

**AGREEMENT**

**BETWEEN THE CAYMAN ISLANDS**

**AND THE REPUBLIC OF POLAND**

**FOR**

**THE EXCHANGE OF INFORMATION**

**RELATING TO TAX MATTERS**

**Whereas** the Cayman Islands and the Republic of Poland recognise that present legislation already provides for cooperation and the exchange of information on tax matters;

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

**Whereas** it is acknowledged that the Cayman Islands under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Republic of Poland;

**Whereas** the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

**Now, therefore,** the Contracting Parties have agreed to conclude the following Agreement, which contains obligations on the part of the Cayman Islands and the Republic of Poland only.

## **Article 1**

### **Object and Scope of the Agreement**

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

## **Article 2**

### **Jurisdiction**

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

## **Article 3**

### **Taxes Covered**

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

- a) in the case of the Cayman Islands:
  - i) taxes of every kind and description.
  
- b) in the case of Poland:
  - i) the personal income tax;
  - ii) the corporate income tax;

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes in their laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

## **Article 4 Definitions**

1. In this Agreement:

- a) the term “the Cayman Islands” means the territory of the Cayman Islands and includes the territorial sea, areas within the maritime boundaries of the Cayman Islands and any area within which in accordance with international law the rights of the Cayman Islands with respect to the seabed and sub-soil and their natural resources may be exercised;
- b) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
- c) the term “Contracting Party” means Poland or the Cayman Islands, as the context requires;
- d) the term “competent authority” means:
  - i) in the case of the Cayman Islands, the Tax Information Authority or a person or authority designated by it;
  - ii) in the case of Poland, the Minister of Finance or his authorized representative.
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- i) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- j) the term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units,

shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

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

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

## **Article 5**

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

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

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

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

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

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

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

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

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

h) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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

a) confirm receipt of the request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of any deficiencies in the request within 60 days of receipt of the request, and

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

## **Article 6 Tax Examinations Abroad**

1. With reasonable notice the applicant Party may request that the requested Party allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to interview individuals and examine records, to the extent permitted under its domestic laws. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to attend a tax examination in the territory of the requested Party.

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

## **Article 7 Possibility of Declining a Request**

1. The competent authority of the requested Party may decline to assist, where:

a) the request is not made in conformity with this Agreement;

- b) the applicant Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
- c) the disclosure of the information requested would be contrary to public policy (ordre public).

2. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, or information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5 (4) shall not by reason of that fact alone be treated as such a secret or trade process.

3. In no case shall the provisions of this Agreement be construed so as to impose on a Contracting Party the obligation to supply information which is not obtainable under the laws or in the normal course of the administration of that or the other Contracting Party.

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

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

## **Article 8 Confidentiality**

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

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

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

4. The information provided to an applicant Party under this Agreement may not be disclosed to any other jurisdiction.

## **Article 9 Costs**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party. The respective competent authorities shall consult periodically with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party if the costs of providing information with respect to a specific request are expected to be significant.

## **Article 10 Language**

Requests for assistance, the responses thereto and any other written communication between the competent authorities shall be drawn up in English. As regards other documents or files to be provided, the competent authorities shall consult whether and to what extent translation into the English language is indeed required.

## **Article 11 Mutual Agreement Procedure**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, and 9.
3. The Contracting Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

## **Article 12 Entry into Force**

1. The Contracting Parties shall notify each other in writing of the completion of procedures required by the respective laws for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith.

### **Article 13 Termination**

1. This Agreement is concluded for unspecified time. It may be terminated by the notification by either Contracting Party; in such a case it shall cease to be in force after three months from after the date of receipt of the notification by the other Contracting Party.
2. All requests received by the Contracting Parties up to effective day of termination will be dealt in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the Agreement.

Done in duplicate at London this twenty-ninth day of November, 2013, in the English and Polish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF  
THE CAYMAN ISLAND:

Hon. G. Wayne Panton

FOR THE GOVERNMENT OF  
POLAND:

HE Witold Sobkow