



REPUBLIC OF THE MARSHALL ISLANDS  
**CONFIDENTIAL**  
**C.M. 211(2016)**

**FOR ACTION**

Minister of Finance


**FOR INFORMATION**

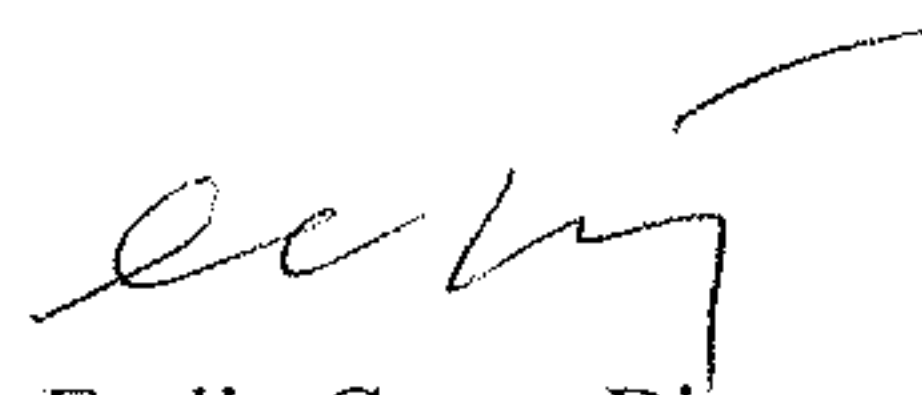
All Ministers

**SUBJECT:** To Promulgate Regulations Pursuant to the *Automatic Exchange of Financial Account Information Act, 2016*.

At its meeting on December 21<sup>st</sup>, 2016, 2016, the Cabinet:

1. **approved** the attached regulations to be promulgated pursuant to the authority granted under §517 of the *Automatic Exchange of Financial Account Information Act, 2016*; and
2. **authorized** the Minister of Foreign affairs to deposit the necessary instruments with the relevant agency or office in Paris.

  
Hilda C. Heine, Ed. D  
President

  
Earlie Carter Bing  
Clerk of the Cabinet

[Reference – C.P. 7584 (2016)]

Signed by the President on December 22<sup>nd</sup>, 2016.

## **AEOI REGULATIONS**

The Minister of Finance promulgates the following regulations (the “Regulations”) pursuant to the authority vested in him under §517 of the Automatic Exchange of Financial Account Information Act of 2016.

### **Section 1. Citation, commencement, and effect.**

(1) These Regulations may be cited as the “AEOI Regulations 2016” and come into force on January 1, 2017 and have effect from 01 January 2017.

(2) These Regulations have effect for and in connection with the implementation of obligations arising under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol, and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, which together provide for the exchange of information on an automatic basis as described in the Standard, signed by the Government of the Republic of the Marshall Islands, as amended from time to time.

### **Section 2. Definitions and interpretation.**

(1) For purposes of these Regulations, the terms defined in §502 of the Act shall have the meanings set forth therein. In addition, for purposes of these Regulations, unless the context otherwise requires:

(a) “**Act**” means the Automatic Exchange of Financial Account Information Act of 2016;

(b) “**designated person**” means an employee of the Ministry of Finance designated by the Ministry to exercise the powers conferred in these Regulations;

(c) “**excluded account**” means:

- i. an account as defined in subparagraphs C(17)(a) to (f) of Section VIII of the Standard, or
- ii. an account listed as an excluded account in Schedule 1 of these Regulations;

(d) “**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 as an exempt collective investment vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- i. the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2016,
  - ii. the collective investment vehicle retires all such shares upon surrender,
  - iii. the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII of the Standard 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
  - iv. the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed and immobilised as soon as possible, and in any event prior to 01 January 2019;
- (e) **“high value account”** means a preexisting 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;
- (f) **“lower value account”** means a preexisting 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;
- (g) **“new account”** means a financial account maintained by a reporting financial institution opened on or after 01 January 2017, unless it is treated as a preexisting account under paragraph (ii) of the definition “preexisting account”;
- (h) **“non-reporting financial institution”** means:
- i. a financial institution as defined in subparagraphs B(1)(a), (b), (d) and (e) of Section VIII of the Standard, or
  - ii. an entity listed in Schedule 2 of these Regulations;
- (i) **“participating jurisdiction”** means a jurisdiction which is listed in Schedule 3 of these Regulations;
- (j) **“preexisting account”** means:
- i. a financial account maintained by a reporting financial institution as of 31 December 2016, or
  - ii. any financial account of an account holder, regardless of the date such financial account was opened if:



- a. 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 preexisting account under paragraph (i) of this definition,
- b. 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 preexisting accounts under this paragraph, 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,
- c. 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 preexisting account described in paragraph (i) of this definition, and
- d. 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;

(k) “**standardised industry coding system**” means a coding system used to classify establishments by business type for purposes other than tax purposes;

(l) “**US\$**” means United States Dollars, the official currency of the United States of America.

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

4. 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 (c) 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 purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

(3) For the purposes of applying:

(a) the due diligence procedures described in Sections II to VII of the Standard and sections 3 and 4 of these Regulations, the Standard is to be read as if the definition “Reportable Jurisdiction” in subparagraph D(4) of Section VIII of the Standard read as follows:

4. The term “Reportable Jurisdiction” means any jurisdiction other than the United States of America or the Republic of the Marshall Islands.

(b) Section I of the Standard and sections 5 to 9 of these Regulations, the Standard is to be read as if the definition “Reportable Jurisdiction” in subparagraph D(4) of Section VIII of the Standard read as follows:

4. The term “Reportable Jurisdiction” means any jurisdiction which is listed in Schedule 4 of the AEOI Regulations 2016.

(4) For the purposes of these Regulations, the date specified in the definition “Qualified Credit Card Issuer” in subparagraph B(8) of Section VIII of the Standard is 01 January 2017.

(5) Subject to subsections (1) to (3) of this section, any term which is defined in the Standard but not in §502 of the Act or in these Regulations has the same meaning in these Regulations as in the Standard.

### **Section 3. Due diligence obligations.**

(1) Every reporting financial institution shall establish, maintain and document the procedures described in sections 3 to 5 of these Regulations that are designed to identify reportable accounts maintained by the institution.

(2) Every reporting financial institution shall identify reportable accounts maintained by the institution by applying the due diligence procedures described in Sections II to VII of the Standard. The due diligence procedures shall be applied as if the date specified in:

(a) subparagraph C(6) of Section III of the Standard were 31 December 2016;

(b) paragraph D of Section III of the Standard were 31 December 2017 with respect to high value accounts and 31 December 2018 with respect to lower value accounts;

(c) paragraph A of Section V of the Standard were 31 December 2016;

(d) paragraph B of Section V of the Standard were 31 December 2016 in both the first and second instances;

(e) 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

(f) subparagraph E(2) of Section V of the Standard were 31 December 2016.

(3) An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures described in Sections II to VII of the Standard 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.

(4) For the purposes of these Regulations, an account with a balance or value that is negative is deemed to have a balance or value equal to zero.

(5) 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 shall translate the relevant US\$ threshold amount described in the Standard or in these Regulations into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

(6) For the purposes of the Standard and these Regulations, a financial account held by an individual as a partner of a partnership is deemed to be an entity account.

#### **Section 4. Modifications to due diligence procedures.**

(1) A reporting financial institution may apply, for a calendar year:

- (a) the residence address test, as described in subparagraph B(1) of Section III of the Standard, to a lower value account;
- (b) the due diligence procedures for a high value account, described in paragraph C of Section III of the Standard, to a lower value account; or
- (c) paragraphs A to C of Section V of the Standard to determine whether a preexisting entity account is subject to the due diligence procedures described in Section V of the Standard.

(2) Subject to subsections (3) and (4) of this section, a reporting financial institution may apply, for a calendar year, the due diligence procedures for a new account, described in paragraph A of Section IV or VI of the Standard, to a preexisting account.

(3) Where a reporting financial institution applies the due diligence procedures for a new account to a preexisting 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 preexisting account.



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

(5) A reporting financial institution may, with respect to a preexisting 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 purposes of AML/KYC procedures or another regulatory purposes (other than for tax purposes), and that was implemented by the institution prior to the date used to classify the financial account as a preexisting account, provided that the institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(6) 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.

(7) For the purposes of section 3 of these Regulations, the Standard is to be read as if paragraph B of Section VII of the Standard read as follows:

**B. 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 Person and may treat such Financial Account as other than 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 USD 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 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.

## **Section 5. Reporting obligation.**

(1) A reporting financial institution shall, in respect of the calendar year 2017 and every following calendar year, file with the Secretary an information return setting out the information required to be reported described in paragraphs A and B of Section I of the Standard, subject to paragraphs C to E in Section I of the Standard, in relation to every financial account identified as a reportable account that is maintained by the institution at any time during a calendar year.

(2) An information return required to be filed by this section shall be submitted electronically in accordance with section 6 of these Regulations on or before 31st May of the year following the calendar year to which the return relates.

## **Section 6. Electronic return system.**

An information return, required to be filed by section 5 of these Regulations, shall be filed electronically using such technology as may be approved or provided by the Ministry of Finance, and in such form as the Ministry of Finance may require.



## **Section 7. 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 subsection (4) of this section.
- (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.
- (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 six (6) years following:
  - (a) in the case of a 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.

## **Section 8. Inspection of books, etc., and provision of information and assistance.**

- (1) A designated person may, by notice in writing not less than 14 days in advance, require a financial institution to provide the designated person with such information as the designated person may reasonably require for any purpose relating to the administration or enforcement of these Regulations.
- (2) A designated person 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 person 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 designated person or require that copies of books, records or other documents be made available to the designated person for any purpose relating to the administration or enforcement of these Regulations.

## **Section 9. Service providers.**

(1) A reporting financial may appoint a third party as its agent to carry out the duties and obligations imposed on it by these Regulations.

(2) Where a third party is appointed by a reporting financial institution in accordance with subsection (1) of this section:

(a) the institution shall, at all times, have access to and be able to produce, where so requested by the Competent Authority, the records and documentary evidence used to identify and report on reportable accounts; and

(b) the institution is responsible for any failure of that third party to carry out the obligations of the institution and §§508(4) and 511 of the Act will apply to the institution notwithstanding that:

- i. the actions were the actions of that third party, or
- ii. the failure to act was the failure by that third party to act.

## **SCHEDULE 1**

*(Section 2)*

### **EXCLUDED ACCOUNTS**

For the purposes of the Standard the following are excluded accounts.

## **SCHEDULE 2**

*(Section 2)*

### **NON-REPORTING FINANCIAL INSTITUTIONS**

For the purposes of the Standard, the following are non-reporting financial institutions.

## **SCHEDULE 3**

*(Section 2)*

### **PARTICIPATING JURISDICTIONS**

For the purposes of the Standard, the following are participating jurisdictions.

Albania	Curaçao	Japan	Romania
Andorra	Cyprus	Jersey	Russia
Anguilla	Czech Republic	Korea	Saint Kitts and Nevis
Antigua and Barbuda	Denmark	Kuwait	Saint Lucia
Argentina	Dominica	Latvia	Saint Vincent and the Grenadines
Aruba	Estonia	Lebanon	Samoa
Australia	Faroe Islands	Liechtenstein	San Marino
Austria	Finland	Lithuania	Saudi Arabia
Bahrain	France	Luxembourg	Seychelles
Barbados	Germany	Macao (China)	Singapore
Belgium	Ghana	Malaysia	Sint Maarten
Belize	Gibraltar	Malta	Slovak Republic
Bermuda	Greece	Mauritius	Slovenia
Brazil	Greenland	Mexico	South Africa
British Virgin Islands	Grenada	Monaco	Spain
Brunei Darussalam	Guernsey	Montserrat	Sweden
Bulgaria	Hong Kong (China)	Nauru	Switzerland



Canada	Hungary	Netherlands	The Bahamas
Cayman Islands	Iceland	New Zealand	Trinidad and Tobago
Chile	India	Niue	Turkey
China	Indonesia	Norway	Turks and Caicos Islands
Colombia	Ireland	Panama	United Arab Emirates
Cook Islands	Isle of Man	Poland	United Kingdom
Costa Rica	Israel	Portugal	Uruguay
Croatia	Italy	Qatar	Vanuatu

## **SCHEDULE 4**

*(Section 2)*

### **REPORTABLE JURISDICTIONS**

For the purposes of the Standard, the following are reportable jurisdictions.