

SOLUTION

The Regulatory Newsletter – May 2017

deBOCCARD
CONSEIL

In partnership with Geneva Compliance Group



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EDITORIAL

Since the first publication in November 2016 of **SOLUTION**, Geneva Compliance Group SA and de Boccard Conseil SA's regulatory newsletter, we have carefully followed the topics related to the gradual implementation of the Automatic Exchange of Information (CRS). In this edition, you will find the latest information about this subject.

Regulatory news also prompts us to look again at the regulations that came into force in 2014 and 2016, FATCA and LIMF. With respect to FATCA, the renewal of the FFI Agreement has to be carried out before the end of July 2017. LIMF came up again with its practical consequences, with the obligation to obtain an LEI number and to classify entities.

As far as the regulatory future is concerned, we will keep you informed of future developments, in particular regarding LSFIn and LEFin.

We sincerely hope this new article will continue to bring practical solutions and wish you a pleasant reading.

Geneva Compliance Group SA

De Boccard Conseil SA

De Boccard Conseil SA
Rue de Candolle 12 - 1205 Genève
+41227353576
www.deboccard.ch

Geneva Compliance Group SA
Rue de Candolle 12 - 1205 Genève
+41227353555
www.genevacompliance.com

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FATCA – RENEWAL OF FFI AGREEMENT IN JULY 2017

In a newsletter published on [May 5, 2017](#), the Internal Revenue Service (IRS) informs the requirement for financial institutions FFIs to renew their FFI Agreement with the IRS by July 31, 2017 on the IRS portal. This obligation applies in particular to Swiss financial institutions, as part of the Reporting Model 2 FFI agreement.

Financial institutions failing to renew within the deadline will be deemed to have terminated their FFI Agreements. This would result in the loss of GIIN number and withdrawal from the FFI List, and eventually treatment of the institution concerned as a Nonparticipating FFI entity by custodian banks.

Renewal must be applied for via the "*Renew FFI Agreement*" link on the [FATCA Homepage](#). However, this feature is not yet available. We recommend concerned entities to carefully monitor the FATCA Home page updates.

In respect to entities sponsored by Geneva Compliance Group SA (GCG), this will be undertaken by GCG directly; No action is therefore required from these sponsored entities.

FMIA - STATUS

Although the [Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading \("FMIA"\)](#) and its [Ordinance](#) (OIMF) have been in force in Switzerland since the 1st of January 2016, the consequences on account holders only recently arise with the requirement for entity classification and LEI number transmission.

The FMIA is the Swiss translation of the conclusions of the G-20 set up in response to the 2008 economic crisis. Inspired by the European EMIR directive and the American Dodd-Frank Act, the FMIA was adopted in order to improve regulation of the derivatives market capital market infrastructures.

For those dealing with derivatives, FMIA imposes obligations to offset, declare and mitigate risks. To determine each counterparty's specific reporting, clearing and reconciliation obligations, it's necessary to determine the FMIA status for each entity within the following categories:

- Large financial counterpart (FC+)
- Small Financial counterpart (FC-)
- Large non-financial counterpart (NFC+)
- Small Financial counterpart (NFC-).

In principle, a "NFC-" will have no obligation in relation to the FMIA, unlike all other counterparty types. Based on thresholds issued by the Federal Council (OIMF), a specific examination is required to analyze its counterparty type and then determine its related obligations.

For more information on this subject, we invite you to read **THE SOLUTION** at the end of this edition.

FMIA – LEI NUMBER

Among the obligations set out above, the FMIA includes the obligation to report derivative transactions (104 FMIA) to a central repository. This obligation requires counterparties to declare (in general financial counterparties) and to identify the parties to the contract. Annex 2 of the OIMF states that the identification of counterparties is done through a Legal Entity Identifier ("LEI" Number), consisting of 20 alphanumeric characters.

Only entities active on the derivatives market must obtain a LEI Number and communicate it to their custodian bank. On the other hand, entities that are not dealing with this type of financial instrument should not be concerned with obtaining and disclosing a LEI Number.

To date, the registration portal at the Federal Statistical Office is still not available and Swiss entities wishing to obtain a LEI Number must apply to a [Local Operating Unit \(LOU\)](#) located abroad.

For more information on this subject, we also invite you to read **THE SOLUTION** at the end of this edition.

CRS – NEWLY ACTIVATED CRS AGREEMENTS IN MAY 2017

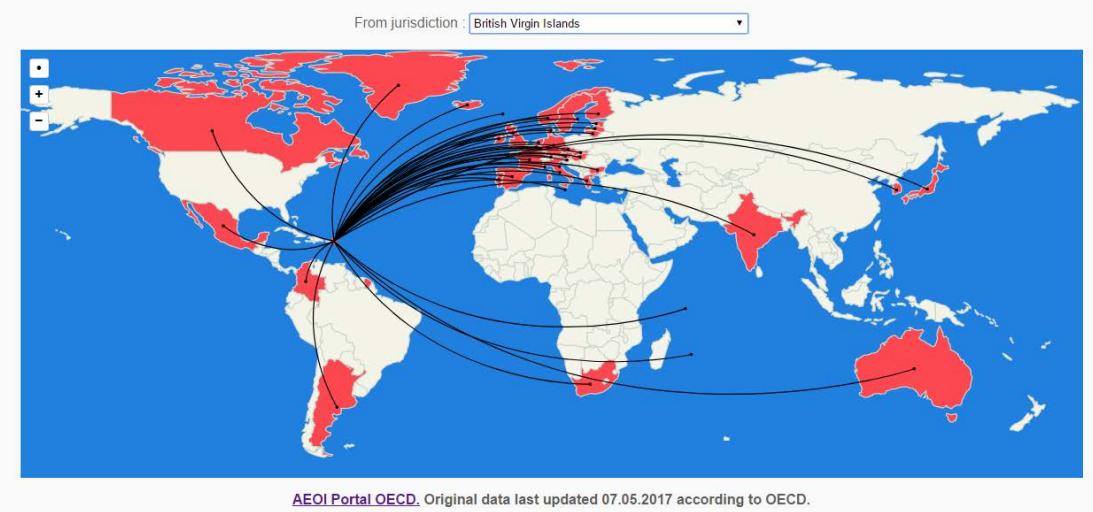
On May 5, 2017, the OECD published an update to its interactive database listing newly activated CRS agreements. This now includes more than 1,800 bilateral activated agreements in force in more than 60 jurisdictions.

Most new agreements were activated by Anguilla, Brazil, Canada, Croatia, Japan, Monaco and Uruguay. It should also be noted that some agreements with Romania were revoked. The OECD also used this update to correct some material errors made in previously activated agreements.

A list of newly activated CRS agreements can be found [via this link](#).

In the [press release](#) accompanying this update, the OECD declares that most of the CRS agreements to be implemented in 2017 on the 2016 data are now activated. A new round of agreements activation is planned for July 2017 and could still concern agreements considering an exchange in 2018 on the 2017 data.

Geneva Compliance Group: CRS Map with links between countries



CRS – POSTPONEMENT OF REGISTRATION AND REPORTING DEADLINES

In our April edition of **SOLUTION**, we mentioned the reporting deadlines for reporting FIs in early adopter countries having to make the first reporting to their respective authorities in 2017 on the basis of the data collected in 2016.

Please find a list of the main amended deadlines below (modified deadlines are in blue):

Jurisdiction	Time-limit for registration	Time-limit for reporting
Malta	30 September 2016	30 April 2017
UK	31 May 2017	31 May 2017
Seychelles	30 June 2017	30 June 2017
Liechtenstein	31 May 2017	<u>31 July 2017</u>
British Virgin Islands	<u>30 June 2017</u>	<u>31 July 2017</u>
Cayman Islands	<u>30 June 2017</u>	<u>31 July 2017</u>
Gibraltar	31 July 2017	31 July 2017

THE SOLUTION: FMIA STATUS ANALYSIS AND LEI NUMBER REQUEST

As indicated above (*FMIA - Status* and *FMIA – LEI Number*), the FMIA requires Swiss banks to collect LEI Numbers and FMIA status of specific entity accounts in their books. Furthermore, many of the entities managed in Switzerland have received a communication from their banks asking them to provide their banks with a LEI Number and a FMIA status.

It should be noted that Swiss depository banks are not responsible for FMIA status classification and have no obligation to confirm the said status.

In this context, de Boccard Conseil SA offers assistance to its client entity directors within the framework of these new regulatory obligations, namely:

1. Classification in regard to the FMIA Status: assistance for FMIA status classification (Large Financial Counterpart (FC +), Small Financial Counterpart (FC-), Large Non-Financial Counterpart (NFC +) and Small Non-Financial Counterpart (NFC -)) by providing a legal opinion on the said classification in the light of the applicable criteria and thresholds.
2. Obtaining the LEI Number: assistance with the registration process at the Federal Statistical Office or, failing that, at a Local Operating Unit (LOU) in order to get an LEI Number.

De Boccard Conseil SA team remain at your disposal to assist you in these new regulatory procedures.

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CONTRIBUTORS :



Guillaume de Boccard
gdb@deboccard.ch



Michel Chauvet
mc@genevacompliance.ch



Romain Blanc
rb@deboccard.ch



Owen Merz
om@genevacompliance.com

De Boccard Conseil SA
Rue de Candolle 12 - 1205 Genève
+41227353576
www.deboccard.ch

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Rue de Candolle 12 - 1205 Genève
+41227353555
www.genevacompliance.com

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