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**Automatic Exchange of Financial Account
Information Regulations 2017**

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Cabinet makes the following regulations under section 15 of the *Automatic Exchange of Financial Account Information Act 2016*:

1. Short Title

These Regulations may be cited as the *Automatic Exchange of Financial Account Information Regulations 2017*.

2. Commencement

These Regulations commence on the day they are notified in the Gazette.

3. Definitions

(1) In these Regulations:

'Act' means the *Automatic Exchange of Financial Account Information Act 2016*;

'dormant account'

(a) means an account where:

- (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 reporting financial institution in the previous 3 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 reporting financial institution in the previous 5 years;
- (iii) the annual balance of the account does not exceed US\$1,000;
- (iv) the account is treated as a dormant account under the reporting financial institution's normal operating procedures, provided that such procedures contain substantially similar requirements to those in subparagraphs (i), (ii), (iii) and (v) of this definition of dormant account;
- (v) in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous 5 years.

(b) An account ceases to be a dormant account when:

- (i) the account holder initiates a transaction with regard to the account or any other account held by the account holder with the reporting financial institution;

the account holder communicates with the reporting financial institution that maintains such account regarding the account or

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- (ii) any other account held by the account holder with the reporting financial institution;
or
- (iii) the account ceases to be a dormant account under the reporting financial institution's normal operating procedures,

'excluded account' means:

- (a) an account as defined in subparagraph C (17) (a) to (f) of Section VIII of the Standard; or
- (b) an account listed as an excluded account in Schedule 1 of these regulations,

'high value account' means a pre-existing individual account with an aggregate balance or value that exceeds US\$1,000,000 as of 31 December 2016 or 31 December of any subsequent year;

'lower value account' means a pre-existing individual account, which is not a high value account, with an aggregate balance or value as of 31 December 2016, that does not exceed US\$1,000,000';

'Nauru financial institution' means a Jurisdiction Financial Institution as defined in and for the purposes of the Act;

'new account' means a financial account maintained by a reporting financial institution opened on or after 1 January 2017, unless it is treated as a pre-existing account under paragraph (b) of the definition of 'pre-existing account' in these Regulations;

'non-reporting financial institution' means:

- (a) a financial institution as defined in subparagraphs B (1) (a), (b), (d) and (e) of Section VIII of the Standard;
- (b) an entity listed as a non-reporting financial institution in Schedule 2 of these Regulations.

'participating jurisdiction' means a jurisdiction which is listed in Schedule 3 of these Regulations;

'pre-existing account' means:

- (a) a financial account maintained by a reporting financial institution as of 31 December 2016;
or
- (b) any financial account of an account holder, regardless of the date such financial account was opened, if:
 - (i) the account holder also holds with the reporting financial institution (or with a related entity within the same jurisdiction as the reporting financial institution) a financial account that is a pre-existing account under paragraph (a);

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- (ii) the reporting financial institution (and, as applicable, the related entity within the same jurisdiction as the reporting financial institution) treats both of the aforementioned financial accounts, and any other financial accounts of the account holder that are treated as pre-existing accounts under this paragraph (b), as a single financial account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the Standard, and for 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 reporting financial institution is permitted to satisfy such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the pre-existing account described in paragraph (a); 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 purposes of the Standard.

'reportable account' has the meaning given to it by the Standard;

'standardised industry coding system' means a coding system used to classify establishments by business type for purposes other than tax purposes;

'US\$' means *United States Dollars, the official currency of the United States of America.*

(2) A term used in these Regulations has the same meaning as in the Act.

(3) A reference to the Standard, or a provision of it, is to be construed as a reference to the Standard or provision of it as amended from time to time.

(4) For the purposes of these Regulations, the dates specified in the definition of "Exempt Collective Investment vehicle" in subparagraph B(9) of Section VIII of the Standard are:

(a) 1 January 2017 in the case of subparagraph B(9)(a); and

(b) 14 April 2017 in the case of subparagraph B(9)(d).

(5) For the purposes of these Regulations the Standard is to be read as if the definition of "Related Entity" in subparagraph E(4) of Section VIII of the Standard read as follows:

An Entity is a "Related Entity" of another Entity if:

(a) either Entity controls the other Entity;

(b) the two Entities are under common control; or

the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this

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- (c) purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.
- (6) For the purposes of these Regulations, the date specified in the definition of "Qualified Credit Card Issuer" in subparagraph B(8) of Section VIII of the Standard is 1 January 2017.
- (7) For the purposes of applying:
 - (a) regulations 4 and 5 and the due diligence procedures described in Sections II to VII of the Standard, the definition of "Reportable Jurisdiction" in subparagraph D(4) of Section VIII of the Standard is to be read as follows:

The term "Reportable Jurisdiction" means any jurisdiction other than the United States of America or Nauru;
 - (b) regulations 6 and 7 and Section I of the Standard, the definition "Reportable Jurisdiction" in subparagraph D(4) of Section VIII of the Standard is to be read as follows:

The term "Reportable Jurisdiction" means any jurisdiction which is listed in Schedule 4 of these Regulations.

4 Due diligence requirements

- (1) A reporting financial institution must establish, maintain and document procedures that are designed to identify reportable accounts maintained by the institution.
- (2) A reporting financial institution must:
 - (a) identify reportable accounts maintained by the institution by applying the due diligence procedures described in Sections II to VII of the Standard; and
 - (b) apply due diligence procedures as if the date specified in:
 - (i) subparagraph C(6) of Section III of the Standard were 31 December 2016;
 - (ii) paragraph D of Section III of the Standard were 31 December 2016;
 - (iii) paragraph A of Section V of the Standard were 31 December 2016;
 - (iv) paragraph B of Section V of the Standard were 31 December 2016 in both the first and second instances;
 - (v) subparagraph E(1) of Section V of the Standard were 31 December 2016 in the first instance and 31 December 2018 in the second instance; and

- (vi) subparagraph E(2) of Section V of the Standard were 31 December 2016.
- (3) For the purposes of these Regulations, an account balance that has a negative value is treated as having a nil value.
- (4) In determining the balance or value of an account denominated in a currency (other than US\$) for the purposes of the Standard and these Regulations, the institution must translate the relevant US\$ threshold amount into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.
- (5) For the purposes of these Regulations, an account held by an individual as a partner of a partnership is treated as an entity account and is not treated as an individual account.

5 Modification of the due diligence requirements of the Standard

(1) A reporting financial institution may apply:

1. the residence address procedure, as described in sub-paragraph B(1) of Section III of the Standard, to a lower value account;
2. the due diligence procedures for new accounts, described in paragraph A of Section IV or VI of the Standard, to pre-existing accounts, subject to subsections (2) and (3); and
3. the due diligence procedures for high value accounts, described in paragraph C of Section III of the Standard, to lower value accounts.

(2) Where a reporting financial institution applies the due diligence procedures for a new account to a pre-existing account, the procedures described in subparagraph B(1) of Section III and paragraphs C of Section I, A of Section III and A of Section V of the Standard shall apply to the new account.

(3) A reporting financial institution may not apply the due diligence procedures for a new account to a pre-existing account unless the institution applies the procedures to all pre-existing accounts it maintains or a clearly identifiable group of pre-existing accounts.

(4) A reporting financial institution may, with respect to a pre-existing entity account, use as documentary evidence any classification in the institution's records with respect to the account holder that was determined based on a standardised industry coding system, that was recorded by the institution consistent with its normal business practices for the purposes of AML/KYC procedures or another regulatory purpose (other than for tax purposes) and that was implemented by the institution prior to the date used to classify the financial account as a pre-existing account, provided that the institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(5) 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.

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- (6) For the purposes of regulation 4, the Standard is to be read as if paragraph B of Section VII of the Standard read as follows:

'Alternative Procedures for 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 Reporting 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 Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting 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 Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- (a) the Group Cash value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in the domestic currency of each Member State that corresponds to US\$1,000,000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that:

- i. provides coverage on individuals who are affiliated 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 class within the group) that is determined without regard to the individual health characteristics

- iii. other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

6 Reporting obligations

- (1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, file an information return with the Secretary setting out the information required to be reported under the Standard in relation to every reportable account that is maintained by the institution at any time during the calendar year in question.
- (2) The first reporting year for any reportable account is the calendar year 2017.
- (3) The information required to be reported in relation to a reportable account is set out in paragraphs A and B of section I of the Standard, subject to paragraphs C to E of Section I of the Standard.
- (4) The return must be submitted electronically in accordance with regulation 7 on or before 31 May of the year following the calendar year to which the return relates.
- (5) For the purposes of the information required to be reported under the Standard:
 - (a) references to the balance or value of an account include a nil balance or value; and
 - (b) references to paying an amount include crediting an amount.
- (6) A reporting financial institution must, in respect of the first reporting year and every following calendar year, file an information return with the Secretary indicating that it has no reportable accounts to report in respect of such year, if it has not identified any reportable accounts after applying the due diligence procedures described in Sections II to VII of the Standard.

7 Electronic return system

- (1) The return under regulation 6 must be made electronically using an electronic return system.
- (2) The form and manner of an electronic return system may be specified in specific or general directions given by the Secretary.
- (3) A return that is not made in accordance with sub-regulations (1) and (2) is treated as not having been made.
- (4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved:

- (a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process;
- (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process;
- (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

(6) A return made on behalf of a reporting financial institution is taken to have been made by that institution, unless the institution proves that the return was made without the institution's authority.

8 Records

(1) Every reporting financial institution shall keep records that the institution obtains or creates for the purpose of complying with these Regulations, including self-certifications and records of documentary evidence.

(2) Every reporting financial institution required by these Regulations to keep records that does so electronically shall retain them in an electronically readable format for the retention period referred to in sub regulation (4).

(3) Every reporting financial institution that obtains or creates records, as required under these Regulations, in a language other than English shall, upon request, provide an English translation to the Secretary for Finance.

(4) Every reporting financial institution that is required to keep, obtain or create records under these Regulations shall retain those records for a period of at least 5 years following:

- (a) in the case of self-certification, the last day on which a related financial account is open; and
- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

9 Inspection of books, etc and provision of information and assistance

(1) A designated officer or authorised officer may, by notice in writing, require a financial institution to give the officer within such time, not being less than 14 days, as may be provided by the notice, with such information (including copies of any relevant books, records or other documents) as the officer may reasonably require for any purpose relating to the administration or enforcement of these Regulations.

- (2) A designated officer or authorised officer may require a financial institution to produce books, records or other documentation, to provide information, explanations and particulars, and to give all assistance which the officer may reasonably require relating to the administration or enforcement of these Regulations.
- (3) A designated or authorised officer may make extracts from or copies of all or any part of the books, records or other documents or other material made available to the officer or require that copies of books, records or other documents be made available to the officer for any purpose relating to the administration or enforcement of these Regulations.

10 Non-resident reporting financial institution's representative or agent

- (1) If a reporting financial institution is not a resident in Nauru, the obligations of the institution under these Regulations are to be treated as if they were also the obligations of any Nauru representative or agent of the institution.
- (2) For the purposes of this regulation:
- (a) a reporting financial institution which is a partnership is resident in Nauru if the control and management of the business of the partnership as a reporting financial institution takes place there;
 - (b) a reporting financial institution which is not a partnership is resident in Nauru if it is resident in Nauru for tax purposes.

11 Use of service providers

A reporting financial institution may use a service provider to undertake the due diligence requirements under regulations 4 and 5 and, the reporting obligations under regulations 6 and 7, but in such cases those obligations continue to be the obligations of the institution.

SCHEDULE 1 – Excluded Accounts

For the purposes of the Standard and these Regulations, the following are excluded accounts:
- dormant accounts.

SCHEDULE 2 – Non-reporting Financial Institutions

For the purposes of the Standard and these Regulations, the following are non-reporting financial institutions:
- no non-reporting financial institutions have been specified as yet.

SCHEDULE 3 – Participating Jurisdictions

For the purpose of the Standard, the following are participating jurisdictions:

Albania, Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, The Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Ghana, Gibraltar, Greece, Greenland, Grenada, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macao (China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montserrat, Netherlands, New Zealand, Niue, Norway, Panama, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Seychelles, Singapore, Saint Maarten, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Turks and Caicos Islands, United Arab Emirates, United Kingdom, Uruguay, Vanuatu.

SCHEDULE 4 – Reportable Jurisdictions

For the purposes of applying regulations 6 and 7, the following are reportable jurisdictions:

Albania, Argentina, Australia, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Ghana, Gibraltar, Greece, Greenland, Grenada, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jersey, Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Montserrat, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Saint Vincent and the Grenadines, Saudi Arabia, Seychelles, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, United Kingdom, Uruguay, Vanuatu.