

AGREEMENT ON EXCHANGE OF INFORMATION ON TAX MATTERS

AGREEMENT BETWEEN THE STATES OF GUERNSEY AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS ON EXCHANGE OF INFORMATION ON TAX MATTERS

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

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

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

Article 1 Object and Scope of the Agreement

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

Article 2 Jurisdiction

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

Article 3 Taxes Covered

1. The taxes which are the subject of this Agreement are:
 - a) in Guernsey:
 - (i) income tax,
 - (ii) dwellings profits tax;
 - b) in Mauritius, the income tax.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of the Parties shall notify each other of any substantial changes to their taxation and related information gathering measures which may affect their obligations pursuant to the Agreement.

Article 4 Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) “Guernsey” means the States of Guernsey and, when used in a geographical context, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - b) “Mauritius” means the Republic of Mauritius and includes:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (i) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;

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

- o) “requested Party” means the Party requested to provide or which has provided information in response to a request;
- p) “requesting Party” means the Party submitting a request for or having received information from the requested Party;
- q) “tax” means any tax to which the Agreement applies.

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

Article 5

Exchange of Information Upon Request

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

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

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

4. Each Party shall ensure that its competent authority has the authority for the purposes specified in Article 1, and within the limitations of Article 2, to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) (i) information regarding the ownership of companies, partnerships, foundations, and other persons, including ownership information on all such persons in an ownership chain;

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

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

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

Article 6

Tax Examinations Abroad

1. With reasonable notice, a Party may allow representatives of the competent authority of the other Party, to the extent permitted under its domestic laws, 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, and in accordance with its domestic laws, the competent authority of the other Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party 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 competent authority of the requested Party may decline to assist:

- a) where the request is not made in conformity with this Agreement;
- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or

- c) where the disclosure of the information requested would be contrary to public policy.
2. This Agreement shall not impose on a Party the obligation to supply items subject to legal privilege or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information of the type referred to in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain or provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its own laws for the purposes of the administration and enforcement of its own tax laws.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Party as compared with a citizen of the requesting Party in the same circumstances.

Article 8 Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.
4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9
Costs

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

Article 10
Implementation Legislation

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

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the 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, 6 and 9.
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 12
Entry into Force

1. This Agreement is subject to ratification, acceptance or approval by the Parties, in accordance with their respective laws.
2. The 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 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 Party may terminate the Agreement by serving a notice of termination either through appropriate channels or by letter to the competent authority of 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 receipt of notice of termination by the other Party.
3. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
4. If the Agreement is terminated, the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement in London on this day of of the year of 2013, in two originals, in the English language.

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Deputy P. A. Harwood
Chief Minister

For the States of Guernsey

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H. E. Mr. A. Kundasamy
High Commissioner

For the Government of the
Republic of Mauritius