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FATCA FREQUENTLY ASKED QUESTIONS

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1. What is FATCA?

FATCA is an acronym for the Foreign Account Tax Compliance Act enacted by the US Congress which introduced a new reporting and withholding regime designed to combat offshore tax evasion by U.S. persons (individuals as well as entities), including the failure to disclose U.S. source income. On 19th December, 2013 Bermuda's Minister of Finance, on behalf of the Government of Bermuda, signed an Intergovernmental Agreement (the IGA) with the United States that will implement a FATCA regime in Bermuda.

2. What is the intent of FATCA?

FATCA is intended to increase transparency so that the IRS will be more readily able to identify instances where U.S. persons may be investing in and earning income through non-US financial institutions. Although the primary goal of FATCA is one of identification, you should be aware that FATCA imposes a reporting obligation on local financial institutions that have identified real or possible accounts for US Persons or entities that meet certain criteria.

3. What does the term US person cover?

The term "United States person" means:

- A citizen or resident of the United States, including a Green Card Holder
- A US domestic partnership;
- A US "domestic corporation";
- Any estate other than a foreign estate;
- Any trust if:
 - A court within the United States is able to exercise primary supervision over the administration of the trust, and
 - One or more United States persons have the authority to control all substantial decisions of the trust. This could be the settlor, one or more trustees, a protector of a trust and in some instances the beneficiaries or a class of beneficiaries.
- Any other person that is not a foreign person.

4. How do I know if FATCA applies to me?

The following factors point to a person potentially being a US Person for FATCA purposes. These factors are refutable and the IGA sets out specific steps and types of documentation/information that must be provided if a person wishes to refute their possible US status. The IGA cites US these indicators:

- a) Identification of the account holder as a US citizen or resident;
- b) Unambiguous indication of a US place of birth;
- c) Current US mailing address or residence (including a US P.O. Box);
- d) Current US telephone number;
- e) Standing instructions to transfer funds to an account maintained in the United States;

- f) Currently effective power of attorney or signatory authority given to a person with a US address; or
- g) An “in care of” or “hold mail address that is the **sole** address that we have on file for the account holder. In the case of a **Pre-existing Individual** account that is a Lower Value Account (one that does not exceed the greater than \$1million threshold and for which the RFI only has to perform an electronic search), an in care of or hold mail address that is outside of the US will not be treated as US indicia.

In the case of an entity account, in addition to the above, a US place of incorporation or organization.

5. I am not a US Person. Why should I be concerned about FATCA?

In the simplest of terms, if an individual customer is receiving US source income and **exceeds the \$50k account value threshold**, the customer will first have to provide documentation proving that he/she is not a US Person, preferably a non-US passport that clearly shows a place of birth that is not in the US or any of its territories. Also, the customer will be asked to provide additional documentation such as an acceptable self-certification document or a Form W-8 BEN as further proof that he/she is not a US person for FATCA purposes.

Additionally, customers that meet or exceed the FATCA threshold and, for example, have provided a passport to us that shows a place of birth in the United States, have a Standing Order to wire funds to an address in the US or have a US mailing address on file are considered to have provided evidence of US indicia for FATCA purposes. Those customers will be required to furnish additional evidence that they are not a US Person.

6. Are all of the financial institutions in Bermuda planning to register with the IRS?

Whilst we cannot state with certainty that this will be the case, we expect that most, if not all of Bermuda’s financial institutions, will register and become a Reporting Foreign Financial Institution (“RFFI”).

7. Can a Bermuda financial institution opt out of registering with the IRS?

Certainly. Financial institutions that decide not to register will be deemed as Non-Participating Foreign Financial Institutions.

8. Who does this legislation impact?

FATCA is far reaching and can impact any person, U.S. or otherwise, to the extent that such a person is involved in making or receiving payments that fall within the scope of FATCA “withholdable payments”.

9. What types of payment does FATCA apply to?

Put simply, FATCA applies to payments of U.S. source income (income derived in the US or from an activity carried on in the US) that is fixed, determinable annual or periodic (FDAP)

such as salary from employment in the US, rental income earned on a US property, interest income earned on a US Treasury Bond and US Royalties.

10. Does FATCA apply to me if I only have a small account at the Bank?

We are not required to report individual accounts with balances of \$50,000 or less, irrespective of whether or not the account holder is a US person. Similarly, we are not required to report on entity accounts with a balance of \$250,000 or less.

11. Are other Financial Institutions on the Island also using this \$50,000 individual, \$250,000 entity rule?

If you have accounts that you think might be impacted with other financial institutions you should speak directly with them to ascertain whether they are FATCA compliant and what standards they are applying.

12. Will all financial institutions in Bermuda be requesting the same documents for FATCA?

There may well be variables in the documentation that Banks and other financial institutions on the Island will request from customers in order to confirm their FATCA status. The Clarien Limited group of companies has adopted a consistent standard of FATCA documentation and we will be asking customers for the same documentation across the Group.

13. How frequently will I be required to update my information for FATCA compliance?

The Clarien Limited group of companies will reach out to affected customers should there be any changes or additions to the documentation requirements imposed by FATCA. Customers should notify us if there have been any changes to their information that might make it necessary to refresh their FATCA documentation.

15. If a joint account is held by a U.S. person and a non-U.S. person, is it considered 50% U.S. or 100% U.S.? Does it make a difference if the U.S. person is not a U.S. resident?

A joint account that has one or more U.S. persons as owner is treated as a U.S. account and the entire account is subject to reporting as a U.S. person's account. The fact that the US person is not resident in the USA is irrelevant. Group entities will be required to report not only any U.S. income received but the world-wide income and proceeds received into the account.

16. I am a US Person. What documents do I need to provide for FATCA purposes?

In addition to our standard account opening documents we will ask that you provide us with a completed Form W-9 either when you become a customer of any Group entity or as part of our customer data remediation exercise. We will also ask you to provide us with a

waiver form in which you will give us your consent to provide your financial information to the IRS.

17. I am a US Person. What information will you be reporting to the IRS?

We cannot report your financial information to the IRS unless you have provided us with consent to do so. If you have consented we will provide:

- Your name, address and Taxpayer Identification number (SSN/TIN)
- Your account number(s)
- Your account balance or value on the specified report date; and
- The gross receipts and gross withdrawals from the account.
- If you are the owner of an entity with an account balance of \$250,000 or greater, we will report your details as above as well as the same information for any other specified US Person that owns 10% or more of the company.

18. What if I meet the \$50,000 or greater threshold, have US indicia and refuse to provide additional proof that I am not a US Person?

We will not open accounts for new customers or open new accounts for existing customers who refuse to provide documentary evidence or a satisfactory explanation for any US indicia. If you are an existing customer and you refuse to clarify your US indicia, we are obliged to report your account as part of our aggregated reporting of recalcitrant customers. This does not mean that we will report you by name or disclose your actual account balance to the IRS. However, we are obliged to report the total number of recalcitrant customers as well as the total balances in their accounts to the IRS.

19. If I am a US person and I refuse to give my TIN and consent to report to the IRS can the IRS compel the Bank to divulge my information?

- Under normal circumstances and privacy rules, we cannot divulge specific customer information unless the customer has consented or we are legally obliged to do so.
- However, we will warn you that, under the terms of the IGA, there are procedures in place whereby the IRS can seek to obtain a Production Order from Bermuda's Supreme Court compelling the named financial institutions to provide the information contained in the Production Order including the Name, TIN (Tax Information number) or date of birth and account balances for all persons to whom the Order applies.

20. How do I know that your Group entities are FATCA compliant?

Foreign Financial Institutions such as ourselves participating in FATCA are required to register on-line through a portal created by the IRS. Once registered we will be issued a Global Intermediary Information Number (GIIN).

**21. I have Banking, Investment, Trust and Brokerage Accounts with your Group?
How will these be treated?**

Presently, we do not use a single computerized system in our various Group entities that would allow us to link a customer's accounts by reference to a data element such as a unique client number, Employee Information Number or foreign tax identification number. Consequently, we are not presently able to provide aggregated reporting of your account balances.

22. Do you plan to discontinue offering services to U.S. persons?

As long as the U.S. person meets our FATCA documentation requirements we will continue to offer him/her our full range of products and services. If you have accounts with other financial institutions that you think might be impacted you should speak directly with them to ascertain whether they are FATCA compliant and what standards they are applying.

23. I am still unsure as to whether FATCA applies to me. What should I do?

Please seek professional advice regarding any possible FATCA implications. The penalties for potential mistakes, criminal and or monetary, far exceed the cost of obtaining advice from a knowledgeable tax attorney or adviser.