

**AGREEMENT
BETWEEN
THE GOVERNMENT OF GUERNSEY
AND
THE GOVERNMENT OF ROMANIA
FOR THE EXCHANGE OF INFORMATION RELATING TO
TAX MATTERS**

The Government of Guernsey and the Government of Romania (hereinafter referred to as “the Parties”),

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 subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of Romania,

WHEREAS the Parties are active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing,

WHEREAS the Parties wish to establish a bilateral framework governing the exchange of information relating to taxes,

DESIRING to facilitate the exchange of information with respect to taxes,

HAVE AGREED as follows:

**Article 1
Definitions**

1. In this Agreement:
 - a) “Romania” means the state territory of Romania, including its territorial sea and air space above them, over which Romania exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which Romania exercises sovereign rights and jurisdiction, in accordance with its legislation and with the rules and principles of international law;
 - a) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;

- b) “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;
- c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) “competent authority” means:
 - i) in the case of Romania, the Ministry of Public Finance;
 - ii) in the case of Guernsey, the Director of Income Tax, or his delegate;
- e) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether they are contained in the tax laws, the criminal code or other statutes;
- f) “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) “information” means any fact, statement, document or record in any form whatever;
- h) “information gathering measures” means laws and administrative or judicial procedures that enable a requested Party to obtain and provide the requested information;
- i) “national” means:
 - i) in the case of Romania, any individual possessing the citizenship of Romania and any legal person, body of persons and any other entity set up and deriving its status as such from the laws in force in Romania;
 - ii) in the case of Guernsey, any individual possessing British Citizenship under the British Nationality Act 1981, any legal person created or organised under the laws of Guernsey and any organisation without legal personality treated for the purposes of

Guernsey tax as a legal person created or organised under the laws of Guernsey;

- j) “person” includes an individual, a company and any other body of persons;
- k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- l) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- m) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- n) “requested Party” means the Party which is requested to provide or has provided information in response to a request;
- o) “requesting Party” means the Party submitting a request for or having received information from the requested Party;
- p) “tax” means any tax to which the Agreement applies.

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

Article 2

Object and Scope of the Agreement

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement including information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation of tax matters or the prosecution of criminal tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7.

Article 3 Jurisdiction

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

Article 4 Taxes Covered

1. The taxes which are the subject of this Agreement are:
 - a) in Romania:
 - i) the tax on income;
 - ii) the tax on profit.
 - b) in Guernsey:
 - i) the income tax;
 - ii) the dwellings profits tax.
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of each Party shall notify the other of any substantial changes to laws and taxation and related information gathering measures which may affect the obligations of that Party pursuant to this Agreement.

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 exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct had occurred in the 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 in its own territory, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures necessary to

provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

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

4. Each Party shall ensure that it has the authority, subject to the terms of Article 2 and within the constraints of Article 3, to obtain and provide through its competent authority upon request:

- a) information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b)
 - i) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain;
 - ii) in the case of collective investment funds or schemes, information on shares, units and other interests;
 - iii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
 - iv) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Notwithstanding the provisions of subparagraph b) of this paragraph, this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with as much detail as is available and shall specify:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is sought;
- c) the nature of the information 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 is obtainable by a person within the jurisdiction of the requested Party;
 - g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
 - h) a statement that the request is in conformity with the laws and administrative practice of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall acknowledge the receipt of the request to the competent authority of the requesting Party and shall forward the requested information to the requesting Party as soon as possible.

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.
2. The requested Party shall not be required to obtain or provide information which, if the requested information was within the jurisdiction of the requesting Party, the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws, or in the normal course of administrative practice.

3. This Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. However, information of the type described in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

4. The provisions of this Agreement shall not impose on a requested Party the obligation to obtain or provide information relating to communications between attorneys, advocates, solicitors or other admitted legal representatives in their role as such and their clients, to the extent that the communications are deemed as confidential and protected from disclosure under the law of the requested Party.

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

6. 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 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 2, 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 2 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 8 Costs

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

Article 9
Implementation Legislation

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

Article 10
Language

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

Article 11
Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. The competent authorities of the Parties may communicate with each other directly for the purposes of implementing this Agreement, as well as for resolving the matters referred to in paragraph 1 of this Article.
3. The Parties shall also agree on other forms of dispute resolution should this become necessary.

Article 12
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 13
Entry into Force

1. The Parties shall notify each other, in writing, of the completion of the internal legal procedures required for the entry into force of this Agreement.
2. This Agreement shall enter into force 30 days after receipt of the latter notification and shall have effect:
 - a) with respect to criminal tax matters, from the date of the entry into force; and
 - b) with respect to all other matters described in Article 2, from the date of the entry into force, but only in respect of taxable periods beginning on or

after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

Article 14
Termination

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may terminate the Agreement by serving a notice of termination, in writing, through appropriate channels.
3. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of the receipt of the notice of termination by the other Party. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of this Agreement.
4. If this 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, duly authorized thereto, have signed this Agreement.

DONE in duplicate at London, on the 12th January 2011 and in Guernsey on 17th January 2011, in the English and Romanian languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR
THE GOVERNMENT OF GUERNSEY

FOR
THE GOVERNMENT OF ROMANIA