

CAYMAN ISLANDS



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**THE TAX INFORMATION AUTHORITY LAW  
(2009 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) (NO. 2) ORDER, 2011**



CAYMAN ISLANDS

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(2009 REVISION)**

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION  
AGREEMENTS) (NO. 2) ORDER, 2011**

In exercise of the powers conferred by section 3(5)(a) of the Tax Information Authority Law (2009 Revision), the Governor in Cabinet makes the following order -

1. This order may be cited as the Tax Information Authority (Tax Information Agreements) (No. 2) Order, 2011. Citation

2. For the purpose of setting out and giving effect to additional agreements for the provision of information in taxation matters, the Tax Information Authority Law (2009 Revision) is amended by inserting after the Twenty-fourth Schedule the following schedules - Additional Tax Information Agreements for the purposes of the Tax Information Authority Law (2009 Revision)

**“TWENTY-FIFTH SCHEDULE**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE STATES OF GUERNSEY FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS**

WHEREAS the Government of the Cayman Islands and the States of Guernsey recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS it is acknowledged that the Government of the Cayman Islands and the States of Guernsey have the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with each other;

WHEREAS the Government of the Cayman Islands and the States of Guernsey have agreed, to conclude the following Agreement for the exchange of information relating to tax matters which contains obligations on the part of the Parties only.

**Article 1**

**Object and scope of the agreement**

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

**Article 2**

**Jurisdiction**

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

**Article 3**

**Taxes covered**

1. This Agreement shall apply to the following taxes imposed
  - a) by Guernsey:
    - (i) income tax, and
    - (ii) dwellings profits tax.
  - b) by the Cayman Islands any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Guernsey to which this agreement applies.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of each Party shall notify the other of any substantial changes to the taxation and related information

gathering measures which may affect the obligations of that Party pursuant to this Agreement.

#### **Article 4**

##### **Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - b) “Guernsey”, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
  - c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) “competent authority” means:
    - (i) in the case of the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
  - f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
  - g) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting party;
  - h) “information” means any fact, statement, document or record in any form whatever;

- i) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the requested information;
- j) “Party” means the Cayman Islands or the States of Guernsey as the context requires;
- k) “person” includes an individual, a company and any other body or group of persons;
- l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- m) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- n) “recognised stock exchange” means the Cayman Islands Stock Exchange and the Channel Islands Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Parties;
- o) “requested Party” means the Party to this Agreement requested to provide, or which has provided, information in response to a request;
- p) “requesting Party” means the Party to this Agreement submitting a request for information or having received information from the requested Party;
- q) “tax” means any tax to which the Agreement applies.

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

## **Article 5**

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

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

in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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

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

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, and within the constraints of Article 2, to obtain and provide, through its competent authorities and upon request:

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

provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party wishes to receive it;

- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph a) of this paragraph;
- f) the grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay. To ensure a prompt response, the competent authority of the requested Party shall:

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

## **Article 6**

### **Tax Examinations Abroad**

1. With reasonable notice, a Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party in



accordance with its domestic laws to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

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

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

## **Article 7**

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

1. The competent authority of the requested Party may decline to assist:
  - a) where the request is not made in conformity with this Agreement;
  - b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) where the disclosure of the information requested would be contrary to public policy.
2. This Agreement shall not impose on a requested Party the obligation to provide information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain or provide information which, if the requested information was within the jurisdiction of the requesting

Party the competent authority of the requesting Party would not be able to obtain under its own laws or in the normal course of administrative practice.

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

## **Article 8**

### **Confidentiality**

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

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

## **Article 9**

### **Costs**

Unless the competent authorities of the Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**Article 10**

**Mutual agreement procedure**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 8.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

**Article 11**

**Entry into Force**

1. Each of the Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
  - a) with respect to criminal tax matters for taxable periods beginning on or after 1 September 2005 or, where there is no taxable period, for all charges to tax arising on or after 1 September 2005;
  - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

**Article 12**

**Termination**

1. This Agreement shall remain in force until terminated by a Party.
2. Either Party may terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have

effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.

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

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

Done at Guernsey this 29<sup>th</sup> day of July 2011, in duplicate in the English language.

For the Government of the Cayman Islands For the States of Guernsey:  
Islands:

**HON. W. MCKEEVA BUSH OBE, MR. LYNDON TROTT  
JP**

#### **TWENTY-SIXTH SCHEDULE**

#### **AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the Cayman Islands and the Government of the People's Republic of China ("the Contracting Parties"),

Acknowledging that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement,

Desiring to provide a framework for cooperation and facilitate the exchange of information with respect to taxes,

Have agreed as follows:

**ARTICLE 1**

**SCOPE OF AGREEMENT**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, and the investigation or prosecution of tax matters.
2. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

**ARTICLE 2**

**JURISDICTION**

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

**ARTICLE 3**

**TAXES COVERED**

1. The existing taxes to which this Agreement shall apply are in particular:
  - a) in the People's Republic of China:  
all taxes except customs tariffs;  
(hereinafter referred to as "Chinese tax")
  - b) in the Cayman Islands:  
taxes of every kind and description.  
(hereinafter referred to as "Cayman Islands tax")
2. This Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, any of the existing taxes listed in paragraph 1.
3. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Contracting Parties in the form agreed upon by both Contracting Parties.

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

#### **ARTICLE 4**

##### **DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term “the People’s Republic of China”, when used in a geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with international law and its domestic law;
  - b) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
  - c) the term “person” includes an individual, a company and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors; and for this purpose, the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company. For the purposes of this paragraph the term “recognised stock exchange” means:
    - (i) in the People’s Republic of China, the Shanghai Stock Exchange or the Shenzhen Stock Exchange;
    - (ii) in the Cayman Islands, the Cayman Islands Stock Exchange;
    - (iii) any other stock exchange which the competent authorities agree to recognize for the purposes of this Agreement;

- f) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- g) the term “tax” means any tax to which this Agreement applies;
- h) the term “competent authority” means:
  - (i) in the case of the People’s Republic of China, the State Administration of Taxation or its authorized representative; and
  - (ii) in the case of the Cayman Islands, the Tax Information Authority or a person or its authorized representative;
- i) the term “information” means any fact, statement, document or record in whatever form;
- j) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- k) the term “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;
- l) the term “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request.

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

## **ARTICLE 5**

### **EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of a requested Party shall provide upon request in writing information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a tax offence under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the

requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

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

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

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

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

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

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;



- c) the nature and type of the information requested, including a description of the information and/or specific evidence sought, and the form in which the requesting Party would prefer to receive the information;
- d) the tax purposes for which the information is sought;
- e) grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person subject to the jurisdiction of the requested Party;
- f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and that if the requested information were within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice;
- h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of any deficiencies in the request within 60 days of receipt of the request; and
- b) immediately inform the competent authority of the requesting Party to explain the reasons for its inability or the obstacles or its refusal, if the competent authority of the requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested Party refuses to provide the information.

**ARTICLE 6**

**TAX EXAMINATIONS OR INVESTIGATIONS ABROAD**

1. The requested Party may, in accordance with its domestic laws, following receipt of notice of a reasonable time from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authorities of the Contracting Parties shall agree on the time and place of the intended meeting with the persons concerned.
2. At the request of the competent authority of the requesting Party, and in accordance with its domestic laws, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to be present at the tax examination in the territory of the requested Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination in accordance with its domestic laws.

**ARTICLE 7**

**POSSIBILITY OF DECLINING A REQUEST**

1. The competent authority of the requested Party may decline to assist:
  - a) where the request is not made in conformity with this Agreement;
  - b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - c) where the disclosure of the information requested would be contrary to the public policy (*ordre public*) of the requested Party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
    - (i) produced for the purposes of seeking or providing legal advice; or
    - (ii) produced for the purposes of use in existing or contemplated legal proceedings;
  - b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent a professional legal advisor from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.
6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

## **ARTICLE 8**

### **CONFIDENTIALITY**

1. All information provided and received by the Competent Authorities of the Contracting Parties shall be treated as confidential in the same manner as information obtained under its domestic legislation; or according to the confidentiality conditions applicable in the jurisdiction of the Contracting Party that provides such information if the latter conditions are more restrictive and shall be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Parties officially concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 and may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the Competent Authority of the requested Party.

**ARTICLE 9  
SAFEGUARDS**

The rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

**ARTICLE 10  
ADMINISTRATIVE COSTS**

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**ARTICLE 11  
LANGUAGE**

Requests for assistance and responses thereto shall be in English.

**ARTICLE 12  
MUTUAL AGREEMENT PROCEDURE**

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

2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 10.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution should this become necessary.

### **ARTICLE 13**

#### **ENTRY INTO FORCE**

The Contracting Parties shall notify each other in writing that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day upon the receipt of the latter notification. This Agreement shall have effect in respect of taxable years beginning on or after the date of entry into force.

### **ARTICLE 14**

#### **TERMINATION**

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

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

**Done** at George Town on the 26<sup>th</sup> day of September, 2011, in duplicate in the English and Chinese languages, both texts being equally authentic.

For the Government of the Cayman  
Islands:

**HON. W. MCKEEVA BUSH OBE,  
JP**

For the Government of the People's  
Republic of China

**MADAME SONG LAN**

## **TWENTY-SEVENTH SCHEDULE**

### **AGREEMENT BETWEEN THE CAYMAN ISLANDS AND THE REPUBLIC OF ARGENTINA ON EXCHANGE OF INFORMATION ON TAX MATTERS**

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

#### **Article 1**

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

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

#### **Article 2**

##### **Jurisdiction**

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

### **Article 3**

#### **Taxes covered**

1. This Agreement shall apply to the following taxes:
  - a) in the case of the Republic of Argentina:
    - (i) Income Tax;
    - (ii) Value Added Tax;
    - (iii) Personal Assets Tax; and
    - (iv) Tax on Presumptive Minimum Income.
  - b) In the case of the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of the Republic of Argentina to which this agreement applies.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.
3. The information provided for the administration of the abovementioned taxes can be used for other taxes, the obligations of which could be determined according to the information gathered under the domestic legislation.

### **Article 4**

#### **Definitions**

1. For the purposes of this Agreement:
  - a) the term “Contracting Party” means the Cayman Islands or the Republic of Argentina as the context requires;
  - b) the term “competent authority” means:
    - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
    - (ii) in the Republic of Argentina, the Head of the Federal Administration of Public Revenues or his authorized representative;
  - c) the term “person” includes an individual, a company and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

- e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- g) the term “recognised stock exchange” means any stock exchange recognized by the competent authorities of the Contracting Parties;
- h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) the term “tax” means any tax to which the Agreement applies;
- j) the term “Applicant Party” means the Contracting Party requesting information;
- k) the term “Requested Party” means the Contracting Party requested to provide information;
- l) the term “information gathering measures” means rules and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) the term “information” means any fact, statement or record in any form whatever, relevant to the administration and enforcement of taxes covered in this Agreement;
- n) the term “tax offences” means crimes or offences that are committed within the tax field and that are considered as such under domestic laws, irrespective of whether contained in the tax laws, the Criminal Code or other statutes;
- o) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the Criminal Code or other statutes.

2. As regards the application of this Agreement at any time by any of the Contracting Parties, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that



Party, and the meaning under the applicable tax laws of that Party prevails over a meaning given to the term under other laws of that Party.

## **Article 5**

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

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

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

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

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

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

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

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

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

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

7. Requests shall be submitted in writing in the official language of the country receiving such request - in the case of Argentina: Spanish language or in the case of the Cayman Islands: English language - and may be made by electronic means.

**Article 6**

**Presence of Officials of a Contracting Party in the Territory of the Other Contracting Party**

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

**Article 7**

**Possibility of Declining a Request**

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

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

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

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

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

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

## **Article 8**

### **Confidentiality**

Any information received by a Contracting Party under this Agreement shall be treated as confidential, in the same conditions as that obtained under its domestic laws or according to the confidentiality conditions applicable in the jurisdiction of the State that provides such information if the second-mentioned conditions are more restrictive, and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

**Article 9**

**Costs**

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

**Article 10**

**Mutual agreement procedure**

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

**Article 11**

**Entry into Force**

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

- b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which the Agreement enters into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which the Agreement enters into force.

## **Article 12**

### **Termination**

1. This Agreement shall remain in force until terminated by a Party. Either Party may, after one year from the date of its entry into force, terminate the Agreement by giving written notice of termination to the other Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Party.

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

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

Done at Grand Cayman, this 13<sup>th</sup> day of October, 2011 in two originals, each of them in the Spanish and English languages, both texts being equally authentic.

For the Government of the Cayman Islands:      For the Republic of Argentina:

**HON. W. MCKEEVA BUSH OBE,      DR. RICARDO ECHEGARAY”.**  
**JP**

