

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF GUERNSEY
FOR
THE EXCHANGE OF INFORMATION RELATING TO TAXES**

WHEREAS the Government of the People's Republic of China and the Government of Guernsey (hereinafter referred to as "the Parties") wish to facilitate the exchange of information relating to taxes;

WHEREAS it is acknowledged that the Government 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 terminate a tax information exchange agreement with the Government of the People's Republic of China;

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

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

**ARTICLE 1
SCOPE OF AGREEMENT**

1. The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, and the investigation or prosecution of tax matters.

2. 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.

**ARTICLE 2
JURISDICTION**

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

2. To enable this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the requested Party:

- (a) without regard to whether the person to whom the information relates is a resident, national or citizen of a Party, or whether the person by whom the information is held is a resident, national or citizen of a Party; and
- (b) provided that the information is present within the territory of the requested Party, or in the possession of or obtainable by persons who are within its territorial jurisdiction.

ARTICLE 3 TAXES COVERED

1. The taxes covered by this Agreement are all taxes imposed by either Party as of the date of entry into force of this Agreement except customs duties or tariffs.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Party after the date of entry into force of this Agreement in addition to, or in place of, any of the taxes referred to in paragraph 1.
3. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures which may affect the obligations of the Parties pursuant to this Agreement.
4. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Parties.

ARTICLE 4 DEFINITIONS

1. In this Agreement:
 - (a) “the People’s Republic of China”, when used in a geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights and jurisdiction of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with international law and its domestic law;
 - (b) “Guernsey”, when used in a geographical sense, 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;
 - (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 the People’s Republic of China, the State Administration of Taxation or its authorized representative; and
- (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
- (f) “information” means any fact, statement, document or record in whatever form;
- (g) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Party to obtain and provide the information requested;
- (h) “person” means a natural person, a company or any other body or group of persons;
- (i) “public collective investment fund or scheme” means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (j) “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; and for this purpose, 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. For the purposes of this sub-paragraph the term “recognised stock exchange” means:
 - (i) in the People’s Republic of China:
the Shanghai Stock Exchange or the Shenzhen Stock Exchange;
 - (ii) in Guernsey:
the Channel Islands Stock Exchange;
 - (iii) any other stock exchange which the competent authorities agree to recognize for the purposes of this sub-paragraph;
- (k) “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- (l) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;
- (m) “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 in writing 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 tax offence under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to

enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

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

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

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

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

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

6. 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 purposes 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 sub-paragraph (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 information requested;
- (h) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and 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;
- (i) 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.

ARTICLE 6
TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. With reasonable notice, a Party may allow representatives of the competent authority of the other Party to enter the territory of the first-mentioned Party, in accordance with its domestic laws, to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

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

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

4. For the purposes of this Article, the term “domestic laws” refers to laws or instruments governing entry into, or exit from, the territories of the Parties.

ARTICLE 7
POSSIBILITY OF DECLINING A REQUEST

- 1. The competent authority of the requested Party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;

- (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulties; or
- (c) where the disclosure of the information requested would be contrary to public policy (“ordre public”) 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. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone be treated as such a secret or trade process.

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

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, citizen or resident of the requested Party as compared with a national, citizen or resident 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) in the jurisdiction of the Parties officially 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
SAFEGUARDS**

The 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 10
ADMINISTRATIVE COSTS**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs 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 11
LANGUAGE**

Requests for assistance and responses thereto shall be 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 endeavours 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 10.
3. The competent authorities of the Parties may communicate with each other directly for the purposes of this Agreement.
4. The Parties may also agree in writing 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 that they have completed their internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force 30 days after the date of receipt of the latter notification, and shall have effect in respect of all charges to tax arising on or after January 1st of the year following that in which this Agreement enters into force.

**ARTICLE 15
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 six months after the date of receipt of notice of termination by the other Party.
3. If this Agreement is terminated, the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

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

DONE at _____ in duplicate this _____ day of 2010, in the Chinese and English languages, both texts being equally authentic.

For the Government of the

For the Government of

People's Republic of China

Guernsey