

CAYMAN ISLANDS



Supplement No. 3 published with Gazette No. 18 dated  
6 September, 2004.

**A BILL FOR A LAW TO PROVIDE FOR CO-OPERATION, BETWEEN  
THE CAYMAN ISLANDS AND OTHER JURISDICTIONS, IN THE  
PROVISION OF INFORMATION RELATING TO TAXATION  
MATTERS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

**THE TAX INFORMATION AUTHORITY BILL, 2004**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to provide for co-operation, between the Cayman Islands and other jurisdictions, in relation to the provision of information on tax matters.

Clause 1 of the Bill provides the short title and commencement of the legislation.

Clause 2 sets out the definitions of various terms used in the legislation.

Clause 3 specifies the purpose of the legislation, namely, to give effect to the terms of agreements having legal effect in the Islands, for the provision of information in taxation matters. The clause also provides that in the case of the relevant Agreement with the United States of America, nothing in the legislation will require the provision of information under that Agreement in relation to taxation matters that arose prior to the respective dates stipulated as the dates upon which the provisions of that Agreement shall have effect.

Clause 4 provides that the Tax Information Authority shall be the Financial Secretary.

Clause 5 prescribes the functions of the Authority, and these include –

- (a) 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;
- (b) ensuring compliance with the scheduled Agreements;
- (c) advising the Governor in 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 Governor in Cabinet;
- (d) making determinations pursuant to 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; and
- (f) performing such other functions as may be prescribed.

Clause 6 imposes upon the Authority the duty to notify the Attorney-General of any request received by the Authority where in its opinion there are issues of public policy.

Clause 7 imposes upon the Authority the duty to execute a request for tax information, in accordance with the provisions of the relevant tax information exchange agreement and the legislation.

Clause 8 requires a Grand Court order to compel testimony by a witness or to require the production of evidence. The clause also enables a witness to be represented by an attorney-at-law.

Clause 9 makes provision for the authentication of official documents of the Islands.

Clause 10 sets out the circumstances under which a person who is the subject of a request for tax information, is to be notified of the request.

Clauses 11, 12 and 13 are confidentiality provisions.

Clause 14 restricts the use of information or evidence provided pursuant to the legislation.

Clause 15 makes provision for interviews and examinations of taxpayers, with their consent.

Clause 16 contains provisions relating to the service of documents.

Clause 17 constitutes various offences under the legislation.

Clause 18 provides for the making of regulations by the Governor in Cabinet.

Clause 19 protects the Authority from liability in damages for anything done or omitted in the discharge of its functions under the legislation, unless it is shown that the act or omission was in bad faith.

**THE TAX INFORMATION AUTHORITY BILL, 2004**

**ARRANGEMENT OF CLAUSES**

1. Short title and commencement.
2. Interpretation.
3. Implementation.
4. Tax Information Authority.
5. Functions of the Authority.
6. Procedures for public policy determination.
7. Procedures for the execution of a request.
8. Powers of Grand Court to compel witness or for production of evidence.
9. Authentication of official documents.
10. Notification.
11. Protection of persons disclosing confidential information.
12. Restriction on application of Confidential Relationships (Preservation) Law (1995 Revision).
13. Confidentiality with regard to a request.
14. Restriction on use of information.
15. Interviews and examinations with consent.
16. Service of notices and documents.
17. Enforcement.
18. Regulations.
19. Immunity.

Schedule 1 - 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

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Tax Information Authority Law, 2004.

Short title and  
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor.

2. (1) In this Law -

Interpretation

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

“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;

“Governor” means the Governor in Cabinet;

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

“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, pursuant to a scheduled Agreement;

“requesting Party” means a Party making a request;

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

“taxation matters” includes matters relating to the collection, calculation or assessment of a tax referred to in a scheduled Agreement or matters incidental thereto.

(2) For the purposes of the Agreement set out in Schedule 1, the Cayman Tax Co-operation Authority shall be the Tax Information Authority designated under section 4.

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 in taxation matters, 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 taxation matters.

(2) Nothing in this Law shall require the provision of information under a scheduled Agreement in relation to any taxation matter that arose prior to the date of entry into force stipulated in the respective Agreement or, in any event, prior to the date of commencement of this Law; except that, in the case of the scheduled Agreement set out in Schedule 1, nothing in this Law shall require the provision of information under that Agreement in relation to taxation matters that arose prior to the respective dates stipulated, in Article 12(1) of that Agreement, as the dates upon which the provisions of that Agreement shall have effect.

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

(4) Nothing in this Law or any scheduled Agreement shall be taken to require the provision of information to a requesting Party otherwise than with respect to a person identified in a request.

(5) The Governor may by order -

- (a) add a schedule to this Law for the purpose of setting out and giving effect to an agreement for the provision of information in taxation matters; or
- (b) amend, revoke or replace any schedule to this Law.

(6) An order made under subsection (5) is subject to affirmative resolution of the Legislative Assembly.

4. The Financial Secretary 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.

Tax Information  
Authority

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 the generality of subsection (1), the principal functions of the Authority include -

- (a) subject to sections 8, 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;
- (b) ensuring compliance with the scheduled Agreements;
- (c) advising the Governor 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 Governor;
- (d) making determinations pursuant to 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; 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

Procedures for public  
policy determination

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.

(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.

Procedures for the execution of a request

7. (1) Upon receipt of a request, and subject to the provisions of sections 6(2) and 10(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 Grand Court 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 the Grand Court, any constable of the rank of Inspector or above, if so required by the Authority, shall assist in such service or seizure.

Powers of Grand Court to compel witness or for production of evidence

8. (1) Where, pursuant to a request, any person is required to testify, the Authority shall apply to the Grand Court for the Court to receive such testimony as appears to it 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 Grand Court may, in pursuance of an application under subsection (1), issue a subpoena and take evidence under oath.

(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, pursuant to 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 or related investigations, apply to the Grand Court 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.

(5) Where information is produced pursuant to 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 (1995 Revision), any other Law or the common law.

(7) If, on an application under subsection (4)(a), the Court is satisfied that the conditions in subsection (9) are fulfilled, it may make an order that the person who appears to it 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 seven days, unless it appears to the Court 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 Court 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 10(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 Court makes an order under subsection (7)(b) in relation to information held on any premises it may, on the application of the Authority, order any person who appears to it 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 criminal 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 17(3) has been issued, whoever, 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, is guilty of an offence and liable on summary conviction to a fine 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.

9. For the purpose of the authentication of any official documents or records of the Islands, a person authorised in that behalf by the Financial Secretary shall be deemed to be an authorised person.

Authentication of  
official documents

10. (1) Subject to subsection (2), a person who is the subject of a request for information solely in relation to a matter which is not a criminal matter or an alleged criminal matter, shall if his whereabouts or address is made known to the Authority, be served with a notice by the Authority advising of the existence of a request specifying that person, the jurisdiction making the request and the general nature of the information sought; and any person 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 person who is the subject of a request for information.

(3) Save as expressly provided in this Law or any other 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 person who is the subject of a request in order to serve a notice to that person pursuant to subsection (1).

(5) For the purposes of subsection (1), the date of receipt of notice from the Authority is deemed to be fifteen days from the date of issuance indicated on the notice.

Protection of persons disclosing confidential information

11. A person who divulges any confidential information or gives any testimony in conformity with an order or notice issued pursuant to a request shall be deemed not to commit any offence under the Confidential Relationships (Preservation) Law (1995 Revision), or under any other Law for the time being in force in the Islands, by reason only of such disclosure or the giving of such testimony; and such disclosure or testimony 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 the person making such disclosure or giving such testimony or against such person's principal or employer by reason of such disclosure or testimony.

Restriction on application of Confidential Relationships (Preservation) Law (1995 Revision)

12. Section 4 of the Confidential Relationships (Preservation) Law (1995 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.

Confidentially with regard to a request

13. (1) Without prejudice to the provisions of 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.

(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.

Restriction on use of information

14. (1) The requesting Party shall not, without the prior written consent of the Authority, transmit or use information or evidence provided pursuant to this Law for purposes, investigations or proceedings other than those stated in the request.

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

15. (1) Where, pursuant to 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.

16. (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.

Service of notices and  
documents

(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
17. (1) Any 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 the Grand Court by order, or by the Authority by notice; or
  - (b) destroys, mutilates, defaces, hides or removes any information,
- is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.
- (2) Any person who, contrary to section 13, 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, is guilty of an offence and 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; or
  - (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) Any person who, when required so to do in accordance with the instructions given by the Grand Court pursuant to section 8, or any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year.

18. The Governor may make regulations generally for carrying the purposes and provisions of this Law into effect and, without prejudice to the generality of the foregoing, the Governor may make regulations prescribing the forms to be used for the purposes of this Law.

Regulations

19. 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 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, INCLUDING THE GOVERNMENT OF THE CAYMAN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

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, (“the parties”), desiring to facilitate the exchange of information relating to taxes, have agreed as follows:

#### **Article 1 Scope of the Agreement**

The competent authorities of the parties shall provide assistance through exchange of information relating to the administration and enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, including information that may be relevant to the determination, assessment, verification, enforcement or collection of tax claims with respect to persons subject to such taxes, or to the investigation or prosecution of criminal tax evasion in relation to such persons. The territorial scope of this Agreement, in respect of the United Kingdom, is the territory of the Cayman Islands.

#### **Article 2 Jurisdiction**

To enable the scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the requested party:

- (a) 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; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested party.

### **Article 3 Taxes Covered**

The taxes covered by this Agreement are federal income taxes; provided that the types of tax covered may be extended by agreement between the parties in the form of an exchange of letters.

### **Article 4 Definitions**

In this Agreement –

“competent authority” means, for the United States of America, the Secretary of the Treasury or his delegate, and for the Cayman Islands, the Cayman Tax Co-operation Authority or a person or authority designated by it;

“person” means a natural person, a company or any other body or group of persons;

“tax” means any tax covered by this Agreement;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“information gathering measures” means judicial, regulatory or administrative procedures enabling a requested party to obtain and provide the information requested;

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

“items subject to legal privilege” means

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made –
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.

Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

“criminal tax evasion” means willfully, with dishonest intent to defraud the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred. The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability, and the conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either 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 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, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested 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 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 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 beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds, information on shares, units and other interests; and in the case of trusts, information on settlors, trustees and beneficiaries.

5. 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 relevance of the information sought to the request:

- (a) the identity of the taxpayer under examination or investigation;
- (b) the nature of the information requested;
- (c) the tax purpose for which the information is sought;
- (d) reasonable 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;
- (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 declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under this Agreement.

6. 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;

- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within a reasonable period relative to the nature of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party to explain the reasons for its inability or the obstacles or its refusal.

#### **Article 6**

##### **Tax Examinations (or Investigations) Abroad**

1. The requested party may, to the extent permitted under its domestic laws, 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 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 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 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, 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 party.

2. This Agreement shall not impose upon a party any obligation to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.

3. 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.

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 enforcement of its own tax laws or in response to a valid request from the requested party under this Agreement.

### **Article 8 Confidentiality**

1. All information provided and received by the competent authorities of the parties shall be kept confidential.

2. Information provided to the competent authority of a requesting party may not be used for any purpose other than for the purposes stated in Article 1, without the prior consent of the requested party.

3. Information provided shall be disclosed only to persons or authorities (including judicial, administrative, and Congressional oversight authorities) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

4. Information provided to a requesting party under this Agreement may not be disclosed to any third party.

### **Article 9 Safeguards**

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party, provided and to the extent that these are not so burdensome or time-consuming as to act as impediments to access to the information.

**Article 10**  
**Administration Costs or Difficulties**

1. The requesting party shall reimburse the requested party for direct out of pocket costs of processing each request (including direct out of pocket costs of litigation directly relating to such request), as agreed by the parties.
2. In the event that compliance with the obligations under this Agreement occasions undue difficulty for either party, either as a result of the number or complexity of requests, the respective competent authorities shall consult with a view to resolving the difficulty under Article 11.

**Article 11**  
**Mutual Agreement Procedure**

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.

**Article 12**  
**Entry into Force**

1. 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 entry into force, it shall have effect for criminal tax evasion beginning on 1 January 2004, and with respect to all other matters covered in Article 1 beginning on 1 January 2006.
2. Upon entry into force, the provisions of the Agreement shall have effect with respect to criminal tax evasion for taxable periods commencing from 2004, and shall have effect with respect to all other matters for taxable periods commencing from 2006.

**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. 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.

3. A party which terminates this Agreement 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 this Agreement.

Done at Washington, in duplicate, this twenty-seventh day of November 2001.

For the Government of  
the United States of  
America:

PAUL H. O'NEILL

For the Government of  
the United Kingdom of  
Great Britain and Northern Ireland:

CHRISTOPHER MEYER

For the Government of the Cayman  
Islands:

PETER J. SMITH

Passed by the Legislative Assembly the            day of            , 2004.

Speaker.

Clerk of the Legislative Assembly.