

AGREEMENT
BETWEEN
THE STATES OF GUERNSEY
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS

WHEREAS the States of Guernsey and the Government of the Republic of Korea (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

WHEREAS it is acknowledged that the 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 Korea;

WHEREAS the States of Guernsey on the 21st February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

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 shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or the investigation of tax matters or the prosecution of criminal tax matters in

relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

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

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of the Republic of Korea:

- i) the income tax;
- ii) the corporation tax;
- iii) the inheritance tax;
- iv) the gift tax;
- v) the value added tax;
- vi) the individual consumption tax;
- vii) the local income tax.

(b) in the case of Guernsey:

- i) the income tax;
- ii) the dwellings profits 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 or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

Article 4

Definitions

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

- (a) “Korea” means the Republic of Korea; when used in a geographical sense, it means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;
- (b) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- (c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- (d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) “competent authority” means:

- i) in the case of Korea, the Minister of Strategy and Finance or his authorized representative;
- ii) in the case of Guernsey, the Director of Income Tax or his designate;
- (f) “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;
- (g) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- (h) “information” means any fact, statement, document or record in whatever form;
- (i) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the information requested;
- (j) “person” means a natural person, a company or any other body or group of persons;
- (k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (l) “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;
- (m) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (n) “requested Party” means the Party to this Agreement which is requested to provide information in response to a request;
- (o) “requesting Party” means the Party to this Agreement submitting a request for information or having received information from the requested Party;
- (p) “tax” means any tax covered by this Agreement.

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

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, 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, the requested Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

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

4. Each Party shall ensure that it has the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and provide through its competent authority and upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

- (b) i) information regarding the legal and beneficial ownership of companies, partnerships, foundations, and other persons, including, in the case of collective investment funds or schemes, information on shares, units and other interests;
- ii) in the case of trusts, information on settlors, trustees and beneficiaries; and
- iii) in the case of foundations, information on the founders, members of the foundation council and beneficiaries,

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

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

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requesting Party 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 tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- (f) the grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- (i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and use its best endeavours to forward the requested information as promptly as possible to the requesting Party.

Article 6

Tax Examinations Abroad

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic 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 Party shall notify the competent authority of the requested 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 Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described 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 and provide information which if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

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

Article 8
Confidentiality

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

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

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

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

Article 9
Costs

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

requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 10

Implementation

The Parties shall take all necessary steps to comply with, and give effect to the terms of this Agreement.

Article 11

Language

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

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 use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the 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 shall agree on other forms of dispute resolution should this become necessary.

Article 13

Mutual Assistance Procedure

If both competent authorities of the Parties consider it appropriate to do so, they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

Article 14

Entry into Force

The Parties shall notify each other, in writing, 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 thirtieth day after the later of these notifications, and 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 15

Termination

1. Either Party may terminate this Agreement by serving a notice of termination 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 three months after the date of receipt of notice of termination by the

other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

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

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

DONE in duplicate at _____ this _____, in the English and Korean languages, all texts being equally authentic.

For the States of Guernsey

For the Government of
the Republic of Korea

Protocol

In order to ensure the appropriate implementation of the Agreement, the competent authorities of Guernsey and Korea (the “competent authorities”) agree to the following:

Liability for costs

1. The term “direct costs” in Article 9 of the Agreement shall be interpreted as follows:

(a) Examples of “direct costs” include, but are not limited to, the following:

- i) reasonable costs of reproducing and transporting an extraordinary amount of documents or records to the competent authority of the requesting Party;
- ii) reasonable fees imposed by a financial institution or other third-party record keeper for copying records and research related to a specific request for information;
- iii) reasonable costs for stenographic reports of interviews, depositions or testimony;
- iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, of a person who voluntarily appears in Guernsey or Korea for an interview, deposition or testimony relating to a particular information request; and
- v) reasonable legal fees for non-government counsel appointed or retained, with approval of the competent authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information;

(b) “Direct costs” do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

2. If the direct costs pertaining to a specific request are expected to exceed Won 1,000,000 or the sterling equivalent, the competent authority of the requested Party shall contact the competent authority of the requesting Party to determine whether the requesting Party wants to pursue the request and bear the cost.

3. The competent authorities shall consult not later than 12 months after the date the

Agreement enters into force, and upon request of either competent authority thereafter, with respect to costs incurred or potentially to be incurred under the Agreement and with a view to minimizing such costs.

Time limit for providing information

4. Pursuant to paragraph 6 of Article 5 of the Agreement, the competent authority of the requested Party shall acknowledge receipt of the request in writing to the competent authority of the requesting Party and shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal, if it has been unable to obtain and provide the information requested within 90 days of the receipt of the request, including if it encounters obstacles in furnishing the information, or it refuses to furnish the information.

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

DONE in duplicate at _____ this _____, in the
English and Korean languages, all texts being equally authentic.

For the States of Guernsey

For the Government of
the Republic of Korea