

STATES OF JERSEY



RATIFICATION OF THE AGREEMENT FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES BETWEEN THE STATES OF JERSEY AND THE GOVERNMENT OF AUSTRALIA

**Lodged au Greffe on 1st October 2009
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to ratify the agreement for the exchange of information with respect to taxes between the States of Jersey and Australia as set out in the Appendix to the report of the Chief Minister dated 5th August 2009.

CHIEF MINISTER

REPORT

Agreement to be entered into with Australia for the exchange of information with respect to taxes

1. The States are asked to ratify the signed agreement to be entered into with Australia for the exchange of information with respect to taxes attached as an appendix to this report.

Background

2. In February 2002 Jersey entered into a political commitment to support the OECD's tax initiative on transparency and information exchange through the negotiation of tax information exchange agreements with each of the OECD Member States.
3. The Council of Ministers current negotiating strategy in respect of tax information exchange agreements is –
 - to build up good political and economic relationships with individual countries, particularly those in the European Union;
 - to obtain general support for the Island where matters affecting the Island are being considered within international fora;
 - to obtain the removal of key barriers to market access, such as black lists;
 - to recognise that all the Island's wishes may not be achieved at the outset, and establish a platform from which to build in securing further benefits in the future;
 - to press for action to be taken by the OECD Member States against the non-committed/non-cooperative jurisdictions who may otherwise be gaining advantage from that position.
4. The Council of Ministers have also seen the negotiation of tax information exchange agreements as one of balance between –
 - the impact on business arising from the perception that Jersey is ahead of its competitors on transparency;
 - the impact on business of negative action taken by OECD/EU Member States against non-cooperative jurisdictions, if they should decide that Jersey is in that category;
 - the impact on business of the positive action taken by OECD/EU Member States when they recognise Jersey as a cooperative jurisdiction.
5. The action the Island has taken in signing tax information exchange agreements has been recognised by the international community. On October 21st 2008 at a Conference on the Fight against International Tax Evasion and Avoidance: Improving Transparency and Stepping Up the Exchange of Information on Tax Matters, held in Paris, the Secretary General of the OECD, commented favourably on the action taken by Jersey in negotiating tax information exchange agreements and stated that what is now required is "a clear political recognition being given to those offshore financial centres

that have made progress”. In the Summary of Conclusions of the Paris Conference it is stated that the participating countries “recognise the efforts made by certain jurisdictions [such as Jersey] that have set out a new direction for their financial centres and have signed tax information exchange agreements, which constitute effective instruments of fighting international tax fraud and evasion.

6. Jeffrey Owens, the Head of the OECD Centre for Tax Policy and Administration, said at the signing of the tax information exchange agreements with the Nordic countries in Helsinki on 28th October that “we at the OECD recognise the importance of the progress Jersey has made in signing TIEAs, and in receiving clear political endorsement from OECD member countries. To show that the choice Jersey has made is the right one we recognise the need for firm action to be taken with regard to those jurisdictions that are not showing the same commitment to tax information exchange”. The G20 Summit in Washington held on 15th November 2008 also issued a declaration which called upon national and regional authorities to implement national and international measures and protect the global financial system from uncooperative and non-transparent jurisdictions that pose risks of illicit financial activity.
7. These sentiments were then clearly reflected in the outcome of the G20 Summit held in London on 2nd April 2009. In particular the list of countries published by the OECD in the form of a progress report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed tax standards. Jersey was included in the list of jurisdictions that have substantially implemented the internationally agreed tax standard – what has become known as the “white list” – in which Jersey sits alongside the United Kingdom, the United States, Germany, France, Japan etc.
8. The importance of achieving this result is evident from the G20 Summit declaration on strengthening the financial system issued on 2nd April 2009 which states “we stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency. To this end we have agreed to develop a tool box of effective counter measures for countries to consider.”
9. The G20 Summit welcomed the new commitments made by a number of jurisdictions such as Switzerland and encouraged them to proceed swiftly with implementation. The view was also held that if there is not genuine progress in agreeing, implementing and abiding by the necessary international agreements, particularly among those jurisdictions that have only just declared their commitment to international standards, the G20 should be encouraged to take the necessary action to ensure that all abide by the high standards and the level playing field that Jersey has long pressed for is achieved. This view is fully supported by the Council of Ministers.

Procedure for Signing and Ratifying the TIEAs

10. The procedure adopted in respect of individual agreements is for industry to be consulted and for the views of industry to be taken into account by the Council of Ministers in deciding whether to support the signing of a tax

information exchange agreement. If the Council of Ministers decide that it would be in the Island's best interests for an agreement to be signed, both parties to the agreement then exchange signed agreements which allows both to start their ratification procedures contemporaneously. Agreements are signed by the Chief Minister in accordance with the provisions of Article 18(2) of the States of Jersey Law 2005 and paragraph 1.8.5 of the Strategic Plan 2006–2011 adopted by the States on 28th June 2006. Subsequent to the signing by the Chief Minister, agreements are presented to the States for ratification, are published, entered into the official record and regulations are made for the agreements to enter into force when the domestic procedures of the other party also have been completed.

11. The States on 29th January 2008 adopted the Taxation (Exchange of Information with Third Countries) (Jersey) (Regulations) 2008. The Schedule to these Regulations lists the Third Countries, and includes the taxes covered by the Agreements being entered into. As further agreements are entered into, the Regulations need to be amended to include in the Schedule the jurisdiction and taxes concerned. The necessary Regulations to provide for the inclusion in the Schedule of Australia and the relevant taxes are being presented to the States for adoption subsequent to the ratification of the Agreement for the exchange of information relating to tax matters being entered into with Australia (*see* P.162/2009).
12. An Agreement does not come into force until both of the parties concerned have completed their own domestic procedures. The date when an agreement is to come into force is then included in the Schedule attached to the Regulations.

Agreement with Australia

13. The negotiations with Australia produced agreement on the following, attached as an Appendix to this report –
 - (a) A tax information exchange agreement which is consistent with the agreements signed previously with other countries.

The Agreement provides for the exchange of information on tax matters on request. However that request has to be formulated in writing in the greatest detail possible. There can be no “fishing expeditions”. The agreement only comes into force once the States have ratified it and have approved the necessary regulations, and Australia has completed its own domestic procedures;
 - (b) An agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect to transfer pricing adjustments.
 - (c) A joint declaration which among other things –
 - recognises each country's commitment to operate financial regulatory systems that meet the highest international

standards in order to combat money laundering, terrorist financing and other financial and fiscal crimes;

- welcomes Jersey as a member of the community of nations committed to international cooperation and information exchange on tax matters, and affirms that Jersey will be treated accordingly by the Australian authorities;
- provides that following the entry into force of the agreements, Australia and Jersey will continue to examine what measures could be adopted to further enhance their political and economic relationship, including the further clarification of elements of double taxation, discrimination and other undesired tax barriers.

- (d) In addition to the foregoing, Australia will remove any governmental references to Jersey as a tax haven and, following entry into force of the TIEA, will move to list Jersey as an information exchange country in the Taxation Administration Regulations. This will provide Jersey residents with access to reduced withholding tax rates on distributions of certain income they may receive from Australian managed investment trusts.

14. The negotiation of the agreements has helped to establish a good relationship with Australia and has helped their understanding of and has influenced favourably their attitude towards the Island. The agreement is considered to enhance the Island's international personality and generally to lead to a more favourable response to the Island on a wide range of market access and other economic/political issues. There are no implications for the financial or manpower resources of the States arising from the ratification and implementation of the agreements with Australia.

5th August 2009

AGREEMENT BETWEEN
THE GOVERNMENT OF JERSEY
AND
THE GOVERNMENT OF AUSTRALIA
FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE
GOVERNMENT OF AUSTRALIA FOR THE EXCHANGE OF INFORMATION
WITH RESPECT TO TAXES

Whereas the Government of Jersey and the Government of Australia ("the Parties") recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that Jersey has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Government of Australia;

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

Now, therefore, the Parties have agreed to conclude the following agreement which contains obligations on the part of the Parties only:

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 such taxes, with respect to persons liable to such taxes, or to the investigation or the prosecution of civil or 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 to the extent that they do not unduly prevent or delay the effective exchange of information.

ARTICLE 2
TAXES COVERED

1 This Agreement shall apply to the following taxes imposed by the Parties:

- (a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and
- (b) in the case of Jersey:
 - (i) the income tax; and
 - (ii) the goods and services tax.

2 This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws or measures which may affect the obligations of that Party pursuant to this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Party.

ARTICLE 3 DEFINITIONS

1 In this Agreement:

- (a) "Australia", when used in a geographical sense, excludes all external territories other than:
 - (i) the Territory of Norfolk Island;
 - (ii) the Territory of Christmas Island;
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands;
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- (b) "Jersey" means the Bailiwick of Jersey, including its territorial sea;
- (c) "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;

- (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister;
- (f) "criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether such laws are contained in the tax laws, the criminal code or other statutes;
- (g) "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 law of the requesting Party;
- (h) "information" means any fact, statement, document or record in whatever form;
- (i) "information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- (j) "person" includes an individual, a company or any other body or group 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 to this Agreement which is requested to provide or has provided information in response to a request;
- (o) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and
- (p) "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 competent authority of 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 measure 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) (i) information regarding the legal and beneficial ownership of companies, partnerships and other persons and, within the constraints of Article 1, any other persons in an ownership chain, 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, protectors and beneficiaries; and
- (iii) in the case of foundations, information on founders, members of the foundation council 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 necessary 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 purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to the 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 of or able to obtain the information requested;
- (h) a statement that the request conforms 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; and
- (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 (ordre public) of the requested Party.

2 This Agreement shall not impose upon a requested Party any obligation to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(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 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 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 Information provided to the competent authority of the requesting Party may not be used for any purpose other than for the purposes stated in Article 1 without the prior written consent of the requested Party.

3 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.

4 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 contracting Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party, and direct costs incurred in providing assistance (including reasonable costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult as necessary 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
NO PREJUDICIAL OR RESTRICTIVE MEASURES

1 Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Party so long as this Agreement is in force and effective.

2 For the purposes of this Article, a "prejudicial or restrictive measure" based on harmful tax practices means a measure applied by one Party to residents or nationals of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3 Without limiting the generality of paragraph 2, the term "prejudicial or restrictive measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

4 A "prejudicial or restrictive measure" does not include generally applicable measures, applied by either Party, such as Controlled Foreign Company rules, Foreign Investment Fund rules, Transferor Trust rules, transfer pricing rules, thin capitalisation rules, the operation of dual exempt and foreign tax credit systems or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

ARTICLE 10
MUTUAL AGREEMENT PROCEDURES

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 this Agreement.

3 The Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

ARTICLE 11
ENTRY INTO FORCE

This Agreement shall enter into force when each Party has notified the other in writing through the appropriate channel of the completion of its necessary internal procedures for entering 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 12
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 through the appropriate channel. 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.
- 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, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at _____, this _____ day of _____, 2009,
in duplicate in the English language.

FOR THE GOVERNMENT OF
JERSEY:

FOR THE GOVERNMENT OF
AUSTRALIA:

.....

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AGREEMENT BETWEEN
THE GOVERNMENT OF JERSEY
AND
THE GOVERNMENT OF AUSTRALIA
FOR THE ALLOCATION OF TAXING RIGHTS WITH RESPECT TO CERTAIN
INCOME OF INDIVIDUALS AND TO ESTABLISH A MUTUAL AGREEMENT
PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

AGREEMENT BETWEEN THE GOVERNMENT OF JERSEY AND THE
GOVERNMENT OF AUSTRALIA FOR THE ALLOCATION OF TAXING
RIGHTS WITH RESPECT TO CERTAIN INCOME OF INDIVIDUALS AND TO
ESTABLISH A MUTUAL AGREEMENT PROCEDURE IN RESPECT OF
TRANSFER PRICING ADJUSTMENTS

The Government of Jersey and the Government of Australia ("the Parties"),

Recognising that the Parties have concluded an Agreement for the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1
PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Parties.

ARTICLE 2
TAXES COVERED

- 1 The existing taxes to which this Agreement shall apply are:
 - (a) in Australia, the income tax imposed under the federal law of Australia; (hereinafter referred to as "Australian tax").
 - (b) in Jersey the income tax; (hereinafter referred to as "Jersey tax").
- 2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.
- 3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

ARTICLE 3
DEFINITIONS

1 For the purposes of this Agreement, unless the context otherwise requires:

(a) "Australia", when used in a geographical sense, excludes all external territories other than:

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory of Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

- (b) "Jersey" means the Bailiwick of Jersey, including its territorial sea;
- (c) "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister;
- (d) "Party" means Australia or Jersey, as the context requires;
- (e) "national", in relation to a Party, means any individual possessing the nationality or citizenship of that Party;
- (f) "person" includes an individual, a company and any other body of persons;
- (g) "tax" means Australian tax or Jersey tax, as the context requires; and
- (h) "transfer pricing adjustment" means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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, for the purposes of the taxes to which this Agreement applies, with 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
RESIDENT

1 For the purposes of this Agreement, the term "resident of a Party" means:

- (a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and
- (b) in the case of Jersey, a person who is a resident of Jersey for the purposes of Jersey tax.

2 A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;
- (c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

4 Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

ARTICLE 5
PENSIONS AND RETIREMENT ANNUITIES

1 Pensions (including government pensions) and retirement annuities paid to an individual who is a resident of a Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Party may be taxed in that Party where such income is not subject to tax in the other Party.

- 2 The term "retirement annuity" means:
- (a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;
 - (b) in the case of Jersey, a retirement annuity contract approved by the Comptroller of Income Tax in accordance with the provisions of the taxation laws of Jersey; and
 - (c) any other similar periodic payment agreed upon by the competent authorities.

ARTICLE 6
GOVERNMENT SERVICE

- 1 (a) Salaries, wages and other similar remuneration, other than a pension or retirement annuity, paid by a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who:
- (i) is a national or citizen of that Party; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party.

ARTICLE 7
STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Party, provided such payments arise from sources outside that Party.

ARTICLE 8
MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING
ADJUSTMENTS

1 Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within 3 years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9
EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement for the Exchange of Information with Respect to Taxes concluded by the Parties. (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 10
ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

- (a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and
- (b) in respect of Jersey tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 11
TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party written notice of termination.

2 Such termination shall become effective:

- (a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- (b) in respect of Jersey tax, in the year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through appropriate channels of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of such notice.

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

DONE at _____, this _____ day of _____, 2009, in duplicate
in the English language.

FOR THE GOVERNMENT OF
JERSEY:

FOR THE GOVERNMENT OF
AUSTRALIA:

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