

**CAYMAN ISLANDS**



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**TAX INFORMATION AUTHORITY LAW**

**(2014 Revision)**

Law 1 of 2005 consolidated with Law 20 of 2008 and with the Tax Information Authority (Scheduled Countries) Order, 2009, the Tax Information Authority (Scheduled Countries) (No.2) Order, 2009, the Tax Information Authority (Scheduled Countries) (No. 3) Order, 2009, the Tax Information Authority (Tax Information Agreements) Order, 2009, the Tax Information Authority (Tax Information Agreements) Order, 2010, the Tax Information Authority (Tax Information Agreements) (No. 2) Order, 2010, the Tax Information Authority

(Tax Information Agreements) Order, 2011, the Tax Information Authority (Tax Information Agreements) Order, (No. 2) 2011, Law 11 of 2012 the Tax Information Authority (Tax Information Agreements) Order, 2013, the Tax Information Authority (Tax Information Agreements) Order, 2014, Law 9 of 2014 and Law 12 of 2014.

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Law 1 of 2005-11th February, 2005  
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Order 2009-17th March, 2009  
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Order (No. 2) 2010-26th October, 2010  
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Order (No. 2) 2011-6th December, 2011  
Order 2013-12th February, 2013  
Order 2014-21st January, 2014.

Consolidated and revised this 31st day of July, 2014.

*Note (not forming part of the Law): This revision replaces the 2013 Revision which should now be discarded.*

**TAX INFORMATION AUTHORITY LAW**

**(2014 Revision)**

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**TAX INFORMATION AUTHORITY LAW**

**(2014 Revision)**

**PART I - Introductory**

1. This Law may be cited as the Tax Information Authority Law (2014 Revision). Short title

2. (1) In this Law -

Definitions and  
interpretation

“Authority” means the Tax Information Authority designated under section 4;

“automatic exchange of information” means the systematic and periodic exchange of information for tax purposes between parties to a scheduled Agreement in the manner and to the specifications agreed between the parties or their competent authorities;

“electronic” means relating to technology having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“electronic record” means a record processed and maintained by electronic means;

“information” means any fact, statement, document or record in whatever form; and includes -

- (a) any fact, statement, document or record held by banks, other financial institutions, or any persons, including nominees and trustees, acting in an agency or fiduciary capacity; and
- (b) any fact, statement, document or record regarding the beneficial ownership of companies, partnerships and other persons, including -
  - (i) in the case of collective investment funds, information on shares, units and other interests; and
  - (ii) in the case of trusts, information on settlors, trustees and beneficiaries;

“Judge” means the Chief Justice acting alone and in an administrative capacity, or any other judge of the Grand Court so acting and designated under subsection (3);

“Party” means a party to a scheduled Agreement;

“proceedings” means civil or criminal proceedings;

“request” means a request made by one of the Parties to the other Party, under a scheduled Agreement;

“requesting Party” means a Party making a request;

“scheduled Agreement” means an agreement for the provision of information for tax purposes, being an agreement which has legal effect in the Islands and which is more particularly set out in a relevant Schedule to this Law; and

“tax purposes” means any tax purpose for which information may be provided under a scheduled Agreement or matters incidental thereto;

(2) *Repealed by section 2 of Law 12 of 2014.*

(3) The Chief Justice may, in writing, designate any judge of the Grand Court to act on his behalf under this Law.

Implementation

3. (1) This Law shall apply for the purpose of giving effect to the terms of a scheduled Agreement for the provision of information for tax purposes including the automatic exchange of information and including for the purposes of any proceedings taken by Parties or by any persons acting on their behalf, connected with, arising from, related to, or resulting from those tax purposes.

(2) Nothing in this Law shall require the provision of information under a scheduled Agreement for tax purposes that arose prior to the date of commencement of this Law, except where the terms of a scheduled Agreement otherwise so provide.

(3) A scheduled Agreement shall, for such period as is specified in the Agreement, have legal effect in the Islands.

(4) *Repealed by section 3 of Law 11 of 2012.*

(5) The Cabinet may by order subject to affirmative resolution -

- (a) add a Schedule to this Law for the purpose of setting out and giving effect to an agreement for the provision of information for tax purposes; or
- (b) amend, revoke or replace any such Schedule.

(6) *Repealed by section 3 of Law 12 of 2014.*

## **PART II - Tax Information Authority**

Tax Information  
Authority

4. The Minister charged with responsibility for Financial Services is hereby designated as the Tax Information Authority for the purposes of this Law and any scheduled Agreement, and the Authority shall exercise its functions under this Law and under any scheduled Agreement acting alone or through a person designated by the Authority to act on its behalf, and shall be deemed to act in an administrative capacity.



5. (1) Subject to this Law, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other law or any scheduled Agreement.

Functions of the Authority

(2) Without prejudice to subsection (1), the principal functions of the Authority include -

- (a) subject to sections 8, 22 and 24, executing requests, including but not limited to providing assistance in relation to -
  - (i) taking the testimony or statement of any person;
  - (ii) providing information and articles of evidence;
  - (iii) serving documents; and
  - (iv) executing searches and seizures;
- (aa) facilitating the automatic exchange of information for tax purposes in accordance with a scheduled Agreement and any implementing arrangements made under a scheduled Agreement;
- (b) ensuring compliance with the scheduled Agreements;
- (c) advising the Cabinet on matters relating to any proposal or agreement for the provision of information in tax matters, any matter touching upon or relating thereto, and any other related matter at the request of the Cabinet;
- (d) making determinations under the terms of any scheduled Agreement as to any costs and the apportionment of such costs relating to or arising from any request;
- (e) entering into agreements with competent authorities under scheduled Agreements on matters relating to the operation thereof including matters in relation to the automatic exchange of information; and
- (f) performing such other functions as may be prescribed under this or any other law.

6. (1) Without prejudice to section 5, the Authority may, in its discretion or shall where in its opinion there are issues of public policy, notify the Attorney General of any request received by the Authority, with particulars thereof; and the Attorney General shall be entitled, in a manner analogous to *amicus curiae*, to appear or to take part in any proceedings in the Islands, whether judicial or administrative, arising directly or indirectly from a request received by the Authority.

Procedures for public policy determination

(2) The Authority shall deny a request, in accordance with the relevant provisions of a scheduled Agreement where the Attorney General has issued a certificate to the effect that the execution of the request is contrary to the public policy of the Islands.

**PART III - Execution of Requests**

Procedures for the execution of a request

7. (1) Upon receipt of a request, and subject to sections 6(2) and 17(1), the Authority shall determine whether the request is in compliance with the relevant scheduled Agreement and, if it is determined that there is compliance, the Authority shall execute the request in accordance with, but subject to, the provisions of the relevant scheduled Agreement and this Law.

(2) The Authority may request such additional information from the requesting Party as may be necessary to assist the Authority in executing the request.

(3) A certificate given by the Authority that a request is in compliance with the relevant scheduled Agreement shall be taken into account by the Judge pursuant to an application under section 8(4)(a).

(4) Notwithstanding any other law, if the execution of any request requires the service of any document or order or the seizure of any article in pursuance of any order or directions by a Judge or the Grand Court, any constable of the rank of Inspector or above, if so required by the Judge or the Grand Court, shall assist in such service or seizure.

Powers of Judge to compel witness or for production of evidence

8. (1) Where, under a request, any person is required to testify, the Authority shall apply to a Judge for the Judge to receive such testimony as appears to him to be appropriate for the purpose of giving effect to the request, and such testimony shall be provided to the competent authority of the requesting Party.

(2) The Judge may, in pursuance of an application under subsection (1), issue a subpoena, take evidence under oath and exercise any other power which the Grand Court may exercise for the purpose of compelling testimony.

(3) A person shall not be compelled in any proceedings under this section to give evidence which he could not be compelled to give in proceedings in the Islands.

(4) Where, under a request, the Authority considers it necessary to obtain specified information or information of a specified description from any person the Authority shall -

- (a) in the case of information required for proceedings in the territory of the requesting Party, apply to a Judge for an order to produce such information; or
- (b) in the case other than that referred to in paragraph (a), issue a notice in writing requiring the production of such information as

may be specified in the notice; and such notice may require the information –

- (i) to be provided within a specified time;
- (ii) to be provided in such form as the Authority may require; and
- (iii) to be verified or authenticated in such manner as the Authority may require.

(4A) For the purposes of subsections (4) and (13) the word “proceedings” means criminal proceedings.

(5) Where information is produced under subsection (4)(b)-

- (a) the Authority may take copies or extracts of any information; and
- (b) where a person claims a lien on a document, the production is without prejudice to his lien.

(6) An order under subsection (7) or a notice under subsection (4)(b) -

- (a) shall not confer any right to production of, or access to, items subject to legal privilege; and
- (b) shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law (2009 Revision), any other law or the common law.

2009 Revision

(7) If, on an application under subsection (4)(a), the Judge is satisfied that the conditions in subsection (9) are fulfilled, he may make an order that the person who appears to him to be in possession or control of the information to which the application relates shall-

- (a) produce it to a constable to take away; or
- (b) give a constable access to it,

within such period as the order may specify.

(8) The period to be specified in an order under subsection (7) shall be fourteen days, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(9) The conditions referred to in subsection (7) are that the Judge is satisfied that -

- (a) the Authority has certified the request in accordance with section 7(3);
- (b) the information to which the request relates is under the possession or control of a person in the Islands;

- (c) the information to which the request relates does not include items subject to legal privilege or items subject to protection as secret, pursuant to the terms of a scheduled Agreement;
- (d) the provisions of section 17(1) have been complied with; and
- (e) pursuant to the terms of the relevant scheduled Agreement, there are no reasonable grounds for not granting the request.

(10) Where the Judge makes an order under subsection (7)(b) in relation to information held on any premises he may, on the application of the Authority, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the information.

(11) The Chief Justice may make rules governing the procedure in relation to-

- (a) applications for the grant, discharge and variation of orders under subsection (7); and
- (b) proceedings relating to such orders.

(12) Where the information to which an order under subsection (7) or a notice under subsection (4)(b) relates consists of information maintained as an electronic record, such information shall be produced in a form in which it can be taken away and in which it is visible and legible or in a form in which it is visible and legible, as the case may be.

(13) Where, pursuant to a request concerning proceedings or investigations, an order under subsection (7) has been made or has been applied for, and has not been refused, or a warrant under section 24(3) has been issued, a person who, knowing or suspecting that a request has been made, or that an investigation into any matter to which a request relates is taking place, makes any disclosure which is likely to prejudice the proceedings or the investigation to which the request may relate, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for five years.

(14) In proceedings against a person for an offence under subsection (13), it is a defence to prove-

- (a) that he did not know or believe that the disclosure was likely to prejudice the request or investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(15) Any documents or other written information obtained under an order by virtue of subsection (7) shall be brought immediately to the Authority to be dealt with according to this Law.

(16) A person required to testify or to produce information under subsection (7) shall have the right to be represented by an attorney-at-law when he does so.

**PART IV - Repealed**

9. to 15. *Repealed by section of Law 12 of 2014*

*Repealed*

**PART V - General**

16. Any person may be authorised by the Minister charged with responsibility for Financial Services for the purpose of the authentication of any official documents or records of the Islands.

Authentication of  
official documents

17. (1) Subject to subsection (2), an individual who is the subject of a request made by a requesting Party solely in relation to a matter which is not a criminal matter or an alleged criminal matter, shall if the individual's whereabouts or address in the Islands is made known to the Authority, be served with a notice by the Authority advising of the existence of a request specifying that individual, the jurisdiction making the request and the general nature of the information sought; and any individual so notified may within fifteen days from the date of receipt of the notice, make a written submission to the Authority specifying any grounds which he wishes the Authority to consider in making its determination as to whether or not the request is in compliance with the provisions of the relevant scheduled Agreement, including any assertions that the information requested is subject to legal privilege.

Notification

(2) The Authority shall consider any written submission made in compliance with subsection (1), but shall not be obliged to permit or consider any oral submission by or on behalf of any individual who is the subject of a request for information.

(3) Save as expressly provided in this Law, the Authority shall hold all information received as confidential, and the proceedings and deliberations of the Authority shall accordingly be closed to all persons not specifically authorised by the Authority or by this Law to be present at such proceedings or deliberations.

(4) Nothing in this Law shall require the Authority to search for or conduct enquiries into the address or whereabouts of any individual who is the subject of a request in order to serve a notice to that individual pursuant to subsection (1).

(5) The requirement in subsection (1) for the Authority to give notice shall not apply where a requesting Party makes a request in urgent cases or in cases where notification is likely to undermine the success of the investigation in the jurisdiction of the requesting Party.

(6) For the purposes of this section, “the subject of a request” means the individual identified in a request who is under examination or investigation in the requesting Party.

Protection of persons disclosing confidential information

18. (1) A person who divulges any confidential information or gives any testimony in conformity with an order or notice issued pursuant to a request, provides information to the Authority to facilitate the automatic exchange of information or otherwise provides information to the Authority for tax purposes shall, by reason only of such disclosure or the giving of such testimony or the provision of such information, be deemed not to commit any offence -

2009 Revision

- (a) under the Confidential Relationships (Preservation) Law (2009 Revision); or
- (b) under any other law for the time being in force in the Islands.

(2) The disclosure, testimony, provision of information for the facilitation of the automatic exchange of information or provision of any information to the Authority for tax purposes by a person to whom subsection (1) applies shall be deemed not to be a breach of any confidential relationship between that person and any other person, and no civil claim or action whatsoever shall lie against -

- (a) the person making the disclosure, giving testimony, providing information to facilitate the automatic exchange of information or providing information for tax purposes; or
- (b) the person’s principal or employer,

by reason of the disclosure, testimony, provision of information for the facilitation of the automatic exchange of information or information otherwise provided to the Authority for tax purposes.

Restriction on application of Confidential Relationships (Preservation) Law (2009 Revision)

19. Section 4 of the Confidential Relationships (Preservation) Law (2009 Revision) shall be deemed not to apply to confidential information given by any person in conformity with an order or notice issued in pursuance of a request under this Law, facilitating the automatic exchange of information or information otherwise provided to the Authority for tax purposes..

Confidentially with regard to a request

20. (1) Without prejudice to section 8(13), if so instructed by the Authority, the particulars of and all matters relating to a request shall be treated as confidential, and no person who is notified of a request, or is required to take any action, or produce any document or supply any information in response to or in relation to any matter to which a request relates, shall disclose the fact of the receipt of such request or any of the particulars required or documents produced or information supplied to any other person, except that person’s attorney-at-law and such other persons as the Authority may authorise, for such period as he may be notified by the Authority.

(1A) Subject to section 17, all information provided and received by the Authority in relation to a request made under a scheduled Agreement shall be kept confidential.

(2) This section shall be binding on the attorney-at-law of any person to whom subsection (1) applies as if he were that person.

20A. Information provided to or received by the Authority for the facilitation of the automatic exchange of information or otherwise for tax purposes shall be kept confidential.

Confidentiality of information

21. (1) A requesting Party shall not, without the prior written consent of the Authority, transmit or use information or evidence provided under this Law for purposes, investigations or proceedings other than those within the scope of a scheduled Agreement.

Restriction on use of information

(2) Before the Authority gives consent under subsection (1) in relation to testimony provided or an order issued under section 8, the Authority shall apply to a Judge for directions.

22. (1) Where, under the terms of a scheduled Agreement the competent authority of a requesting Party requests permission for its representative to enter the Islands for the purposes of interviewing and examining the records of a specified person in the Islands and the person concerned notifies the Authority in writing that he consents to the interview and examination, the representative may conduct such interview and examination, at such time and place as are agreed upon in writing by the Authority and the person concerned.

Interviews and examinations with consent

(2) In conducting an interview and examination under subsection (1), a representative may -

- (a) take statements from the specified person; and
- (b) with the consent of the specified person, make copies of, or take extracts from, any record.

(3) A representative shall not have the power-

- (a) to compel a specified person to answer any question;
- (b) to compel a specified person to remain in any place for the purpose of an interview;
- (c) to compel a specified person to produce any information or thing;
- (d) to enter and search premises without the consent of the owner or occupier of the premises; or
- (e) to take information or things without the consent of the specified person.

(4) A person who consents to an interview and examination shall have the right to be advised by his attorney-at-law during the course thereof.

(5) A statement made to a representative under this section shall not, in any proceedings, be used in evidence against the person making the statement.

(6) In this section “specified person” means a person who is subject to a tax of the jurisdiction of a requesting Party that is covered in the relevant scheduled Agreement.

Service of notices and documents

23. (1) For the purposes of this Law and any scheduled Agreement, the service of any document shall be sufficient if delivered by hand or posted by registered post to the registered or other office of the addressee or to his last known address.

(2) Affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate shall be deemed sufficient proof of such service.

Enforcement

24. (1) A person who, having been required under this Law to produce any information which is in his possession or under his control -

- (a) without lawful excuse fails so to do, within such time as may be specified by a Judge by order, or by the Authority by notice; or
- (b) alters, destroys, mutilates, defaces, hides or removes any information,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

(2) A person who, contrary to section 20, informs any person, other than his attorney-at-law, of the fact of the issue of a request or of any communication relevant to the matter to which the request relates, commits an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

(3) Where pursuant to a request, the Authority considers it necessary to enter and search any premises, the Authority shall apply to the Grand Court for the issue of a search warrant for specified premises to search for and seize specified information or information of a specified description.

(4) On application made under subsection (3), the Grand Court may issue a warrant authorising the search and seizure if it is satisfied that -

- (a) an order made or notice issued under section 8 in relation to information on the premises has not been complied with;



- (b) the request for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the information; or
- (c) the conditions in section 8(9) are fulfilled in relation to any information on the premises; and
- (d) it would not be appropriate to make an order under section 8(7) in relation to the material because -
  - (i) it is not practicable to communicate with any person entitled to produce the information;
  - (ii) it is not practicable to communicate with any person entitled to grant access to the information or entitled to grant entry to the premises on which the information is situated; or
  - (iii) the request for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the information.

(5) Any information seized under a warrant issued under subsection (4) shall be brought immediately to the Authority to be dealt with according to law.

(6) A person who, when required so to do in accordance with the instructions given by a Judge pursuant to section 8, or any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year.

25. The Cabinet may make regulations for carrying the purposes and provisions of this Law into effect including making regulations prescribing the forms to be used for the purposes of this Law. Regulations

26. Neither the Authority nor any person designated under section 4 to act on his behalf, shall be liable in damages for anything done or omitted in the discharge of their functions under this Law unless it is shown that the act or omission was in bad faith. Immunity

**SCHEDULE 1**

section 3

**AGREEMENT BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE GOVERNMENT OF  
THE CAYMAN ISLANDS FOR THE EXCHANGE OF  
INFORMATION RELATING TO TAXES**

The Government of the United States of America (the "United States") and the Government of the Cayman Islands (the "Cayman Islands"), desiring to facilitate the exchange of information with respect to taxes, noting that the Government of the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") provided a copy of a Letter of Entrustment, via diplomatic note number 16/10/13 of October 20, 2013, to the United States in which the United Kingdom has entrusted the Cayman Islands to negotiate and conclude a tax information exchange agreement with the United States, have agreed as follows:

**ARTICLE 1**

**Object and Scope of this Agreement**

The competent authorities of the Contracting Parties shall provide assistance to each other through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 10 (Confidentiality).

**ARTICLE 2**

**Jurisdiction**

A requested Party shall not be obligated to provide information that is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. With respect to information held by its authorities or in the possession or control of persons who are within its territorial jurisdiction, however, the requested Party shall provide information in accordance with this Agreement regardless of the residence or nationality of the person holding the information or to whom the information relates.

**ARTICLE 3**  
**Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:

- (a) in the case of the United States, all federal taxes; and
- (b) in the case of the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to the taxes described in subparagraph (a) of this paragraph.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree in writing. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

**ARTICLE 4**  
**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:

- (a) the term "Contracting Party" means the United States or the Cayman Islands as the context requires;
- (b) the term "competent authority" means:
  - (i) in the case of the United States, the Secretary of the Treasury or his delegate, and
  - (ii) in the case of the Cayman Islands, the Tax Information Authority or its delegate;
- (c) the term "person" includes an individual, a company and any other body of persons;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange if the purchase or sale of its listed shares is not implicitly or explicitly restricted to a limited group of investors;
- (f) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (g) the term "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

- (h) the term "public collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form, if the purchase, sale or redemption of the units, shares or other interests in the investment vehicle is not implicitly or explicitly restricted to a limited group of investors;
  - (i) the term "tax" means any tax to which this Agreement applies and does not include customs duties;
  - (j) the term "applicant Party" means the Contracting Party requesting information;
  - (k) the term "requested Party" means the Contracting Party requested to provide information;
  - (l) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information; and
  - (m) the term "information" means any fact, statement or record in any form whatever.
2. For purposes of determining the geographic area within which jurisdiction to compel production of information may be exercised:
- (a) the term "United States" means the territory of the United States of America, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and any other U.S. possession or territory; and
  - (b) the term "Cayman Islands" means the Islands of Grand Cayman, Cayman Brae and Little Cayman.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 12 (Mutual Agreement Procedure), have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **ARTICLE 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide information for the purposes referred to in Article 1 (Object and Scope of this Agreement) upon request by the competent authority of the applicant Party. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes. Privileges under the laws and practices of the applicant Party shall not apply in the execution of a request by the requested Party and the resolution of such matters shall be solely the responsibility of the applicant Party.

3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall, to the extent allowable under its domestic laws:

- (a) specify the time and place for the taking of testimony or the production of books, papers, records and other data;
- (b) place the individual giving testimony or producing books, papers, records or other data under oath;
- (c) permit the presence of individuals designated by the competent authority of the applicant Party as being involved in or affected by execution of the request, including an accused, counsel for the accused, individuals charged with the administration or enforcement of the domestic laws of the applicant Party covered by this Agreement or a commissioner or magistrate for the purpose of rendering evidentiary rulings or determining issues of privilege under the laws of the applicant Party;
- (d) provide individuals permitted to be present with an opportunity to question, directly or through the executing authority, the individual giving testimony or producing books, papers, records and other data;
- (e) secure original and unedited books, papers, records and other data;
- (f) secure or produce true and correct copies of original and unedited books, papers, records and other data;
- (g) determine the authenticity of books, papers, records and other data produced, and provide authenticated copies of original books, papers, records and other data;
- (h) examine the individual producing books, papers, records and other data regarding the purpose for which and the manner in which the item produced is or was maintained;
- (i) permit the competent authority of the applicant Party to provide written questions to which the individual producing books, papers, records and other data is to respond regarding the items produced;

- (j) perform any other act not in violation of the laws or at variance with the administrative practice of the requested Party; and
- (k) certify either that procedures requested by the competent authority of the applicant Party were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor.

4. Each Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 (Object and Scope of this Agreement) of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2 (Jurisdiction), ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Notwithstanding subparagraph 4(b), this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties to the requested Party.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement, with the greatest degree of specificity possible:

- (a) the identity of the person or ascertainable group or category of persons under examination or investigation;
- (b) a statement of the information sought, including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the period of time with respect to which the information is requested;
- (d) the matter under the applicant Party's tax law with respect to which the information is sought;
- (e) grounds for believing that the information requested is foreseeably relevant to tax administration or enforcement of the applicant Party with respect to the person or group or category of persons identified in subparagraph 5(a);

- (f) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
- (h) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and
- (i) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

#### **ARTICLE 6**

##### **Automatic Exchange of Information**

The competent authorities may automatically transmit information to each other for the purposes referred to in Article 1 (Object and Scope of this Agreement). The competent authorities shall determine the items of information to be exchanged pursuant to this Article and the procedures to be used to exchange such items of information.

#### **ARTICLE 7**

##### **Spontaneous Exchange of Information**

The competent authority of a Contracting Party may spontaneously transmit to the competent authority of the other Contracting Party information that has come to the attention of the first-mentioned competent authority and that the first-mentioned competent authority supposes to be foreseeably relevant to the accomplishment of the purposes referred to in Article 1 (Object and Scope of this Agreement). The competent authorities shall determine the procedures to be used to exchange such information.

#### **ARTICLE 8**

##### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 of this Article is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **ARTICLE 9**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement. The competent authority of the requested Party may decline to assist where the applicant Party has not pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5 (Exchange of Information upon Request), paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information that would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice;  
or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).



5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. A request for information shall not be refused on the ground that the period of limitations in the requested party has expired. Instead, the statute of limitations of the applicant Party pertaining to the taxes to which the Agreement applies shall govern a request for information.

**ARTICLE 10**  
**Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement, or the oversight of such functions. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person, entity, authority or jurisdiction. Notwithstanding the foregoing, where the requested Party provides prior, written consent, the information may be used for purposes permitted under the provisions of the Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters, done on July 3, 1986 at Grand Cayman, as may be amended or any successor treaty.

**ARTICLE 11**  
**Costs**

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance shall be borne by the applicant Party.

**ARTICLE 12**  
**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavor to resolve the matter by mutual agreement.

2. The competent authorities may adopt and implement procedures to facilitate the implementation of this Agreement.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching a mutual agreement under this Article.

**ARTICLE 13**  
**Entry Into Force**

1. This Agreement shall enter into force one month from the date of the Cayman Islands' written notification to the United States that the Cayman Islands has completed its necessary internal procedures for entry into force of this Agreement. The provisions of this Agreement shall have effect for requests made on or after the date of entry into force, without regard to the taxable period to which the request relates.

2. The Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the Cayman Islands, for the Exchange of Information Relating to Taxes, done on November 27, 2001 at Washington (the "2001 Agreement"), shall terminate on the date of entry into force of this Agreement. Notwithstanding such termination, the terms of the 2001 Agreement shall continue to apply to requests for information that have been accepted prior to such termination unless the competent authorities of the Contracting Parties have mutually agreed otherwise and in writing pursuant to Article 12 (Mutual Agreement Procedure) of this Agreement.

**ARTICLE 14**  
**Termination**

1. The Agreement shall remain in force until terminated by a Contracting Party.

2. Either Contracting Party may terminate the Agreement by giving notice of termination in writing to the other Contracting Party. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of the notice of termination.

3. If the Agreement is terminated, both Contracting Parties shall remain bound by the provisions of Article 10 (Confidentiality) with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at London, United Kingdom in duplicate, in the English language, this 29th day of November, 2013.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: **JULIE NUTTER**  
FOR THE GOVERNMENT OF THE CAYMAN ISLANDS: **WAYNE PANTON**”.

**SCHEDULE 2**

*Repealed by section 17 of Law 12 of 2014*

**SCHEDULE 3**

**AGREEMENT BETWEEN THE GOVERNMENT OF DENMARK AND  
THE GOVERNMENT OF THE CAYMAN ISLANDS CONCERNING  
INFORMATION ON TAX MATTERS**

The Government of Denmark and the Government of the Cayman Islands, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

**Article 1**

**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Denmark:
  - (i) the income tax to the State (indkomstskatten til staten), and
  - (ii) the communal income tax (den kommunale indkomstskat).
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**

**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means Denmark or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Denmark, the Minister for Taxation or his authorized representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

**Article 5**

**Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify

the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).



5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1st day of April 2009, in duplicate in the English language.

For the Government of Denmark

For the Government of the Cayman Islands

TOM RISDAHL JENSEN

ALDEN MCLAUGHLIN

**SCHEDULE 4**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE FAROES AND  
THE GOVERNMENT OF THE CAYMAN ISLANDS CONCERNING  
INFORMATION ON TAX MATTERS**

The Government of the Faroes and the Government of the Cayman Islands,

- desiring to conclude an Agreement concerning information on tax matters,
- considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of the Faroes,

have agreed as follows:

**Article 1**

**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed by the Faroes:  
taxes on income or profit
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**

**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means the Faroes or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "the Faroes" means the landmass of the Faroes and their territorial waters and any area outside the territorial waters where the Faroes according to Faroese legislation and in accordance with international law, may exercise rights with respect to the seabed and subsoil and their natural resources;
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in the Faroes, the Minister of Finance or his authorised representative or the authority which is designated as a competent authority for the purpose of this Agreement;
  - e) the term "person" includes an individual, a company and any other body of persons;
  - f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the

public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

**Article 5**

**Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify

the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).



5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1st day of April 2009, in duplicate in the English language.

For the Government of the Faroes

For the Government of the Cayman  
Islands

HERÁLVUR JOENSEN

ALDEN MCLAUGHLIN

**SCHEDULE 5**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
FINLAND AND THE GOVERNMENT OF THE CAYMAN ISLANDS  
CONCERNING INFORMATION ON TAX MATTERS**

The Government of the Republic of Finland and the Government of the Cayman Islands, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

**Article 1**

**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Finland:

- (i) valtion tuloverot; de statliga inkomstskatterna (the state income taxes);
- (ii) yhteisöjen tulovero; inkomstskatten för samfund (the corporate income tax);
- (iii) kunnallisvero; kommunalskatten (the communal tax);
- (iv) kirkollisvero; kyrkoskatten (the church tax);
- (v) korkotulon lähdevero; källskatten på ränteinkomst (the tax withheld at source from interest);
- (vi) rajoitetusti verovelvollisen lähdevero; källskatten för begränsat skattskyldig (the tax withheld at source from non-residents' income);
- (vii) ulkomailta tulevan palkansaajan lähdevero; källskatten för löntagare från utlandet (the withholding tax for foreign employees);

2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means Finland or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;
  - d) the term "competent authority" means:

- (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - (ii) in Finland, the Ministry of Finance, its authorised representative or the authority which, by the Ministry of Finance, is designated as competent authority;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;

- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain

or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:



- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

#### **Article 11**

##### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

#### **Article 12**

##### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1<sup>st</sup> day of April 2009, in duplicate in the English language.

For the Government of the Republic  
of Finland

For the Government of the Cayman  
Islands

ALEC AALTO

ALDEN MCLAUGHLIN

## **SCHEDULE 6**

### **AGREEMENT BETWEEN THE GOVERNMENT OF GREENLAND AND THE GOVERNMENT OF THE CAYMAN ISLANDS CONCERNING INFORMATION ON TAX MATTERS**

The Government of Greenland and the Government of the Cayman Islands,

- desiring to conclude an Agreement concerning information on tax matters,
- considering that the Government of Greenland concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of Greenland,

have agreed as follows:

#### **Article 1**

##### **Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Greenland:
  - (i) the home rule tax;
  - (ii) the special home rule tax;
  - (iii) the communal tax;
  - (iv) the intercommunal tax;
  - (v) the company tax;
  - (vi) the dividend tax;
  - (vii) the royalty tax; and
  - (viii) labour market tax.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**

**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means Greenland or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Greenland" means the landmass of Greenland and its territorial waters and any area outside the territorial waters where Denmark or Greenland according to domestic legislation and in

- accordance with international law, may exercise its rights with respect to the seabed and subsoil and their natural resources;
- d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Greenland, the Minister of Finance or his delegate;
  - e) the term "person" includes an individual, a company and any other body of persons;
  - f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
  - i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - k) the term "tax" means any tax to which the Agreement applies;
  - l) the term "applicant Party" means the Contracting Party requesting information;
  - m) the term "requested Party" means the Contracting Party requested to provide information;
  - n) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - o) the term "information" means any fact, statement or record in any form whatever;
  - p) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;

- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain

or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:



- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

#### **Article 8**

##### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

#### **Article 9**

##### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

#### **Article 10**

##### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

#### **Article 11**

##### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

#### **Article 12**

##### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1st day of April 2009, in duplicate in the English language.

For the Government of Greenland

For the Government of the Cayman Islands

TOVE SØVND AHL PEDERSEN

ALDEN MCLAUGHLIN

## **SCHEDULE 7**

### **AGREEMENT BETWEEN THE GOVERNMENT OF ICELAND AND THE GOVERNMENT OF THE CAYMAN ISLANDS CONCERNING INFORMATION ON TAX MATTERS**

The Government of Iceland and the Government of the Cayman Islands, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

#### **Article 1**

##### **Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

#### **Article 2**

##### **Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

### **Article 3**

#### **Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Iceland:
  - (i) the income taxes to the state (tekjuskattar ríkissjóðs); and
  - (ii) the communal income tax (útsvar til sveitarfélaganna).
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means Iceland or the Cayman Islands as the context requires;
  - b) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term “Iceland” means Iceland and, when used in a geographical sense, means the territory of Iceland, including its territorial sea, and any area beyond the territorial sea within which Iceland, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its subsoil and its superjacent waters, and their natural resources;
  - d) the term “competent authority” means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Iceland, the Minister of Finance or his authorised representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
  - b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - c) the tax purpose for which the information is sought;
  - d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
  - e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify

the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice, or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).



5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

**Article 8**  
**Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

**Article 9**  
**Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

**Article 10**  
**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
  - a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1st day of April 2009, in duplicate in the English language.

For the Government of Iceland:

For the Government of the Cayman

Islands:

GUÐMUNDAR ÁRNI  
STEFÁNSSON

ALDEN MCLAUGHLIN

## **SCHEDULE 8**

### **AGREEMENT BETWEEN THE KINGDOM OF NORWAY AND THE CAYMAN ISLANDS CONCERNING INFORMATION ON TAX MATTERS**

The Government of the Kingdom of Norway and the Government of the Cayman Islands, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

#### **Article 1**

##### **Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

#### **Article 2**

##### **Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

### **Article 3**

#### **Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Norway:
  - (i) the tax on general income (skatt på alminnelig inntekt);
  - (ii) the tax on personal income (skatt på personinntekt);
  - (iii) the special tax on petroleum income (petroleumsskatt);
  - (iv) the resource rent tax on income from production of hydroelectric power (grunnrenteskatt på kraftverk);
  - (v) the withholding tax on dividends (kildeskatt på utbytte); and
  - (vi) the tax on Remuneration to non-resident artistes (artistskatt).
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means Norway or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Norway" means the Kingdom of Norway, and includes the land territory and internal waters, the territorial sea and the area beyond the territorial sea where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources; the term does not comprise Svalbard, Jan Mayen and the Norwegian dependencies ("biland");
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;

- (ii) in Norway, the Minister of Finance or the Minister's authorised representative;
- e) the term "person" includes an individual, a company and any other body of persons;
- f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term "tax" means any tax to which the Agreement applies;
- l) the term "applicant Party" means the Contracting Party requesting information;
- m) the term "requested Party" means the Contracting Party requested to provide information;
- n) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term "information" means any fact, statement or record in any form whatever;
- p) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes

unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:



- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

#### **Article 11**

##### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

#### **Article 12**

##### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1st day of April 2009, in duplicate in the English language.

For the Government of the Kingdom  
of Norway

For the Government of the Cayman  
Islands

ODD L. FOSSEIDBRÅTEN

ALDEN MCLAUGHLIN

## **SCHEDULE 9**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE CAYMAN ISLANDS CONCERNING INFORMATION ON TAX MATTERS**

The Government of the Kingdom of Sweden and the Government of the Cayman Islands, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

#### **Article 1**

##### **Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

#### **Article 2**

##### **Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

### **Article 3**

#### **Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Sweden:
  - (i) den statliga inkomstskatten (the national income tax);
  - (ii) kupongskatten (the withholding tax on dividends);
  - (iii) den särskilda inkomstskatten för utomlands bosatta (the income tax on non-residents);
  - (iv) den särskilda inkomstskatten för utomlands bosatta artister m.fl. (the income tax on non-resident artistes and athletes);
  - (v) den kommunala inkomstskatten (the communal income tax);
  - (vi) avkastningsskatten på pensionsmedel (the yield tax on pension funds).
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term "Contracting Party" means Sweden or the Cayman Islands as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Sweden" means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;

- (ii) in Sweden, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purposes of this Agreement;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

**Article 5**  
**Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:



- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

#### **Article 11**

##### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - (a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - (b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

#### **Article 12**

##### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Stockholm this 1<sup>st</sup> day of April 2009, in duplicate in the English language.

For the Government of the Kingdom  
of Sweden

For the Government of the Cayman  
Islands

INGEMAR HANSSON

ALDEN MCLAUGHLIN.

#### **SCHEDULE 10**

### **EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE UNITED KINGDOM AND THE CAYMAN ISLANDS CONCERNING AN ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION**

15th June 2009

Sir

I have the honour to propose to you –

- the Arrangement between the United Kingdom of Great Britain and Northern Ireland and the Cayman Islands for the avoidance of double taxation and the prevention of fiscal evasion (“the Arrangement”) at Appendix 1 to this letter;
- that the Arrangement shall have effect in accordance with Paragraph 14 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

I have the honour to propose that, if the above is acceptable to the Government of the Cayman Islands, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

The United Kingdom welcomes this Arrangement as a significant step in establishing the Cayman Islands’ status as a jurisdiction which complies with international standards in the field of taxation, and recognizes the Cayman Islands’ commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

Please accept, Sir, the assurance of our highest consideration,

THE RT. HON. STEPHEN TIMMS MP  
FINANCIAL SECRETARY TO THE TREASURY

Sir,

I have the honour to acknowledge receipt of your letter of 15th June 2009, which reads as follows:

“ Sir

I have the honour to propose to you –

- the Arrangement between the United Kingdom of Great Britain and Northern Ireland and the Cayman Islands for the avoidance of double taxation and the prevention of fiscal evasion (“the Arrangement”) at Appendix 1 to this letter;
- that the Arrangement shall have effect in accordance with Paragraph 14 thereof;
- our mutual commitment to comply at the earliest date with our internal procedures required by our respective domestic law for the bringing into force of the Arrangement and to notify each other without delay through the formal channels when such procedures are completed.

I have the honour to propose that, if the above is acceptable to the Government of the Cayman Islands, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

The United Kingdom welcomes this Arrangement as a significant step in establishing the Cayman Islands’ status as a jurisdiction which complies with international standards in the field of taxation, and recognizes the Cayman Islands’ commitment to transparency and effective exchange of information in tax matters and to continued progress in this area.

Please accept, Sir, the assurance of our highest consideration,”

I am able to confirm that the Government of the Cayman Islands is in agreement with the contents of your letter dated 15th June 2009 and that this letter constitutes our mutual acceptance and making of the Arrangement contained in Appendix 1 to your letter and appended to this letter.

Please accept, Sir, the assurance of our highest consideration,

THE HON. W. MCKEEVA BUSH  
LEADER OF GOVERNMENT BUSINESS,  
CAYMAN ISLANDS GOVERNMENT

15th June 2009

Appendix 1

**ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND  
THE GOVERNMENT OF THE CAYMAN ISLANDS FOR THE  
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION**

The Government of the United Kingdom of Great Britain and Northern Ireland  
and the Government of the Cayman Islands (“the Governments”);

Desiring to conclude an Arrangement for the avoidance of double taxation and the  
prevention of fiscal evasion;

Have arranged as follows:

**1. Persons covered**

This Arrangement shall apply to persons who are residents of one or both of the  
Territories.

**2. Taxes covered**

The taxes to which this Arrangement shall apply are the following United  
Kingdom taxes:

- a) the income tax;
- b) the corporation tax;
- c) the capital gains tax; and for the purposes of Paragraph 13 only:
- d) the inheritance tax;
- e) the value added tax;

and any taxes which are identical or substantially similar to those taxes which are  
imposed by either Territory after the date of signature of this Arrangement. The  
competent authorities of the Territories shall notify each other of any significant  
changes that have been made in their taxation laws.

**3. General definitions**

1. For the purposes of this Arrangement, unless the context otherwise requires:
  - a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
  - b) the term “the Cayman Islands” means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the sea bed and sub-soil and their natural resources may be exercised in accordance with international law;
  - c) the terms “a Territory” and “the other Territory” mean the United Kingdom or the Cayman Islands, as the context requires;
  - d) the term “person” includes an individual, a company and any other body of persons;
  - e) the term “competent authority” means:
    - (i) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
    - (ii) in the Cayman Islands, the Cayman Islands Tax Information Authority.
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes or which is otherwise treated as a body corporate under the law of a Territory;
  - g) the term “enterprise” applies to the carrying on of any business;
  - h) the term “enterprise of a Territory” and “enterprise of the other Territory” mean respectively an enterprise carried on by a resident of a Territory and an enterprise carried on by a resident of the other Territory;
  - i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which is a resident of and has its place of effective management in a Territory except where the ship or aircraft is operated solely between places in the other Territory.
2. As regards the application of this Arrangement at any time by a Territory, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Territory, any meaning under the applicable tax laws of that Territory prevailing over a meaning given to the term under other laws of that Territory.

**4. Resident**

1. For the purposes of this Arrangement, the term “resident of a Territory” means

- a) in the case of the United Kingdom, any person who, under its laws, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes the United Kingdom, and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in the United Kingdom in respect only of income or capital gains from sources therein;
- b) in the case of the Cayman Islands, any person who, under its laws, is recognised as a resident by reason of his domicile, residence, place of incorporation, place of management, or any other criterion of a similar nature and also includes the Cayman Islands.

2. Where by reason of the provisions of subparagraph 1 a person is a resident of both Territories, then that person shall be treated for the purposes of this Arrangement as a resident of the United Kingdom only.

3. Persons to whom subparagraph 2 applies shall not be subjected in the United Kingdom to taxation which is more burdensome than the taxation which applies to residents of the United Kingdom in the same circumstances to whom subparagraph 2 does not apply.

**5. Business profits of individuals**

1. Business profits derived by an individual shall be taxable only in the Territory in which he is resident unless he undertakes business in the other Territory. If he undertakes such business, his profits may be taxed in that other Territory, but only so much of them as is attributable to that business.

2. In determining the profits of such individual, there shall be allowed as deductions expenses which are incurred for the purposes of his business, including executive and general administrative expenses so incurred, whether in the Territory in which he undertakes the business or elsewhere.

3. Where profits include items of income which are dealt with separately in other Paragraphs of this Arrangement, then the provisions of those Paragraphs shall not be affected by the provisions of this Paragraph.

4. No provision of this Paragraph shall be construed as restricting the right of a Territory to tax its residents.

**6. Profits and gains from shipping and air transport**

1. Profits of an enterprise of a Territory from the operation of ships or aircraft in international traffic shall be taxable only in that Territory.
2. Gains derived by a resident of a Territory from the alienation of ships or aircraft operated in international traffic by an enterprise of that Territory, or moveable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Territory.
3. The provisions of subparagraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

**7. Pensions**

1. Subject to the provisions of subparagraph 2 of Paragraph 8 (Government service), pensions and other similar remuneration paid to an individual who is a resident of a Territory, shall be taxable only in that Territory.
2. Notwithstanding the provisions of subparagraph 1, such payments which arise in the other Territory may also be taxed in that other Territory where the recipient has not been continuously a resident of the first-mentioned Territory either
  - a) for a period of 6 years immediately before the commencement of the payment of that pension, or
  - b) for a period of 6 years immediately before the commencement of the employment to which the pension relates.

**8. Government service**

1.
  - a) Salaries, wages and other similar remuneration paid by a Territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Territory or subdivision or authority shall be taxable only in that Territory.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Territory if the services are rendered in that Territory and the individual is a resident of that Territory who did not become so resident solely for the purpose of rendering the services.
2.
  - a) Notwithstanding the provisions of sub-paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Territory or subdivision or authority shall be taxable only in that Territory.



- b) However, such pensions and other similar remuneration shall be taxable only in the other Territory if the individual is a resident of that other Territory and has been continuously a resident of that other Territory either
  - (i) for a period of 6 years immediately before the commencement of the payment of that pension, or
  - (ii) for a period of 6 years immediately before the commencement of the employment to which the pension relates.

3. This Paragraph does not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Territory or a political subdivision or a local authority thereof.

**9. Students**

Payments received by a student or business apprentice who immediately before visiting a Territory was a resident of the other Territory under the laws of that other Territory, and who is present in the first-mentioned Territory solely for the purpose of his full-time education at a university, college or other recognised educational institution of a similar nature, or for his full-time training, shall not be taxed in that first-mentioned Territory, provided that such payments arise outside that first-mentioned Territory, and are for the purpose of his maintenance, education or training. The exemption from tax provided by this Paragraph shall apply to a business apprentice only for a period of time not exceeding one year from the date he first arrives in the first-mentioned Territory for the purpose of his training.

**10. Other income**

Items of income not dealt with in the foregoing Paragraphs of this Arrangement arising in a Territory and paid to a resident of the other Territory may be taxed in the first-mentioned Territory.

**11. Elimination of double taxation**

1. Where a resident of a Territory derives profits, income or gains which, in accordance with the provisions of this Arrangement, may be taxed in the other Territory, the first-mentioned Territory shall, subject to any provisions of its law regarding the allowance as a credit against its tax of tax payable in another territory (which shall not affect the general principle hereof), allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in that other Territory. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income, profits or gains which may be taxed in that other Territory.

2. For the purposes of this Paragraph, profits, income and gains owned by a resident of a Territory which may be taxed in the other Territory in accordance

with this Arrangement shall be deemed to arise from sources in that other Territory.

**12. Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those Territories, present his case to the competent authority of either Territory.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Territories, except such limitations as apply for the purposes of giving effect to such an agreement.

3. The competent authorities of the Territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

4. The competent authorities of the Territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding subparagraphs.

**13. Exchange of information and tax examinations**

1. The competent authorities of the Territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of the Territories concerning taxes covered by this Arrangement imposed on behalf of the Territories insofar as the taxation thereunder is not contrary to the Arrangement. The exchange of information is not restricted by Paragraph 1.

2. Any information received under subparagraph 1 by a Territory shall be treated as confidential in the same manner as information obtained under the domestic laws of that Territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes covered by this Arrangement, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court

proceedings or in judicial decisions. Notwithstanding the foregoing, information received may be used:

- a) for other tax purposes with the express written consent of the competent authority of the Territory that provided the information; and
- b) for any other purposes when such information may be used for such purposes under the laws of both Territories and the competent authority of the Territory that provided the information authorises such use in writing.

3. Information received under subparagraph 1 by a Territory shall not be disclosed to any other jurisdiction.

4. In no case shall the provisions of subparagraphs 1 and 2 be construed so as to impose on a Territory the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Territory;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Territory;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

5. If information is requested by a Territory in accordance with this Paragraph, the other Territory shall use its information gathering measures to obtain the requested information, even though that other Territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of subparagraph 4 but in no case shall such limitations be construed to permit a Territory to decline to supply information solely because it has no domestic interest in such information.

6. In no case shall the provisions of subparagraph 4 be construed to permit a Territory to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

7. A Territory may, in accordance with its law and pursuant to any procedures agreed by the competent authorities, allow representatives of the competent authority of the other Territory to enter its jurisdiction in order to interview persons, examine records or to conduct a tax examination in its jurisdiction.

**14. Entry into force**

1. Each of the Territories shall notify the other of the completion of the procedures required by its law for the bringing into force of this Arrangement. The Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- a) in the United Kingdom:
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which this Arrangement enters into force;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Arrangement enters into force;
  - (iii) in respect of other taxes, for charges to tax arising on or after the date on which this Arrangement enters into force; and
- b) in the Cayman Islands on those same dates.

2. The provisions of this Arrangement shall not impose upon a Territory any obligation to provide information under Paragraph 13 in respect of a taxable period or charge to tax as the case may be occurring prior to the later of the notification dates referred to in subparagraph 1.

**15. Termination**

1. This Arrangement shall remain in force until terminated by one of the Territories. Either of the Governments may on or before 30th June in any calendar year, give notice of termination to the other Government and, in such event, this Arrangement shall cease to have effect

- a) in relation to relief from double taxation, at the end of the year of assessment or financial year immediately following receipt of that notice;
- b) in relation to other matters, from the date of receipt of the notice.

2. In the event that this Arrangement is terminated,

- a) all requests for information under Paragraph 13 received up to the effective date of termination will be dealt with in accordance with the terms of the Arrangement; and
- b) the Territories shall remain bound by the confidentiality provisions in Paragraph 13 with respect to any information obtained under the Arrangement.

**SCHEDULE 11**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF IRELAND CONCERNING INFORMATION ON TAX MATTERS**

The Government of the Cayman Islands and the Government of Ireland, desiring to conclude an Agreement concerning information on tax matters, have agreed as follows:

**Article 1**

**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed by Ireland:
  - (i) the income tax,
  - (ii) the income levy,
  - (iii) the corporation tax,
  - (iv) the capital gains tax,

- (v) the capital acquisitions tax, and
  - (vi) the value added tax.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
- a) the term “Contracting Party” means the Cayman Islands or Ireland as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term “Ireland” includes any area outside the territorial waters of Ireland which has been or may hereafter be designated under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Ireland, the Revenue Commissioners or their authorized representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term “principal class of shares” means the class or classes of

- shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - k) the term “tax” means any tax to which the Agreement applies;
  - l) the term “applicant Party” means the Contracting Party requesting information;
  - m) the term “requested Party” means the Contracting Party requested to provide information;
  - n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - o) the term “information” means any fact, statement or record in any form whatever;
  - p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
  - q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated

would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
  - a) the identity of the person under examination or investigation;
  - b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - c) the tax purpose for which the information is sought;



- d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
  - e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the

appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the firstmentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - a) produced for the purposes of seeking or providing legal advice or
  - b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

#### **Article 8**

##### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

#### **Article 9**

##### **Costs**

Incidence of ordinary costs incurred in providing assistance shall be agreed by the Contracting Parties, and direct extraordinary costs incurred in providing assistance shall be borne by the requesting party.

#### **Article 10**

##### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect
  - a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may after one year from the date of its entry into force terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Berlin this day June 23rd of 2009, in duplicate in the English language.

For the Government of the Cayman Islands:      For the Government of Ireland:

HON. W. MCKEEVA BUSH  
MINISTER FOR FINANCIAL

MARTIN MANSERGH  
MINISTER OF STATE

SERVICES CAYMAN ISLANDS  
GOVERNMENT

DEPARTMENT OF FINANCE

**SCHEDULE 12**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Cayman Islands and the Government of the Kingdom of the Netherlands, DESIRING to strengthen the relationship between them through cooperation in taxation matters, have determined to accede to the Agreement hereinafter set out, Have agreed as follows:

*Article 1*

*Scope of the Agreement*

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

*Article 2*

*Jurisdiction*

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

*Article 3*

*Taxes covered*

1. The taxes which are the subject of this Agreement are taxes of every kind and description existing on the date of signature.
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes.

This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

*Article 4*

*Definitions*

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Party” means the Netherlands or the Cayman Islands as the context requires;
  - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub soil and its superjacent waters, and their natural resources;
  - c) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea and areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - d) the term “competent authority” means
    - i) in the case of the Netherlands the Minister of Finance or his authorized representative;
    - ii) in the case of the Cayman Islands the Tax Information Authority;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means the stock exchanges of the Netherlands, the Cayman Islands and any stock exchange agreed upon by the competent authorities of the Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Party requesting information;
- m) the term “requested Party” means the Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of the applicant state prevailing over a meaning given to the term under other laws of that state.

*Article 5*

*Exchange of information upon request*

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:



- (a) the identity of the person under examination or investigation and the tax period of the person concerned;
- (b) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (c) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (d) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

and, to the fullest extent possible:

- (e) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (f) the tax purpose for which the information is sought;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party.

*Article 6*  
*Tax examinations abroad*

1. A Party may, on request, allow representatives of the competent authority of the other Party to enter its territory to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and

the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

*Article 7*

*Possibility of declining a request*

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which is subject to legal privilege or would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

*Article 8*

*Confidentiality*

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or

any other jurisdiction or used for any other purpose without the express written consent of the competent authority of the requested Party.

*Article 9  
Costs*

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities.

*Article 10  
Language*

Requests for assistance and answers thereto shall be drawn up in English.

*Article 11  
Mutual agreement procedure*

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The parties shall agree on other forms of dispute resolution should this become necessary.

*Article 12  
Entry into force*

This Agreement shall enter into force when each party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect;

- (a) for criminal tax matters on that date, but only in respect of taxable periods beginning on or after January 1<sup>st</sup>, 2004 or, where there is no taxable period, all charges to tax arising on or after January 1<sup>st</sup>, 2004; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or,

where there is no taxable period, all charges to tax arising on or after that date.

*Article 13  
Termination*

1. This Agreement shall remain in force until terminated by one of the Parties. Either Party may terminate the Agreement by giving notice of termination given by one competent authority to the other competent authority at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

2. In the event of termination, both Parties shall remain bound by the provision of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE at The Hague, this 8<sup>th</sup> day of July 2009, in duplicate, in the English language.

For the Government of the Cayman Islands

For the Government of the Kingdom of the Netherlands

HON. W. MCKEEVA BUSH  
MINISTER FOR FINANCIAL  
SERVICES CAYMAN ISLANDS  
GOVERNMENT

JAN KEES DE JAGER  
STATE SECRETARY OF FINANCE

**PROTOCOL BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS CONCERNING THE INTERPRETATION AND APPLICATION OF THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

Whereas the Government of the Netherlands recognises the commitment the Government of the Cayman Islands made to the OECD in 2000 to respect the principles of transparency and exchange of information and the Netherlands considers that this Agreement demonstrates the commitment of the Cayman Islands to high standards for effective exchange of information with respect to both criminal and civil taxation matters;

Whereas the Government of the Netherlands also recognises the progressive steps that the Cayman Islands have taken to demonstrate their commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters in negotiation of Tax Information Exchange Agreements with other countries and recognises that the Cayman Islands are committed to combating tax abuse by putting in place mechanisms which enhance transparency; for example, the proactive steps taken to amend domestic legislation of the Cayman Islands for the purpose of fulfilling this Agreement and upon entering into the Agreement, the Netherlands does not consider the Cayman Islands to be engaging in any harmful tax practices and thus is not referred to as a tax haven.

The Government of the Cayman Islands and the Government of the Kingdom of the Netherlands (the “Parties”), DESIRING to facilitate the exchange of information with respect to taxes, Have agreed as follows:

**I. Ad Article 5(5)(g)**

With respect to subparagraph g of paragraph 5 of Article 5 it is understood that the term “pursued all means available in its own territory” includes the requesting Party using exchange of information mechanisms it has in force with any third country in which the information is located.

**II. Ad Article 5**

If personal data is exchanged under the Agreement, the following additional provisions shall apply:

- a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
- b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby;

- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority;
- d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Party in whose sovereign territory the application for the information is made;
- f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement. In relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency;
- g) If the domestic law of the supplying authority provided, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
- h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data;
- i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

### **III. Ad article 11**

In the event that a Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, either Party may

immediately initiate Competent Authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Party to residents or nationals of either Party on the basis that any one or more of the following applies:

- (a) the other Party does not engage in effective exchange of information;
- (b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or,
- (c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

#### **IV.**

In the light of the experience of operating the Agreement, or to reflect changing circumstances, either Government may wish to propose a variation in the terms of this Agreement. If so, it is understood the other Government will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a. The competent authorities may initiate discussions in case:
  - (i) the Netherlands enters into an agreement with another jurisdiction comparable to the Cayman Islands which provides for other forms of exchange of information;
  - (ii) the Government of the Cayman Islands enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
  - (iii) the Government of the Cayman Islands introduces new legislation which enables other forms of exchange of information.
- b. If the Netherlands enters into arrangements with another jurisdiction comparable to the Cayman Islands for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Cayman Islands may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar effect.

This Protocol shall form an integral part of the Agreement between the Kingdom of The Netherlands and the Government of the Cayman Islands as authorised under the letter of entrustment from the United Kingdom of Great Britain and Northern Ireland for the exchange of information with respect to tax matters.

The Parties may, by mutual arrangement, amend this Protocol at any time in writing. The amended Protocol will come into effect on the date of the final letter arranging the amendment.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed this Protocol.

DONE at The Hague, this 8<sup>th</sup> day of July 2009, in duplicate in the English language.

For the Government of the Cayman  
Islands

HON. W. MCKEEVA BUSH  
MINISTER FOR FINANCIAL  
SERVICES  
CAYMAN ISLANDS  
GOVERNMENT

For the Government of the Kingdom of  
the Netherlands

JAN KEES DE JAGER  
STATE SECRETARY OF  
FINANCE”.

### **SCHEDULE 13**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF NEW ZEALAND ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Cayman Islands and the Government of New Zealand,

*Desiring* to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

### **ARTICLE 1**

#### ***Object and scope of this Agreement***

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of those Parties concerning



taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

## **ARTICLE 2**

### ***Jurisdiction***

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## **ARTICLE 3**

### ***Taxes covered***

1. The existing New Zealand taxes which are the subject of this Agreement are direct taxes of every kind and description.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.
3. This Agreement shall not apply to taxes imposed by municipalities, local authorities, or possessions of a Contracting Party.

## **ARTICLE 4**

### ***Definitions***

1. For the purposes of this Agreement, unless otherwise defined:

- (a) the term “Cayman Islands” means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the seabed and sub-soil and their natural resources may be exercised in accordance with international law;
- (b) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
- (c) the term “Applicant Party” means the Contracting Party requesting information;
- (d) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term “competent authority” means, in the case of the Cayman Islands, the Tax Information Authority and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (g) the term “Contracting Party” means the Cayman Islands or New Zealand as the context requires;
- (h) the term “information” means any fact, statement or record in any form whatever;
- (i) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (j) the term “person” includes an individual, a company and any other body of persons;
- (k) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the

- purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (m) the term “recognised stock exchange” means the New Zealand Exchange Limited, the Cayman Islands Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - (n) the term “Requested Party” means the Contracting Party requested to provide information; and
  - (o) the term “tax” means any tax to which this Agreement applies pursuant to Article 3.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **ARTICLE 5**

### ***Exchange of information upon request***

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the Applicant Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an Applicant Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
- (c) the tax purpose for which the information is sought;
- (d) the grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the Applicant Party, that if the requested information was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under the laws of the Applicant Party or in the normal course of administrative practice and that the information request is in conformity with this Agreement; and
- (g) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party.

## **ARTICLE 6**

### ***Tax examinations abroad***

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one of the Contracting Parties, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **ARTICLE 7**

### ***Possibility of declining a request***

1. The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

6. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

## **ARTICLE 8**

### ***Confidentiality***

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

## **ARTICLE 9**

### ***Costs***

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the

Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

## **ARTICLE 10**

### **NO PREJUDICIAL OR RESTRICTIVE MEASURES**

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
2. A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2 the term “prejudicial or restrictive measure” includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.
4. A “prejudicial or restrictive measure” does not include generally applicable measures, applied by either Contracting Party, such as Controlled Foreign Company rules, Foreign Investment Fund rules, transfer pricing rules, thin capitalisation rules, or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

**ARTICLE 11**

***Mutual agreement procedure***

1. The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.
4. The Contracting Parties may agree on other forms of dispute resolution.

**ARTICLE 12**

**ENTRY INTO FORCE**

The Government of the Cayman Islands and the Government of New Zealand shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect with respect to all matters described in Article 1 for taxable periods beginning on or after 1 January following entry into force, or where there is no taxable period, for all charges to tax arising on or after 1 January following entry into force.

**ARTICLE 13**

**TERMINATION**

1. This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may, after the expiration of 3 years from the date of its entry into force, terminate the agreement by giving to the other Contracting Party written notice of termination through the diplomatic channel.



2. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Contracting Party.

3. Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Washington, DC this 13<sup>th</sup> day of August 2009, in duplicate in the English language.

For the Government of the Cayman  
Islands:

HON. W. MCKEEVA BUSH  
MINISTER FOR FINANCIAL  
SERVICES CAYMAN ISLANDS  
GOVERNMENT

For the Government of New Zealand:

ROY FERGUSON  
NEW ZEALAND AMBASSADOR  
TO THE UNITED STATES

#### **SCHEDULE 14**

#### **EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE FRENCH REPUBLIC AND THE CAYMAN ISLANDS CONCERNING AN AGREEMENT FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

30 September 2009

Monsieur Eric WOERTH  
Le Ministre  
Ministère du Budget, des Comptes Publics,  
de la Fonction Publique et de la Réforme de l'État  
139 rue de Bercy  
75572 Paris Cedex 12

Monsieur le Ministre,

I have the honour, on behalf of my Government, to acknowledge receipt of your letter of 16 September 2009 in which you advised me:

"J'ai l'honneur, d'ordre de mon Gouvernement, de vous proposer les dispositions contenues dans l'annexe de la présente lettre. Je vous serais obligée de me faire savoir si les termes de cette annexe recueillent l'agrément de votre Gouvernement.

Dans ce cas, la présente lettre et son annexe, ainsi que votre réponse, constitueront l'accord entre nos deux Gouvernements relatif à l'échange de renseignements en matière fiscale, accord qui entrera en vigueur après la notification par chacun de nos deux Gouvernements à l'autre de l'accomplissement des procédures internes requises par sa législation conformément à l'article 12. "

In response, I therefore inform you that pursuant to the powers conferred on me, the provisions and annex to this letter obtain the approval of the Government of Cayman Islands.

I assure you, Monsieur le Ministre, of my best regards.

Yours sincerely,

Hon. W. McKeeva Bush, OBE, JP  
Leader of Government Business (Premier Designate)  
and Minister of Financial Services, Tourism and Development

Le Ministre  
Nos réf. : 1052 CAB BPC

Paris, le 16 SEP. 2009

Monsieur le Ministre,

J'ai l'honneur, d'ordre de mon Gouvernement, de vous proposer les dispositions contenues dans l'annexe à la présente lettre. Je vous serais obligé de me faire savoir si les termes de cette annexe recueillent l'agrément de votre Gouvernement.

Dans ce cas, la présente lettre et son annexe, ainsi que votre réponse, constitueront l'accord entre nos deux Gouvernements relatif à l'échange de renseignements en matière fiscale, qui entrera en vigueur après la notification par

chacun de nos deux Gouvernements à l'autre de l'accomplissement des procédures internes requises par sa législation, conformément à l'article 12.

Je vous prie de croire, Monsieur le Ministre, à l'assurance de ma considération la meilleure.

**Eric WOERTH**

Hon. W. McKeeva Bush  
Minister for Financial Services  
Cayman Islands Government  
4<sup>th</sup> Floor, Government Administration Building  
George Town, Grand Cayman  
Cayman Islands  
KY1-9000



139, rue de Bercy - Télédocus 146 - 75572 Paris Cedex 12

**ANNEX**

**WHEREAS** the Government of the French Republic and the Government of Cayman Islands ("the Contracting Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

**WHEREAS** it is acknowledged that the Government of the Cayman Islands has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude and perform a tax information exchange agreement with the Government of the French Republic;

**NOW**, therefore, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

**ARTICLE 1**

*OBJECT AND SCOPE OF THE AGREEMENT*

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes and tax matters covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.
2. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**ARTICLE 2**

*JURISDICTION*

To enable the provisions of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national or citizen of a Contracting Party. A Requested Party is not obliged to provide information, which is neither held by its authorities nor in the possession of or in the control of or obtainable by persons who are within its territorial jurisdiction.

**ARTICLE 3**

*TAXES COVERED*

1. The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
3. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties.

4. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

**ARTICLE 4**  
**DEFINITIONS**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) “France” means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
  - b) “Cayman Islands” means the territory of Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and subsoil and their natural resources may be exercised;
  - c) the term “competent authority” means
    - i) in the case of France, the Minister of Finance, or his authorised representative;
    - ii) in the case of Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - d) the term “person” includes a natural person, a legal person, or any body or group of such persons;
  - e) the term “tax” means any tax to which the Agreement applies;
  - f) the term “Requesting Party” means the Party requesting information;
  - g) the term “Requested Party” means the Party requested to provide information;
  - h) the term “information gathering measures” means laws and administrative, judicial or regulatory procedures that enable a Contracting Party to obtain and provide the requested information;
  - i) the term “information” means any fact, statement, document or record in any form whatever;
  - j) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;

- k) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **ARTICLE 5**

### *EXCHANGE OF INFORMATION UPON REQUEST*

1. The competent authority of the Requested Party shall provide upon request in writing information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the Requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Contracting Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities, for the purposes of this Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b)
  - (i) information regarding the legal ownership and the beneficial ownership of companies, partnerships, collective investment schemes, and other persons;

- (ii) in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and
- (iii) in the case of a foundation, information on the founders, members of the foundation council and beneficiaries.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party:

- a) the identity of the person under examination or investigation;
- b) the period of time with respect to which information is requested;
- c) the nature of the information requested and the form in which the Requesting Party wishes to receive it;
- d) the tax purposes for which the information is sought;
- e) grounds for believing that the information requested is present in the Requested Party or is in the possession of, or in the control of or obtainable by a person within the jurisdiction of the Requested Party;
- f) to the extent known, the name and address of any person believed to be in possession of or control of or able to obtain the requested information;
- g) a statement that the request conforms with the law and administrative practices of the Requesting Party;
- h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulties.

6. To ensure a prompt response, the competent authority of the Requested Party shall:

- a) confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request;
- b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, it shall inform the Requesting Party, explaining the reason for its inability.

## **ARTICLE 6**

### **TAX EXAMINATIONS OR INVESTIGATIONS ABROAD**

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of

the competent authority of the Requesting Party to enter the territory of the Requested Party to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the meeting with the persons concerned.

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may allow representatives of the competent authority of the Requesting Party to attend a tax examination in the territory of the Requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or official authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the tax examination shall be made by the Requested Party conducting the examination.

## **ARTICLE 7**

### *POSSIBILITY OF DECLINING A REQUEST*

1. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement or where the disclosure of the information requested would be contrary to public policy (*ordre public*).

2. The provisions of this Agreement shall not impose upon a Contracting Party the obligation to provide items subject to legal privilege or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The Requested Party shall not be required to obtain and provide information which the Requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to



a valid request made in similar circumstances from the Requested Party under this Agreement.

5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the Requested Party as compared with a national or citizen of the Requesting Party in the same circumstances.

## **ARTICLE 8**

### *CONFIDENTIALITY*

1. All information received by the competent authority of a Contracting Party shall be kept confidential.
2. Information provided to the competent authority of the Requesting Party may be used for purposes other than the purposes stated in Article 1 with the prior express written consent of the Requested Party.
3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in this Agreement and used by such persons or authorities only for such purposes. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
4. Information provided to a Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## *ARTICLE 9*

### *ADMINISTRATIVE COSTS*

Ordinary costs incurred in providing assistance shall be borne by the Requested Party.

The Requested Party may request from the Requesting Party the reimbursement of direct extraordinary costs incurred in providing assistance.

**ARTICLE 10**

*IMPLEMENTING LEGISLATION*

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement. This includes: availability of information, access to information, exchange of information.

**ARTICLE 11**

*MUTUAL AGREEMENT PROCEDURE*

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to these latter agreements, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching an agreement under this Article.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution should this become necessary.

**ARTICLE 12**

*ENTRY INTO FORCE*

This Agreement shall enter into force when each Contracting Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**ARTICLE 13**

*TERMINATION*

1. Either Contracting Party may terminate this Agreement by serving a notice of termination.
2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.
3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

**SCHEDULE 15**

**AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED  
UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER  
2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES  
FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO  
TAXES**

The Government of the Cayman Islands, and the Government of the Kingdom of the Netherlands, in respect of the Netherlands Antilles,

DESIRING to strengthen the relationship between them through cooperation in taxation matters,

Have agreed as follows:

**Article 1**

**Scope of the Agreement**

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably

relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to the Netherlands Antilles.

## **Article 2**

### **Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## **Article 3**

### **Taxes covered**

1. The taxes which are the subject of this Agreement are:
  - a) in the case of the Cayman Islands, taxes of every kind and description existing on the date of signature;
  - b) in the Netherlands Antilles,
    - (i) the income tax (inkomtenbelasting);
    - (ii) the wages tax (loonbelasting);
    - (iii) the profit tax (winstbelasting); and
    - (iv) the surtaxes on the income and profit tax (opcenten op de inkomsten- en winstbelasting).
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letter. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**

**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Party” means the Cayman Islands, or the Kingdom of the Netherlands, in respect of the Netherlands Antilles as the context requires;
  - b) the term “Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea and areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term “the Netherlands Antilles” means the part of the Kingdom of the Netherlands that is situated in the Caribbean Sea and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part) including the territorial waters thereof and the part of the seabed and its subsoil under the Caribbean Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law but excluding the part thereof relating to Aruba;
  - d) the term “competent authority” means
    - i) in the case of the Cayman Islands, the Tax Information Authority;
    - ii) in the case of the Netherlands Antilles, the Minister of Finance or his authorized representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - i) the term “recognised stock exchange” means the stock exchanges of the Cayman Islands, the Netherlands Antilles and any stock exchange agreed upon by the competent authorities of the Parties;

- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Party requesting information;
- m) the term “requested Party” means the Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of the applicant Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of information upon request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to

provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation and the tax period of the person concerned;
- b) to the extent known, the name and address of any person believed to be in possession of the requested information;
- c) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- d) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

and, to the fullest extent possible:

- e) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - f) the tax purpose for which the information is sought;
  - g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party.

## **Article 6**

### **Tax examinations abroad**

1. A Party may, on request, allow representatives of the competent authority of the other Party to enter its territory to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of declining a request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which is subject to legal privilege or would disclose any



trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

#### **Article 8**

##### **Confidentiality**

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction or used for any other purpose without the express written consent of the competent authority of the requested Party.

#### **Article 9**

##### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities.

#### **Article 10**

##### **Language**

Requests for assistance and answers thereto shall be drawn up in English.

**Article 11**

**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

**Article 12**

**Entry into force**

This Agreement shall enter into force on the first day of the second month after the later of the dates on which each of the Parties has notified the other, in writing, of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect;

- a) for criminal tax matters on that date, but only in respect of taxable periods beginning on or after January 1<sup>st</sup>, 2010 or, where there is no taxable period, all charges to tax arising on or after January 1<sup>st</sup>, 2010; and
- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**Article 13**

**Termination**

This Agreement shall remain in force until terminated by one of the Parties. Either Party may terminate the Agreement, through diplomatic channels, by giving notice of termination to the other Party at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

In the event of termination, both Parties shall remain bound by the provision of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Willemstad, this 29<sup>th</sup> day of October, 2009, in duplicate, in the English language.

FOR THE CAYMAN ISLANDS:	FOR THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES:
SAMUEL BULGIN, QC	ERSILIA DE LANNOOY

**AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED  
UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER  
2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES  
CONCERNING THE INTERPRETATION AND APPLICATION OF THE  
AGREEMENT BETWEEN THE CAYMAN ISLANDS AS AUTHORISED  
UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER  
2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES  
FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO  
TAXES**

The Government of the Cayman Islands, and the Government of the Kingdom of the Netherlands, in respect of the Netherlands Antilles, (the “Parties”),

DESIRING to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

**I. Ad Article 5(5)(g)**

With respect to subparagraph g) of paragraph 5 of Article 5 of the Agreement between the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland, and the Kingdom of the Netherlands, in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes (herein after referred to as “the Agreement”) it is understood that the term “pursued all means available in its own territory” includes the requesting Party using exchange of information

mechanisms it has in force with any third country in which the information is located.

## **II. Ad Article 5**

If personal data is exchanged under the Agreement, the following additional provisions shall apply:

- a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
- b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby;
- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority;
- d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Party in whose sovereign territory the application for the information is made;
- f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement. In relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency;

- g) If the domestic law of the supplying authority provided, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
- h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data;
- i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

### **III. Ad article 12**

In the event that a Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, either Party may immediately initiate Competent Authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Party to residents or nationals of either Party on the basis that any one or more of the following applies:

- a) the other Party does not engage in effective exchange of information;
- b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or,
- c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

### **IV.**

In the light of the experience of operating the Agreement, or to reflect changing circumstances, either Party may wish to propose a variation in the terms of this Agreement. If so, it is understood the other Party will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a) The competent authorities may initiate discussions in case:
  - (i) the Cayman Islands enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
  - (ii) the Kingdom of the Netherlands, in respect of the Netherlands Antilles, enters into an agreement with another

- jurisdiction comparable to the Cayman Islands which provides for other forms of exchange of information;
  - (iii) the Cayman Islands introduces new legislation which enables other forms of exchange of information;
  - (iv) the Netherlands Antilles introduces new legislation which enables other forms of exchange of information.
- b) If the Cayman Islands enters into arrangements with another jurisdiction comparable to the Netherlands Antilles for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Netherlands Antilles may initiate discussions with the Cayman Islands with a view to modifying the Agreement to have similar effect;
- c) If the Netherlands Antilles enters into arrangements with another jurisdiction comparable to the Cayman Islands for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Cayman Islands may initiate discussions with the Netherlands Antilles with a view to modifying the Agreement to have similar effect.

**V.**

This Protocol shall form an integral part of the Agreement between the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland, and the Kingdom of the Netherlands, in respect of the Netherlands Antilles for the exchange of information with respect to tax matters, and shall enter into force on the same date as the Agreement.

**VI.**

The Parties may, by mutual arrangement, amend this Protocol at any time in writing. Such amendment shall enter into force on the first day of the second month after the Parties have notified each other in writing that the constitutional or internal requirements for the entry into force of the amendment have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by their respective Governments, have signed this Protocol.

DONE at Willemstad, this 29<sup>th</sup> day of October, 2009, in duplicate, in the English language.

FOR THE CAYMAN ISLANDS:

SAMUEL BULGIN, QC

FOR THE KINGDOM OF THE  
NETHERLANDS, IN RESPECT OF  
THE NETHERLANDS ANTILLES:

ERSILIA DE LANNOOY

## **SCHEDULE 16**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF AUSTRALIA ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

Whereas it is acknowledged that the Cayman Islands under the Terms of its Entrustment from the United Kingdom is authorised to negotiate, conclude and perform a Tax Information Exchange Agreement with Australia;

Now, therefore, the Government of the Cayman Islands and the Government of Australia ("the Contracting Parties") have agreed to conclude the following Agreement which contains obligations on the part of the Cayman Islands and Australia only,

#### **Article 1**

##### **Object and scope of this agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of those Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be provided in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1 The existing taxes which are the subject of this Agreement are taxes of every kind and description imposed by or on behalf of the Contracting Parties.

2 This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. This Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Contracting Party.

**Article 4**

**Definitions**

1 For the purposes of this Agreement, unless otherwise defined:

- (a) the term "Applicant Party" means the Contracting Party requesting information;
- (b) the term "Cayman Islands" means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the seabed and sub-soil and their natural resources may be exercised in accordance with international law;
- (c) the term "Australia", when used in a geographical sense, excludes all external territories other than:
  - (i) the Territory of Norfolk Island;
  - (ii) the Territory of Christmas Island;
  - (iii) the Territory of Cocos (Keeling) Islands;
  - (iv) the Territory of Ashmore and Cartier Islands;
  - (v) the Territory of Heard Island and McDonald Islands; and
  - (vi) the Coral Sea Islands Territory,



and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

- (d) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "competent authority" means in the case of the Cayman Islands, the Tax Information Authority and, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
- (g) the term "Contracting Party" means the Cayman Islands or Australia as the context requires;
- (h) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (i) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;
- (j) the term "information" means any fact, statement or record in any form whatever;
- (k) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (l) the term "person" includes an individual, a company and any other body of persons;
- (m) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (n) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the

public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- (o) the term "recognised stock exchange" means the Cayman Islands Stock Exchange, the Australian Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (p) the term "Requested Party" means the Contracting Party requested to provide information;
- (q) the term "Requesting Party" means the Contracting Party requesting information; and
- (r) the term "tax" means any tax to which this Agreement applies.

2 As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of information upon request**

1 The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

2 If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the Applicant Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3 If specifically requested by the competent authority of an Applicant Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4 Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5 The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
- (c) the tax purpose for which the information is sought;
- (d) the grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the Applicant Party, that if the requested information was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under the laws of the Applicant Party or in the normal course of administrative practice and that the information request is in conformity with this Agreement; and
- (g) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6 The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax examinations abroad**

1 A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2 At the request of the competent authority of one of the Contracting Parties, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3 If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of declining a request**

1 The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.

2 The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3 The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4 The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

5 A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

6 The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

**Article 9**

**Costs**

The incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties.

**Article 10**

**Implementation legislation**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

**Article 11**

**Mutual agreement procedure**

1 The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.

2 In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.

3 The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

4 The Contracting Parties may also agree on other forms of dispute resolution.

**Article 12**

**Entry into force**

The Contracting Parties shall notify each other in writing through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect:

- (a) for criminal tax matters from 1 July 2010; and
- (b) for all other matters covered in Article 1 from 1 July 2010, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**Article 13**  
**Termination**

1 This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may give written notice of termination to the other Contracting Party through the appropriate channel.

2 Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Contracting Party.

3 Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Washington, DC, this 30<sup>th</sup> day of March 2010, in duplicate.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

FOR THE GOVERNMENT OF  
AUSTRALIA:

**H.E. THE HON. KIM BEAZLEY  
AC  
AUSTRALIAN AMBASSADOR TO  
THE UNITED STATES**

**SCHEDULE 17**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER 2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF ARUBA, FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Cayman Islands and the Kingdom of the Netherlands, in respect of Aruba,

DESIRING to strengthen the relationship between them through cooperation in taxation matters,

Have agreed as follows:

**Article 1**

**Scope of the Agreement**

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to Aruba.

**Article 2**

**Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. The taxes which are the subject of this Agreement are taxes of every kind and description existing on the date of signature.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes.

This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Parties shall notify each other of any



substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Party” means the Kingdom of the Netherlands, in respect of Aruba, or the Cayman Islands as the context requires;
  - b) the term “Aruba” means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Aruba;
  - c) the term “Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea and areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - d) the term “competent authority” means
    - i) in the case of Aruba, the Minister of Finance and Economic Affairs or his authorized representative;
    - ii) in the case of the Cayman Islands the Tax Information Authority;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - i) the term “recognised stock exchange” means the stock exchanges of the Netherlands, the Cayman Islands and any stock exchange agreed upon by the competent authorities of the Parties;
  - j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or

other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Party requesting information;
- m) the term “requested Party” means the Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of the applicant state prevailing over a meaning given to the term under other laws of that state.

## **Article 5**

### **Exchange of information upon request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation and the tax period of the person concerned;
- b) to the extent known, the name and address of any person believed to be in possession of the requested information;
- c) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- d) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

and, to the fullest extent possible:

- e) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - f) the tax purpose for which the information is sought;
  - g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party.

## **Article 6**

### **Tax examinations abroad**

1. A Party may, on request, allow representatives of the competent authority of the other Party to enter its territory to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of declining a request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which is subject to legal privilege or would disclose any

trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

### **Article 8**

#### **Confidentiality**

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction or used for any other purpose without the express written consent of the competent authority of the requested Party.

### **Article 9**

#### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities.

### **Article 10**

#### **Language**

Requests for assistance and answers thereto shall be drawn up in English.

**Article 11**

**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

**Article 12**

**Entry into force**

This Agreement shall enter into force on the first day of the second month after the later of the dates on which each of the Parties has notified the other in writing, of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect;

- a) for criminal tax matters on that date, but only in respect of taxable periods beginning on or after January 1<sup>st</sup>, 2004 or, where there is no taxable period, all charges to tax arising on or after January 1<sup>st</sup>, 2004; and
- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**Article 13**

**Termination**

1. This Agreement shall remain in force until terminated by one of the Parties. Either Party may terminate the Agreement by giving notice of termination through diplomatic channel at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Agreement shall cease to have effect for taxable years and

periods beginning after the end of the calendar year in which the notice of termination has been given.

2. In the event of termination, both Parties shall remain bound by the provision of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Oranjestad, this 9<sup>th</sup> day of April 2010, and at Grand Cayman, this 20<sup>th</sup> of April 2010, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

FOR THE KINGDOM OF THE  
NETHERLANDS IN RESPECT OF  
ARUBA:

**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

**MR. M.E. DE MEZA  
MINISTER FOR FINANCE  
COMMUNICATION, UTILITIES  
AND ENERGY OF ARUBA**

**PROTOCOL BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER 2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF ARUBA CONCERNING THE INTERPRETATION AND APPLICATION OF THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF ARUBA, AND THE GOVERNMENT OF THE CAYMAN ISLANDS AS AUTHORISED UNDER THE LETTER OF ENTRUSTMENT DATED 1 SEPTEMBER 2009 FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Kingdom of the Netherlands, in respect of Aruba, and Government of the Cayman Islands (the “Parties”),

DESIRING to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

**I.**

**Ad Article 5(5)(g)**

With respect to subparagraph g) of paragraph 5 of Article 5 of the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland for the Exchange of Information with Respect to Taxes (herein after referred to as “the Agreement”) it is understood that the term “pursued all means available in its own territory” includes the requesting Party using exchange of information mechanisms it has in force with any third country in which the information is located.

**II.**

**Ad Article 5**

If personal data is exchanged under the Agreement, the following additional provisions shall apply:

- a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;
- b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby;
- c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority;
- d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;
- e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it



outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Party in whose sovereign territory the application for the information is made;

- f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement. In relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency;
- g) If the domestic law of the supplying authority provided, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;
- h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data;
- i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

### **III.**

#### **Ad article 11**

In the event that a Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, either Party may immediately initiate Competent Authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Party to residents or nationals of either Party on the basis that any one or more of the following applies:

- a) the other Party does not engage in effective exchange of information;
- b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or,
- c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either Party against, amongst others, members of the OECD generally.

**IV.**

In the light of the experience of operating the Agreement, or to reflect changing circumstances, either Government may wish to propose a variation in the terms of this Agreement. If so, it is understood the other Government will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a) The competent authorities may initiate discussions in case:
  - i) the Kingdom of the Netherlands, in respect of Aruba, enters into an agreement with another jurisdiction comparable to the Cayman Islands which provides for other forms of exchange of information;
  - ii) the Government of the Cayman Islands enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
  - iii) the Government of the Cayman Islands introduces new legislation which enables other forms of exchange of information.
- b) If the Kingdom of the Netherlands, in respect of Aruba enters into arrangements with another jurisdiction comparable to the Cayman Islands for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Cayman Islands may initiate discussions with Aruba with a view to modifying the Agreement to have similar effect.

**V.**

This Protocol shall form an integral part of the Agreement between the Kingdom of The Netherlands, in respect of Aruba, and the Government of the Cayman Islands as authorised under the letter of entrustment dated 1 September 2009 from the United Kingdom of Great Britain and Northern Ireland for the exchange of information with respect to tax matters, and shall enter into force on the same date as the Agreement.

**VI.**

The Parties may, by mutual arrangement, amend this Protocol at any time in writing. Such amendment shall enter into force on the first day of the second month after the Parties have notified each other in writing that the constitutional or internal requirements for the entry into force of the amendment have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Oranjestad, this 9<sup>th</sup> day of April 2010, and at Grand Cayman, this 20<sup>th</sup> of April 2010, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

FOR THE KINGDOM OF THE  
NETHERLANDS IN RESPECT OF  
ARUBA:

**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

**MR. M.E. DE MEZA  
MINISTER FOR FINANCE  
COMMUNICATION, UTILITIES  
AND ENERGY OF ARUBA**

### **SCHEDULE 18**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS (AS AUTHORISED BY LETTER OF ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND) AND THE PORTUGUESE REPUBLIC CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS**

The Government of the Cayman Islands and the Portuguese Republic, hereinafter referred to as "Parties",

Desiring to facilitate the Exchange of Information with respect to taxes,

Have agreed as follows:

#### **Article 1**

##### **Scope of the agreement**

1. The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Parties concerning taxes covered by this Agreement;
  - b) Include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters; and
  - c) Be treated as confidential as set forth in this Agreement.
2. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

## **Article 2**

### **Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## **Article 3**

### **Taxes covered**

1. This Agreement shall apply to the following taxes imposed by the Parties
  - a) In Portugal:
    - i. Personal income tax (imposto sobre o rendimento das pessoas singulares IRS);
    - ii. Corporate income tax (imposto sobre o rendimento das pessoas colectivas IRC);
    - iii. Local surtax on corporate income tax (Derrama);
    - iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas); and
  - b) In the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Portugal to which this agreement applies
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**

**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) The term “Party” means the Cayman Islands or Portugal as the context requires;
  - b) The term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which, in accordance with international law, the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) The term “Portugal” means territory of the Portuguese Republic situated in the European continent, the archipelagos of Azores and Madeira, the territorial sea and inland waters thereof as well as the continental shelf and any other area wherein the Portuguese State exercises sovereign rights or jurisdiction in accordance with the rules of international law and the laws of the Portuguese Republic;
  - d) The term “competent authority” means:
    - (i) In the Cayman Islands, the Tax Information Authority or a person or authority designated by it.
    - (ii) In Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
  - e) The term “person” includes an individual, a company and any other body of persons;
  - f) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) The term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) The term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - i) The term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
  - j) The term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any

collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- k) The term “tax” means any tax to which the Agreement applies;
- l) The term “applicant Party” means the Party requesting information;
- m) The term “requested Party” means the Party requested to provide information;
- n) The term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- o) The term “information” means any fact, statement or record in any form whatever;
- p) The term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) The term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) Information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- b) Information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) The identity of the person under examination or investigation;
- b) A statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) The tax purpose for which the information is sought;
- d) Grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- e) To the extent known, the name and address of any person believed to be in possession of the requested information;
- f) A statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant

Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- g) A statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.



**Article 7**

**Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - a) Produced for the purposes of seeking or providing legal advice or
  - b) Produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

**Article 8**

**Confidentiality**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article

1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the law of the requested Party.

6. The Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of The European Parliament and of the Council of 24 October 1995 and shall comply with the guidelines established by the United Nations General Assembly Resolution 45/95, adopted on the 14<sup>th</sup> December 1990.

### **Article 9**

#### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Parties.

### **Article 10**

#### **Implementation legislation**

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

### **Article 11**

#### **Language**

Requests for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

**Article 12**

**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 13**

**Entry into Force**

1. This Agreement shall enter into force thirty days from the date on which the Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. Upon the date of entry into force, this Agreement shall have effect:
  - a) For criminal tax matters on that date; and
  - b) For all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**Article 14**

**Duration and Termination**

1. The present Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the present Agreement upon a prior notification in writing through diplomatic channels.
3. The present Agreement shall terminate six months after the receipt of such notification.
4. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of the present Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

Done at **Grand Cayman**, on this **13<sup>th</sup>** day of **May 2010**, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:  
**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

FOR THE PORTUGUESE  
REPUBLIC:  
**DR. SÉRGIO TRIGO TAVARES  
VASQUES  
SECRETARY OF STATE FOR  
TAX AFFAIRS OF PORTUGAL**

#### SCHEDULE 19

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ON ASSISTANCE IN CIVIL AND CRIMINAL TAX MATTERS THROUGH EXCHANGE OF INFORMATION**

The Government of the Cayman Islands and the Government of the Federal Republic of Germany

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to all tax matters;

Whereas it is acknowledged that the Government of the Cayman Islands under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude and perform a tax information exchange agreement with the Government of the Federal Republic of Germany;

Whereas the Contracting Parties have agreed that the following Agreement contains obligations on the part of the Contracting Parties only;

Have agreed as follows:

**Article 1**

**Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable.

**Article 2**

**Jurisdiction**

A requested Contracting Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

**Article 3**

**Taxes Covered**

(1) This Agreement shall apply to the following taxes of the Federal Republic of Germany:

- a) the income tax (Einkommensteuer),
- b) the corporation tax (Körperschaftsteuer),
- c) the trade tax (Gewerbsteuer),
- d) the capital tax (Vermögensteuer) and
- e) the inheritance tax (Erbschaftsteuer),
- f) the value added tax (Umsatzsteuer)
- g) the tax on insurance premiums (Versicherungsteuer)  
including the supplements levied thereon;

(2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

## **Article 4**

### **Definitions**

- (1) For the purposes of this Agreement, unless otherwise defined:
- a) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
  - b) “Cayman Islands”, when used in a geographical sense, means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the seabed and subsoil and their natural resources may be exercised in accordance with international law;
  - c) “competent authority” means
    - (i) in respect of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power,
    - (ii) in respect of the Cayman Islands, the Tax Information Authority or authorised representative,
  - d) “person” includes an individual, a company and any other body of persons,
  - e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
  - f) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors,
  - g) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
  - h) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,
  - i) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme, provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors,
  - j) “tax” means any tax to which the Agreement applies,

- k) “requesting Contracting Party” means the Contracting Party requesting information,
- l) “requested Contracting Party” means the Contracting Party requested to provide information,
- m) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information,
- n) “information” means any fact, statement, document or record in any form whatever,
- o) “tax matters” means all tax matters including criminal tax matters,
- p) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Contracting Party,
- q) “criminal laws” means all criminal laws designated as such under the respective law of the Contracting Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

(2) Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **Article 5**

### **Exchange of Information**

(1) The competent authority of the requested Contracting Party shall provide upon request by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Contracting Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Contracting Party if it had occurred in the territory of the requested Contracting Party. The competent authority of the requesting Contracting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

(2) If the information in the possession of the competent authority of the requested Contracting Party is not sufficient to enable it to comply with the request for information, that Contracting Party shall use at its own discretion all applicable information gathering measures necessary to provide the requesting

Contracting Party with the information requested, notwithstanding that the requested Contracting Party may not, at that time, need such information for its own tax purposes.

(3) If specifically requested by the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party shall provide information under this Article, to the extent allowable under its laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each Contracting Party shall ensure that its competent authorities, in accordance with the terms of this Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity,
- b) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds and schemes, information on shares, units and other interests;
- c) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries,

provided that this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

(5) Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation,
- b) the period for which the information is requested,
- c) the nature of the information sought and the form in which the requesting Contracting Party would prefer to receive it,
- d) the tax purpose for which the information is sought,
- e) the reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the requesting Contracting Party, with respect to the person identified in subparagraph a) of this paragraph,
- f) grounds for believing that the information requested is held in the requested Contracting Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Contracting Party,



- g) to the extent known, the name and address of any person believed to be in possession of the requested information,
  - h) a statement that the request is in conformity with the laws and administrative practices of the requesting Contracting Party, that if the requested information was within the jurisdiction of the requesting Contracting Party then the competent authority of the requesting Contracting Party would be able to obtain the information under the laws of the requesting Contracting Party and that it is in conformity with this Agreement,
  - i) a statement that the requesting Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
- (6) The competent authority of the requested Contracting Party shall acknowledge receipt of the request to the competent authority of the requesting Contracting Party and shall use its best endeavours to forward the requested information to the requesting Contracting Party with the least reasonable delay.

## **Article 6**

### **Tax Examinations Abroad**

- (1) By reasonable notice given in advance, the requesting Contracting Party may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the individuals concerned.
- (2) At the request of the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party may allow representatives of the competent authority of the requesting Contracting Party to be present at the appropriate part of a tax examination in the requested Contracting Party.
- (3) If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Contracting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Contracting Party for the conduct of the examination.

All decisions with respect to the conduct of the tax examination shall be made by the requested Contracting Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

- (1) The competent authority of the requested Contracting Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the requesting Contracting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to the public policy of the requested Contracting Party.
- (2) This Agreement shall not impose upon a requested Contracting Party any obligation:
  - (a) to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or
  - (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5;
- (3) A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
- (4) The requested Contracting Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Contracting Party the competent authority of the requesting Contracting Party would not be able to obtain under its laws.
- (5) The requested Contracting Party may decline a request for information if the information is requested by the requesting Contracting Party to administer or enforce a provision of the tax law of the requesting Contracting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Contracting Party as compared with a citizen of the requesting Contracting Party in the same circumstances.

**Article 8**

**Confidentiality**

- (1) All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be treated as confidential in the same manner as information obtained under the domestic laws of the Contracting Parties.
- (2) Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes information may be disclosed in administrative or criminal investigations, in public court proceedings or in judicial decisions, if this is provided for in the respective laws of the Contracting Parties.
- (3) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Contracting Party.
- (4) The information provided to a requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction.
- (5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

**Article 9**

**Costs**

Incidents of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

**Article 10**

**Mutual Agreement Procedure**

- (1) Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
- (2) In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.

- (3) The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
- (4) The Contracting Parties shall agree on procedures for dispute resolution should this become necessary.

#### **Article 11**

##### **Protocol**

The attached Protocol shall be an integral part of this Agreement.

#### **Article 12**

##### **Entry into Force**

- (1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
- (2) Upon the date of entry into force, this Agreement shall have effect:
  - a) for criminal tax matters on that date; and
  - b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

#### **Article 13**

##### **Termination**

- (1) Either Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.
- (2) Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the competent authority of the other Contracting Party.
- (3) If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Done at **Grand Cayman**, this **27<sup>th</sup> day of May, 2010**, in duplicate in the English and German languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

FOR THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF  
GERMANY:

**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

**MR. JÜRGEN ENGEL  
THE AMBASSADOR OF THE  
FEDERAL REPUBLIC OF  
GERMANY TO KINGSTON**

**PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT  
OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE  
FEDERAL REPUBLIC OF GERMANY ON ASSISTANCE IN CIVIL AND  
CRIMINAL TAX MATTERS THROUGH EXCHANGE OF  
INFORMATION**

The Government of the Cayman Islands and the Government of the Federal Republic of Germany (the “Contracting Parties”) have agreed at the signing of the Agreement between the two Governments on Assistance in Civil and Criminal Tax Matters through Exchange of Information on the following provisions which shall form an integral part of the said Agreement:

1. With respect to subparagraph a) of paragraph 5 of Article 5 it is understood that the identity of the person under examination or investigation may be determined by identifying information other than the name.
2. With respect to paragraph 5 of Article 8 the Contracting Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply:
  - a) The receiving agency may use such data in compliance with paragraph 3 of Article 8 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency and that conform with Article 8.
  - b) Notwithstanding the provisions of paragraph 3 of Article 8, the information may be used for other purposes, if under the law of both Contracting Parties it may be used for these other purposes and the competent authority of the supplying Contracting Party has agreed to this use. Use for other purposes without the prior

approval of the supplying Contracting Party is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of liberty, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying Contracting Party must be asked without delay for retroactive authorisation of the change in purpose. If authorisation is refused, the information may no longer be used for the other purpose and the receiving agency shall erase the data supplied without delay. Any damage which has been caused by use of the information for the other purpose must be compensated.

- c) The supplying agency shall be obliged to exercise vigilance as to the accuracy of the data to be supplied and their foreseeable relevance within the meaning of Article 1 and their proportionality to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.
- d) The receiving agency shall on request inform the supplying agency on a case-by-case basis for the purpose of informing the person concerned about the use of the supplied data and the results achieved thereby.
- e) The receiving agency shall inform the person concerned of the data collection by the supplying agency. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph e) shall apply accordingly.
- g) The receiving agency shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the supply of data under the exchange of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.

- h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- i) Where the law applicable to the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
- j) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

3. Pursuant to Article 9 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information will be borne by the requested Contracting Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the applicant Contracting Party. Examples of extraordinary costs include, but are not limited to, the following:

- a) reasonable fees charged for staff employed by third parties in assisting with the request;
- b) reasonable fees charged by third parties for carrying out research;
- c) reasonable fees charged by third parties for copying documents;
- d) reasonable costs of engaging experts, interpreters, or translators;
- e) reasonable costs of conveying documents to the applicant Contracting Party;
- f) reasonable litigation costs of the requested Contracting Party in relation to a specific request for information;
- g) reasonable costs for obtaining depositions or testimony; and
- h) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears for an interview, deposition or testimony relating to a particular information request.

The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed US\$500 to determine whether the applicant Contracting Party will continue to pursue the request and bear the cost.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications

regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier-mentioned competent authorities or their authorised entities.

- a) Competent authority for the Federal Republic of Germany:  
Bundeszentralamt für Steuern  
53221 Bonn

In respect of criminal tax matters:  
Bundesamt für Justiz  
53094 Bonn

- b) Competent authority for the Cayman Islands:  
Tax Information Authority  
Elizabethan Square (3rd Floor, Phase III)  
80 Shedden Road, George Town  
P O Box 10080  
Grand Cayman, KY1-1001  
Cayman Islands

In respect of criminal tax matters:  
The above-mentioned competent authority.

**SCHEDULE 20**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS UNDER ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS**

**WHEREAS** the Government of the United Kingdom has issued a letter of entrustment to the Government of the Cayman Islands (hereinafter "Cayman Islands") to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada (hereinafter "Canada"):

**THE GOVERNMENT OF THE CAYMAN ISLANDS** and **THE GOVERNMENT OF CANADA**, desiring to facilitate the exchange of information with respect to taxes, have agreed as follows:

**Article 1**

*Object and Scope of this Agreement*

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and



enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

2. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

## **Article 2**

### **Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## *Article 3*

### **Taxes Covered**

The taxes which are the subject of this Agreement are, in the case of Canada, all taxes on income and on capital imposed or administered by the Government of Canada, and in the case of the Cayman Islands, all taxes on income and on capital imposed or administered by the Cayman Islands, including any taxes on income and on capital imposed or administered after the date of signature of this Agreement.

## **Article 4**

### *Definitions*

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term “Party” means the Cayman Islands or Canada as the context requires;
  - (b) the term “competent authority” means:
    - (i) in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative;
    - (ii) in the case of the Cayman Islands, the Tax Information Authority or its authorised representative;

- (c) the term “person” includes an individual, a company, a partnership and any other body of persons;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased and sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased and sold, or readily purchased and redeemed, by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (i) the term “tax” means any tax to which this Agreement applies;
- (j) the term “applicant Party” means the Party requesting information;
- (k) the term “requested Party” means the Party requested to provide information;
- (l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information; and
- (m) the term “information” means any fact, statement or record in any form whatever.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

*Article 5*

**Exchange of Information upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:
  - (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - (b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. This Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
  - (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
  - (c) the tax purpose for which the information is sought;
  - (d) grounds for believing that the information requested is held in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
  - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and
  - (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall immediately confirm receipt of a request in writing to the competent authority of the applicant Party and shall:
- (a) notify the competent authority of the applicant Party, within 60 days of receiving the request, of any deficiencies in the request;
  - (b) notify the competent authority of the applicant Party, within 90 days of receiving the request, of the intention to refuse the request or of any obstacle preventing the requested Party from fulfilling the request;
  - (c) inform the competent authority of the applicant Party of the grounds for the refusal of the request or the nature of the obstacles to processing the request;
  - (d) provide the requested information within 90 days of receiving the request or, in the event that there is an obstacle to fulfilling the request, advise the competent authority of the applicant Party of the estimated additional time required to fulfill the request.

## **Article 6**

### **Tax Examinations Abroad**

1. A Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party to interview individuals

and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Party, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the territory of the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are produced for the purposes of:

- (a) seeking or providing legal advice, or
- (b) use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

#### **Article 8**

##### **Confidentiality**

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes in that jurisdiction. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not otherwise be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

#### **Article 9**

##### **Costs**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties.

#### **Article 10**

##### **Implementation Legislation**

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

#### **Article 11**

##### **Other International Agreements or Arrangements**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Parties which relate to co-operation in tax matters.

*Article 12*

**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution.

**Article 13**

**Entry into Force**

1. This Agreement is subject to ratification, acceptance or approval by the Parties, in accordance with their respective laws. Notification in writing of the completion of each Party's necessary internal procedures for entry into force shall be exchanged as soon as possible.
2. This Agreement shall enter into force on the date of the later of the notifications under paragraph 1. Upon entry into force, it shall have effect:
  - (a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), on that date, but only in respect of taxable periods beginning on or after January 1, 2004 or, where there is no taxable period, for all charges to tax arising on or after January 1, 2004, and
  - (b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

**Article 14**

**Termination**

1. A Party may terminate this Agreement by serving a notice of termination through diplomatic channels to the other Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of the notice of termination.
3. Where a Party terminates this Agreement, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF**, the undersigned being duly authorised thereto, have signed this Agreement.

**SIGNED** in duplicate at **Grand Cayman** this **24** day of **June 2010**, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:  
**HON. W. MCKEEVA BUSH OBE,**  
**JP**  
**PREMIER AND MINISTER FOR**  
**FINANCE, TOURISM &**  
**DEVELOPMENT**

FOR THE GOVERNMENT OF  
CANADA:  
**MR. STEPHEN HALLIHAN**  
**HIGH COMMISSIONER FOR**  
**CANADA TO JAMAICA**

**PROTOCOL**

At the time of signing of this Agreement between the Government of Canada and the Government of the Cayman Islands under Entrustment from the Government of the United Kingdom of Great Britain and Northern Ireland for the Exchange of Information on Tax Matters, the undersigned have agreed upon the following provisions which shall be an integral part of this Agreement.

1. With reference to paragraph 2(a) of Article 13, if at the time of the submission of a request by a Party, or at any time thereafter, the competent



authority of the applicant Party is of the view that it is necessary to request supplemental information which predates January 1, 2004 which is related to its primary request and is relevant to a criminal tax matter to which this Agreement refers, the requested party shall grant such a request.

2. Before making a supplemental request for information referred to in paragraph 1 above the competent authority of the applicant Party shall consult with the competent authority of the requested Party on the likely availability of the supplemental information.

**IN WITNESS WHEREOF**, the undersigned being duly authorised thereto, have signed this Protocol.

**SIGNED** in duplicate at **Grand Cayman** this **24** day of **June 2010**, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:  
**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

FOR THE GOVERNMENT OF  
CANADA:  
**MR. STEPHEN HALLIHAN  
HIGH COMMISSIONER FOR  
CANADA TO JAMAICA**

#### **SCHEDULE 21**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS WITH THE AUTHORISATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON EXCHANGE OF INFORMATION ON TAX MATTERS**

The Government of the Cayman Islands and the Government of the United Mexican States, desiring to conclude an Agreement on exchange of information on tax matters, have agreed as follows:

## **Article 1**

### **Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

## **Article 2**

### **Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## **Article 3**

### **Taxes Covered**

1. This Agreement shall apply to the following taxes:
  - a) in the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Mexico to which this agreement applies.
  - b) in Mexico:
    - (i) income tax;
    - (ii) business flat rate tax; and
    - (iii) value added tax.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

## **Article 4**

### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means the Cayman Islands or Mexico as the context requires;
  - b) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term “Mexico” means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the suprajacent waters, and the air space of the national territory to the extent and under conditions established by international law;
  - d) the term “competent authority” means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Mexico, the Ministry of Finance and Public Credit;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, in all such cases ownership information on all such persons in an ownership chain. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within sixty (60) days of the receipt of the request.
  - b) If the competent authority of the requested Party has been unable to obtain and provide the information within ninety (90) days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice; or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Incidence of ordinary costs incurred in providing assistance shall be agreed by the Contracting Parties, and direct extraordinary costs incurred in providing assistance shall be borne by the requesting Party.

## **Article 10**

### **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

## **Article 11**

### **Interpretation**

The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organization for Economic Cooperation and Development (OECD Model



Agreement) when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

## **Article 12**

### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
  - a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date;
  - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

## **Article 13**

### **Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may after one (1) year from the date of its entry into force terminate the Agreement by giving written notice of termination to the other Contracting Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six (6) months after the date of receipt of notice of termination by the other Contracting Party.
2. In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done in Grand Cayman on this **28<sup>th</sup>** day of **August** of **two thousand and ten** and in Mexico City on this **17** day of **August** of **two thousand and ten**, in duplicate in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS WITH THE  
AUTHORISATION OF THE  
GOVERNMENT OF THE UNITED  
KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND:  
**HON. W. MCKEEVA BUSH OBE,  
JP  
PREMIER AND MINISTER FOR  
FINANCE, TOURISM &  
DEVELOPMENT**

FOR THE GOVERNMENT OF THE  
UNITED MEXICAN STATES:

**MR. ERNESTO JAVIER  
CORDERO ARROYO MINISTER  
OF FINANCE AND PUBLIC  
CREDIT FOR MEXICO”.**

## **SCHEDULE 22**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF JAPAN FOR THE EXCHANGE OF INFORMATION FOR THE PURPOSE OF THE PREVENTION OF FISCAL EVASION AND THE ALLOCATION OF RIGHTS OF TAXATION WITH RESPECT TO INCOME OF INDIVIDUALS**

The Government of the Cayman Islands and the Government of Japan, the Government of the Cayman Islands having been duly authorised by the Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to conclude an Agreement for the exchange of information for the purpose of the prevention of fiscal evasion and the allocation of rights of taxation with respect to income of individuals,

Have agreed as follows:

#### **Chapter 1**

#### **GENERAL PROVISIONS**

#### **Article 1**

#### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Japan”, when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term “the Cayman Islands”, when used in a geographical sense, means the Islands of Grand Cayman, Cayman Brac and Little Cayman, and all the area around them, over which the Cayman Islands may exercise its jurisdiction in accordance with its laws and regulations and international law;
- (c) the term “Contracting Party” means the Cayman Islands or Japan as the context requires;
- (d) the term “competent authority” means:
  - (i) in the case of Japan, the Minister of Finance or his authorised representative; and
  - (ii) in the case of the Cayman Islands, the Tax Information Authority or an individual or authority designated by it;
- (e) the term “person” includes an individual, a company and any other body of persons;
- (f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (g) the term “national” means:
  - (i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and
  - (ii) in the case of the Cayman Islands, any individual who possesses Caymanian status or who is a British Overseas Territory Citizen by virtue of a connection with the Cayman Islands and any company, partnership, trust, estate, association or any other entity deriving its status as such from the laws in force in the Cayman Islands;
- (h) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be readily purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (i) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of a company;

- (j) the term “recognised stock exchange” means:
  - (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
  - (ii) the Cayman Islands Stock Exchange; and
  - (iii) any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (k) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (l) the term “Applicant Party” means the Contracting Party requesting information;
- (m) the term “Requested Party” means the Contracting Party requested to provide information;
- (n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the information requested; and
- (o) the term “information” means any fact, statement or record in any form whatever.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## **Chapter 2**

### **EXCHANGE OF INFORMATION**

#### **Article 2**

#### **OBJECT AND SCOPE**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant for the carrying out of this Agreement or to the administration and enforcement of the laws of the Contracting Parties concerning taxes referred to in Article 4. Such information

shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the Agreement and shall be treated as confidential in the manner provided in Article 8. Where the Requested Party obtains and provides information under the Agreement, the procedural rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable, to the extent that they do not unduly prevent or delay effective exchange of information.

### **Article 3**

#### **JURISDICTION**

The Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

### **Article 4**

#### **TAXES COVERED**

1. This Chapter shall apply to the existing taxes of every kind and description imposed on behalf of a Contracting Party.
2. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws.

### **Article 5**

#### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 2. Such information shall be provided without regard to whether the conduct under examination would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.
2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, the Requested Party shall use all relevant information gathering measures to provide the Applicant Party with the information requested,

notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Applicant Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its laws, in the form of authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 2, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 3, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information sought to the request:

- (a) the identity of the person under examination;
- (b) a statement of the information requested including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
- (c) the tax purposes for which the information requested is sought;
- (d) grounds for believing that the information requested is held by the Requested Party or is in the possession or control of a person who is within the territorial jurisdiction of the Requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (f) a statement that the request is in conformity with the laws and administrative practices of the Applicant Party, that the Applicant Party would be able to obtain the information under the laws or in

the normal course of administrative practices of the Applicant Party in similar circumstances and that the request is in conformity with the Agreement; and

- (g) a statement that the Applicant Party has pursued all means available within its territorial jurisdiction to obtain the information requested, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the information requested as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within sixty days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within ninety days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, immediately inform the Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

#### **Article 6**

#### **TAX EXAMINATIONS ABROAD**

1. At the request of the competent authority of the Applicant Party, the competent authority of the Requested Party may allow representatives of the competent authority of the Applicant Party to be present at the appropriate part of a tax examination in the Requested Party.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the examination shall be made by the Requested Party conducting the examination.

**Article 7**

**POSSIBILITY OF DECLINING A REQUEST**

1. The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under the laws or in the normal course of administrative practices of the Applicant Party in similar circumstances. The competent authority of the Requested Party may decline to assist where the request of the Applicant Party is not made in conformity with this Agreement.
2. This Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Such information includes information relating to communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the laws of each Contracting Party. Notwithstanding the foregoing sentences, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The Requested Party may decline a request for information if the disclosure of the information requested would be contrary to public policy (*ordre public*) of the Requested Party.
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
5. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce any provision of the tax laws of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

**Article 8**

**CONFIDENTIALITY**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial



decisions. The information may not be disclosed to any other person or authority, including those in non-Contracting Parties, without the express written consent of the Requested Party.

**Article 9**

**COSTS**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

**Chapter 3**

**ALLOCATION OF RIGHTS OF TAXATION**

**Article 10**

**PERSONS COVERED**

This Chapter shall apply to individuals who are residents of one or both of the Contracting Parties.

**Article 11**

**TAXES COVERED**

1. This Chapter shall apply to taxes on income of individuals imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.
2. In the case of Japan, the existing tax to which this Chapter shall apply is the income tax.
3. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing tax referred to in paragraph 2.
4. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws.

**Article 12**

**RESIDENT**

1. For the purposes of this Chapter, the term “resident of a Contracting Party” means:

- (a) in the case of Japan, any individual who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature except any individual who is liable to tax in Japan in respect only of income from sources in Japan; and
  - (b) in the case of the Cayman Islands, any individual who, under the laws of the Cayman Islands, has a legal and ordinary residence in the Cayman Islands.
2. Where by reason of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;
  - (c) if he has an habitual abode in both Contracting Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

### **Article 13**

#### **PENSIONS**

Subject to paragraph 2 of Article 14, pensions and other similar remuneration beneficially owned by a resident of a Contracting Party shall be taxable only in that Contracting Party.

### **Article 14**

#### **GOVERNMENT SERVICE**

1. Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting Party. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services

are rendered in that other Contracting Party and the individual is a resident of that other Contracting Party who did not become a resident of that other Contracting Party solely for the purpose of rendering the services.

2. Notwithstanding paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority shall be taxable only in that Contracting Party.

3. Paragraphs 1 and 2 shall not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or local authority thereof.

#### **Article 15**

#### **STUDENTS**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned Contracting Party, provided that such payments arise from sources outside the first-mentioned Contracting Party. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date on which he first begins his training in the first-mentioned Contracting Party.

#### **Chapter 4**

#### **SPECIAL PROVISIONS**

#### **Article 16**

#### **MUTUAL AGREEMENT PROCEDURES**

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with Chapter 3, he may, irrespective of the remedies provided by the laws of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with that Chapter.

2. The competent authority of a Contracting Party shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with Chapter 3. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

## **Chapter 5**

### **FINAL PROVISIONS**

#### **Article 17**

#### **HEADINGS**

The headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

#### **Article 18**

#### **ENTRY INTO FORCE**

1. The Governments of the Contracting Parties shall notify each other, in writing, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications.

2. This Agreement shall be applicable for taxes levied on or after the date on which the Agreement enters into force.

3. Notwithstanding paragraph 2, Chapter 3 shall be applicable:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which this Agreement enters into force; and

- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

**Article 19**

**TERMINATION**

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (c) with respect to other taxes, as regards taxes levied on or after 1 January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London this seventh day of February, 2011, in the English and Japanese languages, each text being equally authentic.

For the Government of the Cayman  
Islands:

**HON. W. MCKEEVA BUSH OBE,  
JP**

For the Government of Japan:

**MR. HITOSHI NODA**

**SCHEDULE 23**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Cayman Islands and the Government of the Republic of India, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

**Article 1**

**Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Party. However, a Requested Party is not obliged to provide information which is neither held by its authorities nor is in the possession or control of persons who are within its territorial jurisdiction.

### **Article 3**

#### **Taxes Covered**

1. The taxes which are the subject of this Agreement are taxes of every kind and description imposed on behalf of a Contracting Party.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term "Cayman Islands" means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights may be exercised in accordance with international law including the UN Convention on the Law of the Sea;
  - (b) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;
  - (c) the term "Contracting Party" means the Cayman Islands or India as the context requires;
  - (d) the term "competent authority" means:
    - i) in the case of the Cayman Islands, the Tax Information Authority or its authorised representative;
    - ii) in the case of India, the Finance Minister, Government of India, or its authorised representative;
  - (e) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;
  - (f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- (g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (i) the term "recognised stock exchange" means:
  - i) in the Cayman Islands, the Cayman Islands Stock Exchange;
  - ii) in India, the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognised by the Securities and Exchange Board of India; and
  - iii) any other stock exchange which the competent authorities agree to recognise for the purposes of this Agreement.
- (j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form;
- (k) the term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (l) the term "tax" means any tax to which this Agreement applies;
- (m) the term "Requesting Party" means the Contracting Party submitting a request for information to, or having received information from, the Requested Party.
- (n) the term "Requested Party" means the Contracting Party which is requested to provide information, or which has provided information;
- (o) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (p) the term "information" means any fact, statement, document or record in whatever form.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, have the meaning that it has at that time under



the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the Requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.
2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations.
5. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded

companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which information is requested;
- (c) the nature of the information requested and the form in which the Requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) grounds for believing that the information requested is present in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
- (g) a statement that the request is in conformity with the laws and administrative practices of the Requesting Party, that if the requested information was within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws of the Requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

**Article 6**

**Tax Examinations Abroad**

1. At the request of the competent authority of the Requesting Party, the Requested Party may allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the Requesting Party, the Requested Party may allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the Requested Party, in which case the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

**Article 7**

**Possibility of Declining a Request for Information**

1. The competent authority of the Requested Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the Requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where disclosure of the information would be contrary to public policy (ordre public) of the Requested Party.
2. This Agreement shall not impose on a Contracting Party the obligation:
  - (a) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph;
  - (b) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or

other admitted legal representative where such communications are:

- i) produced for the purposes of seeking or providing legal advice; or
  - ii) produced for the purposes of use in existing or contemplated legal proceedings.
- (c) to carry out administrative measures at variance with its laws and administrative practices, provided nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The Requested Party shall not be required to obtain and provide information which the Requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the Requested Party under this Agreement.

5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction (including foreign governments) without the express written consent of the competent authority of the Requested Party.

**Article 9**

**Implementation Legislation**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement. Such legislation shall be enacted within six months of entry into force of this Agreement.

**Article 10**

**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement. In addition, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 11 of this Agreement.
2. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Costs**

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance shall, if they exceed 500 British Pounds, be borne by the Requesting Party.
2. The competent authorities will consult each other, in advance, in any particular case where extraordinary costs are likely to exceed 500 British Pounds to determine whether the Requesting Party will continue to pursue the request and bear the cost.
3. The competent authorities shall consult from time to time with regard to this Article.
4. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the Requested Party in reviewing and responding to information requests submitted by the Requested Party. Examples of extraordinary costs incurred in providing assistance include, but are not limited to the following:

- (a) reasonable fees charged by third parties for copying documents on behalf of the Requested Party;
- (b) reasonable costs of engaging interpreters, translators or other agreed experts;
- (c) reasonable costs of conveying documents to the Requesting Party;
- (d) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
- (e) reasonable costs for obtaining depositions or testimony.

## **Article 12**

### **Entry into Force**

1. The Contracting Parties shall notify each other in writing of the completion of the procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith.

## **Article 13**

### **Termination**

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may, after the expiry of five years from the date of its entry into force, terminate the Agreement by serving a written notice of termination to the other Contracting Party through appropriate channel.
3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement.

In witness whereof, the undersigned being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Grand Cayman this 21st day of March 2011, each in the English and Hindi languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Cayman Islands:

**HON. W. MCKEEVA BUSH OBE,  
JP**

For the Government of the Republic of India:

**HIS EXCELLENCY  
MOHINDER S. GROVER**

#### **SCHEDULE 24**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

#### **PREAMBLE**

**WHEREAS** the Government of the Republic of South Africa and the Government of the Cayman Islands (“the Parties”) have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

**WHEREAS** the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

**DESIRING THEREFORE** the Parties in concluding the following Agreement which contains obligations on the part of the Parties only:

**HAVE AGREED AS FOLLOWS:**

#### **ARTICLE 1**

##### **SCOPE OF THE AGREEMENT**

The Parties through their competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the

determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

## **ARTICLE 2**

### **TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by the Parties:
  - (a) in the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to the existing taxes of South Africa to which this Agreement applies; and
  - (b) in South Africa:
    - (i) the normal tax;
    - (ii) the secondary tax on companies;
    - (iii) the withholding tax on royalties;
    - (iv) the tax on foreign entertainers and sportspersons;
    - (v) the value added tax.
2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

## **ARTICLE 3**

### **GENERAL DEFINITIONS**

1. In this Agreement:
  - (a) the term “Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised; and
  - (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the



continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;

- (c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) the term "competent authority" means:
  - (i) in the case of the Cayman Islands, the Tax Information Authority or its authorised representative; and
  - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
- (e) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (f) the term "criminal tax matters" means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- (g) the term "information" means any fact, statement, document or record in whatever form;
- (h) the term "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (i) the term "person" means a natural person, a company or any other body or group of persons;
- (j) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (k) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (m) the term “public collective investment scheme” means any scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) the term "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;

- (o) the term "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (p) the term "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### **ARTICLE 4**

##### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use the information gathering measures it considers relevant to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request:
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

- (b) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
- (c) in the case of trusts, information on settlors, trustees and beneficiaries.

5. This Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. Any request for information shall be formulated with the greatest detail possible in specifying in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or able to obtain the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

**ARTICLE 5**

**TAX EXAMINATIONS ABROAD**

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

**ARTICLE 6**

**POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to public policy of the requested Party.
2. This Agreement shall not impose upon a requested Party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

## **ARTICLE 7**

### **CONFIDENTIALITY**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions:

- (a) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.
- (b) Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## **ARTICLE 8**

### **COSTS**

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**ARTICLE 9**

**MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties shall agree on other forms of dispute resolution should this become necessary.

**ARTICLE 10**

**ENTRY INTO FORCE**

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**ARTICLE 11**

**TERMINATION**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

**DONE** at **Grand Cayman** on **10<sup>th</sup>** day of **May** in the year **2011**.

**HON. W. MCKEEVA BUSH OBE,      MR. PRAVIN GORDHAN**  
**JP**

**FOR THE GOVERNMENT OF      FOR THE GOVERNMENT OF THE**  
**THE CAYMAN ISLANDS          REPUBLIC OF SOUTH AFRICA”.**

## **SCHEDULE 25**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE STATES OF GUERNSEY FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

WHEREAS the Government of the Cayman Islands and the States of Guernsey recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS it is acknowledged that the Government of the Cayman Islands and the States of Guernsey have the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with each other;

WHEREAS the Government of the Cayman Islands and the States of Guernsey have agreed, to conclude the following Agreement for the exchange of information relating to tax matters which contains obligations on the part of the Parties only.

#### **Article 1**

##### **Object and scope of the agreement**

The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment or collection of such taxes, the recovery and

enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

## **Article 2**

### **Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction.

## **Article 3**

### **Taxes covered**

1. This Agreement shall apply to the following taxes imposed
  - a) by Guernsey:
    - (i) income tax, and
    - (ii) dwellings profits tax.
  - b) by the Cayman Islands any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Guernsey to which this agreement applies.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

## **Article 4**

### **Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman



Islands with respect to the seabed and sub-soil and their natural resources may be exercised;

- b) “Guernsey”, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) “competent authority” means:
  - (i) in the case of the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
- f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- g) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting party;
- h) “information” means any fact, statement, document or record in any form whatever;
- i) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the requested information;
- j) “Party” means the Cayman Islands or the States of Guernsey as the context requires;
- k) “person” includes an individual, a company and any other body or group of persons;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or

sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- n) “recognised stock exchange” means the Cayman Islands Stock Exchange and the Channel Islands Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Parties;
- o) “requested Party” means the Party to this Agreement requested to provide, or which has provided, information in response to a request;
- p) “requesting Party” means the Party to this Agreement submitting a request for information or having received information from the requested Party;
- q) “tax” means any tax to which the Agreement applies.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under

this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, and within the constraints of Article 2, to obtain and provide, through its competent authorities and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) (i) information regarding the beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;  
(ii) in the case of trusts, information on settlors, trustees, protectors, enforcers and beneficiaries,

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party wishes to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.
6. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. To ensure a prompt response, the competent authority of the requested Party shall:
- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the complete request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the competent authority of the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. With reasonable notice, a Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party in accordance with its domestic laws to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Party, and in accordance with its domestic laws, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The competent authority of the requested Party may decline to assist:
  - a) where the request is not made in conformity with this Agreement;
  - b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) where the disclosure of the information requested would be contrary to public policy.
2. This Agreement shall not impose on a requested Party the obligation to provide information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain or provide information which, if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its own laws or in the normal course of administrative practice.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

## **Article 8**

### **Confidentiality**

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

**Article 9**  
**Costs**

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**Article 10**

**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 8.

3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:

- a) with respect to criminal tax matters for taxable periods beginning on or after 1 September 2005 or, where there is no taxable period, for all charges to tax arising on or after 1 September 2005;
- b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

## **Article 12**

### **Termination**

1. This Agreement shall remain in force until terminated by a Party.
2. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.
3. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

Done at Guernsey this 29<sup>th</sup> day of July 2011, in duplicate in the English language.

For the Government of the Cayman Islands    For the States of Guernsey:

**HON. W. MCKEEVA BUSH OBE,    MR. LYNDON TROTT  
JP**

**SCHEDULE 26**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the Cayman Islands and the Government of the People's Republic of China ("the Contracting Parties"),

Acknowledging that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement,

Desiring to provide a framework for cooperation and facilitate the exchange of information with respect to taxes,

Have agreed as follows:

**ARTICLE 1**

**SCOPE OF AGREEMENT**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, and the investigation or prosecution of tax matters.

2. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

**ARTICLE 2**

**JURISDICTION**

A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.



**ARTICLE 3**

**TAXES COVERED**

1. The existing taxes to which this Agreement shall apply are in particular:
  - a) in the People’s Republic of China:  
all taxes except customs tariffs;  
(hereinafter referred to as “Chinese tax”)
  - b) in the Cayman Islands:  
taxes of every kind and description.  
(hereinafter referred to as “Cayman Islands tax”)
2. This Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, any of the existing taxes listed in paragraph 1.
3. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Contracting Parties in the form agreed upon by both Contracting Parties.
4. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

**ARTICLE 4**

**DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term “the People’s Republic of China”, when used in a geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with international law and its domestic law;
  - b) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;

- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors; and for this purpose, the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company. For the purposes of this paragraph the term “recognised stock exchange” means:
  - (i) in the People’s Republic of China, the Shanghai Stock Exchange or the Shenzhen Stock Exchange;
  - (ii) in the Cayman Islands, the Cayman Islands Stock Exchange;
  - (iii) any other stock exchange which the competent authorities agree to recognize for the purposes of this Agreement;
- f) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- g) the term “tax” means any tax to which this Agreement applies;
- h) the term “competent authority” means:
  - (i) in the case of the People’s Republic of China, the State Administration of Taxation or its authorized representative; and
  - (ii) in the case of the Cayman Islands, the Tax Information Authority or a person or its authorized representative;
- i) the term “information” means any fact, statement, document or record in whatever form;
- j) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- k) the term “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;
- l) the term “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **ARTICLE 5**

### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of a requested Party shall provide upon request in writing information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a tax offence under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for the information, the requested Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, and beneficiaries; and

in the case of foundations, information on founders, members, beneficiaries and directors or other senior officers of the foundation.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature and type of the information requested, including a description of the information and/or specific evidence sought, and the form in which the requesting Party would prefer to receive the information;
- d) the tax purposes for which the information is sought;
- e) grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person subject to the jurisdiction of the requested Party;
- f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and that if the requested information were within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice;
- h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as promptly as possible to the competent authority of the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of

the requesting Party of any deficiencies in the request within 60 days of receipt of the request; and

- b) immediately inform the competent authority of the requesting Party to explain the reasons for its inability or the obstacles or its refusal, if the competent authority of the requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested Party refuses to provide the information.

## **ARTICLE 6**

### **TAX EXAMINATIONS OR INVESTIGATIONS ABROAD**

1. The requested Party may, in accordance with its domestic laws, following receipt of notice of a reasonable time from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authorities of the Contracting Parties shall agree on the time and place of the intended meeting with the persons concerned.

2. At the request of the competent authority of the requesting Party, and in accordance with its domestic laws, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to be present at the tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

## **ARTICLE 7**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
  - a) where the request is not made in conformity with this Agreement;

- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.
3. a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
- (i) produced for the purposes of seeking or providing legal advice; or
  - (ii) produced for the purposes of use in existing or contemplated legal proceedings;
- b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent a professional legal advisor from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY**

1. All information provided and received by the Competent Authorities of the Contracting Parties shall be treated as confidential in the same manner as information obtained under its domestic legislation; or according to the confidentiality conditions applicable in the jurisdiction of the Contracting Party

that provides such information if the latter conditions are more restrictive and shall be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Parties officially concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 and may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the Competent Authority of the requested Party.

**ARTICLE 9**  
**SAFEGUARDS**

The rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**ARTICLE 10**  
**ADMINISTRATIVE COSTS**

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**ARTICLE 11**  
**LANGUAGE**

Requests for assistance and responses thereto shall be in English.

**ARTICLE 12**

**MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution should this become necessary.

**ARTICLE 13**

**ENTRY INTO FORCE**

The Contracting Parties shall notify each other in writing that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day upon the receipt of the latter notification. This Agreement shall have effect in respect of taxable years beginning on or after the date of entry into force.

**ARTICLE 14**

**TERMINATION**

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.
3. If this Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.



**IN WITNESS** whereof the undersigned, duly authorized thereto, have signed this Agreement.

**Done** at George Town on the 26<sup>th</sup> day of September, 2011, in duplicate in the English and Chinese languages, both texts being equally authentic.

For the Government of the Cayman Islands:

**HON. W. MCKEEVA BUSH OBE,  
JP**

For the Government of the People's Republic of China

**MADAME SONG LAN**

## **SCHEDULE 27**

### **AGREEMENT BETWEEN THE CAYMAN ISLANDS AND THE REPUBLIC OF ARGENTINA ON EXCHANGE OF INFORMATION ON TAX MATTERS**

The Cayman Islands and the Republic of Argentina, desiring to conclude an Agreement on exchange of information on tax matters, have agreed as follows:

#### **Article 1**

##### **Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes:
  - a) in the case of the Republic of Argentina:
    - (i) Income Tax;
    - (ii) Value Added Tax;
    - (iii) Personal Assets Tax; and
    - (iv) Tax on Presumptive Minimum Income.
  - b) In the case of the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of the Republic of Argentina to which this agreement applies.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.
3. The information provided for the administration of the abovementioned taxes can be used for other taxes, the obligations of which could be determined according to the information gathered under the domestic legislation.

**Article 4**

**Definitions**

1. For the purposes of this Agreement:
  - a) the term "Contracting Party" means the Cayman Islands or the Republic of Argentina as the context requires;
  - b) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;

- (ii) in the Republic of Argentina, the Head of the Federal Administration of Public Revenues or his authorized representative;
- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- g) the term “recognised stock exchange” means any stock exchange recognized by the competent authorities of the Contracting Parties;
- h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) the term “tax” means any tax to which the Agreement applies;
- j) the term “Applicant Party” means the Contracting Party requesting information;
- k) the term “Requested Party” means the Contracting Party requested to provide information;
- l) the term “information gathering measures” means rules and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) the term “information” means any fact, statement or record in any form whatever, relevant to the administration and enforcement of taxes covered in this Agreement;
- n) the term “tax offences” means crimes or offences that are committed within the tax field and that are considered as such under domestic laws, irrespective of whether contained in the tax laws, the Criminal Code or other statutes;

- o) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the Criminal Code or other statutes.
2. As regards the application of this Agreement at any time by any of the Contracting Parties, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, and the meaning under the applicable tax laws of that Party prevails over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct would have occurred in the Requested Party.
2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the Applicant Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an Applicant Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create

an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law and administrative practices of the Applicant Party, that if the requested information was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under the laws of the Applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- b) If the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Applicant Party, explaining the reason for

its inability, the nature of the obstacles or the reasons for its refusal.

7. Requests shall be submitted in writing in the official language of the country receiving such request - in the case of Argentina: Spanish language or in the case of the Cayman Islands: English language - and may be made by electronic means.

#### **Article 6**

##### **Presence of Officials of a Contracting Party in the Territory of the Other Contracting Party**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the firstmentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the firstmentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

#### **Article 7**

##### **Possibility of Declining a Request**

1. The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding

the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be considered as such a secret or trade process merely because it meets the criteria set forth in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice; or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national or a citizen of the Requested Party as compared with a national or a citizen of the Applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential, in the same conditions as that obtained under its domestic laws or according to the confidentiality conditions applicable in the jurisdiction of the State that provides such information if the second-mentioned conditions are more restrictive, and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

## **Article 9**

### **Costs**

Ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

## **Article 10**

### **Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

## **Article 11**

### **Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
  - a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date;
  - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next



following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may, after one year from the date of its entry into force, terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.

2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorized thereto have signed the Agreement.

Done at Grand Cayman, this 13<sup>th</sup> day of October, 2011 in two originals, each of them in the Spanish and English languages, both texts being equally authentic.

For the Government of the Cayman Islands: For the Republic of Argentina:

**HON. W. MCKEEVA BUSH OBE, DR. RICARDO ECHEGARAY”.**  
**JP**

**SCHEDULE 28**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE CZECH REPUBLIC CONCERNING THE EXCHANGE OF INFORMATION ON TAX MATTERS**

The Government of the Cayman Islands and the Government of the Czech Republic, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

**Article 1**

**Object and Scope of the Agreement**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

2. Information received by the requesting Party under this Agreement may be used in the requesting Party as evidence in criminal proceedings only if judicial or other competent authorities of the requested Party give consent to it in accordance with the laws of the requested Party if such consent is, under these laws, necessary.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

### **Article 3**

#### **Taxes Covered**

1. The taxes covered by this Agreement are the existing taxes imposed by the laws of the Contracting Parties.
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial exchanges to the taxation and related information gathering measures covered by the Agreement.

### **Article 4**

#### **General definitions**

1. For the purposes of this Agreement, unless otherwise defined the term:
  - a) "Contracting Party" means the Czech Republic or the Cayman Islands as the context requires;
  - b) "competent authority" means:
    - i) in the case of the Czech Republic the Minister of Finance or his authorized representative; and
    - ii) in the case of the Cayman Islands, the Tax Information Authority or an individual or authority otherwise designated;
  - c) "person" includes an individual, a company and any other body of persons;
  - d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) "publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - f) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

- g) "recognized stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- h) "collective investment fund or scheme" means any pooled investment instrument, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) "tax" means any tax to which the Agreement applies;
- j) "requesting Party" means the Contracting Party requesting information;
- k) "requested Party" means the Contracting Party requested to provide information;
- l) "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) "information" means any fact, statement or record in any form whatever;
- n) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- o) "criminal proceedings" means proceedings conducted by law enforcement authorities, prosecutors and courts in order to establish guilt for violations of criminal laws and impose appropriate sentences;
- p) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party for the purposes of taxes to which the Agreement applies, any meaning under the applicable tax law of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

**Article 5**

**Exchange of Information upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party to demonstrate the foreseeable relevance of the information to the request:
  - a) the identity of the person under examination or investigation;

- b) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
  - c) the tax purpose for which the information is sought;
  - d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
  - e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - f) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall

notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

#### **Article 8**

##### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

#### **Article 9**

##### **Costs**

Costs incurred in providing assistance shall be borne by the requested Party, unless the competent authorities of the Contracting Parties otherwise agree.

#### **Article 10**

##### **Implementation measures**

The Contracting Parties shall enact and publish the laws, and regulations necessary to comply with, and give effect to, the terms of the Agreement.



**Article 11**

**Language**

Request for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 13.

**Article 12**

**Other International Agreements or Arrangements**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to the co-operation in tax matters.

**Article 13**

**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreements under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

**Article 14**

**Entry into force**

Each of the Contracting Parties shall notify the other, through relevant channels, of the completion of the procedures required by its domestic law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and its provisions shall have effect:

- a) for criminal tax matters on that date; and

- b) for all other matters covered in Article 1 in respect of any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

### **Article 15**

#### **Termination**

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through the diplomatic channels, by giving written notice of termination. In such event, the Agreement shall cease to have effect on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

2. Upon termination of this Agreement, both parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorized thereto, have signed the Agreement.

Done in duplicate at South Africa this 26 day of October 2012, in the English and Czech languages, each text being equally authentic.

For the Cayman Islands:  
**SAMUEL BULGIN QC, JP**

For the Czech Republic:  
**BLANKA FAJKUSOVÁ**

**SCHEDULE 29**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE STATE OF QATAR CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS**

**THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE STATE OF QATAR DESIRING TO CONCLUDE AN AGREEMENT CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS HAVE AGREED AS FOLLOWS**

**Article 1**

**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed :
  - (a) by the Cayman Islands - taxes of every kind and description, (hereinafter referred to as “the Cayman Islands tax”);

- (b) by the State of Qatar - taxes on income or profits, (hereinafter referred to as “Qatari tax”).

2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means the Cayman Islands or Qatar as the context requires;
  - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term "Qatar" means the State of Qatar’s lands, internal waters, territorial sea including its bed and subsoil, the airspace over them, the exclusive economic zone and the continental shelf, over which the State of Qatar exercises sovereign rights and jurisdiction in accordance with the provisions of international law and Qatar’s national laws and regulations;
  - d) the term "competent authority" means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in Qatar, the Ministry of Economy and Finance or its authorized representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be

exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundation, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the necessary relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) the tax purpose for which the information is sought;

- d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Contracting Party shall acknowledge receipt of the request to the competent authority of the requesting Contracting Party and shall use its best endeavors to forward the requested information to the requesting Contracting Party with the least reasonable delay.

## **Article 6**

### **Tax Examinations Abroad**

1. By reasonable notice given in advance, the requesting Contracting Party may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Contracting party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party may allow representatives of the competent authority of the requesting Contracting Party to be present at the appropriate part of tax examination in the requested Contracting Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Contracting Party about the time and place of the examination, the authority or official

designated to carry out the examination and procedures and conditions required by the requesting Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Contracting Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - a) produced for the purposes of seeking or providing legal advice; or
  - b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*Ordre Public*).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.



**Article 8**  
**Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

**Article 9**  
**Costs**

Incidence of ordinary costs incurred in providing assistance shall be agreed by the Contracting Parties, and direct extraordinary costs incurred in providing assistance shall be borne by the requesting party.

**Article 10**  
**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**  
**Entry into Force**

1. Each of the Parties shall notify the other in writing, through diplomatic channels, of the completion of the procedures required by its law for the entry into force of this Agreement.

2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
- a) for criminal tax matters, on the date of entry into force, for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date;
  - b) for all other matters covered in Article 1, in respect of taxable periods beginning on or after the first day of January of the calendar year immediately following the year in which the agreement enters into force.

## **Article 12**

### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may after five years from the date of its entry into force terminate the Agreement by giving written notice, through diplomatic channels, of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of January of the calendar year immediately following the year in which the notice is given.

2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

Done at Cape Town this 26<sup>th</sup> day of October, 2012, in duplicate in the English and Arabic languages, both texts being equally authentic.

For the Government of the Cayman Islands:

**SAMUEL BULGIN QC, JP**

For the Government of the State of Qatar:

**MOFTAH JASSIM AL MOFTAH**

**SCHEDULE 30**

**AGREEMENT BETWEEN THE ITALIAN REPUBLIC AND THE  
CAYMAN ISLANDS ON EXCHANGE OF INFORMATION ON TAX  
MATTERS**

The Government of the Italian Republic and the Government of the Cayman Islands, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

**Article 1**

**Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**

**Jurisdiction**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**

**Taxes Covered**

1. The taxes which are the subject of this Agreement are:
  - a) in Italy:
    - the personal income tax;
    - the corporate income tax;
    - the regional tax on productive activities;
    - the value added tax;

- the inheritance tax;
- the gift tax;
- the substitute tax;
- b) in the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Italy to which this Agreement applies.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means Italy or the Cayman Islands as the context requires;
  - b) the term “Italy” means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with the international law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
  - c) the term “Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and subsoil and their natural resources may be exercised;
  - d) the term “competent authority” means:
    - i) in the case of Italy, the Ministry of Economy and Finance;
    - ii) in the case of the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - e) the term “person” includes an individual, a company and any other body of persons;

- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public”. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, it being understood that the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning

under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 5**

### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6**

### **Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party in order to be present at the interview of individuals and examination of records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential



communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

## **Article 9**

### **Costs**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the applicant Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party if the costs

of providing information with respect to a specific request are expected to be significant.

“Extraordinary costs” do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the applicant Party.

### **Article 10**

#### **Implementation Legislation**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

### **Article 11**

#### **Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

### **Article 12**

#### **Entry into Force**

1. This Agreement is subject to ratification by the Contracting Parties, in accordance with their respective laws.
2. This Agreement shall enter into force on the date of the receipt of the last notification by which each Party shall formally have communicated to the other that the respective internal procedures for entry into force have been completed. Upon entry into force, it shall have effect:
  - a) for criminal tax matters on that date; and

- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

**Article 13**

**Termination**

1. Either Contracting Party may terminate the Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.
3. Following termination of the Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.

Done at London on 3 December, 2012, in two originals, each in the Italian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
ITALIAN REPUBLIC:

**ALAIN GIORGIO MARIA  
ECONOMIDES**

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

**W. MCKEEVA BUSH".**

**SCHEDULE 31**

**PART 1**

**CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS**

*Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1<sup>st</sup> June 2011.*

**Preamble**

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

## **Chapter I – Scope of the Convention**

### **Article 1 – Object of the Convention and persons covered**

1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.

2 Such administrative assistance shall comprise:

- a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
- b assistance in recovery, including measures of conservancy; and
- c service of documents.

3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

### **Article 2 – Taxes covered**

1 This Convention shall apply:

- a to the following taxes:
  - i taxes on income or profits,
  - ii taxes on capital gains which are imposed separately from the tax on income or profits,
  - iii taxes on net wealth,imposed on behalf of a Party; and
- b to the following taxes:
  - i taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
  - ii compulsory social security contributions payable to general government or to social security institutions established under public law, and

- iii taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
  - A. estate, inheritance or gift taxes,
  - B. taxes on immovable property,
  - C. general consumption taxes, such as value added or sales taxes,
  - D. specific taxes on goods and services such as excise taxes,
  - E. taxes on the use or ownership of motor vehicles,
  - F. taxes on the use or ownership of movable property other than motor vehicles,
  - G. any other taxes;
- iv taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.

2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.

3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the “Depositaries”) of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

## **Chapter II – General definitions**

### **Article 3 – Definitions**

- 1 For the purposes of this Convention, unless the context otherwise requires:
  - a the terms “applicant State” and “requested State” mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
  - b the term “tax” means any tax or social security contribution to which the Convention applies pursuant to Article 2;

- c the term “tax claim” means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;
- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
  - i all individuals possessing the nationality of that Party, and
  - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.

3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

### **Chapter III – Forms of assistance**

#### **Section I – Exchange of information**

##### **Article 4 – General provision**

1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.

2 Deleted.

3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

##### **Article 5 – Exchange of information on request**

1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.

2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

**Article 6 – Automatic exchange of information**

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

**Article 7 – Spontaneous exchange of information**

1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

- a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
- b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
- c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
- d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

**Article 8 – Simultaneous tax examinations**

1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a



common or related interest, with a view to exchanging any relevant information which they so obtain.

**Article 9 – Tax examinations abroad**

1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.

2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.

3 A Party may inform one of the Depositories of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

**Article 10 – Conflicting information**

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

**Section II - Assistance in recovery**

**Article 11 – Recovery of tax claims**

1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.

2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the

property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

**Article 12 – Measures of conservancy**

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

**Article 13 – Documents accompanying the request**

1 The request for administrative assistance under this section shall be accompanied by:

- a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
- b an official copy of the instrument permitting enforcement in the applicant State, and
- c any other document required for recovery or measures of conservancy.

2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

**Article 14 – Time limits**

1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.

2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

**Article 15 – Priority**

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

**Article 16 – Deferral of payment**

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

**Section III – Service of documents**

**Article 17 – Service of documents**

1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.

2 The requested State shall effect service of documents:

- a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
- b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.

3 A Party may effect service of documents directly through the post on a person within the territory of another Party.

4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.

5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

**Chapter IV – Provisions relating to all forms of assistance**

**Article 18 – Information to be provided by the applicant State**

- 1 A request for assistance shall indicate where appropriate:
  - a the authority or agency which initiated the request made by the competent authority;
  - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
  - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
  - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;
  - e in the case of a request for service of documents, the nature and the subject of the document to be served;
  - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

**Article 19 – Deleted**

**Article 20 – Response to the request for assistance**

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

**Article 21 –Protection of persons and limits to the obligation to provide assistance**

1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
- b to carry out measures which would be contrary to public policy (*ordre public*);
- c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
- d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
- e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;
- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
- g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
- h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.

3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but

in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.

4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 22 – Secrecy**

1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.

2 Such information shall in any case 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 that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.

4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

#### **Article 23 –Proceedings**

1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.

2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.

3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

## **Chapter V – Special provisions**

### **Article 24 – Implementation of the Convention**

1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.

2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.

4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.

5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.

6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

#### **Article 25 – Language**

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

#### **Article 26 – Costs**

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

### **Chapter VI – Final provisions**

#### **Article 27 – Other international agreements or arrangements**

1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

#### **Article 28 – Signature and entry into force of the Convention**

1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.



2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27<sup>th</sup> May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.

5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.

6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the

provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

#### **Article 29 – Territorial application of the Convention**

1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.

3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

#### **Article 30 – Reservations**

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:

- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
- b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
- c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
- d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
- f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.

2 No other reservation may be made.

3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.

4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.

5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

**Article 31 – Denunciation**

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.

3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

**Article 32 – Depositaries and their functions**

1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
- d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
- e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
- f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
- g any other act, notification or communication relating to this Convention.

2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1<sup>st</sup> day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

PART 2

**NOTIFICATION OF TERRITORIAL EXTENSION**

State : United Kingdom.

Instrument : Convention on Mutual Administrative Assistance in Tax Matters, opened for

signature in Strasbourg, on 25 January 1988  
(ETS No. 127), **as amended by the 2010  
Protocol** (CETS No. 208).

<u>Date of entry into force of the instrument :</u>	1 June 2011.
<u>Date of entry into force in respect of the United Kingdom:</u>	1 October 2011.
<u>Declaration of acceptance for the Cayman Islands :</u>	STE n° 127 Res./Decl. United Kingdom. (see Annex)
<u>Date of effect of acceptance for the Cayman Islands :</u>	1 January 2014.

Notification made in accordance with Article 32 of the Convention.

Copy to all member States + Australia, Canada, Chile, Israel, Japan,  
Korea, Mexico, New Zealand, United  
States of America and OECD.

**CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX  
MATTERS**

opened for signature, in Strasbourg, on 25 January 1988  
as amended by the 2010 Protocol (CETS No. 208)

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Reservations and Declarations

**UNITED KINGDOM**

*Declaration of territorial extension* contained in a letter from  
the Secretary of State for  
Foreign and Commonwealth  
Affairs of the United  
Kingdom, dated 9 September  
2013, registered at the  
Secretariat General on 25  
September 2013 - Or. Engl.

The Government of the United Kingdom of Great Britain and Northern Ireland declares that the United Kingdom's ratification of the Convention as amended by its Protocol shall be extended to the territory of the Cayman Islands, for whose international relations the United Kingdom is responsible.

Pursuant to Article 30, paragraph 1.a, of the Convention, the Government of the Cayman Islands will not provide any form of assistance in relation to the taxes of other Parties described in Article 2, paragraph 1.b(i), (ii) or (iv), of the Convention (taxes imposed by or on behalf of political subdivisions or local authorities and social security contributions).

Pursuant to Article 30, paragraph 1(b), of the Convention, the Government of the Cayman Islands will not provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes.

Annex A - Taxes to which the Convention applies

For the Cayman Islands, the Convention shall apply to those taxes in Article 2, paragraph 1, which fall within:

- a) any of paragraphs (i) to (iii) of sub-paragraph (a); or
- b) paragraph (iii) of sub-paragraph (b).

Annex B - Competent authorities

The competent authority for the Cayman Islands shall be the Tax Information Authority or its authorised representative.

Annex C - Definition of the word "national" for the purpose of the Convention

In relation to the Cayman Islands, the term “national” means any person who possesses Caymanian status under the repealed Immigration Law (2003 Revision) or any earlier law providing for the same or similar rights, and includes any person who acquires the status under Part III of the Immigration Law (2012 Revision).”.

Additional Tax  
Information Agreements  
- Brazil, Malta and  
Poland

4. For the purpose of setting out and giving effect to additional agreements for the provision of information in taxation matters, the principal Law is amended by inserting after Schedule 31 the following schedules -

**SCHEDULE 32**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS**

The Government of the Cayman Islands and the Government of the Federative Republic of Brazil, desiring to conclude an Agreement concerning exchange of information on tax matters, have agreed as follows:

**Article 1**  
**Object and scope of the agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters, including criminal tax matters, in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**  
**Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. Information shall be provided by a requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Party.

**Article 3**  
**Taxes covered**

1. The taxes which are the subject of this Agreement are:
  - a) in Brazil:
    - (i) the federal income tax;
  - b) in the Cayman Islands:
    - (i) any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Brazil to which this agreement applies.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**  
**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:

- a) the term “Contracting Party” means the Cayman Islands or Brazil as the context requires;
- b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
- c) the term "Brazil" means the Federative Republic of Brazil;
- d) the term "competent authority" means:
  - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - (ii) in Brazil, the Minister of Finance, the Secretary of the Federal Revenue or their authorized representatives;
- e) the term “person” includes an individual, a company and any other body or group of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;



- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct, whether before or after the entry into force of this Agreement, which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.
- r) the term “national” means:
  - (i) in the case of Brazil, any individual possessing the Brazilian nationality and any legal entity or any other collective entity deriving its status as such from the laws in force in Brazil;
  - (ii) in the case of the Cayman Islands, any individual who possesses Caymanian status or who is a British Overseas Territory Citizen by virtue of a connection with the Cayman Islands and any company, partnership, trust, estate, association or any other entity deriving its status as such from the laws in force in the Cayman Islands.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### **Article 5 Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under

this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 and in accordance with Article 2 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees and trustees;
- b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain as well as, in the case of collective investment schemes or funds, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a written request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party as well as the period for which the information is requested;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant

Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
- b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

### **Article 6 Tax Examinations Abroad**

1. Upon reasonable written notice given in advance, a Contracting Party may, to the extent permitted under its laws, allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may, to the extent permitted under its laws, allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

**Article 7**  
**Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - a) produced for the purposes of seeking or providing legal advice or
  - b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (“ordre public”).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

**Article 8**  
**Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public

court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the prior express written consent of the competent authority of the requested Party.

**Article 9**  
**Costs**

Ordinary costs (such as ordinary administrative and overhead expenses) incurred in providing assistance shall be borne by the requested Party, and direct extraordinary costs incurred in providing assistance shall be borne by the requesting Party. If the direct extraordinary costs of providing information with respect to a specific request are expected to be significant the competent authority of the requested Party shall consult with the competent authority of the applicant Party.

**Article 10**  
**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreement referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**  
**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect for criminal tax matters as well as for all other matters covered in Article 1 on the date of entry into force, for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

**Article 12**  
**Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may after one year from the date of its entry into force terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month

following the end of the period of six months after the date of receipt of notice of termination by the other Party.

2. In the event of termination, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed the Agreement.

Done at Brasilia, Brazil, in duplicate, this 19<sup>th</sup> day of March 2013, in the English and the Portuguese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
CAYMAN ISLANDS:

FOR THE GOVERNMENT OF THE  
FEDERATIVE REPUBLIC OF  
BRAZIL:

**R. ANGLIN**

**C.A.F. BARRETO**

### **SCHEDULE 33**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE REPUBLIC OF MALTA FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

The Government of the Cayman Islands and the Government of the Republic of Malta desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

#### **Article 1**

##### **Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party

remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**  
**Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**  
**Taxes Covered**

1. This Agreement shall apply to taxes of every kind and description in the Contracting Parties.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**Article 4**  
**Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - (b) the term "Malta" means the Republic of Malta and, when used in a geographical sense, Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, as well as any area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial waters, wherein Malta exercises sovereign rights, jurisdiction, or control in accordance with international law and its national law, including its legislation relating to the exploration of the continental shelf and exploitation of its natural resources;

- (c) the term "applicant Party" means the Contracting Party requesting information;
- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means:
  - (i) in the case of the Cayman Islands: the Tax Information Authority or a person or its authorized representative
  - (ii) in the case of Malta: the Minister responsible for finance or his authorised representative;
- (f) the term "Contracting Party" means the Cayman Islands or Malta as the context requires;
- (g) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (h) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- (i) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the information requested;
- (j) the term "information" means any fact, statement or record in any form whatever;
- (k) the term "person" includes an individual, a company and any other body of persons;
- (l) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (m) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (n) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;



- (o) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (p) the term "requested Party" means the Contracting Party requested to provide information;
- (q) the term "tax" means any tax to which this Agreement applies.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### **Article 5**

##### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- (b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlers, trustees and beneficiaries; and in the case of foundations, information on founders, members of the

foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for

its inability, the nature of the obstacles or the reasons for its refusal.

**Article 6**  
**Tax Examinations Abroad**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

**Article 7**  
**Possibility of Declining a Request**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
  - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

**Article 8**  
**Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

**Article 9**  
**Costs**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

**Article 10**  
**Implementation of Legislation**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

**Article 11**  
**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

**Article 12**  
**Entry into Force**

This Agreement shall enter into force when each Party has notified the other in writing of the completion of its necessary internal procedures for entry into force. Upon entry into force, it shall have effect:

- (a) for criminal tax matters, as from that date; and
- (b) for all other matters covered in Article 1, as from that date, but only in respect of taxable periods beginning on or after the first day of January immediately following the date of entry into force or, where there is no taxable period, all charges to tax arising on or after that date.

**Article 13**  
**Termination**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing, through diplomatic channels, to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Party.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

DONE in duplicate, this twenty-fifth day of November, 2013.

FOR THE GOVERNMENT OF  
THE CAYMAN ISLANDS:

**WAYNE PANTON**

FOR THE GOVERNMENT OF THE  
REPUBLIC OF MALTA:

**EDWARD SCICLUNA.**

**SCHEDULE 34**

**AGREEMENT BETWEEN THE CAYMAN ISLANDS AND THE  
REPUBLIC OF POLAND FOR THE EXCHANGE OF INFORMATION  
RELATING TO TAX MATTERS**

**Whereas** the Cayman Islands and the Republic of Poland recognise that present legislation already provides for cooperation and the exchange of information on tax matters;

**Whereas** the Contracting Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

**Whereas** it is acknowledged that the Cayman Islands under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Republic of Poland;

**Whereas** the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

**Now, therefore,** the Contracting Parties have agreed to conclude the following Agreement, which contains obligations on the part of the Cayman Islands and the Republic of Poland only.

**Article 1**

**Object and Scope of the Agreement**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of tax with respect to persons subject to such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**Article 2**  
**Jurisdiction**

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**  
**Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:

- a) in the case of the Cayman Islands:
  - i) taxes of every kind and description.
- b) in the case of Poland:
  - i) the personal income tax;
  - ii) the corporate income tax;

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes in their laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

**Article 4**  
**Definitions**

1. In this Agreement:

- a) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
- b) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
- c) the term “Contracting Party” means the Cayman Islands or Poland, as the context requires;
- d) the term “competent authority” means:
  - i) in the case of the Cayman Islands, the Tax Information Authority or a person or authority designated by it;

- ii) in the case of Poland, the Minister of Finance or his authorized representative.
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term “tax” means any tax to which the Agreement applies;
- l) the term “applicant Party” means the Contracting Party requesting information;
- m) the term “requested Party” means the Contracting Party requested to provide information;
- n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- o) the term “information” means any fact, statement or record in any form whatever;
- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party and includes all cases where a person has been notified that proceedings concerning those matters have been initiated against that person;
- r) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes.



2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### **Article 5**

##### **Exchange of Information Upon Request**

1. The competent authority of the requested Party shall provide upon request by the competent authority of the applicant Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the competent authority of the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain, in particular:
  - i) in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries;

Provided that this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest possible detail and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested;
- d) the tax purpose for which the information is sought;
- e) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- f) to the extent known, the name and address of any person believed to be in possession of the requested information;
- g) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- h) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of the request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of any deficiencies in the request within 60 days of receipt of the request, and
- b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

**Article 6**  
**Tax Examinations Abroad**

1. With reasonable notice the applicant Party may request that the requested Party allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to interview individuals and examine records, to the extent permitted under its domestic laws. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to attend a tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant Party of the time and place of the examination, the authority or person authorized to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the tax examination shall be made by the requested Party conducting the examination.

**Article 7**  
**Possibility of Declining a Request**

1. The competent authority of the requested Party may decline to assist, where:
  - a) the request is not made in conformity with this Agreement;
  - b) the applicant Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
  - c) the disclosure of the information requested would be contrary to public policy (*ordre public*).
2. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5 (4) shall not by reason of that fact alone be treated as such a secret or trade process.
3. In no case shall the provisions of this Agreement be construed so as to impose on a Contracting Party the obligation to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Contracting Party.

4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

5. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the applicant Party in the same circumstances.

**Article 8**  
**Confidentiality**

1. Any information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

2. Information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in the Article 1, and used by such persons or authorities only for such purposes, the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. The information provided to an applicant Party under this Agreement may not be disclosed to any other jurisdiction.

**Article 9**  
**Costs**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party. The respective competent authorities shall consult periodically with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party if the costs of providing information with respect to a specific request are expected to be significant.

**Article 10**

***Language***

Requests for assistance, the responses thereto and any other written communication between the competent authorities shall be drawn up in English. As regards other documents or files to be provided, the competent authorities

shall consult whether and to what extent translation into the English language is indeed required.

**Article 11**  
**Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, and 9.
3. The Contracting Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

**Article 12**  
**Entry into Force**

1. The Contracting Parties shall notify each other in writing of the completion of procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith.

**Article 13**  
**Termination**

1. This Agreement is concluded for unspecified time. It may be terminated by the notification by either Contracting Party; in such a case it shall cease to be in force after three months from after the date of receipt of the notification by the other Contracting Party.
2. All requests received by the Contracting Parties up to effective day of termination will be dealt in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the Agreement.

Done in duplicate at London this twenty-ninth day of November, 2013, in the English and Polish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF  
THE CAYMAN ISLANDS:

**WAYNE PANTON**

FOR THE GOVERNMENT OF  
POLAND:

**WITOLD SOBKOW**.

Publication in consolidated and revised form authorised by the Cabinet this 4th day of November, 2014.

Kim Bullings  
Clerk of Cabinet



(Price \$ 65.60)