

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary  
Gazette No. 17 dated 14<sup>th</sup> March, 2014.

**THE TAX INFORMATION AUTHORITY LAW  
(2013 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) ORDER, 2014**

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**ARRANGEMENT OF PARAGRAPHS**

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**THE TAX INFORMATION AUTHORITY LAW  
(2013 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) ORDER, 2014**

In exercise of the powers conferred by section 3(5) of the Tax Information Authority Law (2013 Revision), the Cabinet makes the following Order -

1. (1) This Order may be cited as the Tax Information Authority (Tax Information Agreements) Order, 2014.

Citation and  
commencement

(2) The provisions of this Order shall come into force as follows -

- (a) paragraph 3 shall be deemed to have come into force on 1<sup>st</sup> January, 2014; and
- (b) the other provisions of this Order shall come into force on the date on which this Order is published in the Gazette.

2. The Tax Information Authority Law (2013 Revision), in this Order referred to as the "principal Law", is amended by repealing Schedule 1 and substituting the following schedule -

Replacement of Tax  
Information Agreement -  
United States of  
America

**"SCHEDULE 1**

**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:	FOR THE GOVERNMENT OF THE CAYMAN ISLANDS:
<b>JULIE NUTTER</b>	<b>WAYNE PANTON</b>

3. For the purpose of setting out and giving effect to the Convention on Mutual Administrative Assistance in Tax Matters and the Protocol amending the Convention, the principal Law is amended by inserting after the Thirtieth Schedule the following schedule -

The Convention on  
Mutual Administrative  
Assistance in Tax  
Matters and the Protocol  
amending the  
Convention

**“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 Depositories, 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 Depositaries 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

<u>State</u> :	United Kingdom.
<u>Instrument</u> :	Convention on Mutual Administrative Assistance in Tax Matters, opened for signature in Strasbourg, on 25 January 1988 (ETS No. 127), <b>as amended by the 2010 Protocol</b> (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”.**

Made in Cabinet the 21<sup>st</sup> day of January, 2014.

Kim Bullings

Clerk of the Cabinet.

This order was affirmed by the Legislative Assembly on the 31<sup>st</sup> day of January, 2014 by Government Motion No. 5/2013-2014 in compliance with section 3(5) of the Tax Information Authority Law (2013 Revision).

Zena Merren-Chin

Clerk of the Legislative Assembly.