



## Gibraltar Association of Compliance Officers

Hon Albert Isola MP  
Minister for Financial Services and Gaming  
Suite 771  
Europort  
Gibraltar GX11 1AA

August 6, 2015

Dear Albert,

**RE: Company Management excluded from the definition of “Investment Entity” under local US FATCA Regulations**

After reviewing the draft International Co-operation (improvement of international Tax Compliance) (United States) Regulations 2015 we would like to ask some guidance, on behalf of our members.

The Draft Regulations exclude “Company Management” from the definition of an Investment Entity. As far as we are aware, Gibraltar is the only country that explicitly excludes this activity. BVI gives entities the choice in its guidance – and other jurisdictions do not address the point specifically and hence company managers can be designated an FFI.

It is our understanding that the reason for the exclusion is the Government’s view that company managers do not administer or manage funds/money on behalf of other persons but rather on behalf of the company.

In addition, the Gibraltar Regulations state that *“to the extent that a definition in these regulations differs from a definition in the Agreement (IGA), the definition in the Agreement (IGA) shall prevail to the extent of that difference.”* As the IGA does not include a company management exclusion, it is not clear whether the exclusion in the regulations can be ignored.

Whether or not the exclusion in the regulations can be ignored does to our mind create a grey area and therefore since if a member decides to ignore the exclusion, and reports on that basis, they may have their reports challenged as not complying with local regulations. This position is causing our members some concern.

We, therefore, ask Government to consider taking out the specific exclusion of company management so that its Regulations are consistent with other countries and allow company managers to have a choice in their interpretation of an Investment Entity.

We are not asking Government to consider the inclusion of company management in the Investment Entity definition, but to rather give the choice of interpretation.

We await your response.

Best Regards,

A handwritten signature in black ink, appearing to read 'Carlos M. Martins'. The signature is written in a cursive style with a prominent horizontal line across the top.

Carlos M. Martins  
GACO Chairman,  
For and on behalf of the GACO Executive Committee