

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

The Government of the People’s Republic of China and the Government of Bermuda (“the Contracting Parties”):

Acknowledging that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Desiring to provide a framework for cooperation and exchange of information in tax matters;

Agree to conclude the Agreement as follows:

**ARTICLE 1
SCOPE OF AGREEMENT**

1. 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, verification 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 or control of persons who are within its territorial jurisdiction.

2. To enable the appropriate implementation of this Agreement, 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, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

**ARTICLE 3
TAXES COVERED**

1. The taxes covered by this Agreement are:
 - (a) in the case of the People's Republic of China:
 - (i) the individual income tax; and
 - (ii) the enterprise income tax;
 - (b) in the case of Bermuda, taxes of every kind and description.
2. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.
3. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Contracting Parties in the form agreed upon by both Contracting 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 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 laws;
 - (b) “Bermuda”, when used in a geographical sense, means the Islands of Bermuda, including its territorial sea;
 - (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 Bermuda, the Minister of Finance or an authorised representative of the Minister;

- (f) “information” means any fact, statement, document or record in whatever form;
- (g) “information gathering measures” means judicial, regulatory or administrative laws and procedures that enable a Contracting Party to obtain and provide the information requested;
- (h) “national” means:
 - (i) in relation to Bermuda, a legal person who is a Bermudian deriving their status as such from the laws in force in Bermuda;
 - (ii) in relation to the People’s Republic of China, any individual possessing the nationality of the People’s Republic of China;
 - (iii) any legal person, partnership, company, trust, estate, association or any other entity, deriving its status as such from the laws in force in a Contracting Party;
- (i) “person” means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (j) “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;
- (k) “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 and the term “recognised stock exchange” shall bear the meaning agreed upon by the competent authorities of the Contracting Parties;
- (l) “Requested Party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) “Requesting Party” means the party to this Agreement submitting a request for or having received information from the Requested Party;
- (n) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that 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 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a 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 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 the information, the Requested 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, trusts, foundations 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, and beneficiaries; and in the case of foundations, information on founders, members, beneficiaries and directors or other senior officers of the foundation.

5. Notwithstanding the preceding paragraphs, 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 this Agreement in order 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 the information is requested;
- (c) the nature and type of the information requested, including a description of the information and/or specific evidence sought, and the form in which the Requesting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought;

- (e) grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to 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 information requested;
- (g) 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 were 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;
- (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 competent authority of 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 any deficiencies in the request within 60 days of receipt of the request; and
- (b) immediately inform the competent authority of the Requesting Party to explain the reasons for its inability or the obstacles or its refusal, if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information.

ARTICLE 6

TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. The Requested Party may, in accordance with its domestic laws, following receipt of notice of a reasonable time from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authorities of the Contracting Parties shall agree on the time and place of the intended meeting with the persons concerned.

2. At the request of the competent authority of the Requesting Party, and in accordance with its domestic laws, the competent authority of the Requested Party may permit representatives of the competent authority of the Requesting Party to be present at the 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 in accordance with its domestic laws.

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 difficulty; or
 - (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the Requested Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose 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 constitute such a secret or process.

3.
 - (a) 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
 - (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;
 - (b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent a professional legal advisor from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

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

5. 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.

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 8 CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 and may not be disclosed to any other person or entity or authority 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 shall not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

ARTICLE 10 ADMINISTRATIVE COSTS

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

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 Contracting 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 Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.

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

4. The Contracting Parties may also agree in writing on other forms of dispute resolution.

ARTICLE 13 ENTRY INTO FORCE

This Agreement shall enter into force when each Contracting Party has notified in writing the other of the completion of its necessary internal procedures for entry into force. The Agreement shall have effect in respect of taxable years beginning on or after the date of entry into force.

ARTICLE 14 TERMINATION

1. This Agreement shall remain in force until terminated by either Contracting Party.

2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing through diplomatic channels. 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.

3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under 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 Contracting Parties, have signed this Agreement.

DONE at Hamilton in duplicate this 2nd day of December 2010, in the Chinese and English languages, both texts being equally authentic.

**For the Government of the
People's Republic of China**

WANG Li

**For the Government of
Bermuda**

Paula Cox
