

**AGREEMENT BETWEEN THE GOVERNMENT OF BERMUDA AND THE  
GOVERNMENT OF THE UNITED MEXICAN STATES ON THE  
EXCHANGE OF TAX INFORMATION**

The Government of Bermuda and the Government of the United Mexican  
States

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

Have agreed as follows:

**ARTICLE 1  
Object and Scope of the Agreement**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is relevant to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.

2. Such information shall include information that is 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.

3. 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**

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

## **ARTICLE 3 Interpretation**

The competent authorities may take into consideration the commentaries pertaining to the 2002 Agreement on Exchange of Information on Tax Matters of the Organization for Economic Cooperation and Development (OECD Model Agreement) when interpreting provisions of this Agreement that are identical to the provisions in that OECD Model Agreement.

## **ARTICLE 4 Taxes Covered**

1. The existing taxes which are the subject of this Agreement are taxes of every kind and description in both Contracting Parties.

2. This Agreement shall also apply to 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 covered by this Agreement within a reasonable time.

3. The Agreement shall not apply to taxes imposed by any states, municipalities, or other political sub-divisions of a Contracting Party.

## **ARTICLE 5**

### **Definitions**

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) "Mexico" means the United Mexican States, used in a geographical sense includes the territory of the United Mexican States, as well as the integrated parts of the Federation, the islands, including the reefs and Cays in the adjacent waters, the islands of Guadalupe and Revillagigedo, the continental shelf and the seabed and sub-soil of the islands, cays and reefs, the waters of the territorial seas and the inland waters and beyond them the areas over which, in accordance with the international law, Mexico may exercise its sovereign rights of exploration and exploitation of the natural resources of the seabed, sub-soil and the supra-jacent waters and the air space of the national territory to the extent and under conditions established by international law;
  - (b) "Bermuda" means the Islands of Bermuda;

- (c) “Applicant Party” means the Contracting Party requesting information;
- (d) “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;
- (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) “competent authority” means, in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister and, in the case of Mexico, the Ministry of Finance and Public Credit ;
- (g) “Contracting Party” means Bermuda or Mexico as the context requires;
- (h) “information” means any fact, statement or record in any form whatever;
- (i) “information-gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (j) “national” means:

- (i) in the case of Mexico, any individual possessing the Mexican nationality, and any legal person, association, or any other entity deriving its status as such from the laws in force in Mexico; and
  - (ii) in the case of Bermuda, any legal person, partnership, company, trust, state, association or other entity deriving its status as such from the laws in force in Bermuda;
- (k) “person” includes an individual, a company and any other body of persons;
- (l) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (m) “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;
- (n) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (o) “Requested Party” means the Contracting Party requested to provide information;
- (p) “resident” means:

- (i) in the case of the Mexico, the term a “resident” shall have the meaning provided for in its domestic tax law; and
- (ii) in the case of Bermuda, an individual who has the status of a legal resident of Bermuda; and a company, partnership, trust or association created under the laws of Bermuda;
- (q) “tax” means in the case of Bermuda taxes of every kind and description and in the case of Mexico any federal tax.

2. The term “relevant” wherever used in the Agreement with respect to information, shall be interpreted in a manner that ensures that:

- (a) competent authorities are not at liberty to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer; and
- (b) in the case of a resident or a national, information will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein shall, unless the context otherwise requires, have the meaning that it has at the time under the law 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.

## **ARTICLE 6**

### **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 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, 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 domestic laws, 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 ownership of companies, partnerships and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and the position in an ownership chain.

5. This Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- (i) 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;
- (ii) information relating to a period more than six (6) years prior to the tax period under consideration;
- (iii) information unless the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. If information is requested relating to a person that is not a resident or national in one or other of the Contracting Parties, it also shall be established to the satisfaction of the competent authority of the Requested Party that such information is

necessary for the proper administration and enforcement of the fiscal laws of the Applicant Party.

7. Where the Applicant Party requests information a senior official of its competent authority shall certify that the request is relevant to, and necessary for, the determination of the tax liability of the taxpayer under the laws of the Applicant Party.

8. 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 relevance of the information sought to the request:

- (a) the identity of the taxpayer under examination or investigation;
- (b) the nature and type of the information requested, including a description of the specific evidence, information or other assistance sought and the form, if practicable, in which the Applicant Party prefers to receive the information;
- (c) the tax purposes for which the information is sought and why it is relevant to the determination of the tax liability of a taxpayer under the laws of the Applicant Party;
- (d) evidence that such taxpayer is a resident in, or national of, or carrying on business in, one of the Contracting Parties, or that it is necessary for the determination of the tax liability of a taxpayer under the laws of the Applicant Party;

- (e) the period of time with respect to which the information is required for the tax purposes;
- (f) grounds for believing that the information requested is present in the jurisdiction of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested Party;
- (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (h) a statement that the request conforms to the law and administrative practice of the Applicant Party and would be obtainable by the Applicant Party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the Requested Party under this Agreement;
- (i) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties;
- (j) where the request is directed at a person, other than the taxpayer, confirmation that only information in such person's possession or control that directly relates to the taxpayer need be provided.

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

- (a) confirm receipt of 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 (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 ninety days (90) days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

#### **ARTICLE 7**

#### **Possibility of Declining a Request**

1. The competent authority of the Requested Party may decline to assist where:
  - (a) the request is not made in conformity with this Agreement;
  - (b) the disclosure of the information requested would be contrary to the public policy of the Requested Party;
  - (c) the Applicant Party would not be able to obtain the information:
    - (i) under its own laws for purposes of administration or enforcement of its own tax laws or
    - (ii) in response to a valid request from the Requested Party under this Agreement. The request may be declined if the Applicant Party would not have been able to provide

the same information to the Requested Party if the Requested Party had made a similar Request under the Agreement.

2. The provisions of 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. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 6 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. In conformity with the law pertaining to legal professional privilege of each Contracting Party the provisions of this Agreement shall not impose on a Contracting Party the obligation 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:

- (a) communications for the purposes of seeking or providing legal advice;
- (b) communications for the purposes of use in existing or contemplated legal proceedings.

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

5. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national 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 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 covered by this 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 entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

#### **ARTICLE 9**

## **Safeguards**

The rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

### **ARTICLE 10 Costs**

Incidents of costs incurred in providing assistance (including costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

### **ARTICLE 11 Mutual Agreement Procedure**

1. The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.

2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Article 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

## **ARTICLE 12**

### **Entry into Force**

The Contracting Parties shall each notify each Other in writing, through the diplomatic channels, of the completion of their constitutional and legal procedures that are necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth (30) day after the date of the last notification, and shall thereupon have effect in relation to all matters covered by Article 1 for taxable periods beginning after the date of entry into force or where there is no taxable period, for all charges to tax arising on or after the date of entry into force.

## **ARTICLE 13**

### **Termination**

1. Either Contracting Party may terminate the Agreement by serving a notice of termination through diplomatic channels to the competent authority of the other Contracting Party.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six (6) months after the date of receipt of notice of termination by the other Contracting Party.

3. In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

Done in Mexico City, on this fifteenth day of October of two thousand and nine, in duplicate, in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT  
OF BERMUDA**

**FOR THE GOVERNMENT OF THE  
UNITED MEXICAN STATES**

**Paula A. Cox, J.P.,  
M.P., Minister of Finance**

**Agustín Guillermo Carstens Carstens  
Minister of Finance and Public Credit**