

CAYMAN ISLANDS



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

**THE TAX INFORMATION AUTHORITY (TAX INFORMATION
AGREEMENTS) ORDER, 2011**

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In exercise of the powers conferred by section 3(5) 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) Order, 2011. Citation

2. The Tax Information Authority Law (2009 Revision) is amended as follows - Amendment of Twelfth Schedule and Seventeenth Schedule to the Tax Information Authority Law (2009 Revision) - Agreements for the provision of information in taxation matters

- (a) in the Protocol to the Twelfth Schedule, by deleting the heading “**III. Ad article 12**” and substituting the heading “**III. Ad article 11**”; and
- (b) in the Protocol to the Seventeenth Schedule, by deleting the heading “**III. Ad article 12**” and substituting the heading “**III. Ad article 11**”.

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

“TWENTY-SECOND SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF JAPAN FOR THE EXCHANGE OF INFORMATION FOR THE PURPOSE OF THE PREVENTION OF FISCAL EVASION AND THE ALLOCATION OF RIGHTS OF TAXATION WITH RESPECT TO INCOME OF INDIVIDUALS

The Government of the Cayman Islands and the Government of Japan, the Government of the Cayman Islands having been duly authorised by the Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to conclude an Agreement for the exchange of information for the purpose of the prevention of fiscal evasion and the allocation of rights of taxation with respect to income of individuals,

Have agreed as follows:

Chapter 1

GENERAL PROVISIONS

Article 1

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term “Japan”, when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
 - (b) the term “the Cayman Islands”, when used in a geographical sense, means the Islands of Grand Cayman, Cayman Brac and Little Cayman, and all the area around them, over which the Cayman Islands may exercise its jurisdiction in accordance with its laws and regulations and international law;
 - (c) the term “Contracting Party” means the Cayman Islands or Japan as the context requires;
 - (d) the term “competent authority” means:
 - (i) in the case of Japan, the Minister of Finance or his authorised representative; and
 - (ii) in the case of the Cayman Islands, the Tax Information Authority or an individual or authority designated by it;
 - (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 “national” means:
 - (i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of

- Japanese tax as a juridical person created or organised under the laws of Japan; and
- (ii) in the case of the Cayman Islands, any individual who possesses Caymanian status or who is a British Overseas Territory Citizen by virtue of a connection with the Cayman Islands and any company, partnership, trust, estate, association or any other entity deriving its status as such from the laws in force in the Cayman Islands;
 - (h) 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 readily 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;
 - (i) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of a company;
 - (j) the term “recognised stock exchange” means:
 - (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
 - (ii) the Cayman Islands Stock Exchange; and
 - (iii) any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - (k) 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;
 - (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 information requested; and
 - (o) 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 Contracting 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 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.

Chapter 2

EXCHANGE OF INFORMATION

Article 2

OBJECT AND SCOPE

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant for the carrying out of this Agreement or to the administration and enforcement of the laws of the Contracting Parties concerning taxes referred to in Article 4. 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 Agreement and shall be treated as confidential in the manner provided in Article 8. Where the Requested Party obtains and provides information under the Agreement, the procedural rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable, to the extent that they do not unduly prevent or delay effective exchange of information.

Article 3

JURISDICTION

The 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 4

TAXES COVERED

1. This Chapter shall apply to the existing taxes of every kind and description imposed on behalf of a Contracting Party.

2. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws.

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 2. Such information shall be provided without regard to whether the conduct under examination 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, the Requested 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 laws, in the form of authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 2, 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; and
- (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 3, 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 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 sought to the request:

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

6. The competent authority of the Requested Party shall forward the information requested 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 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 ninety days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, 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. 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 be present at the appropriate part of a tax examination in the Requested Party.
2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Applicant 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 Party for the conduct of the examination. All decisions with respect to the conduct of the examination shall be made by the Requested 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 the laws or in the normal course of administrative practices of the Applicant Party in similar circumstances. The competent authority of the Requested Party may decline to assist where the request of the Applicant Party is not made in conformity with this Agreement.
2. 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. Such information includes information relating to communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the laws of each Contracting Party. Notwithstanding the foregoing sentences, 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 Requested Party may decline a request for information if the disclosure of the information requested would be contrary to public policy (ordre public) of the Requested 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 any provision of the tax laws 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 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 the 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 authority, including those in non-Contracting Parties, without the express written consent of the Requested Party.

Article 9

COSTS

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

Chapter 3

ALLOCATION OF RIGHTS OF TAXATION

Article 10

PERSONS COVERED

This Chapter shall apply to individuals who are residents of one or both of the Contracting Parties.

Article 11

TAXES COVERED

1. This Chapter shall apply to taxes on income of individuals imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.
2. In the case of Japan, the existing tax to which this Chapter shall apply is the income tax.
3. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing tax referred to in paragraph 2.
4. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws.

Article 12

RESIDENT

1. For the purposes of this Chapter, the term “resident of a Contracting Party” means:
 - (a) in the case of Japan, any individual who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature except any individual who is liable to tax in Japan in respect only of income from sources in Japan; and
 - (b) in the case of the Cayman Islands, any individual who, under the laws of the Cayman Islands, has a legal and ordinary residence in the Cayman Islands.
2. Where by reason of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:
 - (a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed

- to be a resident only of the Contracting Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

Article 13

PENSIONS

Subject to paragraph 2 of Article 14, pensions and other similar remuneration beneficially owned by a resident of a Contracting Party shall be taxable only in that Contracting Party.

Article 14

GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting Party. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other Contracting Party and the individual is a resident of that other Contracting Party who did not become a resident of that other Contracting Party solely for the purpose of rendering the services.

2. Notwithstanding paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority shall be taxable only in that Contracting Party.

3. Paragraphs 1 and 2 shall not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or local authority thereof.

Article 15

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned Contracting Party, provided that such payments arise from sources outside the first-mentioned Contracting Party. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date on which he first begins his training in the first-mentioned Contracting Party.

Chapter 4

SPECIAL PROVISIONS

Article 16

MUTUAL AGREEMENT PROCEDURES

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with Chapter 3, he may, irrespective of the remedies provided by the laws of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with that Chapter.
2. The competent authority of a Contracting Party shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with Chapter 3. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.
3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

Chapter 5

FINAL PROVISIONS

Article 17

HEADINGS

The headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

Article 18

ENTRY INTO FORCE

1. The Governments of the Contracting Parties shall notify each other, in writing, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications.

2. This Agreement shall be applicable for taxes levied on or after the date on which the Agreement enters into force.

3. Notwithstanding paragraph 2, Chapter 3 shall be applicable:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which this Agreement enters into force; and
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

Article 19

TERMINATION

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving written notice of

termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (c) with respect to other taxes, as regards taxes levied on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at London this seventh day of February, 2011, in the English and Japanese languages, each text being equally authentic.

For the Government of the Cayman
Islands:

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

For the Government of Japan:

MR. HITOSHI NODA

TWENTY-THIRD SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of the Cayman Islands and the Government of the Republic of India, desiring to facilitate the exchange of information with respect to taxes 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

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Party. However, a Requested Party is not obliged to provide information which is neither held by its authorities nor is 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 imposed on behalf of a Contracting Party.
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. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) 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 may be exercised in accordance with international law including the UN Convention on the Law of the Sea;
 - (b) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the UN Convention on the Law of the Sea;
 - (c) the term "Contracting Party" means the Cayman Islands or India as the context requires;
 - (d) the term "competent authority" means:
 - i) in the case of the Cayman Islands, the Tax Information Authority or its authorised representative;
 - ii) in the case of India, the Finance Minister, Government of India, or its authorised representative;
 - (e) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;
 - (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:
 - i) in the Cayman Islands, the Cayman Islands Stock Exchange;
 - ii) in India, the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognised by the Securities and Exchange Board of India; and

- iii) any other stock exchange which the competent authorities agree to recognise for the purposes of this Agreement.
- (j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form;
- (k) 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;
- (l) the term "tax" means any tax to which this Agreement applies;
- (m) the term "Requesting Party" means the Contracting Party submitting a request for information to, or having received information from, the Requested Party.
- (n) the term "Requested Party" means the Contracting Party which is requested to provide information, or which has provided information;
- (o) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (p) the term "information" means any fact, statement, document or record in whatever form.

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 or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, 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 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 Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, 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 collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations.
5. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) the period for which 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) grounds for believing that the information requested is present 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 or control of the requested information;
- (g) 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;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the 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; 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 Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

1. At the request of the competent authority of the Requesting Party, the Requested Party may 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 Requested Party may allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the Requested Party, in which case the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting 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 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 for Information

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 disclosure of the information would be contrary to public policy (*ordre public*) of the Requested Party.
2. This Agreement shall not impose on a Contracting Party the obligation:
 - (a) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described 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;
 - (b) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - i) produced for the purposes of seeking or providing legal advice; or
 - ii) produced for the purposes of use in existing or contemplated legal proceedings.
 - (c) to carry out administrative measures at variance with its laws and administrative practices, provided 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 Party shall not be required to obtain and provide information which the Requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the Requested Party under this Agreement.

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 of the Requested Party as compared with a national of the Requesting 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 (including foreign governments) without the express written consent of the competent authority of the Requested Party.

Article 9

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement. Such legislation shall be enacted within six months of entry into force of this Agreement.

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. In addition, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6 and 11 of this Agreement.
2. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 11

Costs

1. Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance shall, if they exceed 500 British Pounds, be borne by the Requesting Party.
2. The competent authorities will consult each other, in advance, in any particular case where extraordinary costs are likely to exceed 500 British Pounds to determine whether the Requesting Party will continue to pursue the request and bear the cost.
3. The competent authorities shall consult from time to time with regard to this Article.
4. Ordinary costs include internal administration costs, any minor external costs and overhead expenses incurred by the Requested Party in reviewing and responding to information requests submitted by the Requested Party. Examples of extraordinary costs incurred in providing assistance include, but are not limited to the following:
 - (a) reasonable fees charged by third parties for copying documents on behalf of the Requested Party;
 - (b) reasonable costs of engaging interpreters, translators or other agreed experts;
 - (c) reasonable costs of conveying documents to the Requesting Party;
 - (d) reasonable litigation costs of the Requested Party in relation to a specific request for information; and

- (e) reasonable costs for obtaining depositions or testimony.

Article 12

Entry into Force

1. The Contracting Parties shall notify each other in writing of the completion of the 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 shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may, after the expiry of five years from the date of its entry into force, terminate the Agreement by serving a written notice of termination to the other Contracting Party through appropriate channel.
3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement.

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

DONE in duplicate at Grand Cayman this 21st day of March 2011, each in the English and Hindi languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Cayman Islands:

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

For the Government of the Republic of India:

**HIS EXCELLENCY
MOHINDER S. GROVER**

TWENTY-FOURTH SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE CAYMAN ISLANDS AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

PREAMBLE

WHEREAS the Government of the Republic of South Africa and the Government of the Cayman Islands (“the Parties”) have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

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

DESIRING THEREFORE the Parties in concluding the following Agreement which contains obligations on the part of the Parties only:

HAVE AGREED AS FOLLOWS:

ARTICLE 1

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 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 to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. 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. 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

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by the Parties:
 - (a) in the Cayman Islands, any tax imposed by the Cayman Islands which is substantially similar to the existing taxes of South Africa to which this Agreement applies; and
 - (b) in South Africa:
 - (i) the normal tax;
 - (ii) the secondary tax on companies;
 - (iii) the withholding tax on royalties;
 - (iv) the tax on foreign entertainers and sportspersons;
 - (v) the value added tax.
2. This Agreement shall apply also 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 substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement:
 - (a) the term "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; and

- (b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;
- (c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) the term "competent authority" means:
 - (i) in the case of the Cayman Islands, the Tax Information Authority or its authorised representative; and
 - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
- (e) 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;
- (f) the term "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;
- (g) the term "information" means any fact, statement, document or record in whatever form;
- (h) the term "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (i) the term "person" means a natural person, a company or any other body or group of persons;
- (j) 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;
- (k) 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;
- (l) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- (m) the term “public collective investment scheme” means any scheme or fund, in which the purchase, sale or redemption of

shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

- (n) the term "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) the term "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (p) the term "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 4

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 the information gathering measures it considers relevant to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

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

4. Each Party shall ensure that it has the authority, subject to the terms of Article 1, 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) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;
- (c) in the case of trusts, information on settlors, trustees and beneficiaries.

5. 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 schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. Any request for information shall be formulated with the greatest detail possible in specifying 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) 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 or able to obtain the information requested;
- (h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

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

7. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 5

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 permit 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 regarding the conduct of the examination shall be made by the requested Party conducting the examination.

ARTICLE 6

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 of the requested Party.
- 2. This Agreement shall not impose upon 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 4, 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 7

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:
 - (a) 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.
 - (b) Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 8

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 9

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 4, 5 and 8.
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 10

ENTRY INTO FORCE

This Agreement shall enter into force 30 days after receipt of written notification by the latter Party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it 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 11
TERMINATION**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of 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 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at Grand Cayman on 10th day of May in the year 2011.

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

**FOR THE GOVERNMENT OF
THE CAYMAN ISLANDS**

MR. PRAVIN GORDHAN

**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA”.**

Made in Cabinet the 30th day of August, 2011.

Kim Bullings

Clerk of the Cabinet.

This order was affirmed by the Legislative Assembly on the 14th day of September, 2011 by Government Motion No. 2/11-12 in compliance with section 3(5) of the Tax Information Authority Law (2009 Revision).

Zena Merren-Chin

Clerk of the Legislative Assembly.