Law 19/2016, of 30 November on automatic exchange of financial account information in tax matters

Preamble

On 12 February 2016, the Minister of Finance signed the Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.

The amendment of the Agreement introduces the automatic exchange of information between the member states of the European Union and the Principality of Andorra based on the Standard of Automatic Exchange of Financial Account Information of the Organisation for Economic Co-operation and Development (Common Reporting Standard - CRS).

This action seeks to improve international tax compliance on the basis of a reciprocal automatic exchange of information subject to a certain degree of confidentiality and other protections, including provisions limiting the use of the information exchanged thereunder and applying the respective data protection laws and practices to the processing of personal data exchanged, in accordance with the legal provisions on data protection.

In compliance with the Agreement, the Principality of Andorra and the member states of the European Union have to have in place (i) appropriate safeguards to ensure that the exchanged information remains confidential and is used solely for the purposes of, and by the persons or authorities concerned with, the assessment or collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes, or the oversight of these, as well as for other authorised purposes, and (ii) the infrastructure for an effective exchange relationship. This Law governs the necessary legal framework to fulfil these commitments and derogates Law 11/2005 of 13 June on the application of the Agreement between the Principality of Andorra and the European Community on the establishment of measures equivalent to those laid down in Council Directive 2003/48/EC of the Council on taxation of savings income in the form of interest payments.

On 5 November 2013, the Ambassador of Andorra in Paris signed the adhesion to the Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD Multilateral Convention). This adhesion was unanimously ratified by the *Consell General* of Andorra on 28 July 2016.

Article 6 of the OECD Multilateral Convention provides for the possibility of automatically exchanging information with other contracting states based on the OECD Standard for Automatic Exchange of Financial Account Information. This automatic exchange of information necessarily requires a prior bilateral or multilateral agreement between competent authorities on the procedures to be followed and the scope of the exchange.

The Multilateral Competent Authority Agreement (MCAA), signed by the Secretary of State for International Financial Affairs on 3 December 2015, is the multilateral instrument allowing the possible automatic exchange of information with the contracting states of the OECD Multilateral Convention pursuant to its article 6. The automatic exchange of information with these states requires that they meet the requirements provided for in the MCAA and which are reproduced in the first final provision of this Law. In addition, the bilateral relations of these states with the Principality of Andorra, their political stability, respect for human rights and the principles of the rule of law must also be assessed.

In addition to the MCAA, the *Consell General* may conclude bilateral agreements with other contracting states of the OECD Multilateral Convention. The requirements set out in this Law must also be met for the automatic exchange of information based on bilateral agreements.

This Law contains ten articles, one transitional provision, one derogating provision, two final provisions, Annex I setting out the reporting and due diligence rules regarding information on financial accounts and Annex II setting out additional provisions.

With a view to ensuring that the commitments acquired through the ratification of the international agreements on the automatic exchange of information are fulfilled, this Law sets out that the reporting and due diligence rules regarding information on financial accounts are tax obligations. Verification of compliance is governed by the rules on the tax inspection procedure provided for in Law 21/2014, of 16 October, on the bases of the tax system.

The breach of the reporting and due diligence obligations set out by this Law is a special tax infringement. This provision implements section IX of the OECD Standard for Automatic Exchange of Financial Account Information and strengthens the deterrent effect of the provisions preventing the adoption of practices intended to circumvent this Law.

The deadlines for the first automatic reporting of information of pre-existing accounts based on the Agreement with the European Union or on the OECD Multilateral Convention are linked to the deadlines for the identification of pre-existing accounts as provided for in Section III and Section V of Annex I of this Law.

Chapter I. General Provisions

Article 1. *Subject matter and scope of application*

This Law governs the automatic exchange of information in tax matters between the Principality of Andorra and others states within the framework of the following international agreements and conventions:

a) the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance, signed on 12 February 2016; and

b) other international agreements and conventions providing for an automatic exchange of financial account information between other states and the Principality of Andorra in application of the OECD's Standard for Automatic Exchange of Financial Account Information in Tax Matters.

Article 2. *Definitions*

The provisions of this Law must be interpreted in accordance with the definitions contained in Section VIII of Annex I. Annex I and Annex II form an integral part of this Law and establish the reporting and due diligence rules with respect to information of financial accounts held by Andorran financial institutions.

Article 3. *Andorran Reporting Financial Institutions*

1. Andorran reporting financial institutions are subject to the reporting with respect to financial account information as provided for in the articles and the annexes of this Law, when the individuals or entities holders of the reportable account, or the individuals that are controlling persons of passive NFE holders of the reportable account, are resident for tax purposes in:

a) a Member State of the European Union; or

b) a state with which an agreement or convention providing for an automatic exchange of information in application of the OECD's Standard for Automatic Exchange of Financial Information in Tax Matters is applicable.

2. For the purposes of this Law, Andorran reporting financial institutions are resident entities in Andorra and branches of non-resident entities in Andorra as defined in paragraph A of Section VIII of Annex I of this Law and, in particular, insurance companies and the following operative entities of the Andorran financial system as set out by Law 7/2013, of 9 May, on the regulation of entities operating in the Andorran financial system, and other provisions governing financial activities in the Principality of Andorra:

a) banking institutions;

b) financial investment companies;

c) financial investment agencies;

d) asset management companies; and

e) collective investment schemes in financial assets' management companies.

3. The Government, acting on a proposal of the Minister of Finance, will approve criteria to avoid duplicity in the reporting of information about a single financial account resulting from the fact that more than one Andorran reporting financial institution is obliged to report it in its capacity as depositary, custodian or investment entity.

Article 4. ***Andorran Non-Reporting Financial Institutions***

1. For the purposes of this Law, Andorran non-reporting financial institutions are financial institutions resident in Andorra, as defined in paragraph B of Section VIII of Annex I of this Law and, in particular, the following:

a) the Principality of Andorra and its public Administration:

- the Government and bodies under its direction;
- the *Comuns* and *Quarts* and their dependent bodies;
- the autonomous bodies or para-public entities;

b) the Andorran National Institute of Finance (INAF) (*l'Institut Nacional Andorrà de Finances*);

c) the Andorran Social Security Authority (CASS) (*Caixa Andorrana de Seguretat Social*);

d) the National Agency for the Resolution of Banking Institutions (AREB) (*Agència Estatal de la Resolució d'Entitats Bancàries*); and

e) the Pension Reserve Fund *(Fons de reserva de jubilació)*.

2. The Government, acting on a proposal of the Minister of Finance, may designate other entities as non-reporting financial institutions if such institutions present a low risk of being used to evade tax and they have substantially similar characteristics to any of the entities described in paragraph B.1 (a) and (b) of Section VIII of Annex I of this Law or in the applicable agreement or convention.

Article 5. *Excluded Accounts*

1. For the purposes of this Law, accounts excluded from reporting are those defined in paragraph C.17 of Section VIII of Annex I of this Law and, in particular, the following:

a) accounts linked to insurance contracts or any other contractual arrangement for pension plans and other social welfare instruments with the characteristics set forth in article 7 of the Implementing Regulations of Law 5/2014, of 24 April, on personal income tax, if any of the following requirements are met:

(i) annual contributions must not exceed USD 50,000; or

(ii) the maximum lifetime contribution must not exceed USD 1,000,000, in each case applying the rules set forth in paragraph C of Section VII of Annex I of this Law for account aggregation and currency translation.

Andorran reporting financial institutions shall report annually to the Ministry of Finance the total amount of contributions made to these accounts and shall submit a report issued by an external auditor in the terms provided for in article 24 of the Implementing Regulations of Law 5/2014, of 24 April, on personal income tax. The time and manner of the report will be determined by decree;

b) accounts linked to insurance contracts or any other contractual arrangement for savings products for purposes other than retirement, if the following requirements are all met:

(i) the savings product is linked to welfare, educational or social purposes related to:

- unemployment or prolonged situations in which the household economy worsens significantly for reasons beyond the policyholder's control, either due to an increase in expenses or a decrease in income;
- accidents, disability or other diseases;
- the account holder's or of any of his/her relatives' education;
- the acquisition of a residence;

(ii) account withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account, or penalties apply to withdrawals made before such criteria are met;

(iii) annual contributions must not exceed USD 50,000, applying the rules set forth in paragraph C of Section VII of Annex I of this Law for account aggregation and currency translation.

Income deriving from savings products that meet these requirements is treated as capital income exempt from tax, in accordance with articles 13 and 15 of Law 94/2010, of 29 December, on non-resident income tax.

2. For the purposes of paragraph C.17 of Section VIII of Annex I of this Law, the following financial accounts are excluded from reporting:

a) inactive accounts with a balance that does not exceed USD 1,000. An account is considered to be inactive when:

(i) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the same reporting financial institution in the past three years;

(ii) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the same reporting financial institution in the past six years;

(iii) the account is treated as an inactive account under the financial institution's ordinary operative procedures;

(iv) in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder that holds such account regarding the account or any other account held by the account holder with the same reporting financial institution in the past six years.

b) operative current accounts exclusively used to make payments associated with the ownership or use of a residence located in the Principality of Andorra, in the following terms:

(i) the average annual balance does not exceed USD 10,000;

(ii) the account is used for the direct debit of utilities expenses (electricity, water and heating, among others) and other payments.

c) custodial accounts in which public debt securities issued by the Andorran Government or by other Andorran public institutions are deposited, with an average annual balance that does not exceed USD 50,000.

3. The Ministry of Finance may designate other financial accounts as excluded accounts if such accounts present a low risk of being used to evade taxes and they have substantially similar characteristics to any of the accounts described in paragraph C.17 (a) to (f) of section VIII of Annex I of this Law.

Article 6. ***Place, time and manner of automatic information exchanges***

1. The information referred to in Section I of Annex I of this Law shall be reported annually and by electronic means by 30 June of the calendar year following the year to which the information relates, in the manner, place and time to be determined by decree of the Government, acting on a proposal of the Ministry of Finance.

2. The Ministry of Finance must submit the required information to the competent authorities of the states concerned within the deadline set out by the applicable international agreement or convention.

Article 7. ***Exchange of information upon request***

1. The Ministry of Finance shall exchange, upon request of the competent authorities, the information that is foreseeably relevant for carrying out the applicable international agreement or convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the requesting state, or of its political subdivisions or local authorities, insofar as the taxation under such domestic laws is not contrary to a double taxation agreement between Andorra and the state concerned.

2. The exchange of information upon request shall be executed in accordance with Law 3/2009, of 7 September, on the exchange of tax information upon request.

Article 8. ***Confidentiality and data safeguards***

1. Any information reported or obtained under any agreement or international convention providing for an automatic exchange of financial account information between other states and the Principality of Andorra shall be treated as confidential and protected in the same manner as information obtained under the domestic law of each state and, to the extent necessary for the protection of personal data, in accordance with the applicable domestic law and safeguards which may be specified by the state supplying the information as required under its domestic law.

2. Information processed in accordance with this Law shall be retained for no longer than necessary to achieve the purposes of the applicable international agreements or conventions and, in any case, no longer than the statute of limitations applicable for tax obligations as set out by Law 21/2014, of 16 October, on the bases of the tax system.

3. Such information shall be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes of Andorra or the state concerned, or the oversight of these. Only the persons and authorities mentioned above may use the information and then only for the purposes spelled out in the preceding sentence. They may, however, disclose it in public court proceedings or in judicial decisions related to such taxes.

Chapter 2. Other provisions

Article 9. ***Verification of compliance***

1. The reporting and due diligence obligations with respect to financial account information set out by this Law constitute tax obligations. The verification of compliance shall be subject to the rules on the tax inspection procedure provided for in Law 21/2014, of 16 October, on the bases of the tax system.

2. Andorran reporting financial institutions shall submit to the Ministry of Finance a report issued by an external auditor regarding their compliance with the obligations provided for in this Law. Such report shall be submitted during the second calendar semester following the term established by article 7 of this Law for the automatic

reporting of financial account information. In the case of financial institutions with external auditors, the report may be issued by their own external auditors, subject to prior authorisation from the Ministry of Finance.

The Ministry of Finance may request and review additional information and clarifications as deemed necessary with respect to the content of the report issued by the external auditor.

Article 10. ***Sanctions (enforcement provisions)***

1. The breach of the reporting and due diligence obligations set out by this Law constitutes an infringement of the duty to supply information for tax purposes, reports or background information, in the terms established in paragraph 2 (c) of article 127 of Law 21/2014, of 16 October, on the bases of the tax regime. The quantification of the sanctions is determined according to paragraph 2 (c) of article 128 of the said Law.

2. The adoption of practices intended to circumvent the reporting and due diligence procedures established in this Law constitutes a special tax infringement sanctioned with a fine of up to EUR 250,000. The sanctions are graduated in accordance with the following criteria:

a) the degree of intention of the offender;

b) the seriousness and duration of the facts;

c) the existence of other final sanctions that have been imposed on the offender in administrative proceedings in the last five years.

3. The sanctioning provisions in this Law are complemented solely for the purposes of their procedure and the competence to handle the case and impose the sanctions by the provisions set forth in Title IV of Law 21/2014, of 16 October, on the bases of the tax system, concerning sanctioning powers and, subsidiarily, by the Administration Code of 29 March 1989.

Sole transitional provision. ***Deadline for the first automatic reporting of information with respect to pre-existing accounts***

The first automatic reporting of information referred to in article 6 of this Law with respect to pre-existing accounts must be carried out once the maximum period for account review set out in Section III and Section V of Annex I of this Law has elapsed, in the following deadlines:

a) pre-existing high value accounts held by an individual: until 30 June 2018.

b) pre-existing low value accounts held by an individual: until 30 June 2019.

c) pre-existing accounts held by entities: until 30 June 2019.

Sole repealing provision. ***Repealing Law 11/2015, of 13 June, and transitional provisions***

1. Law 11/2005, of 13 June, on the application of the Agreement between the Principality of Andorra and the European Community on the establishment of measures equivalent to those laid down in Council Directive

2003/48/EC of the Council, on taxation of savings income in the form of interest payments is repealed and the following transitional provisions are introduced:

a) paying agents' obligations provided for in Law 11/2015 concerning savings income in the form of interest payments made until 31 December 2016 shall continue to apply in 2017 in terms established in the regulations;

b) the transfer obligation of the Principality of Andorra with respect to the Member states of the European Union contained in the first additional provision of Law 11/2005 concerning savings income in the form of interest payments made until 31 December 2016 shall continue to apply in 2017;

c) the exchange of information upon request regulated in Chapter V of Law 11/2005 shall be applicable to requests regarding the conducts referred to in its article 12 occurred prior to the entry into force of this Law.

2. The duty of secrecy established in article 11 of Law 11/2005 shall be maintained after the repeal.

First final provision. ***Automatic exchange of information under the OECD Multilateral Convention***

1. The Ministry of Finance, as the competent authority, and pursuant to the procedure set out in article 7 of the MCAA, notifies the Co-ordinating Body Secretariat the states with which it is willing to automatically exchange information based on the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters.

The automatic exchange of information with these states requires that such states comply with the requirements provided for in the MCAA and which are reproduced below as an integral part of this Law:

a) the necessary laws to implement the Common Reporting Standard are in force, specifying the relevant effective dates with respect to pre-existing accounts, new accounts, and the application or completion of the reporting and due diligence procedures;

b) one or more methods for data transfer are compatible with those used in the Principality of Andorra;

c) there are adequate measures to ensure the required confidentiality and data protection standards are met.

In addition, the bilateral relations of these states with the Principality of Andorra, their political stability, respect for human rights and the principles of the rule of law must also be assessed.

Furthermore, it will be taken into consideration if these states grant market access to the operative entities of the Andorran financial system.

2. Additionally, regardless of the multilateral instrument which is the MCAA, the Ministry of Finance may negotiate bilateral agreements with other contracting states of the OECD Multilateral Convention for the automatic exchange of information based on the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters. The requirements set out in paragraph 1 of this provision must also be met for the automatic exchange of information based on bilateral agreements.

3. The inclusion of the states with which information will be automatically exchanged within the framework of the MCAA or the adoption of bilateral agreements with other states requires, in any case, the approval of the *Consell General,* according to the applicable legislative procedure.

4. The Ministry of Finance shall periodically publish in the Official Gazette, and at least at the beginning of every calendar year, the list of states with which information will be automatically exchanged based on the OECD Standard for Automatic Exchange of Financial Account Information, indicating the date from which such exchange applies for each state.

Second final provision. *Entry into force*

This Law will enter into force on 1 January 2017.

The exchange of information upon request provided for in article 7 of this Law is applicable to requests made on or after 1 January 2017 with respect to taxable periods beginning on or after such date or, where there is no taxable period, to tax obligations that arise on or after such date. Exchanges of information upon request made pursuant to Law 3/2009, of 7 September, on the exchange of tax information upon request are governed by the temporary provisions set out by its second final disposition.

The information automatically exchanged with other states in accordance with the provisions of this Law cannot be the basis for information requests with respect to taxable periods beginning before 1 January 2017 or, where there is no taxable period, to tax obligations that arise before such date.

ANNEX I

STANDARDS ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION HELD BY NATURAL PERSONS AND NON-RESIDENT ENTITIES IN ANDORRA

Section I: General requirements on reporting of information

A. The information to be reported with respect to each reportable account is the following:

a) the name, address, state or states of residence, TIN(s) or equivalent and, in the case of individuals, date and place of birth of each reportable person that is an account holder. In the case of any entity that is an account holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII of Annex I of this Law, is identified as having one or more controlling persons that is a reportable person, the name, address, state or states of residence and TIN(s) or equivalent of each reportable person;

b) the account number (or functional equivalent in its absence);

c) the name and identifying number of the reporting financial institution;

d) the account balance or value (including, in the case of a cash value insurance contractor annuity contract, the cash value or surrender value) as of the end of the relevant calendar year or, if the account was closed during such year or period, the date of closure of the account;

e) in the case of any custodial account:

   i) the total gross amount in concept of interest, the total gross amount in concept of dividends, and the total gross amount of 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) during the calendar year; and

   ii) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the financial institution acted as a custodian, broker, nominee, or otherwise as an any agent for the account holder;

f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the calendar year; and

g) in the case of an account not described in subparagraphs (e) and (f), the total gross amount paid or credited to the account holder during the calendar year with respect to which the financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year.

The information reported must specify the currency in which each amount is denominated.

2. Notwithstanding the provisions of the paragraph above, the following exceptions are applicable with respect to the obligation to report:

a) the TIN(s) or equivalent and date of birth are not required to be reported with respect to reportable accounts that are preexistent accounts by the entry into force of the applicable international agreement or convention, if such TIN(s) or equivalent and date of birth are not in the records of the reporting financial institution. However, a reporting financial institution will try to use reasonable efforts to obtain the TIN(s) or equivalent and date of birth with respect to preexisting accounts by the end of the second calendar year following the year in which preexisting accounts were identified as reportable accounts.

b) there will be no obligation to report the TIN(s) or equivalent if such TIN(s) or equivalent has not been issued by the state of residence of the account holder.

Section II. General due diligence requirements

A. An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II to VII and, unless otherwise provided, information with respect to a reportable account must be reported annually in the calendar year following the year to which the information relates.

B. The balance or value of an account is determined as of the last day of the calendar year.

C. The Andorran reporting financial institutions may use service providers to fulfil the reporting and due diligence obligations imposed on such reporting financial institutions that, in any case, shall remain the responsibility of the reporting financial institutions.

D. The Andorran reporting financial institutions may apply the due diligence procedures for new accounts to preexisting accounts, and the due diligence procedures for high value accounts to lower value accounts, even though the rules otherwise applicable to preexisting accounts continue to apply.

Section III. Due diligence for preexisting individual accounts

The following procedures apply for preexisting individual accounts for the purposes of identifying reportable accounts.

A. Accounts Not Subjected To Review, Identification, Or Reporting. A preexisting individual account that is a cash value insurance contract or an annuity contract is not required to be reviewed, identified or reported, when the selling of such cash value insurance contracts or annuity contracts to residents of a reportable state is effectively prevented by law.

B. Lower Value Accounts.

The following procedures apply with respect to lower value accounts.

1. Residence address. If the reporting financial institution has in its files a current residence address for the individual account holder based on documentary evidence, the reporting financial institution may treat the individual account holder as being a resident for tax purposes of the state in which the address is located for purposes of determining whether such individual account holder is a reportable person.

2. Electronic file search. If the reporting financial institution does not rely on the current residence address for the individual account holder based on documentary evidence as set forth in paragraph B.1, the reporting financial institution must review available electronically searchable data for any of the following indicia and apply paragraphs B.3 to B.6:

a) identification of the account holder as a resident of a reportable state;

b) current mailing or residence address (including a post office box) in a reportable state;

c) one or various telephone numbers in a reportable state and no telephone number in Andorra;

d) standing instructions (other than with respect to depository accounts) to transfer funds to an account maintained in a reportable state;

e) currently effective power of attorney or signatory authority granted to a person with an address in a reportable state; or

f) a “hold mail” instruction or “in-care-of” address in a reportable state if the financial institution does not have any other address on its files for the account holder.

3. If none of the indicia listed in paragraph B.2 are discovered in the electronic search, then no further action is required until there is a change in circumstances from which one or various indicia are associated with the account, or the account becomes a high value account.

4. If any of the indicia listed in paragraphs B.2 (a) to (e) are discovered in the electronic search, or if there is a change in circumstances from which one or various indicia are associated with the account, then the financial institution must treat the account holder as a resident for tax purposes of each reportable state for which indicia are identified, unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and no other indicium listed in paragraph B.2 (a) to (e) are identified, the financial institution must, in the order most appropriate to the circumstances, apply the paper file search described in paragraph C.2, or seek to obtain from the account holder a self-certification or documentary evidence to establish the residence(s) for tax purposes of such account holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or documentary evidence is not successful, the financial institution must report the account to Ministry of Finance as an undocumented account.

6. Notwithstanding a finding of indicia listed in paragraph B.2, a financial institution is not required to treat an account holder as a resident of a reportable state if:

(a) the account holder information contains a current mailing or residence address in the referred state, one or various telephone numbers in that state (and no telephone number in Andorra) or standing instructions (with respect to financial accounts other than depository accounts) to transfer funds to an account maintained in the referred state, and the financial institution obtains, or has previously reviewed and maintains a file of:

(i) a self-certification from the account holder of the state(s) of residence of such account holder that does not include the referred state; and

(ii) documentary evidence establishing the account holder non-reportable status.

(b) the account holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the referred state, and the financial institution obtains, or has previously reviewed and maintains a file of:

(i) a self-certification from the account holder of the state(s) of residence of such account holder that does not include the referred state; or

(ii) documentary evidence establishing the account non-reportable status.

C. Enhanced review procedures for high value accounts

The following procedures apply with respect to high value accounts.

1. Electronic file search. With respect to high value accounts, the financial institution must review electronically searchable data maintained by the financial institution for any of the indicia described in paragraph B.2.

2. Paper file search. If the financial institution's electronically searchable databases include fields for, and register, all of the information described in paragraph C.3, then a further paper file search is not required. If the electronic databases do not capture all of that information, then with respect to a high value account, the financial institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the financial institution within the last five years for finding any of the indicia described in paragraph B.2:

a) the most recent documentary evidence collected with respect to the account;

b) the most recent account opening contract or documentation;

c) the most recent documentation obtained by the financial institution pursuant to AML/KYC procedures or for other regulatory purposes;

d) any power of attorney or signature authority forms currently in effect;

e) any standing instructions currently in effect (other than with respect to depository accounts) to transfer funds to a reportable state.

3. Exception when databases contain sufficient information. The financial institution is not required to perform the paper file search described in paragraph C.2 when the financial institution's electronically searchable information includes the following:

a) the account holder's status with respect to its residence;

b) the account holder's residence address and mailing address currently on file with the reporting financial institution;

c) the account holder's telephone number(s) currently on file, if any, with the financial institution;

d) in the case of financial accounts other than depository accounts, reference to whether there are standing instructions to transfer funds in the account to another account (including accounts at another branch of the financial institution or another financial institution);

e) reference to whether there is a current “in-care-of” address or “hold mail” instruction for the account holder; and

f) reference to whether there is any power of attorney or signatory authority for the account.

4. Relationship manager inquiry for account knowledge. In addition to the electronic and paper file searches described in paragraphs C.1 and C.2, the financial institution must treat as a reportable account any high value account assigned to a relationship manager (including any financial accounts aggregated with that high value account) if the relationship manager has knowledge that the account holder is a reportable person.

5. Effect of Finding Indicia.

a) If none of the indicia listed in paragraph B.2 are discovered in the enhanced review of high value accounts, and the account is not identified as held by a reportable person pursuant to paragraph C.4, then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

b) If any of the indicia listed in paragraphs B.2 (a) to (e) are discovered in the enhanced review of high value accounts, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the financial institution must treat the account as a reportable account with respect to each reportable state for which an indicium is identified unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

c) If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of high value accounts, and no other address and none of the other indicia listed in paragraphs B.2 (a) to (e) are identified for the account holder, the financial institution must obtain from such account holder a self-certification or documentary evidence to determine the residence(s) for tax purposes of the account holder. If the financial institution cannot obtain such self-certification or documentary evidence, it must report the account to the Ministry of Finance as an undocumented account.

6. If a preexisting individual account is not a high value account as of 31 December preceding the entry into force of the applicable international agreement or convention, but becomes a high value account as of the last day of a subsequent calendar year, the financial institution must conduct the enhanced review procedures with respect to such account within the calendar year following the year in which the account becomes a high value account. If, based on that review such account is identified as a reportable account, the financial institution must report the required information with respect to the year in which it is identified as a reportable account and subsequent years on an annual basis, unless the account holder ceases to be a reportable person.

7. Once applied the enhanced review procedures described in paragraph C to a high value account, the financial institution is not required to re-apply such procedures in any subsequent years, other than the relationship manager inquiry, unless the account is undocumented. In the latter case, the financial institution should re-apply them annually until such account is documented.

8. If there is a change of circumstances with respect to a high value account from which one or more indicia described in paragraph B.2 may be associated with the account, then the financial institution must treat the account as a reportable account with respect to each reportable state for which an indicium is identified unless it elects to apply paragraph B.6 and one of the exceptions in that paragraph applies with respect to that account.

9. Financial institutions must implement procedures to ensure that relationship managers identify any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in a reportable state, the financial institution is required to treat the new address as a change in circumstances and, if it elects to apply paragraph B.6, is required to obtain the appropriate documentation from the account holder.

D. Terms for the review of preexisting accounts

Review of preexisting high value individual accounts must be completed within one year of the entry into force of the applicable international agreement or convention. Review of preexisting lower value individual accounts must be completed within two years of the entry into force of the applicable international agreement or convention.

E. Any preexisting individual account that has been identified as a reportable account under this Section must be treated as a reportable account in all subsequent years, unless the account holder ceases to be a reportable person.

Section IV. Due diligence for new individual accounts

The following procedures apply to new individual accounts for the purposes of identifying reportable accounts.

A. Upon account opening, the financial institution must obtain a self-certification, which may be part of the account opening documentation, that allows the financial institution to determine the account holder's residence for tax purposes. The financial institution must confirm the reasonableness of the self-certification based on the information obtained by the 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 resident for tax purposes in a reportable state, the 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 the state of residence for tax purposes (subject to paragraph D of Section I) and account holder's 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 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.

Section V. Due diligence for preexisting entity accounts

The following procedures apply to preexistent entity accounts for the purposes of identifying reportable accounts.

A. Entity accounts not required to be reviewed, identified or reported

Unless the financial institution elects otherwise, either with respect to all preexisting entity accounts or, separately, with respect to any clearly identified group, preexisting entity accounts with an aggregate account balance or value that does not exceed USD 250,000, is not required to be reviewed, identified, or reported as a reportable account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.

B. Entity accounts subject to review

A preexisting entity account that has an aggregate account balance or value, as of 31 December preceding the entry into force of the applicable international agreement or convention, that exceeds USD 250,000, and a preexisting entity account that has an aggregate account balance or value that does not exceed the referred amount, as of 31 December preceding the entry into force of the applicable international agreement or convention, but that does exceed such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. Entity accounts with respect to which reporting is required

With respect to preexisting entity accounts described in paragraph B, only accounts that are held by one or various entities that are reportable persons, or by passive NFEs with one or more controlling persons who are reportable persons, shall be treated as reportable accounts.

D. Review procedures for identifying entity accounts with respect to which reporting is required

With respect to preexisting entity accounts described in paragraph B, financial institutions must apply the following review procedures to determine whether the account is held by one or various reportable persons, or by passive NFEs with one or more controlling persons who are reportable persons:

1. Determination of whether the entity is a reportable person

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the account holder is resident in a reportable state. For this purpose, information indicating that the account holder is resident in a state includes the place of incorporation or organisation, or an address in the referred state.

b) If the information indicates that the account holder is resident in a reportable state, the financial institution must treat the account as a reportable account unless it obtains a self-certification from the entity account holder, or may reasonably determine, based on information in its possession or that is publicly available, that the entity account holder is not a reportable person.

2. Determination of whether the entity is a passive NFE with one or more controlling persons who are reportable persons.

The financial institution must determine whether the account holder is a passive NFE with one or more controlling persons who are reportable persons. If any of the controlling persons of the passive NFE is a reportable person, then the account must be treated as a reportable account. In making these determinations the financial institution must follow the guidance in paragraphs D.2 (a) to (c) in the order most appropriate under the circumstances.

a) Determination of whether the account holder is a passive NFE

For purposes of determining whether the account holder is a passive NFE, the financial institution must obtain a self-certification from the entity account holder to establish its status, unless it may reasonably determine, based on the information in its possession or that is publicly available, that the entity account holder is an active NFE or a financial institution other than an investment entity described in paragraph A.6 (b) of Section VIII that is not resident in a participating state.

b) Determination of the controlling persons of an account holder

For the purposes of determining the controlling persons of an entity account holder, a financial institution may rely on information collected and maintained pursuant to the application of the AML/KYC procedures.

c) Determination of whether a controlling person of a passive NFE Is a reportable person

For the purposes of determining whether a controlling person of a passive NFE is a reportable person, a financial institution may rely on:

(i) information collected and maintained pursuant to AML/KYC procedures in the case of a preexisting entity account held by one or various NFEs and with an aggregate account balance or value that does not exceed USD 1,000,000; or

(ii) a self-certification from the entity account holder or from the controlling persons with respect to the state(s) in which the controlling person(s) are resident for tax purposes.

E. Timing of review and additional procedures applicable to preexisting entity accounts

1. Review of preexisting entity accounts with an aggregate account balance or value that exceeds USD 250,000, as of 31 December preceding the entry into force of the applicable international agreement or convention, must be completed within two years of the entry into force.

2. Review of preexisting entity accounts with an aggregate account balance or value that does not exceed USD 250,000, as of 31 December preceding the entry into force of the applicable international agreement or convention, but that exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

3. If there is a change of circumstances with respect to a preexisting entity account that causes the reporting financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the financial institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

Section VI. Due diligence for new entity accounts

The following procedures apply to new entity accounts for the purposes of identifying reportable accounts.

A. Review procedures for identifying entity accounts with respect to which reporting is required

With respect to new entity accounts, financial institutions must apply the following review procedures to determine whether the account is held by one or various reportable persons, or by passive NFEs with one or more controlling persons who are reportable persons:

1. Determination of whether the entity is a reportable person

a) Obtain a self-certification, which may be part of the account opening documentation, that allows to determine the account holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to the application of AML/KYC procedures. If the entity certifies that it has no residence for tax purposes, the financial institution may rely on the address of the principal office of the entity to determine its residence.

b) If the self-certification indicates that the entity account holder is resident for tax purposes in a reportable state, the 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 entity account holder is not a reportable person.

2. Determination of whether the entity is a passive NFE with one or more controlling persons who are reportable persons

If any of the controlling persons of a passive NFE is a reportable person, then the account must be treated as a reportable account. In making these determinations the financial institution must follow the guidance in paragraph A.2 (a) to (c) in the order most appropriate under the circumstances.

a) Determination of whether the account holder is a passive NFE

For purposes of determining whether the account holder is a passive NFE, the financial institution must obtain a self-certification from the account holder to establish its status, unless it may reasonably determine that, based on the information in its possession or that is publicly available, the account holder is an active NFE or a financial institution other than an investment entity described in paragraph A.6 (b) of Section VIII resident in a non-participating state.

b) Determination of controlling persons of an entity account holder

For purposes of determining the controlling persons of an entity account holder, the financial institution may rely on information collected and maintained pursuant to the application of the AML/KYC procedures.

c) Determination of whether a controlling person of a passive NFE is a reportable person

For purposes of determining whether a controlling person of a passive NFE is a reportable person, the financial institution may rely on a self-certification from the account holder or such controlling person.

Section VII. Special due diligence rules

The following additional rules apply in implementing the due diligence procedures described above:

A. Validity of self-certifications and documentary evidence

A financial institution may not consider valid a self-certification or documentary evidence if the financial institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. Alternative procedures applicable to financial accounts held by individual beneficiaries of a cash value insurance contract or an annuity contract and for a group cash value insurance contract or group annuity contract

A financial institution may presume that an individual beneficiary (other than the owner) of a cash value insurance contract or an annuity contract receiving a death benefit is not a reportable person and treat the financial account as non-reportable, unless the financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person. A financial institution has reason to know that a beneficiary of a cash value insurance contract or an annuity contract is a reportable person if the information collected by the financial institution contains any of the indicia listed in paragraph B of Section III. If a financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person, the institution must follow the procedures established in paragraph B of Section III.

The financial institution may treat a financial account that is an interest in a group cash value insurance contract or group annuity contract as non-reportable account until the date on which an amount is payable to the employee/certificate holder or to the beneficiary, if the financial account that is an interest in a group cash value insurance contract or group annuity contract meets the following requirements:

a) that the policyholder of the group cash value insurance contract or group annuity contract is the employer and covers 25 or more employees/certificate holders;

b) the employee/certificate holders are entitled to receive any service related to their interests and to designate beneficiaries for the benefit payable upon the employee's death; and

c) that the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1,000,000.

The term "group cash value insurance contract" means a cash value insurance contract that (i) offers coverage on individuals who are associated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a group category) the amount of which is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or category of members) of the group.

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

C. Account balance aggregation and currency rules

1. Aggregation of individual accounts

For the purposes of determining the aggregate balance or value of financial accounts held by an individual, the financial institution is required to aggregate all financial accounts maintained by the individual in the financial institution, or in a related entity, but only to the extent that the financial institution's computerised systems link the financial accounts by reference to a data element, such as client number or TIN, and allow account balances or values to be aggregated. For the purposes of applying the aggregation requirements described in this paragraph,

each holder of a jointly held financial account shall be attributed the entire balance or value of the jointly held financial account.

2. Aggregation of entity accounts

For the purposes of determining the aggregate balance or value of financial accounts held by an entity, the financial institution is required must aggregate all financial accounts held by the entity in the financial institution or in related entities, but only to the extent that the financial institution's computerised systems link the financial accounts by reference to a data element, such as client number or TIN, and allow account balances or values to be aggregated. For purposes of applying the aggregation requirements described in this paragraph, each holder of a jointly held financial account shall be attributed the entire balance or value of the jointly held financial account.

3. Special aggregation rule applicable to account relationship managers

For the purposes of determining the aggregate balance or value of financial accounts held by a person in order to identify the financial account as a high value account, the financial institution is required to aggregate all such accounts with respect to which a relationship manager knows, or has reason to know that, directly or indirectly, such accounts are owned or have been established by the same person (unless such person intervenes in a fiduciary capacity).

4. Amounts read to include equivalent in other currencies

All amounts or amounts denominated in US dollars include the equivalent amount in euros and other currencies, according to the official exchange rate of the day in which the conversion is made.

The official exchange rates published by the European Central Bank will be taken as a reference.

Section VIII. Defined terms

The following terms will have the meanings set forth below:

A. Reporting financial institution

1. The term "reporting financial institution" means any Andorran financial institution that is not a non-reporting financial institution.

2. The term "participating state financial institution" means (i) any financial institution that is resident in a participating state, but excludes any branch of that financial institution that is located outside such participating state, and (ii) any branch of a financial institution that is not resident in a participating state, if that branch is located in such participating state.

3. The term "financial institution" means a custodial institution, a depository institution, an investment entity, or a specified insurance company.

4. The term "custodial institution" means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business when 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.

5. The term "depository institution" means any entity that accepts deposits in the usual framework of a banking or similar business.

6. The term "investment entity" means any entity:

a) which primarily conducts as business one or various of the following activities or operations for or on behalf of a customer:

   (i) trading in money market instruments (cheques, bills of exchange, certificates of deposit, derivatives, etc.); foreign exchange; exchange or monetary market instruments based on indexes, transferable securities; or commodity futures trading;

   (ii) individual and collective investment management; or

   (iii) otherwise investing, administering, or managing financial assets or currencies on behalf of other persons; or

b) the institutions' gross income 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 paragraph A.6 a).

An entity is treated as primarily conducting as business one or more of the activities described in paragraph A.6 a), or that an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for the purposes of paragraph A.6 b), if the entity's gross income attributable to the relevant activities equals or exceeds 50 % of the entity's gross income obtained during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is being made; or (ii) the period during which the entity has been in existence. The term "investment entity" does not include entities that are active NFEs because those entities meet any of the criteria in paragraph D.8 d) to g).

This paragraph shall be interpreted in a manner consistent with the definition of "financial institution" included in the financial action task force recommendations.

7. The term "financial asset" includes a security (for example, a share of stock in a corporation; interest in the equity or profits of a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract. The term "financial asset" does not include a non-debt, direct interest in real property.

8. The term "specified insurance company" means any entity that is an insurance company (or the holding company of an insurance company) which offers a cash value insurance contract or an annuity contract, or that is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.

B. Non-Reporting Financial Institution

1. The term “non-reporting financial institution” means any financial institution which is:

a) a public entity, international organisation or central bank, other than with respect to a payment that is derived from an obligation held in the framework of a commercial financial activity of the same type as the activities engaged in by a specified insurance company, custodial institution, or depository institution;

b) a broad participation retirement fund; a narrow participation retirement fund; a pension fund of a public entity, international organisation or central bank; or a qualified credit card issuer;

c) an exempt collective investment vehicle;

d) a trust, if the trustee of the trust is a financial institution and reports all information required to be reported pursuant to Section I with respect to all reportable accounts of the trust.

2. The term “public entity” means the Andorran administration or of any other state, any political subdivision of Andorra or of any other state (which, for the avoidance of any doubt, includes a state, county, or municipality), or any wholly owned agency or instrumentality of Andorra, of any other state or any of any one or more of the foregoing (each, a “public entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Andorra or of any other state.

a) An “integral part” of Andorra or other state means any person, organisation, agency, bureau, fund, instrumentality, and any other body, however designated, that constitutes a governing authority of Andorra or of another state. The net earnings of the governing authority must be credited to its own account or to other accounts of the state of which it is part, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a personal capacity.

b) A controlled entity means an entity which is formally different or that constitutes a separate juridical entity, provided that:

   (i) the entity is wholly owned by one or various public entities and it exclusively controlled, either directly or through other controlled entities, by the referred public entity or entities;

   (ii) the entity’s net earnings are credited to its own account or to other accounts of one or more public entities, with no portion of its income inuring to the benefit of any private person; and

   (iii) the entity’s assets vest in one or more public entities upon dissolution.

c) Income does not inure to the benefit of private persons if such persons are beneficiaries of a public programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the management of some Administration phase. However, income is considered to inure to the benefit of private persons if the income is derived from the use of a public entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term “international organisation” means any international organisation or any wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including supranational

organisations) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with Andorra or other state; and (iii) the income of which does not inure to the benefit of private persons.

4. The term “central bank” means an institution that is by law or state sanction the principal authority, other than the government of Andorra or of another state, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Andorra or of another state, whether or not owned in whole or in part by the institutions of the Principality of Andorra or of another state.

5. The term “broad participation retirement fund” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or various employers in consideration for services rendered, provided that the fund:

a) does not have a single beneficiary with a right to more than 5 % of the fund’s assets;

b) is subject to government regulation and provides information reporting to the tax authorities;

c) satisfies at least one of the following requirements:

   (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;

   (ii) the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in subparagraphs B.5 to B.7 or from retirement and pension accounts described in subparagraph C.17 a)) from the sponsoring employers;

   (iii) the distribution or withdrawal of amounts from the fund is authorised upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs B.5 to B.7 or retirement and pension accounts described in paragraph C.17 a), or penalties apply to distributions or withdrawals made before such specified events; or

   (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed annually USD 50,000 applying the rules set forth in Section VII for account aggregation and currency translation.

6. The term “narrow participation retirement fund” means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or various employers in consideration for services rendered, provided that:

a) the fund has fewer than 50 participants;

b) the fund is sponsored by one or various employers that are not investment entities or passive NFEs;

c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in paragraph C.17 a)) are limited by reference to earned income and compensation of the employee, respectively;

d) participants that are not residents of the state in which the fund is established are not entitled to more than 20 % of the fund's assets; and

e) the fund is subject to state regulation and provides information reporting to the tax authorities.

7. The term "pension fund of a public entity, international organisation or central bank" means a fund established by a governmental entity, international organisation or central bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the public entity, international organisation or central bank.

8. The term "qualified credit card issuer" means a financial institution satisfying the following requirements:

a) the financial institution is a financial institution solely because it is an issuer of credit cards that only accepts deposits when a customer makes a payment in excess of a balance due with respect to transactions conducted with the card and the overpayment is not immediately returned to the customer; and

b) beginning on or before the entry into force of the applicable international agreement or convention, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50,000 or to ensure that any customer overpayment in excess of that amount, is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C.A of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term "exempt collective investment vehicle" means an investment entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not reportable persons, except a passive NFE with controlling persons who are reportable persons.

An investment entity that is regulated as a collective investment vehicle does not fail to qualify under paragraph B.9 as an exempt collective investment vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

a) the collective investment vehicle does not issue any physical shares in bearer form after 31 December preceding the entry into force of the applicable international agreement or convention;

b) the collective investment vehicle retires all such shares upon surrender;

c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and

d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible and in any event within two years of the entry into force of the applicable international agreement or convention.

C. Financial Account

1. The term “financial account” means an account maintained by a financial institution, and includes the depository account, the custodial account and:

a) in the case of an investment entity, any equity or debt interest in the financial institution. However, the term “financial account” does not include any equity or debt interest in an entity that is a financial institution solely because it (i) renders financial advice to, and acts on his behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering financial assets deposited in the name of the customer with a financial institution other than such entity;

b) in the case of a financial institution not described in paragraph C.1 a), any equity or debt interest in the financial institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and

c) any cash value insurance contracts and any annuity contracts issued or managed by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an excluded account.

The term “financial account” does not include any account that is an excluded account.

2. The term “depository account” includes any commercial, checking, savings, time, or thrift account, or another account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or similar instrument maintained by a financial institution in the course of a banking or similar business. Depository accounts also include amounts held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

3. The term “custodial account” means an account (other than an insurance contract or annuity contract) which holds one or various financial assets for the benefit of another person.

4. The term “equity interest” means, in the case of a partnership that is a financial institution, either a capital or profits interest in the partnership. In the case of a trust that has a financial institution nature, an equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A reportable person will be treated as being a beneficiary of a trust if such reportable person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

5. The term “Insurance Contract” means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

6. The term “annuity contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or various individuals. This term also includes the contracts that are considered to be annuity contracts in accordance with the law, regulation, or practice of the state in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

7. The term “cash value insurance contract” means an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value.

8. The term “cash value” means the greater of the following amounts: (i) the amount that the policyholder is entitled to receive as a consequence of surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. However, the term “cash value” does not include an amount payable under an insurance contract:

a) solely by reason of the death of the individual insured under a life insurance contract;

b) as a personal injury or sickness benefit or other benefit upon the occurrence of the event insured against;

c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from a new calculation of a posting or similar error with regard to the premium for the contract;

d) in concept of a dividend paid to the policyholder of the insurance (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in paragraph C.8 b); or

e) as a return of an advance premium or premium deposit for an insurance contract for which the premium is paid at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term “preexisting account” means:

a) a financial account maintained by a financial institution as of 31 December preceding the entry into force of the applicable international agreement or convention.

b) any financial account regardless of the date such financial account was opened, if:

   (i) the account holder also holds with the financial institution or with a related entity within Andorra a financial account that is a preexisting account under paragraph C.9 a);

   (ii) the financial institution, and, as applicable, the related entity within Andorra, treats both of the aforementioned financial accounts, and any other financial accounts of the holder that are treated as preexisting accounts, as a single financial account for the purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for the purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds;

   (iii) with respect to a financial account that is subject to AML/KYC procedures, the financial institution is permitted to apply such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the preexisting account; and

   (iv) the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for the purposes of this Act.

10. The term “new account” means a financial account opened in a financial institution on or after the entry into force of the applicable international agreement or convention, unless it is treated as a preexisting account under paragraph C.9.

11. The term “preexisting individual account” means the preexisting account held by one or various individuals.

12. The term “new individual account” means a new account held by one or various individuals.

13. The term “preexisting entity account” means a preexisting account held by one or various entities.

14. The term “lower value account” means a preexisting financial account with aggregate balance or value, as of 31 December preceding the entry into force of the applicable international agreement or convention, that does not exceed USD 1,000,000.

15. The term “high value account” means a preexisting financial account with aggregate balance or value that exceeds USD 1,000,000, as of 31 December preceding the entry into force of the applicable international agreement or convention or 31 December of any subsequent year.

16. The term “new entity account” means a new account held by one or various entities.

17. The term “excluded account” means any of the following accounts:

a) a retirement or pension account that satisfies the following requirements:

(i) the account is subject to administrative regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) information reporting is required to the Andorran tax authorities with respect to the account;

(iv) account withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(v) either (i) annual contributions are limited to USD 50,000, or (ii) the maximum lifetime contribution limit to the account of USD 1,000,000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A financial account that satisfies the requirement established in paragraph C.17 a)(v) does not fail to satisfy such requirement solely because such financial account may receive assets or funds transferred from one or various financial accounts that meet the requirements of subparagraph C.17 (a) or (b) or from one or more pension funds that meet the requirements of paragraphs B.5, B.6 or B.7;

b) an account that satisfies the following requirements:

(i) the account is subject to administrative regulation as investment vehicle for purposes other than for retirement and is regularly traded on an regulated securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) account withdrawals are conditioned on meeting specific circumstances related to the purpose of the investment or savings account (for example, the offer to provide educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(iv) annual contributions are limited to USD 50,000, applying for these purposes the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A financial account that otherwise satisfies the requirement of paragraph C.17 b)(iv) does not fail to satisfy such requirement solely because such financial account may receive assets or funds transferred from one or various accounts that meet the requirements of paragraph C.17 a) or b) or transferred from one or various pension funds that meet the requirements of any of paragraphs B.5, B.6 or B.7;

c) a life insurance contract with a coverage period that ends before the insured individual attains age 90 that satisfies the following requirements:

(i) periodic premiums do not decrease over time and must be payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, accident or expense charges (whether or not actually imposed) during the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(iv) the contract is not held by a transferee for onerous title;

d) an account that is held exclusively by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

e) an account established as a result of any of the following:

(i) a judicial mandate or judgment.

(ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

- the account is funded exclusively with a down payment, earnest money, deposit in an amount enough to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account as a result of the sale, exchange, or lease of the property;

- the account is established and used exclusively as security of the obligation of the purchaser to pay the purchase price for the property, the obligation of the seller to pay any contingent liability, or the

obligation of the lessor or lessee to pay for any damages to the leased property as agreed under the lease;

- the assets of the account, including the income earned thereon, are payable or otherwise distributable for the benefit of the purchaser, seller, lessor, or lessee (if so, to satisfy such person's obligation) when the property is sold, exchanged, or assigned, or the lease terminates;
- the account is not a margin or similar account established in the framework of a sale or exchange of financial assets; and
- the account is not associated with an account described in paragraph C.17 f).

(iii) the obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment to exclusively facilitate the payment of taxes or insurances related to the real property at a later time;

(iv) the obligation of a financial institution exclusively to facilitate the payment of taxes at a later time.

f) a depository account that satisfies the following requirements:

(i) the account exists solely because a customer makes a payment in excess of a balance due with respect to transactions made with a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and

(ii) beginning on or before the entry into force of the applicable international agreement or convention, the financial institution implements policies and procedures either to prevent the customer from making an overpayment in excess of USD 50,000, or to ensure that any customer overpayment in excess of that amount is refunded within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For these purposes, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

D. Reportable account

1. The term "reportable account" means a financial account held by one or more reportable persons or by a passive NFE with one or more controlling persons that is a reportable person provided it has been identified as such pursuant to the due diligence procedures established in Sections II to VII.

2. The term "reportable person" means a person resident in a reportable state other than: (i) a corporation the stock of which is regularly traded on one or various regulated securities markets; (ii) any corporation that is a related entity of a corporation described in clause (i); (iii) a public entity; (iv) an international organisation; (v) a central bank; or (vi) a financial institution.

3. The term "person of a reportable state" means an individual or entity that is resident for tax purposes in a reportable state under the tax laws of such state, or an estate of a decedent that was a resident for tax purposes in a reportable state. For this purpose, an entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes, shall be treated as resident in the state in which its place of effective management is situated.

4. The term “reportable state” means a Member state of the European Union or any other state with regard to which an amending protocol establishing an automatic exchange of financial account information specified in Section I is applicable.

5. The term “participating state” means:

a) any Member state of the European Union provided that it is obligated to report information to Andorra, or

b) any other state with this an amending protocol establishing an automatic exchange of financial account information specified in Section I is applicable.

6. The term “controlling persons” means the natural persons who exercise control over an entity pursuant to the AML/KYC procedures that are applicable in Andorra. In the case of a trust, this term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or category(es) of beneficiary(ies), and any other natural person(s) exercising ultimate effective control over the trust. In the case of a legal arrangement other than a trust, such term means that or those person(s) that exercise equivalent or similar functions.

7. The term “non-financial entity (NFE)” means any entity that is not a financial institution.

8. The term “passive NFE” means any of the following: (i) an NFE that is not an active NFE; or (ii) an investment entity pursuant to paragraph A.6 b) that is not a participating state financial institution.

9. The term “active NFE” means any NFE that meets any of the following criteria:

a) less than 50 % of the NFE’s gross income for the preceding calendar year is passive income, and less than 50 % of the assets held by the NFE during the preceding calendar year produce or are held for the production of passive income;

b) the stock of the NFE is regularly traded on a regulated securities market or the NFE is a related entity of an entity the stock of which is regularly traded on a regulated securities market;

c) the NFE is a public entity, an international organisation, a central bank, or an entity wholly owned by any of the foregoing;

d) the activities of the NFE essentially consist of holding (in whole or in part) the stock of, or providing financing and services to, one or various subsidiaries that engage in trades or businesses other than the business of a financial institution. However, the entity does not qualify as an NFE 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 their equity for investment purposes;

e) the NFE is not yet operating a business and has no prior operating history, but is investing into assets with the intent to operate a business other than that of a financial institution. The NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation;

f) the NFE was not a financial institution in the past five years, and is in the process of liquidating or reorganising its assets with the intent to continue or recommence a business other than that of a financial institution;

g) the NFE's main business consists on the financing and hedging transactions of related entities that are not financial institutions, the main business of which is other than those of financial institutions, and does not provide such services to any entity that is not a related entity; or

h) the NFE meets all of the following requirements:

(i) it is established and managed in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and managed in its state of residence as a professional organisation, commercial interest league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or organisation operated exclusively for the promotion of social welfare;

(ii) it is exempt from income tax in its state 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 state of residence or the formation documents do not permit income or assets of the NFE to be distributed to, or applied for the benefit of, private persons or non-charitable entities other than pursuant to the conduct of the NFE's charitable activity, or as payment of reasonable compensation for services received, or as payment representing the fair market value of property which the NFE has purchased; and

(v) the applicable laws of the NFE's state of residence or the formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a public entity or to another non-profit organisation, or escheat to the public Administration of the NFE's state of residence or to any political subdivision thereof.

E. Miscellaneous

1. The term "account holder" means the person listed or identified as the holder of a financial account by the financial institution where the account is maintained. A person, other than a financial institution, that holds a financial account for the on behalf of or account of another person as agent, depositary, nominee, signatory, financial advisor, or intermediary, is not treated as account holder. In the case of a cash value insurance contract or an annuity contract, the account holder is any person authorised to access the cash value or to change the beneficiary of the contract. If no person can access the cash value nor change the beneficiary, the account holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the contract. Upon the maturity date of a cash value insurance contract or an annuity contract, each person entitled to receive a payment under the contract is treated as an account holder.

2. The term "AML/KYC procedures" means the due diligence procedures with respect to financial institutions' customers that are established in the anti-money laundering and financing of terrorism activities regulations applicable in Andorra.

3. The term "entity" means a legal person or a legal arrangement, such as, among others, a corporation, partnership, trust, or foundation.

4. An entity is a “related entity” of another entity if either entity controls the other entity or the two entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 % of the vote and value.

5. The term “tax identification number” means the taxpayer identification number of a taxpayer or, in its absence, its functional equivalent.

6. The term “documentary evidence” includes any of the following:

a) a certificate of residence issued by an authorised governmental body to this effect (for example, an administration or agency thereof, or a local entity) of the state in which the payee has its residence.

b) with respect to an individual, any valid identification issued by an authorised government body to this effect (for example, an administration or an agency thereof, or a local entity), that includes the individual’s name and surname.

c) with respect to an entity, any official documentation issued by an authorised government body to this effect (for example, an administration or an agency thereof, or a local entity) that includes the name of the entity and either the address of its principal office in the state in which it claims to be a resident for tax purposes or the state in which the entity was incorporated.

d) any audited financial statement, third-party credit report, bankruptcy information reporting, or securities regulator’s report.

With respect to a preexisting entity account, financial institutions may use as documentary evidence any classification in the reporting financial institution's files with respect to the account holder that has been determined based on a standardised industry coding system, that has been recorded by the reporting financial institution consistent with its normal business practices in application of AML/KYC procedures or with another regulatory purposes (other than for tax purposes) and that was implemented by the reporting financial institution prior to the date used to classify the financial account as a preexisting account, provided that the financial institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term ‘standardised industry coding system’ means a coding system used to classify establishments.

ANNEX II

COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

1. Change In circumstances

A “change in circumstances” includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information with respect to the “account holder” (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in paragraphs C(1) to (3) of section VII of annex I) if such change or addition of information affects the status of the “account holder”.

If a “reporting financial institution” has relied on documentary evidence concerning the residence address under the terms described in paragraph B(1) of section III of annex I and there is a change in circumstances that causes the “reporting financial institution” to know or have reason to know that the original documentary evidence (or other equivalent documentation) is incorrect or unreliable, the “reporting financial institution” must, by the later of the last day of the relevant calendar year, or 90 calendar days following the identification or discovery of such change in circumstances, obtain a self-certification and new “documentary evidence” to establish the residence(s) for tax purposes of the “account holder”. If the “reporting financial institution” cannot obtain the self-certification and the new “documentary evidence” by such date, the “reporting financial institution” must apply the electronic file search procedure described in paragraphs B(2) to (6) of section III of annex I.

2. Self-certification for ‘‘new entity accounts’’

With respect to “new entity accounts”, for the purposes of determining whether a “controlling person” of a “passive NFE” is a “reportable person”, a “reporting financial institution” may only rely on a self-certification from either the “account holder” or the “controlling person”.

3. Residence of a financial institution

A “financial institution” is “resident” in Andorra or in a “participating State” if it is subject to the jurisdiction of Andorra or of such “participating State” (i.e., the “participating State” may impose the reporting of information to the “financial institution”). In general, where a “financial institution” is resident for tax purposes in Andorra or in another “participating State”, it is subject to the jurisdiction of Andorra or of another “participating State” and it is, thus, an “Andorran financial institution” or “another participating State financial institution”. In the case of a trust that is a “financial institution” (irrespective of whether it is resident for tax purposes in Andorra or in another “participating State”), the trust is considered to be subject to the jurisdiction of Andorra or of another “participating State” if one or more of its trustees are resident in Andorra or in another “participant State” except if the trust reports all the information required to be reported pursuant to this Act to another “participating State”, because it is resident for tax purposes in such other “participating State”. However, where a “financial institution” (other than a trust) does not have a residence for tax purposes (e.g., because it is considered as fiscally transparent, or it is located in a State that does not have an income tax), it is considered to be subject to the jurisdiction of Andorra or of another “participating State” and it is, thus, a “financial institution” of Andorra or of another “participating State” if:

a) it is incorporated under the laws of Andorra or of another “participating State”;

b) it has its place of management (including effective management) in Andorra or in another “participating State”; or

c) it is subject to financial supervision in Andorra or in another “participating State”.

Where a “financial institution” (other than a trust) is resident in one or more “participating States” (Andorra or another “participating State”), such “financial institution” is subjected to the reporting and due diligence obligations of the “participating State” in which it maintains the “financial account(s)”.

4. Accounts maintained

In general, an account would be considered to be maintained by a “financial institution” pursuant to the application of the following criteria:

a) in the case of a “custodial account”, by the “financial institution” that holds custody over the assets in the account (including a “financial institution” that holds assets in street name for the “account holder”).

b) in the case of a “depository account”, by the “financial institution” that is obligated to make payments with respect to the account (excluding an agent of a “financial institution” regardless of whether such agent is a “financial institution”).

c) in the case of any equity or debt interest in a “financial institution” that constitutes a “financial account”, by such “financial institution”.

d) In the case of a “cash value insurance contract” or an “annuity contract”, by the “financial institution” that is obligated to make payments with respect to the contract.

5. Trusts that are “passive NFEs”

An “entity” such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to paragraph D(3) of section VIII of annex I, shall be treated as resident in the State in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered “similar” to a partnership or to a limited liability partnership where it is not treated as a taxable unit in a “reportable territory” under the tax laws of such territory. In addition, in order to avoid duplicate reporting (given the wide scope of the term “controlling persons” in the case of trusts), a trust that is a “passive NFE” must not be considered a similar legal arrangement.

6. Address of entity’s principal office

One of the requirements described in paragraph E(6)(c) of section VIII of annex I is that, with respect to an “entity”, the official documentation includes either the address of the its principal office in the State in which it claims to be a resident or the State in which it was incorporated or organised. The address of the “entity’s” principal office is generally the place in which its place of effective management is situated. The address of a “financial institution” with which the “entity” maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the “entity’s” principal office unless such address is the only address used by the “entity” and appears as the “entity's” registered address in the “entity's” organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the “entity’s” principal office.