

CAYMAN ISLANDS



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

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION
AGREEMENTS) (NO. 2) ORDER, 2010**

CAYMAN ISLANDS

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

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION
AGREEMENTS) (NO. 2) ORDER, 2010**

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, 2010. 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 Fifteenth Schedule the following schedules - Additional Tax
Information Agreements
for the purposes of the
Tax Information Authority
Law (2009 Revision)

“SIXTEENTH SCHEDULE

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

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

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

Article 1

Object and scope of this agreement

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

Article 2

Jurisdiction

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

Article 3

Taxes covered

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

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

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

Article 4

Definitions

- 1 For the purposes of this Agreement, unless otherwise defined:
- (a) the term "Applicant Party" means the Contracting Party requesting information;
 - (b) the term "Cayman Islands" means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with respect to the seabed and sub-soil and their natural resources may be exercised in accordance with international law;
 - (c) the term "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;
 - (d) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term "competent authority" means in the case of the Cayman Islands, the Tax Information Authority and, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner;
 - (g) the term "Contracting Party" means the Cayman Islands or Australia as the context requires;

- (h) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (i) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;
- (j) the term "information" means any fact, statement or record in any form whatever;
- (k) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (l) the term "person" includes an individual, a company and any other body of persons;
- (m) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (n) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (o) the term "recognised stock exchange" means the Cayman Islands Stock Exchange, the Australian Stock Exchange and any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (p) the term "Requested Party" means the Contracting Party requested to provide information;
- (q) the term "Requesting Party" means the Contracting Party requesting information; and
- (r) the term "tax" means any tax to which this Agreement applies.

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

Article 5

Exchange of information upon request

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

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

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

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

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

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

- (a) the identity of the person under examination or investigation;

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

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

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

Article 6

Tax examinations abroad

1 A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to

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

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

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

Article 7

Possibility of declining a request

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

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

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

- (a) produced for the purposes of seeking or providing legal advice; or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

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

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

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

Article 8

Confidentiality

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

Article 9

Costs

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

Article 10

Implementation legislation

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

Article 11

Mutual agreement procedure

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

Article 12

Entry into force

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

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

Article 13

Termination

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

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

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

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

DONE at Washington, DC, this 30th day of March 2010, in duplicate.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:

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

FOR THE GOVERNMENT OF
AUSTRALIA:

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

SEVENTEENTH SCHEDULE

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

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

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

Have agreed as follows:

Article 1

Scope of the Agreement

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and

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

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

Article 2

Jurisdiction

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

Article 3

Taxes covered

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

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

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

Article 4

Definitions

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

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

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

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

Article 5

Exchange of information upon request

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

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

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this

Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

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

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

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

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

and, to the fullest extent possible:

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

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

Article 6

Tax examinations abroad

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

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

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

Article 7

Possibility of declining a request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent

authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

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

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

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

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

Article 8

Confidentiality

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

Article 9

Costs

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

Article 10

Language

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

Article 11

Mutual agreement procedure

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

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

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

4. The Parties shall agree on other forms of dispute resolution should this become necessary.

Article 12

Entry into force

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

- a) for criminal tax matters on that date, but only in respect of taxable periods beginning on or after January 1st, 2004 or, where

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

Article 13

Termination

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

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

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

DONE at Oranjestad, this 9th day of April 2010, and at Grand Cayman, this 20th of April 2010, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:

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

FOR THE KINGDOM OF THE
NETHERLANDS IN RESPECT OF
ARUBA:

**MR. M.E. DE MEZA
MINISTER FOR FINANCE
COMMUNICATION, UTILITIES
AND ENERGY OF ARUBA**

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

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

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

Have agreed as follows:

I.

Ad Article 5(5)(g)

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

II.

Ad Article 5

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

- a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and

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

- i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

III.

Ad article 12

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

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

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

IV.

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

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

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

V.

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

VI.

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

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

DONE at Oranjestad, this 9th day of April 2010, and at Grand Cayman, this 20th of April 2010, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:

FOR THE KINGDOM OF THE
NETHERLANDS IN RESPECT OF
ARUBA:

HON. W. MCKEEVA BUSH OBE,

MR. M.E. DE MEZA

**JP
PREMIER AND MINISTER FOR
FINANCE, TOURISM &
DEVELOPMENT**

**MINISTER FOR FINANCE
COMMUNICATION, UTILITIES
AND ENERGY OF ARUBA**

EIGHTEENTH SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS (AS AUTHORISED BY LETTER OF ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND) AND THE PORTUGUESE REPUBLIC CONCERNING EXCHANGE OF INFORMATION ON TAX MATTERS

The Government of the Cayman Islands and the Portuguese Republic, hereinafter referred to as “Parties”,

Desiring to facilitate the Exchange of Information with respect to taxes,

Have agreed as follows:

Article 1

Scope of the agreement

1. The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement. Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the Requesting Parties concerning taxes covered by this Agreement;
- b) Include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters; and
- c) Be treated as confidential as set forth in this Agreement.

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

Article 2

Jurisdiction

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

Article 3

Taxes covered

1. This Agreement shall apply to the following taxes imposed by the Parties
 - a) In Portugal:
 - i. Personal income tax (imposto sobre o rendimento das pessoas singulares IRS);
 - ii. Corporate income tax (imposto sobre o rendimento das pessoas colectivas IRC);
 - iii. Local surtax on corporate income tax (Derrama);
 - iv. Stamp duty on gratuitous transfers (Imposto do Selo sobre as transmissões gratuitas); and
 - b) In the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Portugal to which this agreement applies
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) The term “Party” means the Cayman Islands or Portugal as the context requires;

- b) The term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which, in accordance with international law, the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
- c) The term “Portugal” means territory of the Portuguese Republic situated in the European continent, the archipelagos of Azores and Madeira, the territorial sea and inland waters thereof as well as the continental shelf and any other area wherein the Portuguese State exercises sovereign rights or jurisdiction in accordance with the rules of international law and the laws of the Portuguese Republic;
- d) The term “competent authority” means:
 - (i) In the Cayman Islands, the Tax Information Authority or a person or authority designated by it.
 - (ii) In Portugal, the Minister of Finance, the Director General of Taxation (Director-Geral dos Impostos) or their authorized representative;
- e) The term “person” includes an individual, a company and any other body of persons;
- f) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) The term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) The term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) The term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- j) The term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed

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

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

Article 5

Exchange of Information upon Request

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

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

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

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

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

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

- a) The identity of the person under examination or investigation;
- b) A statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- c) The tax purpose for which the information is sought;

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

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

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

Article 6

Tax Examinations Abroad

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

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

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

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

Article 7

Possibility of Declining a Request

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

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

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

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

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8

Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Party.
4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.
5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the law of the requested Party.
6. The Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of The European Parliament and of the Council of 24 October 1995 and shall comply with the guidelines established by the United Nations General Assembly Resolution 45/95, adopted on the 14th December 1990.

Article 9

Costs

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

Article 10

Implementation legislation

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

Article 11

Language

Requests for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

Article 12

Mutual agreement procedure

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

Article 13

Entry into Force

1. This Agreement shall enter into force thirty days from the date on which the Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
2. Upon the date of entry into force, this Agreement shall have effect:
 - a) For criminal tax matters on that date; and
 - b) For all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 14

Duration and Termination

1. The present Agreement shall remain in force for an unlimited period of time.
2. Either Party may, at any time, terminate the present Agreement upon a prior notification in writing through diplomatic channels.
3. The present Agreement shall terminate six months after the receipt of such notification.
4. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of the present Agreement.

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

Done at **Grand Cayman**, on this **13th** day of **May 2010**, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:

FOR THE PORTUGUESE
REPUBLIC:

HON. W. MCKEEVA BUSH OBE, JP PREMIER AND MINISTER FOR FINANCE, TOURISM & DEVELOPMENT	DR. SÉRGIO TRIGO TAVARES VASQUES SECRETARY OF STATE FOR TAX AFFAIRS OF PORTUGAL
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NINETEENTH SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ON ASSISTANCE IN CIVIL AND CRIMINAL TAX MATTERS THROUGH EXCHANGE OF INFORMATION

The Government of the Cayman Islands and the Government of the Federal Republic of Germany

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to all tax matters;

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

Whereas the Contracting Parties have agreed that the following Agreement contains obligations on the part of the Contracting Parties only;

Have agreed as follows:

Article 1

Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the respective laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters. The rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting Party remain applicable.

Article 2

Jurisdiction

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

Article 3

Taxes Covered

(1) This Agreement shall apply to the following taxes of the Federal Republic of Germany:

- a) the income tax (Einkommensteuer),
 - b) the corporation tax (Körperschaftsteuer),
 - c) the trade tax (Gewerbsteuer),
 - d) the capital tax (Vermögensteuer) and
 - e) the inheritance tax (Erbschaftsteuer),
 - f) the value added tax (Umsatzsteuer)
 - g) the tax on insurance premiums (Versicherungsteuer)
- including the supplements levied thereon;

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

Article 4

Definitions

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

- a) “Federal Republic of Germany”, when used in a geographical sense, means the area in which the tax law of the Federal Republic of Germany is in force;
- b) “Cayman Islands”, when used in a geographical sense, means the territory of the Cayman Islands and includes its territorial sea and any areas beyond its territorial sea within which sovereign rights with

- respect to the seabed and subsoil and their natural resources may be exercised in accordance with international law;
- c) “competent authority” means
 - (i) in respect of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its power; which in respect of criminal tax matters will be the Federal Ministry of Justice or the agency to which it has delegated its power,
 - (ii) in respect of the Cayman Islands, the Tax Information Authority or authorised representative,
 - d) “person” includes an individual, a company and any other body of persons,
 - e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes,
 - f) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors,
 - g) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company,
 - h) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties,
 - i) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme, provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors,
 - j) “tax” means any tax to which the Agreement applies,
 - k) “requesting Contracting Party” means the Contracting Party requesting information,
 - l) “requested Contracting Party” means the Contracting Party requested to provide information,
 - m) “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information,

- n) “information” means any fact, statement, document or record in any form whatever,
- o) “tax matters” means all tax matters including criminal tax matters,
- p) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Contracting Party,
- q) “criminal laws” means all criminal laws designated as such under the respective law of the Contracting Parties irrespective of whether such are contained in the tax laws, the criminal code or other statutes.

(2) Any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning that it has at the time the request was made under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of Information

(1) The competent authority of the requested Contracting Party shall provide upon request by the requesting Contracting Party information for the purposes referred to in Article 1. Such information shall be provided without regard to whether the requested Contracting Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Contracting Party if it had occurred in the territory of the requested Contracting Party. The competent authority of the requesting Contracting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

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

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

(4) Each Contracting Party shall ensure that its competent authorities, in accordance with the terms of this Agreement, have the authority to obtain and provide upon request:

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

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

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

- a) the identity of the person under examination or investigation,
- b) the period for which the information is requested,
- c) the nature of the information sought and the form in which the requesting Contracting Party would prefer to receive it,
- d) the tax purpose for which the information is sought,
- e) the reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the requesting Contracting Party, with respect to the person identified in subparagraph a) of this paragraph,
- f) grounds for believing that the information requested is held in the requested Contracting Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Contracting Party,

- g) to the extent known, the name and address of any person believed to be in possession of the requested information,
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Contracting Party, that if the requested information was within the jurisdiction of the requesting Contracting Party then the competent authority of the requesting Contracting Party would be able to obtain the information under the laws of the requesting Contracting Party and that it is in conformity with this Agreement,
- i) a statement that the requesting Contracting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(6) The competent authority of the requested Contracting Party shall acknowledge receipt of the request to the competent authority of the requesting Contracting Party and shall use its best endeavours to forward the requested information to the requesting Contracting Party with the least reasonable delay.

Article 6

Tax Examinations Abroad

(1) By reasonable notice given in advance, the requesting Contracting Party may request that the requested Contracting Party allow representatives of the competent authority of the requesting Contracting Party to enter the territory of the requested Contracting Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Contracting Party shall notify the competent authority of the requested Contracting Party of the time and place of the intended meeting with the individuals concerned.

(2) At the request of the competent authority of the requesting Contracting Party, the competent authority of the requested Contracting Party may allow representatives of the competent authority of the requesting Contracting Party to be present at the appropriate part of a tax examination in the requested Contracting Party.

(3) If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Contracting Party about the time and place of the examination, the authority or official

designated to carry out the examination and the procedures and conditions required by the requested Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Contracting Party conducting the examination.

Article 7

Possibility of Declining a Request

- (1) The competent authority of the requested Contracting Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting Contracting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to the public policy of the requested Contracting Party.
- (2) This Agreement shall not impose upon a requested Contracting Party any obligation:
 - (a) to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process; or
 - (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under paragraph 4 of Article 5;
- (3) A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
- (4) The requested Contracting Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Contracting Party the competent authority of the requesting Contracting Party would not be able to obtain under its laws.

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

Article 8

Confidentiality

(1) All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be treated as confidential in the same manner as information obtained under the domestic laws of the Contracting Parties.

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

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

(4) The information provided to a requesting Contracting Party under this Agreement may not be disclosed to any other jurisdiction.

(5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Contracting Party.

Article 9

Costs

Incidents of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

Article 10

Mutual Agreement Procedure

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

Article 11

Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 12

Entry into Force

- (1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.
- (2) Upon the date of entry into force, this Agreement shall have effect:
 - a) for criminal tax matters on that date; and
 - b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where

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

Article 13

Termination

(1) Either Contracting Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.

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

(3) If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Done at **Grand Cayman**, this **27th day of May, 2010**, in duplicate in the English and German languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:

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

FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF
GERMANY:

**MR. JÜRGEN ENGEL
THE AMBASSADOR OF THE
FEDERAL REPUBLIC OF
GERMANY TO KINGSTON**

**PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT
OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY ON ASSISTANCE IN CIVIL AND
CRIMINAL TAX MATTERS THROUGH EXCHANGE OF
INFORMATION**

The Government of the Cayman Islands and the Government of the Federal Republic of Germany (the “Contracting Parties”) have agreed at the signing of the Agreement between the two Governments on Assistance in Civil and Criminal Tax Matters through Exchange of Information on the following provisions which shall form an integral part of the said Agreement:

1. With respect to subparagraph a) of paragraph 5 of Article 5 it is understood that the identity of the person under examination or investigation may be determined by identifying information other than the name.

2. With respect to paragraph 5 of Article 8 the Contracting Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In addition the following shall apply:

- a) The receiving agency may use such data in compliance with paragraph 3 of Article 8 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency and that conform with Article 8.
- b) Notwithstanding the provisions of paragraph 3 of Article 8, the information may be used for other purposes, if under the law of both Contracting Parties it may be used for these other purposes and the competent authority of the supplying Contracting Party has agreed to this use. Use for other purposes without the prior approval of the supplying Contracting Party is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of liberty, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying Contracting Party must be asked without delay for retroactive authorisation of the change in purpose. If authorisation is refused, the information may no longer be used for the other purpose and the receiving agency shall erase the data supplied without delay. Any damage which has been caused by use of the information for the other purpose must be compensated.
- c) The supplying agency shall be obliged to exercise vigilance as to the accuracy of the data to be supplied and their foreseeable relevance within the meaning of Article 1 and their proportionality to the purpose for which they are supplied. Data are foreseeably relevant if in the concrete case at hand there is the

serious possibility that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay.

- d) The receiving agency shall on request inform the supplying agency on a case-by-case basis for the purpose of informing the person concerned about the use of the supplied data and the results achieved thereby.
- e) The receiving agency shall inform the person concerned of the data collection by the supplying agency. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.
- f) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph e) shall apply accordingly.
- g) The receiving agency shall bear liability in accordance with the law applicable to it in relation to any person suffering unlawful damage in connection with the supply of data under the exchange of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.
- h) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.
- i) Where the law applicable to the supplying agency contains special provisions for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.
- j) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

3. Pursuant to Article 9 of the Agreement it is mutually decided that ordinary costs that are incurred for the purpose of responding to a request for information

will be borne by the requested Contracting Party. Such ordinary costs will normally cover internal administration costs of the competent authority and any minor external costs such as the cost of couriers. All reasonable costs incurred by third parties in complying with the request for exchange of information are considered extraordinary costs and will be borne by the applicant Contracting Party. Examples of extraordinary costs include, but are not limited to, the following:

- a) reasonable fees charged for staff employed by third parties in assisting with the request;
- b) reasonable fees charged by third parties for carrying out research;
- c) reasonable fees charged by third parties for copying documents;
- d) reasonable costs of engaging experts, interpreters, or translators;
- e) reasonable costs of conveying documents to the applicant Contracting Party;
- f) reasonable litigation costs of the requested Contracting Party in relation to a specific request for information;
- g) reasonable costs for obtaining depositions or testimony; and
- h) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears for an interview, deposition or testimony relating to a particular information request.

The competent authorities will consult each other in any particular case where extraordinary costs are likely to exceed US\$500 to determine whether the applicant Contracting Party will continue to pursue the request and bear the cost.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier-mentioned competent authorities or their authorised entities.

- a) Competent authority for the Federal Republic of Germany:
Bundeszentralamt für Steuern
53221 Bonn

In respect of criminal tax matters:
Bundesamt für Justiz
53094 Bonn

- b) Competent authority for the Cayman Islands:
Tax Information Authority
Elizabethan Square (3rd Floor, Phase III)
80 Shedden Road, George Town
P O Box 10080
Grand Cayman, KY1-1001
Cayman Islands

In respect of criminal tax matters:
The above-mentioned competent authority.

TWENTIETH SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS UNDER ENTRUSTMENT FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS

WHEREAS the Government of the United Kingdom has issued a letter of entrustment to the Government of the Cayman Islands (hereinafter "Cayman Islands") to negotiate, and conclude an agreement for the exchange of information on tax matters with the Government of Canada (hereinafter "Canada"):

THE GOVERNMENT OF THE CAYMAN ISLANDS and **THE GOVERNMENT OF CANADA**, desiring to facilitate the exchange of information with respect to taxes, have agreed as follows:

Article 1

Object and Scope of this Agreement

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and

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

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

Article 2

Jurisdiction

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

Article 3

Taxes Covered

The taxes which are the subject of this Agreement are, in the case of Canada, all taxes on income and on capital imposed or administered by the Government of Canada, and in the case of the Cayman Islands, all taxes on income and on capital imposed or administered by the Cayman Islands, including any taxes on income and on capital imposed or administered after the date of signature of this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) the term “Party” means the Cayman Islands or Canada as the context requires;
 - (b) the term “competent authority” means:
 - (i) in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative;

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

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

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

Article 5

Exchange of Information upon Request

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

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

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

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

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

can be obtained without giving rise to disproportionate difficulties.

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

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

6. The competent authority of the requested Party shall immediately confirm receipt of a request in writing to the competent authority of the applicant Party and shall:

- (a) notify the competent authority of the applicant Party, within 60 days of receiving the request, of any deficiencies in the request;
- (b) notify the competent authority of the applicant Party, within 90 days of receiving the request, of the intention to refuse the request or of any obstacle preventing the requested Party from fulfilling the request;
- (c) inform the competent authority of the applicant Party of the grounds for the refusal of the request or the nature of the obstacles to processing the request;

- (d) provide the requested information within 90 days of receiving the request or, in the event that there is an obstacle to fulfilling the request, advise the competent authority of the applicant Party of the estimated additional time required to fulfill the request.

Article 6

Tax Examinations Abroad

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

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

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

Article 7

Possibility of Declining a Request

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

2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the

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

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

- (a) seeking or providing legal advice, or
- (b) use in existing or contemplated legal proceedings.

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

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

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

Article 8

Confidentiality

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

Article 9

Costs

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

Article 10

Implementation Legislation

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

Article 11

Other International Agreements or Arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Parties which relate to co-operation in tax matters.

Article 12

Mutual Agreement Procedure

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

Article 13

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval by the Parties, in accordance with their respective laws. Notification in writing of the completion of each Party's necessary internal procedures for entry into force shall be exchanged as soon as possible.
2. This Agreement shall enter into force on the date of the later of the notifications under paragraph 1. Upon entry into force, it shall have effect:
 - (a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), on that date, but only in respect of taxable periods beginning on or after January 1, 2004 or, where there is no taxable period, for all charges to tax arising on or after January 1, 2004, and
 - (b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

Article 14

Termination

1. A Party may terminate this Agreement by serving a notice of termination through diplomatic channels to the other Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of the notice of termination.
3. Where a Party terminates this Agreement, both Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

SIGNED in duplicate at **Grand Cayman** this **24** day of **June 2010**, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS:
**HON. W. MCKEEVA BUSH OBE,
JP
PREMIER AND MINISTER FOR
FINANCE, TOURISM &
DEVELOPMENT**

FOR THE GOVERNMENT OF
CANADA:
**MR. STEPHEN HALLIHAN
HIGH COMMISSIONER FOR
CANADA TO JAMAICA**

PROTOCOL

At the time of signing of this Agreement between the Government of Canada and the Government of the Cayman Islands under Entrustment from the Government of the United Kingdom of Great Britain and Northern Ireland for the Exchange of Information on Tax Matters, the undersigned have agreed upon the following provisions which shall be an integral part of this Agreement.

1. With reference to paragraph 2(a) of Article 13, if at the time of the submission of a request by a Party, or at any time thereafter, the competent authority of the applicant Party is of the view that it is necessary to request supplemental information which predates January 1, 2004 which is related to its primary request and is relevant to a criminal tax matter to which this Agreement refers, the requested party shall grant such a request.

2. Before making a supplemental request for information referred to in paragraph 1 above the competent authority of the applicant Party shall consult with the competent authority of the requested Party on the likely availability of the supplemental information.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto, have signed this Protocol.

SIGNED in duplicate at **Grand Cayman** this **24** day of **June 2010**, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE FOR THE GOVERNMENT OF

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

CANADA:
**MR. STEPHEN HALLIHAN
HIGH COMMISSIONER FOR
CANADA TO JAMAICA**

TWENTY-FIRST SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS WITH THE AUTHORISATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON EXCHANGE OF INFORMATION ON TAX MATTERS

The Government of the Cayman Islands and the Government of the United Mexican States, desiring to conclude an Agreement on exchange of information on tax matters, have agreed as follows:

Article 1

Object and Scope of the Agreement

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

Article 2

Jurisdiction

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

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes:
 - a) in the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to existing taxes of Mexico to which this agreement applies.
 - b) in Mexico:
 - (i) income tax;
 - (ii) business flat rate tax; and
 - (iii) value added tax.
2. This Agreement shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The Agreement shall also apply to other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term "Contracting Party" means the Cayman Islands or Mexico as the context requires;
 - b) the term "the Cayman Islands" means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
 - c) the term "Mexico" means the United Mexican States, when used in a geographical sense it includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and cays in the adjacent waters,

the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the suprajacent waters, and the air space of the national territory to the extent and under conditions established by international law;

- d) the term "competent authority" means:
 - (i) in the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
 - (ii) in Mexico, the Ministry of Finance and Public Credit;
- e) the term "person" includes an individual, a company and any other body of persons;
- f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- k) the term "tax" means any tax to which the Agreement applies;
- l) the term "applicant Party" means the Contracting Party requesting information;

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

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

Article 5

Exchange of Information upon Request

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

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

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

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

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

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

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

- g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within sixty (60) days of the receipt of the request.
 - b) If the competent authority of the requested Party has been unable to obtain and provide the information within ninety (90) days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

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

conduct of the tax examination shall be made by the Party conducting the examination.

Article 7

Possibility of Declining a Request

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

Article 8

Confidentiality

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

Article 9

Costs

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

Article 10

Mutual Agreement Procedure

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

Article 11

Interpretation

The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organization for Economic Cooperation and Development (OECD Model Agreement) when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

Article 12

Entry into Force

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

Article 13

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may after one (1) year from the date of its entry into force terminate the Agreement by giving written notice of termination to the other Contracting Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six (6) months after the date of receipt of notice of termination by the other Contracting Party.
2. In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

Done in Grand Cayman on this **28th** day of **August** of **two thousand and ten** and in Mexico City on this **17** day of **August** of **two thousand and ten**, in duplicate in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
CAYMAN ISLANDS WITH THE
AUTHORISATION OF THE
GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND:
**HON. W. MCKEEVA BUSH OBE,
JP
PREMIER AND MINISTER FOR
FINANCE, TOURISM &
DEVELOPMENT**

FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES:

**MR. ERNESTO JAVIER
CORDERO ARROYO MINISTER
OF FINANCE AND PUBLIC
CREDIT FOR MEXICO”.**

Made in Cabinet the 26th day of October, 2010.

Kim Bullings

Clerk of the Cabinet.

This order was affirmed by the Legislative Assembly on the 4th day of November, 2010 by Government Motion No. 7/2010-11 in compliance with section 3(5)(a) of the Tax Information Authority Law (2009 Revision).

Zena Merren-Chin

Clerk of the Legislative Assembly.