a (“US”) financial disclosure and transparency law designed to combat offshore tax evasion by US persons who hold investments<sup>1</sup> in offshore accounts or portfolios. It was signed into US law on March 18

---

<sup>1</sup> Offshore accounts may also include portfolio holders; the definition of Account holder will also apply to portfolio holder.

2010, became effective July 1, 2014 and requires Foreign Financial Institutions (“FFIs”) to provide information annually on US Reportable Accounts held with the FFI to the US Internal Revenue Service (“IRS”). This law imposes a new withholding and reporting regime upon all FFIs that invest directly or as an intermediary in U.S. assets on behalf of US persons. These withholding and reporting requirements add another layer of rules to the existing withholding and reporting rules, including the Qualified Intermediary regime.

FATCA seeks to promote cross border compliance with US tax requirements by implementing an international standard for the automatic exchange of information related to US taxpayers. Non-compliance with FATCA imposes inter alia a 30% withholding tax on FFIs and US persons and has the potential to compromise correspondent banking relationships with US banks.

### **Trinidad and Tobago Intergovernmental Agreement**

The Government of Trinidad and Tobago signed a Model 1A Inter-Governmental Agreement (“IGA/declared agreement”) with the US on Friday August 19th 2016 and brought the IGA into the laws of Trinidad and Tobago by repealing the 1989 Tax Information Exchange Agreement Act, Chap. 76:51 between the US and Trinidad and Tobago, and replaced it with the Tax Information Exchange Agreements (United States of America) Act, 2017 (“TIEAA”) which was enacted in March 2017.

The TIEAA provides for the automatic reporting and exchange of information on an annual basis in relation to financial accounts / portfolios held in reporting financial institutions in Trinidad and Tobago by US persons.

Under the terms of the TIEAA, reporting Financial Institutions must provide the Trinidad and Tobago’s Competent Authority, namely the Board of Inland Revenue (“BIR”), with the required information. The BIR will in turn forward the information to the Competent Authority in the US, namely the IRS.

### **TIEAA AND THE SECURITIES SECTOR**

The TIEAA makes provisions for implementation of the declared agreements between Trinidad and Tobago and the US for the exchange of information for the purposes of taxation.

The TIEAA expands the powers of the TTSEC as set out in the Securities Act, Chap.83:02 of the laws of the Republic of Trinidad and Tobago (the “SA 2012”). In accordance with Section 7(1) (j) of the SA 2012, the Trinidad and Tobago Securities and Exchange Commission (“TTSEC”) has the power to formulate, prepare and publish guidelines in respect of declared agreements, as defined in these TIEAA Guidelines, for the purpose of discharging its functions under the SA. The 1989 Tax Information Exchange Agreement (1989 TIEA) as defined in Section 5 of the TIEAA and the IGA as defined in Section 9 of the TIEAA are the declared agreements which the BIR is expected to oversee. The TTSEC is further empowered pursuant to Section 146 of the SA 2012 to issue guidelines to aid compliance with a declared agreement

Given that some registrants are dually registered with the Central Bank of Trinidad and Tobago (“CBTT”) TTSEC, collaboration will be required among the TTSEC, the CBTT and the BIR to give effect to the TIEAA and the declared agreement.

Consequently, as detailed herein, these TIEAA Guidelines provide registrants regulated by the TTSEC with guidance as to what is required to ensure compliance with the reporting requirements of the TIEAA.

## **APPLICATION AND SCOPE**

These TIEAA Guidelines apply to Applicable Registrants, who are “investment entities” as defined in the TIEAA, regardless of whether they currently maintain any Account / Portfolio for Specified US Persons. Hereinafter, these institutions will be collectively referred to as “Applicable Registrant(s)”.

Applicable Registrants should be aware that overseas branches and subsidiaries and issuers of securities will be subject to the laws of the respective jurisdiction as it pertains to the exchange of tax information and will therefore not be subject to this Guideline. However, it is expected that Applicable Registrants will ensure that their overseas branches and subsidiaries comply with the relevant laws and regulations in their respective jurisdictions.

The TTSEC may take such regulatory measures, as may be allowed under the Section 89 of the SA 2012, to ensure compliance with these TIEAA Guidelines.

## PURPOSE OF THE TIEAA GUIDELINES

The purpose of these TIEAA Guidelines is to provide direction to Applicable Registrants for implementation of, and on-going compliance with the reporting requirements under the TIEAA through the following –

- a) establishment of an adequate compliance framework;
- b) implementation of effective policies, procedures and controls; and
- c) appointment of a Responsible Officer.

The main responsibilities of the TTSEC in respect of these TIEAA Guidelines include –

- a) reviewing Applicable Registrants' compliance with these TIEAA Guidelines through onsite examinations and / or off-site surveillance. This will comprise, *inter alia*, reviewing the compliance framework, including policies and procedures, of all Applicable Registrants to determine their adequacy;
- b) taking regulatory action against Applicable Registrants which fail to adequately comply with these TIEAA Guidelines; and
- c) sharing information with the Board of Inland Revenue (BIR) and the Central Bank of Trinidad and Tobago (CBTT) as required for the purpose of giving effect to the TIEAA.

**INTERPRETATION SECTION<sup>1</sup> Offshore accounts may also include portfolio holders; the definition of Account holder will also apply to portfolio holder.**

- 1) These Guidelines may be cited as the "TIEAA Guidelines".
- 2) In these TIEAA Guidelines, unless the context otherwise requires:

**"Account (s) / Portfolio holder(s)<sup>2</sup>"** means —

- a) the person listed or identified as the holder of an account by the Financial Institutions / Applicable Registrant that maintains the account / custodial account and does not include a person holding an account/ custodial account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor or intermediary; or

---

<sup>2</sup> For these TIEAA Guidelines an account with an "investment entity" will be a portfolio account.

b) in the case of a security, any person entitled to access the security or change the beneficiary of the security and where no person can access the security or change the beneficiary of the security, any person named as the owner in the security and each person with a vested entitlement to payment under the terms of the security;

**“Applicable Registrant”** means a Registrant who is defined as an Investment entity or custodial institution under the TIEAA;

**“Board of Directors”** means the Board of Directors of an **Applicable Registrant**;

**“Board of Inland Revenue”** means the Board of Inland Revenue or BIR established by Section 3 of the Income Tax Act, Chap. 79:09;

**“Central Bank of Trinidad and Tobago”** means the bank as defined in Section 3 of the Central Bank Act, Chapter 79:02

**“Controlling Persons”** means an individual who exercises control over an entity as defined in Section 9(1) of the TIEAA;

**“Custodial Account”** means an account, other than an insurance contract or annuity contract, for the benefit of another person that holds any financial instrument or contract held for investment, including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a non-financial index, a notional principal, an insurance contract or annuity contract, and any option or other derivative instrument;

**“Custodial Institution”** means an entity that holds as a substantial portion of its business or financial assets for the account of others;

**“Declared Agreement”** means the 1989 TIEA as defined in Section 5 of the TIEAA and the IGA as defined in Section 9 of the TIEAA;

**“Entity”** means a legal person or legal arrangement such as a trust<sup>3</sup>;

**“Financial Accounts”** means an account maintained by a financial institution and—

---

<sup>3</sup> For the avoidance of doubt entity includes legal arrangements such as partnerships, collective investment schemes and funds which are regulated under the Securities Act, Chap. 83:02

(a) in the case of an entity that is a financial institution solely because it is an investment entity, includes any equity or debt interest, other than interests that are regularly traded on an established securities market, in the financial institution;

(b) in the case of a financial institution other than a financial institution described in paragraph (a), any equity or debt interest in the financial institution, other than interests that are regularly traded on an established securities market if—

(i) the value or the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to US Source Withholdable Payments; and

(ii) the class of interests was established with a purpose of avoiding reporting in accordance with the IGA;

(c) any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of financial account under Schedule 3 of the TIEAA;

**“Financial Institution”** means a custodial institution or an investment entity.

**Foreign Financial Institution (FFI)** means any foreign entity that:

- a) Accepts deposits in the ordinary course of banking or a similar business such as banks and credit unions.
- b) Holds financial assets for the account of others as a substantial portion of its business such as brokerages or custodians.
- c) Is engaged, or holding itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest. This includes a futures or forward contract or option in such securities, partnership interests, or commodities such as mutual funds, private equities and hedge funds.

**High Value Accounts”** means accounts with a balance or value that exceeds US\$1,000,000;

**“Inter-Governmental Agreement (IGA)”** means the Inter-Governmental Agreement signed between the Government of Trinidad and Tobago and the Government of the United States of America to improve international tax compliance and provide for the implementation of the Foreign Accounts



Tax Compliance Act of the United States of America and set out specifically in Schedule 2 of the TIEAA;

**“Investment entity”** means any entity that conducts as a business or is managed by an entity that conducts as a business, one or more of the following activities or operations for, or on behalf of a customer:

(a) trading in money market investments such as cheques, bills, certificates of deposit and derivatives, foreign exchange, interest rates and instruments, transferable securities or commodity futures trading;

(b) individual and collective portfolio management; or

(c) otherwise investing, administering or managing funds or money on behalf of other persons;

**“Lower Value Accounts”** means accounts with a balance or value that exceeds (does not exceed) US\$50,000 (US\$250,000 for a Cash Value Insurance Contract or Annuity Contract), but does not exceed US\$1,000,000;

**“Non-Financial Foreign Entity”** (“NFFE”)) means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this Section, and also includes any Non-U.S. Entity that is established in Trinidad and Tobago or another Partner Jurisdiction and that is not a Financial Institution.

**“Non-Participating Applicable Registrants”** means any non-participating foreign financial institution or a financial institution deemed to be a non-participating financial institution under Schedule 2 of the TIEAA;

**“Non-Participating Financial Institution”** means any non-participating foreign financial institution or a financial institution deemed to be a non-participating financial institution under Schedule 2 of the TIEAA;

**“Non-Reporting Financial Institution”** means a financial institution or other entity Schedule 2 No. 4 Tax Information Exchange Agreements 2017 23 (United States of America) resident in Trinidad and Tobago, that is described in Schedule 2 as a non-reporting financial institution or that otherwise qualifies as a deemed compliant foreign financial institution or an exempted beneficial owner under relevant Regulations of the United States of America Treasury in effect on the date of signature of the IGA;

**“Non-US Entity”** means an entity that is not a United States of America person;

**“Point of Contact”** means an individual authorized by an Applicable Registrant to submit the information required under the TIEAA, to the BIR;

**“Registrant”** means a person registered or required to be registered under Part IV of the SA 2012;

**“Reportable Account”<sup>4</sup>** means a financial account maintained by a reporting financial institution and held by one or more Specified United States Person or by a Non-US entity with one or more controlling person that is a Specified United States Person but does not include an account which, after the due diligence procedures set out in Schedule 4 of the TIEAA are applied is not identified as a reportable account;

**“Reporting Trinidad and Tobago Financial Institution”** means any Trinidad and Tobago Registrant that is not a Non-Reporting Trinidad and Tobago Financial Institution, hereinafter referred to as a **“Reporting Financial Institution”**;

**“Responsible Officer”<sup>5</sup>** means a person employed locally at a managerial level of an Applicable Registrant who performs the functions and duties set out under Section 7(5) in accordance with Section 7(6) of these TIEAA Guidelines;

**“Security”** has the meaning assigned to it in the SA;

**“Sensitive personal information”** has the same meaning as assigned under the TIEAA;

**“Specified US Person”** means a US Person as defined in the TIEAA;

**“Tax Information Exchange Agreements (United States of America) Act (TIEAA), 2017** means AN ACT to repeal the Tax Information Exchange Agreements Act and replace it with a Tax Information Exchange Agreements (United States of America) Act which would make provision for the implementation of agreements between Trinidad and Tobago and the United States of America providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the Board of Inland Revenue or financial institutions and for related purposes;

---

<sup>4</sup> an account maintained by a Trinidad and Tobago Registrant that has more that USD 50,000 or the equivalent and the account holder is a **US Person** as defined in the TIEAA

<sup>5</sup> A Responsible Officer may also be classified as a Designated Person as defined in By-law 17 of the Securities (General) By-Laws, 2015

**“US Person”** means a citizen of the United States of America or resident individual, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if—

- a) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- b) one or more US Person has 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 of America;

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

## 2. CLASSIFICATION AND REGISTRATION REQUIREMENTS

- 1) Each Applicable Registrant shall conduct an assessment in accordance with Schedule 3 of the TIEAA, in the format shown in Appendix 1 of these TIEAA Guidelines, to determine its classification and confirm whether it –
  - a) is a Financial Institution as defined in Section 9(1) of the TIEAA or a Non-Financial Foreign Entity (NFFE;
  - b) is an Applicable Registrant or Non-Reporting Trinidad and Tobago Registrant;
  - c) is required to register and obtain a Global Intermediary Identification Number with the Internal Revenue Service of the United States of America;
  - d) in the case of an Applicable Registrant, has any obligations under the TIEAA; and
  - e) in the case of an Applicable Registrant, it has met certain requirements under this TIEAA Guideline.
  
- 2) Each Applicable Registrant shall submit the written evidence of the assessment referred to at Subsection (1) and resulting classification to the TTSEC, within one month of the issuance of these TIEAA Guidelines and subsequently in the event of a change in the classification. Where the

Applicable Registrant is also registered with the CBTT, the written evidence of the assessment should also be submitted to the CBTT.

- 3) The written evidence of the assessment referred to at Subsection (2) shall be signed by the Chief Executive Officer of the Applicable Registrant or any person acting in a similar position;
- 4) Subject to Subsection (1), each Applicable Registrant shall comply –
  - a) With the applicable registration requirements of the IRS for the purposes of the declared agreement; and
  - b) In the manner that the IRS may from time to time require which may include submissions by electronic means.

### 3. KEY ELEMENTS OF A COMPLIANCE FRAMEWORK

- 1) Applicable Registrants will be required to implement a robust compliance framework to ensure compliance with the TIEAA. The compliance framework shall be documented and approved by the Board of Directors.
- 2) The compliance framework shall include establishment of appropriate policies, procedures, systems and controls for the following –
  - a) identification of US Reportable Accounts using the due diligence obligations required under Schedule 4 of the TIEAA;
  - b) application of review procedures for pre-existing individual accounts which are considered lower value accounts and enhanced review procedures for high value accounts (refer to Schedule 4 of the TIEAA);
  - c) opening of new individual accounts;
  - d) processing of sensitive personal information, with or without the consent of the account holder, as required under the TIEAA;
  - e) disclosure of personal information to the United States Treasury (See Section 12 of the TIEAA)
  - f) compliance with reporting requirements to the BIR in accordance with the TIEAA;

- g) transmission of information to the BIR in accordance with the reporting requirements and timelines required under the TIEAA;
- h) reporting to the Board of Directors on submissions to the BIR as well as any queries and/or instances of non-compliance;
- i) corrective action regarding minor or administrative errors or areas of significant non-compliance as outlined in Schedule 2 Article 5 of the TIEAA;
- j) internal auditor testing for compliance with these TIEAA Guidelines and TIEAA;
- k) retention of records and other information in accordance with Section 13.1 of these TIEAA Guidelines;
- l) adequate safeguards for confidentiality of data submissions;
- m) ensuring the appropriateness of the information technology systems and the integrity of the data to be submitted to the BIR; and
- n) appointment of a Responsible Officer an /or Point of Contact for the purpose of ensuring compliance with these TIEAA Guidelines and the TIEAA.

#### 4. DUE DILIGENCE REQUIREMENTS

4.1 Applicable Registrants shall establish and maintain arrangements that are designed to identify US Reportable Accounts / portfolio and accounts held by Non-Participating Financial Institutions.

4.2 These arrangements shall –

- 1) identify Financial accounts held by a NON-US entity with one or more controlling persons that is a specified US person;
- 2) identify payments made by the Financial Institutions to Non-Participating Applicable Registrants; and
- 3) apply the due diligence procedures set out in Schedule 4 of the TIEAA.

#### 5. REPORTING REQUIREMENTS

5.1 Subject to SubSection 5 (2), where an Applicable Registrant has determined that it has reporting obligations under the TIEAA following the assessment at Section 2:

- 5.1.1 the Applicable Registrant shall, in respect of the first reporting year 2014 and every following calendar year, report to the BIR, on:
- i. Sensitive Personal Information on an Account Holder in respect of a US Reportable Account / Custodial Account within nine (9) months after the end of the calendar year to which Sensitive Personal Information relates;
  - ii. the names of Non-Participating Applicable Registrants, to which any payments have been made and the total amounts of those payments for 2015, 2016 and 2017, within nine (9) months after the end of the calendar year; and
- 5.1.2 The information required to be reported by a registrant as is set out in Schedule 2 Article 2 of the TIEAA.
- 5.1.3 The report referred to in Section 5.1.1 shall be submitted electronically in a form and manner as may be determined by the BIR.
- 5.2 If an Applicable Registrant applies the due diligence procedures for a particular calendar year and no account is identified as a US Reportable Account / Custodial Account, the Applicable Registrants shall file a nil return to the BIR, within nine (9) months after the end of the calendar year.
- 5.3 An Applicable Registrant shall notify<sup>6</sup> an Account Holder in respect of a US Reportable Account / Custodial Account, that Sensitive Personal Information relating to that person which was required to be reported, has been reported to the BIR and TTSEC and must do so by January 31 in the following calendar year;
- 5.4 An Applicable Registrant shall notify the BIR and the TTSEC if there is a change in its registration status with the IRS, including if it ceases to be registered, within 30 days of such change.

## 6. USE OF THIRD PARTY SERVICE PROVIDERS

- 6.1 An Applicable Registrant may use a third-party service provider to perform due diligence procedures, to the extent provided in relevant US Treasury Regulations.
- 6.2 Where an Applicable Registrant uses a third-party service provider, the Applicable Registrant shall obtain the consent of the customer to share his/her information with the service provider.

---

<sup>6</sup> Notification may be done by electronic or manual means. However, the means of notification should be recorded by the Applicable Registrant

6.3 The Applicable Registrant must inform the TTSEC of its decision to use a third party service provider as allowed in Section 6 (1) within thirty (30) days of entering into an agreement with the third party service provider and provide information on the measures taken to ensure confidentiality of information.

6.4 Where a third-party service provider is used, the Applicable Registrant –

6.4.1 shall at all times, have access to and be able to produce the records and documentary evidence used to identify and report on US Reportable Accounts;

6.4.2 is responsible for any failure of the third-party service provider to carry out its obligations; and

6.4.3 shall be responsible for the confidentiality of any information transmitted to the third-party provider.

## 7. RESPONSIBLE OFFICER / POINT OF CONTACT

7.1 Every Applicable Registrant shall, for the purpose of ensuring compliance with the reporting requirements of the TIEAA –

7.1.1 designate a manager or senior official employed at a managerial level as the Responsible Officer;

7.1.2. where the Applicable Registrant is part of a Group of Companies (Group), the Applicable Registrant may designate a manager or senior officer employed at a managerial level within the Group as the Responsible Officer for all Applicable Registrants within the Group.

7.1.3 designate a Point of Contact for the purpose of conducting activities at SubSection 7.5 and 7.6; and

7.1.4 notify the BIR and the TTSEC of the name, designation and contact details of the Responsible Officer and Point of Contact.

7.2 The Responsible Officer and Point of Contact may be one and the same person.

7.3 An Applicable Registrant shall ensure that the Responsible Officer and Point of Contact receives appropriate training to enable him to perform his duties adequately.

7.3.1 Training should be up-to-date and in areas relevant to the Responsible Officer and Point of Contact functions and conducted at least once a year.

7.3.2 Training and areas of training should be properly recorded<sup>7</sup> and maintained by the Applicable Registrant.

7.4 The Responsible Officer/ Point of Contact must:

7.4.1 report to the BIR, as required under Section 5; and

7.4.2 facilitate communication between the Applicable Registrant, BIR and TTSEC.

7.5 The Responsible Officer shall function as the official liaison with the TTSEC to ensure -

7.5.1 the policies and procedures of the Applicable Registrants, required for compliance with the reporting requirements of the TIEAA, are in place;

7.5.2 the accuracy and timeliness of all data submissions to the BIR;

7.5.3 continuous compliance with the Applicable Registrant compliance framework;

7.5.4 the Applicable Registrant complies with the applicable registration requirements on the IRS FATCA registration website;

7.5.5 queries from the BIR and the TTSEC are responded to in such time as may be required;

7.5.6 self-assessments referred to at Section 2.1 are conducted; and

7.5.7 there is reporting to the Board of Directors, at least annually, on the Financial Institution compliance framework, deficiencies in its compliance framework and all incidents of non-compliance with the requirements of the TIEAA.

7.6 The Applicable Registrant must ensure that the Responsible Officer and other employees have timely access to customer data, records and relevant information to enable them to –

7.6.1 comply with the reporting requirements under the TIEAA;

7.6.2 report to its Board of Directors, the BIR and the TTSEC as appropriate; and

7.6.3 address queries and/or instances of non-compliance.

---

<sup>7</sup> Records should be kept of the course content of the training as well as training attendance logs indicating, at a minimum, employee name and dates of attendance and/or completion of training.



## 8. INTERNAL AND EXTERNAL AUDIT

- 8.1 The external auditor shall evaluate the Applicable Registrant's compliance with the TIEAA and these TIEAA Guidelines at least once every three (3) years and submit an external audit report with recommendations to the TTSEC and the Applicable Registrant's Board of Directors, within four (4) months of the Applicable Registrant's year end. The first report must be submitted to the TTSEC within four (4) months of the Applicable Registrant's 2020 financial year end, and every three (3) years thereafter. Internal auditors should also follow up routinely to ensure that recommendations made by the Applicable Registrant's external auditors, the BIR and TTSEC are acted upon in a timely manner.
- 8.2 The external auditor shall evaluate the Applicable Registrant's compliance with the TIEAA and these TIEAA Guidelines at least once every three (3) years and submit an external audit report with recommendations to the TTSEC and the Applicable Registrant's Board of Directors, within four (4) months of the Applicable Registrant's year end.

## 9. RECORD KEEPING REQUIREMENTS

- 9.1 To facilitate compliance with reporting requirements of the TIEAA, Applicable Registrants should retain for a period of six (6) years, all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the BIR for the purposes of the TIEAA.
- 9.2 Records should be retained in a format, including electronic, scanned or microfilm, that would facilitate reconstruction of information to comply swiftly with information requests from the BIR.
- 9.3 Each Applicable Registrant is required to maintain a register of all queries and/or instances of non-compliance and corrective actions taken to address them.
- 9.4 All Applicable Registrants shall maintain all records as required by Section 87 of the SA.

## 10. TRAINING OF STAFF

- 10.1 Applicable Registrants are required to ensure that its Directors, Responsible Officer and staff are appropriately trained to equip them to perform their obligations in respect of the reporting requirements of the TIEAA, including the requirements of collecting customer due diligence information.
- 10.2 Training should be targeted at all relevant employees<sup>8</sup>, with emphasis on the Responsible Officer as well as the Compliance and Audit Staff.
- 10.3 At a minimum, an Applicable Registrant is required to –
- 10.3.1 develop an appropriately tailored training and awareness programme;
  - 10.3.2 document its approach to training;
  - 10.3.3 ensure that staff involved with screening customers or obtaining customer data are aware of the reporting requirements of the TIEAA;
  - 10.3.4 establish and maintain a regular schedule of new and refresher programmes for the different types of training required for relevant staff; and
  - 10.3.5 provide all staff with reference manuals/materials that outline their responsibilities and the Financial Institution’s policies. These should complement rather than replace formal training programmes.

## 11. CONFIDENTIALITY OF CUSTOMER INFORMATION

- 11.1 The Applicable Registrant shall, in respect of any information received with regards to the TIEAA, ensure that the information is –
- 11.1.1 treated as confidential;
  - 11.1.2 afforded the necessary safeguards as may be required for the protection of personal data; and

---

<sup>8</sup> Relevant Employees will refer to those involved in the day-to-day business of on-boarding customers and/or those involved in ensuring Compliance with these TIEAA Guidelines.

11.1.3 only disclosed to an authority that is legally entitled to the information, who shall use the information solely to fulfil its obligations under the TIEAA.

## 12. NON-COMPLIANCE AND ENFORCEMENT

12.1 The TTSEC may take such regulatory measures, as may be allowed under the SA 2012, to ensure compliance with these TIEAA Guidelines, including, but not limited to, on site examinations to assess the adequacy / effectiveness of the Applicable Registrants' compliance framework.

12.2 Additionally, if the BIR indicates that an Applicable Registrant or its Responsible Officer, or Director(s) failed to take such actions as may be necessary to give effect to or comply with the TIEAA, the TTSEC may issue compliance directions or take any other regulatory action allowed under Section 90 (1)(c) of the SA 2012 and or any other written law that is administered by the Commission which may be in force from time to time as may be necessary to rectify the non-compliance.

12.3 When considering the appropriate intervention actions, or combination of actions, needed to address potential concerns or non-compliance with these TIEAA Guidelines, the TTSEC will consider – inter alia,

12.3.1 the nature and extent of the non-compliance;

12.3.2 whether there are a number of deficiencies which, when considered collectively, indicate a pattern of non-compliance;

12.3.3 the extent to which the Board of Directors, Responsible Officer or any other officer acted in such a way to contribute to or further non-compliance; and

12.3.4 any corrective measures undertaken by the Applicable Registrants.

12.4 An Applicable Registrant is required to immediately notify the BIR and TTSEC of any matter arising that would impede its ability to comply with these TIEAA Guidelines of the reporting requirements under the TIEAA and its plan to address this deficiency.

- 12.5 Compliance directions issued by the TTSEC for non-compliance with these TIEAA Guidelines may *inter alia* require the Applicable Registrant to either: (i)take, (ii)or not take, a specified action in order to comply with these TIEAA Guidelines and the TIEAA.

November 6, 2019 (Draft)

## APPENDIX I

### TIEAA SELF-ASSESSMENT FORM

This Form is intended to assist you in identifying your entity’s classification in accordance with the TIEAA and is to be used as a guide only. This Form is not a substitute for understanding the requirements and obligations of the relevant laws and must be read in conjunction with the TIEAA and these TIEAA Guidelines on the Implementation of the Tax Information Exchange Agreements (United States of America) Act, 2017 (the TIEAA Guidelines).

#### Section A (Fill in block letters)

1. Legal Name of the Applicable Registrant.

---

2. Address of the Applicable Registrant.

---

3. What is the jurisdiction of incorporation of the Applicable Registrant?

---

4. Status of Applicable Registrant (tick all applicable boxes).

- Licensed or Permitted under the Financial Institutions Act, Chap. 79:09
- Registered under the Insurance Act, Chap. 84:01
- Registered with the Securities Act, Chap.83:02

**Section B (Tick relevant boxes)**

5. With reference to the Declared Agreement, the Applicable Registrant is categorized as a:

a.

- Registrant (as defined in Section 51- 53 of the SA) - GO TO SECTION C
- Custodial Institution
- Depository Institution
- Investment Entity
- Specified Insurance Company

b.

- Non- Financial Reporting Entity
- Non-Reporting Financial Institution

**Section C (Tick relevant boxes and fill in relevant information)**

6. The Registrant at 5.a. above has conducted an assessment in accordance with Schedule 3 of the TIEAA and confirms that it is a:

- a.  Applicable Registrant **GO TO SECTION D**
- b.  Non- Financial Reporting Entity
- c.  Non-Reporting Financial Institution

7. If the Applicable Registrant is an Investment Entity, please state the Global Intermediary Identification Number (GIIN):

~ \_\_\_\_\_ ~                      ~                      ~ \_\_\_\_\_

8. If the Applicable Registrant is an Investment Entity, please state the following:

a. Responsible Officer

i. Name

\_\_\_\_\_

ii. Designation

\_\_\_\_\_

iii. Contact information

\_\_\_\_\_

b. Point of Contact

i. Name

\_\_\_\_\_

i. Designation

\_\_\_\_\_

ii. Contact information

\_\_\_\_\_

**Section D (Tick relevant boxes)**

9. For the purposes of compliance with the reporting requirements of the TIEAA, please confirm the following:

	YES	NO
i. The Applicable Registrant has developed and implemented a compliance framework as required under Section 7 of the TIEAA Guidelines	<input type="checkbox"/>	<input type="checkbox"/>
ii. The compliance framework of the Applicable Registrant has been documented and approved by the Board of Directors	<input type="checkbox"/>	<input type="checkbox"/>
iii. The Applicable Registrant has established due diligence procedures to identify US Reportable Accounts / Portfolios	<input type="checkbox"/>	<input type="checkbox"/>
iv. The Applicable Registrant has implemented a record retention policy for the information required to be reported to the BIR in accordance with Section 13 of the TIEAA Guidelines	<input type="checkbox"/>	<input type="checkbox"/>
v. The Applicable Registrant has implemented a process to notify account or portfolio holders in respect of US Reportable Accounts or Portfolios in accordance with Section 17(4) of the TIEAA	<input type="checkbox"/>	<input type="checkbox"/>

**Section E**

**Self-Declaration:**

I declare that I have examined the information on this form, to the best of my knowledge, and belief it is true, correct, and complete. I agree that I will submit a revised form within 30 days if there is any change of

circumstances which will necessitate an update to the information provided in this form. Name and designation of Chief Executive Officer Signature:

Name and designation of Chief Executive Officer	Signature:	Date: