

MUTUAL LEGAL ASSISTANCE TREATY WITH  
BERMUDA

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA AND THE GOVERNMENT OF BERMUDA RELATING  
TO MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS,  
SIGNED AT HAMILTON ON JANUARY 12, 2009



JUNE 29, 2010.—Treaty was read the first time, and together with the  
accompanying papers, referred to the Committee on Foreign Relations  
and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *June 29, 2010.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the Government of the United States of America and the Government of Bermuda relating to Mutual Legal Assistance in Criminal Matters, signed at Hamilton on January 12, 2009. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States to more effectively counter criminal activities. The Treaty should enhance our ability to investigate and prosecute a wide variety of crimes.

The Treaty provides for a broad range of cooperation in criminal matters. Under the Treaty, the Parties agree to assist each other by, among other things: producing evidence (such as testimony, documents, or items) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to the other country to provide evidence; serving documents; executing searches and seizures; locating and identifying persons or items; and freezing and forfeiting assets or property that may be the proceeds or instrumentalities of crime.

I recommend that the Senate give early and favorable consideration to the Treaty, and give its advice and consent to ratification.

BARACK OBAMA.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, DC, March 1, 2010.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of Bermuda relating to Mutual Legal Assistance in Criminal Matters, signed at Hamilton on January 12, 2009. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, the United States has entered into similar bilateral treaties with a number of countries. This Treaty contains all of the essential provisions of such treaties sought by the United States. It will enhance our ability to investigate and prosecute a wide variety of offenses. The Treaty is self-executing and will not require further implementing legislation.

An overview of the Treaty, including a detailed, article-by-article analysis, is enclosed with this report. The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate at the earliest possible date.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: As stated.

## U.S.-BERMUDA MUTUAL LEGAL ASSISTANCE TREATY

## OVERVIEW

The Treaty between the Government of the United States of America and the Government of Bermuda relating to Mutual Legal Assistance in Criminal Matters creates for the first time a treaty-based relationship of mutual legal assistance between the United States and Bermuda.

Bermuda is an overseas territory of the United Kingdom and prior to signature, the United States obtained from the United Kingdom, under cover of a diplomatic note, a copy of the entrustment letter to Bermuda, through which the United Kingdom granted Bermuda the authority to sign and conclude the Treaty.

The following is an article-by-article description of the provisions of the Treaty.

Article 1 sets out the scope of assistance available under the Treaty. Article 1(1) creates an international obligation on each Party to provide mutual legal assistance to the other Party in connection with the investigation, prosecution, and prevention of criminal offenses for which the maximum penalty is deprivation of liberty for at least one year, and in “proceedings related to criminal matters.” In limiting the applicability of the Treaty to offenses for which the maximum penalty is at least one year imprisonment, this provision makes clear that the Treaty is to be used for requests relating to serious offenses. There is no other limit on the types of offenses for which assistance can be requested. Thus, as with U.S. mutual legal assistance treaties (MLATs) generally, assistance under the Treaty is available for a broad range of criminal matters, from violent crimes to fraud, from tax matters to racketeering, from computer crime to environmental crime, and so on.

The seriousness of the offense is to be measured by the penalty provisions in the state making the request. As noted below, there is no general requirement in the Treaty that the conduct constitute an offense, let alone a serious offense, in both countries. In addition, the negotiators expressed the view that where a request related to an investigation or prosecution of a person for multiple offenses, at least one of which met this threshold, the Treaty would apply as well to the other “lesser included offenses.”

“Proceedings related to criminal matters” is defined in Article 21 of the Treaty to encompass any measure or step taken in connection with the investigation or prosecution of serious criminal offenses, including specifically forfeiture proceedings, as well as ancillary civil or administrative proceedings when they relate to securities matters. Thus, assistance would be available for proceedings of the Securities and Exchange Commission when those proceedings are incidental to or connected with pending criminal investigations and prosecutions. The Treaty also permits the Parties, at their discretion, to treat as “proceedings related to criminal matters” any administrative investigation that might result in the imposition of civil or administrative sanctions.

Article 1(2) contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including producing evidence (such as testimony, documents, or items) obtained voluntarily or, where necessary, by compulsion; arranging for persons,

including persons in custody, to travel to another country to provide evidence; serving documents; executing searches and seizures; locating and identifying persons or items; and freezing and forfeiting assets or property that may be the proceeds or instrumentalities of crime. Each of these types of assistance is described in detail in subsequent articles in the Treaty.

The Treaty also authorizes provision of any other assistance not inconsistent with the laws of the state receiving the request (referred to in the Treaty, as in other such treaties, as the “Requested Party,” while the state making the request is the “Requesting Party”). As long as there is no specific legal restriction in the Requested Party barring the type of assistance requested, it may be provided pursuant to the Treaty.

Consistent with most U.S. MLATs, Article 1(3) provides that, with the exception of where it is specifically required by the Treaty, “dual criminality” is not a prerequisite for assistance under the Treaty. Thus, assistance shall be provided without regard to whether the conduct at issue would constitute an offense under the laws of the Requested Party. One specific “dual criminality” requirement is found in Article 15, relating to search and seizure. Either Party may refuse a request to execute a search or seizure if such authority would not be available under its own law with respect to the conduct in question.

Article 1(4), a standard provision in U.S. MLATs, provides that the Treaty is intended solely for government-to-government mutual legal assistance. The Treaty is not intended to provide to private persons a means of evidence gathering, nor is it intended to extend generally to civil matters. Private persons in the United States may continue to obtain evidence from Bermuda by letters rogatory, an avenue of international assistance that the Treaty leaves undisturbed. Similarly, the paragraph provides that the Treaty is not intended to create any right in a private person to suppress or exclude evidence provided pursuant to the Treaty, or to impede the execution of a request.

Article 2 requires that each Party designate a “Central Authority” to make and receive Treaty requests. The Central Authority of the United States would make all requests to Bermuda on behalf of federal and state agencies and local law enforcement authorities in the United States. The Central Authority of Bermuda would make all requests emanating from officials in Bermuda. The Central Authorities are, pursuant to Article 2(3), to communicate directly with one another.

In each state, the Central Authority is to be the Attorney General or a person designated by the Attorney General. In the United States, the authority to handle the duties of the Central Authority under MLATs has been delegated to the Office of International Affairs in the Criminal Division of the Department of Justice.

The Central Authority of the Requesting Party exercises discretion as to the form and content of requests, as well as the number and priority of requests. The Central Authority of the Requested Party is responsible for receiving and evaluating each incoming request; transmitting it to the proper agency, court, or other authority for execution; and effecting a timely response.

Article 3 sets forth the circumstances under which the Requested Party's Central Authority may deny assistance under the Treaty. Refusal under this Article is discretionary with the Central Authority of the Requested Party. Several of the grounds for refusal are common to most U.S. MLATs. So, for example, a request may be denied if it relates to a political or a military offense, if it does not conform to the requirements of the Treaty, or if its execution would impair the sovereignty, security, or other essential interests of the Requested Party, or would be contrary to important public policy. With respect to this last ground, the government of Bermuda indicated that it intends to interpret the provision to give Bermuda the right to deny assistance in cases involving capital punishment. Although the United States made clear in negotiations its view that assistance should be possible in such cases, the United States indicated to Bermuda that it understood Bermuda's intention.

The other ground for refusal of assistance, which also appears in a number of U.S. MLATs, is when a request relates to an offender who, if proceeded against in the Requested Party for the offense for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction.

In keeping with the overall intent of the Treaty to facilitate assistance, the Parties also included in Article 3 a provision designed to limit the use of grounds for refusal. Under Article 3(2), a Central Authority, before refusing assistance under Article 3(1), is to consult with its counterpart in the Requesting Party to consider whether assistance can be given subject to such conditions as the Central Authority of the Requested Party deems necessary. If the Requesting Party accepts assistance subject to these conditions, it is required to comply with them. In addition, if the Central Authority of the Requested Party refuses assistance, it is required under Article 3(3) to inform the Central Authority of the Requesting Party of the reasons for the refusal.

Article 4 prescribes the form and contents of requests under the Treaty, specifying in detail the information required in each request.

Article 5 concerns the execution of requests. Article 5(1) includes two important concepts: the requirement that the Requested Party take "whatever steps it deems necessary" as empowered by the Treaty or national law to execute requests; and the granting of authority to courts in the Requested Party to issue subpoenas, search warrants, or other orders necessary to execute requests. Taken together, these provisions specifically authorize United States courts to use all of their powers to issue whatever process is necessary to satisfy a request under the Treaty, whether the authority for such process comes from the Treaty itself or from existing statutes. Article 5(2) builds on this by requiring the Central Authority to ensure that requests, where necessary, are presented to appropriate judicial or administrative authorities for action. This provision reflects an understanding that the Parties intend to provide each other with every available form of assistance from judicial and executive branches of government in the execution of mutual legal assistance requests.

Article 5(3) addresses the manner in which requests are to be executed. It creates a hierarchy for a Requested Party to follow in de-



termining the appropriate procedures for executing a request. In the first instance, requests themselves may specify a particular procedure to be followed, and such specified procedures are to be followed unless incompatible with the laws and practices of the Requested Party. This can be important to ensure that evidence collected in one state satisfies requirements for admissibility at trial in the other. If no particular procedure is specified in the request, the request is to be executed in accordance with any specific provisions of the Treaty. Finally, if neither the Treaty nor the request specifies procedures to be followed, the Requested Party is to execute the request in accordance with its domestic criminal procedure laws. The intent of this provision, like similar provisions in other U.S. MLATs, is to allow the Requested Party to use its established procedures for obtaining evidence where procedures are not otherwise specified, so long as those procedures do not undermine the obligation in the Treaty to provide assistance. *See, e.g., In re Commissioner's Subpoenas*, 325 F.3d 1287 (11th Cir. 2003). In Bermuda, the relevant procedures are in the Criminal Justice (International Cooperation) (Bermuda) Act 1994.

Article 5(4) allows the Central Authority of the Requested Party to postpone or condition the execution of a request if it determines that execution of the request would interfere with an ongoing criminal investigation, prosecution or proceeding in that state, or would prejudice the safety of any person in its territory. If the Requesting Party accepts assistance subject to such conditions, it must comply with them.

Confidentiality of requests is addressed in Article 5(5). Although requests themselves are generally not confidential, the Requesting Party may ask that the request and its contents be kept confidential. The Requested Party is to use its best efforts to comply with such a request, but if assistance cannot be granted without breaching the confidentiality requirements, the decision whether to proceed is left to the Requesting Party.

The remaining provisions in Article 5 address some of the types of communications between Central Authorities essential to a good working mutual legal assistance relationship. So, for example, Central Authorities are to notify each other of any problems with executing requests, respond to reasonable requests for progress reports, and inform each other promptly of the outcome of requests, including any reasons for denials, delay, or postponement of execution.

Article 6 addresses the costs associated with providing assistance. As is standard in U.S. MLATs, Article 6 provides that the Requested Party must pay all costs relating to the execution of a request, including representation costs, except for the following items to be paid by the Requesting Party: fees of expert witnesses; costs of translation, interpretation and transcription; and allowances and expenses related to travel of persons pursuant to Articles 10 and 11 (relating to travel for the purpose of providing assistance and transfer of persons in custody). The article also provides that, in the event that fulfilling a request would require extraordinary expenses, consultation between Central Authorities shall occur in order to determine the terms and conditions for execution. Finally, if the Requested Party, through no fault of its own, incurs unex-

pected, extraordinary expenses the Central Authorities are to consult as to whether the Requesting Party should pay some or all of those expenses. The Parties discussed that such situations would be rare.

Article 7 addresses limitations on use of information and evidence provided under the Treaty. Information or evidence provided under the Treaty may not be used or disclosed for any purpose other than for the proceedings stated in the request without the consent of the Central Authority of the Requested Party. The Central Authority of the Requested Party may also request that the information or evidence produced under the Treaty be kept confidential or be used subject to certain conditions (Article 7(2)). The default rule, however, is that such information or evidence is not confidential, and Article 7(4) also provides that, unless otherwise indicated, once such information or evidence has been disclosed in a public judicial or administrative hearing related to the request, it may be used for any purpose. Moreover, the Treaty explicitly does not preclude the disclosure of information or evidence to the extent that there is an obligation to disclose it under the Constitution of the Requesting Party in a criminal prosecution. This contingency, found in Article 7(3), was included to ensure that the United States would be able to satisfy any obligations to disclose information under its Constitution, such as those set forth in *Brady v. Maryland*, 373 U.S. 83 (1963).

As with other provisions of the Treaty, the confidentiality protections and use limitation provisions of Article 7 are for the benefit of the two governments that are Parties to the Treaty, and invocation and enforcement of these provisions is entirely a matter for the Parties.

Article 8 is the first of a series of articles that spell out in detail the procedures to be employed in the case of specific types of requests for assistance outlined in Article 1(2). Article 8 addresses the obtaining of evidence, whether it is a statement or testimony, documents, records, or particular items. A person from whom evidence is sought under the Treaty may appear voluntarily to provide such evidence, or, if necessary, the Treaty authorizes the Parties to compel production of evidence. This compulsion may be accomplished by subpoena or any other means available under the laws of the Requested Party.

Article 8(3) requires the Requested Party to permit persons specified in the request to be present during execution of the request and, through a legal representative qualified to appear in the Requested Party's courts, to question the person giving testimony or evidence. In order to ensure the availability of this possibility, Article 8(2) calls on the Central Authority of the Requested Party, upon request, to notify the Requesting Party in advance of the date and place of the taking of testimony or evidence. Consistent with Article 1(4), these provisions do not create a right for private persons to be present during the execution of the request.

Article 8(4) addresses the situation where a person from whom the request seeks testimony or evidence asserts a right to decline to provide such evidence (such as a privilege or immunity). If the claim is based on the laws of the Requesting Party, and there is no claim under the Requested Party's law, the evidence would

nonetheless be taken and the claim made known to authorities of the Requesting State so that they may resolve it. The Treaty does not specifically address the resolution of privilege claims under the Requested Party's law, but by implication those are to be resolved by that state's authorities. This formulation allows each Party to resolve privilege claims made under its own laws.

Article 8(5) contains the first of several provisions in the Treaty addressing the authentication of evidence produced pursuant to the Treaty. Similar provisions are found at Articles 9(3) and 15(3). Evidence produced under the Treaty may be authenticated by an attestation including, with respect to business records, official records, or evidence that has been seized pursuant to the Treaty, use of one of the forms appended to the Treaty. The appended forms are an integral part of the Treaty. The Treaty provides that evidence produced and authenticated according to the procedure set forth in the Treaty be admissible in evidence in the Requesting Party.

Article 9 addresses provision of documents or other records in the possession of government agencies. The Parties are obligated to provide to each other copies of publicly available records in any form in the possession of an executive, legislative, or judicial authority upon request. With respect to documents that are not publicly available, whether to provide such documents is left to the discretion of the Requested Party. The Treaty authorizes the Requested Party to provide to the Requesting Party any records to the same extent, and under the same conditions, as they would be available to the Requested Party's own law enforcement or judicial authorities.

Article 10 provides a mechanism for the Requesting Party to ask for the voluntary attendance in its territory, or in the territory of a third state, of a person located in the Requested Party for the purpose of assistance under the Treaty, such as to serve as a witness or expert in proceedings or to assist in an investigation. The Requesting Party must indicate the extent to which the person's expenses will be paid.

Article 11 provides a similar mechanism for persons in custody. A need sometimes arises for the testimony in one country of a person who is incarcerated in another country. For example, a witness incarcerated in one country—whether the Requesting or Requested Party—may have to give testimony in the presence of an incarcerated defendant in the other country. Attendance of the person is still voluntary, but is also subject to the discretion of the Parties and agreement of the Central Authorities. In addition, the Treaty imposes certain conditions on such transfers: the person must be held in custody by the receiving Party, unless otherwise authorized by the sending Party; the receiving Party must return the person in custody to the sending Party as soon as circumstances permit or as otherwise agreed; the return of the person shall not require any extradition or other proceedings, such as immigration proceedings; the period that the person is in custody in the receiving Party shall be credited against the person's sentence in the sending Party; and, when the receiving state is neither of the Parties, it is the obligation of the Requesting Party to make all necessary arrangements to meet the Treaty's requirements.

When persons agree to travel to a Requesting Party to give evidence, whether in custody or not, Article 10(3) authorizes the Central Authority of the Requesting Party, in its discretion, to give such persons a guarantee of “safe conduct.” This would ensure that a person appearing in the Requesting Party would not be subject to service of process or any restriction on personal liberty by reason of any acts or convictions that preceded that person’s departure from the Requested Party. This provision would not prevent action against a person for perjury or any other crime committed while in the Requesting Party—rather, it applies only to past offenses. Under Article 10(4), any safe conduct so provided would cease fifteen days after the Central Authority of the Requested Party is notified that the person’s presence is no longer required, or if the person has left the Requesting Party and voluntarily returns to it. Of course, as the Treaty sets forth in Article 11(4), this article does not preclude a state from holding a person in custody as required by Article 11(3).

While Article 11 addresses the transfer of persons in custody from one Party to the other, Article 12 addresses the situation in which one Party may need to bring persons in custody through the territory of the other on the way to or from third states in order to participate in an investigation, prosecution, or proceeding. Article 12(2) provides that the state through which the person transits has the authority and obligation to keep that person in custody during the transit.

Article 13 provides for determining the whereabouts or identity in the Requested Party of persons (such as witnesses, potential defendants, or experts) or items when such information is requested. The Treaty requires only that the Requested Party use its “best efforts” to ascertain the location or identity of the persons or items sought. The extent of such efforts will vary, of course, depending on the quality and extent of the information provided by the Requesting Party concerning the suspected location and last known location.

Article 14 relates to service of documents. It creates an obligation on the Parties to use their best efforts, upon request, to serve documents relating to a request for assistance, such as summonses, complaints, subpoenas, or notices. The Parties made clear, however, in Article 14(2), that service of a document in a Requested Party requesting appearance or production of documents in a Requesting Party does not impose any obligation under the law of the Requested Party to comply. When the document pertains to an appearance in the Requesting Party, it must be transmitted a reasonable time before the scheduled appearance. The Parties chose not to set a fixed period of time for this obligation, as circumstances may vary.

Article 15 obligates the Requested Party to execute a request for the search, seizure, and transfer of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party. For requests from Bermuda to the United States, this means that a request would have to be supported by a showing of probable cause for the search. The evidentiary standard required under Bermuda law for requests by the United States is whether there are “reasonable grounds for sus-

pecting,” for example, that an offense was committed. As noted before, either Party may refuse a request if it relates to conduct for which the powers of search and seizure are not available in the Requested Party. Bermuda indicated during the negotiations that tax crimes are one example of conduct for which search and seizure are not available in Bermuda.

Article 16 addresses return of items provided pursuant to Treaty requests. Such items are to be returned as soon as practicable unless the Central Authority of the Requested Party waives the return. The negotiators agreed that this Article should be read in tandem with Article 7, which addresses limitations on use of information provided under the Treaty.

Assistance in forfeiture proceedings is the subject of Article 17. The types of actions that could be undertaken in the United States under this Article include actions to seize and forfeit property under Title 18, Section 981 of the United States Code, which can be and is employed to temporarily restrain or to seize assets or proceeds of offenses committed abroad. The language of this Article, however, does not require either state to take any action that would exceed its domestic legal authority. Thus it does not mandate, for example, institution of forfeiture proceedings against property located in the United States in the absence of statutory authority to institute such proceedings.

Once property is confiscated, Article 17(3) permits the Party in control of the property to share it with the other Party or otherwise dispose of it in accordance with its own laws and upon such terms as it deems appropriate. United States law permits the government to transfer a share of certain forfeited property to other countries that participate directly or indirectly in the seizure or forfeiture of the property where, among other requirements, such transfer is authorized by an international agreement. This Article provides such authorization for asset sharing with Bermuda.

Article 18 is a relatively uncommon provision in U.S. MLATs, although it is based on similar language in MLATs with Canada and the United Kingdom (including the MLAT with the United Kingdom concerning the Cayman Islands). It provides that, before a Party seeks to enforce a compulsory measure requiring an action to be performed in the other Party (such as production of bank records) relating to a matter for which assistance under the Treaty is available, the Party must first attempt in good faith to obtain the desired assistance under the Treaty. The Requesting Party can fulfill its obligation under this Article by making a formal treaty request or by engaging in consultations for the purpose of assessing the availability of assistance under the Treaty. If the Requested Party does not or cannot commit to provide assistance in a timely fashion, and the delay has the potential to jeopardize the success of the investigation or prosecution, the Requesting Party would be relieved of any further obligation under this provision. In addition, this provision does not require use of the Treaty as a first resort where evidence is located in multiple jurisdictions, including the Requested Party, but the Requesting Party is seeking compulsion of evidence located elsewhere (for example, in its own territory).

Article 19 states that this Treaty shall not prevent the Parties from providing assistance to each other through the provisions of

other agreements, arrangements, or practices that may be applicable, or through the provisions of their national laws. Thus, for example, the Treaty would leave the provisions of U.S. and Bermuda law on letters rogatory completely undisturbed, and would not alter any practices or arrangements concerning investigative assistance or prohibit the Parties from developing other such practices or arrangements.

Article 20 provides for consultations between the Central Authorities to promote the effective use of the Treaty. The Parties discussed the importance of regular consultations between Central Authorities. Such contacts generally result in development of practical measures to more effectively implement the Treaty.

The final clauses are contained in Article 22. The Treaty will enter into force on the date of the latter written notification by the Parties that they have completed their internal legal requirements for entry into force. For the United States, this means ratification after the advice and consent of the Senate. The Treaty expressly applies to past conduct—that is, once in force, it shall apply to all requests presented between the Parties regardless of when the acts or omissions constituting the offense occurred. Article 22 also provides procedures for termination of the Treaty.

**TREATY  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF BERMUDA  
RELATING TO MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

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**FORMS**

Form A ..... Certification of Business Records  
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Form C ..... Certification of Official Records  
Form D ..... Certification of Absence or Nonexistence of Official Records  
Form E ..... Certification with Respect to Seized Items

The Government of the United States of America and the Government of Bermuda (having been authorized by the Government of the United Kingdom of Great Britain and Northern Ireland) (hereinafter "the Parties"),

Desiring to improve the effectiveness of the law enforcement authorities of both the United States of America and Bermuda in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters,

Reaffirming their determination to share information in matters involving the investigation and prosecution of criminal tax offenses as well as civil and administrative proceedings pursuant to the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) Relating to the Taxation of Insurance Enterprises and Mutual Assistance in Tax Matters, with exchange of notes, done at Washington, July 11, 1986, and the Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) for the Exchange of Information with Respect to Taxes, done at Washington, December 2, 1988,

Have agreed as follows:

**Article 1**

**Scope of Assistance**

1. The Parties shall provide mutual assistance to each other, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of criminal offenses for which the maximum penalty is deprivation of liberty for at least one year, and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) locating or identifying persons or items;
- (b) serving documents;
- (c) taking the testimony or statements of persons;
- (d) transferring persons in custody for testimony or other purposes;
- (e) providing documents, records, and other items;
- (f) conducting searches and seizures;
- (g) assisting in proceedings related to forfeiture of assets, restitution, and collection of criminal fines; and
- (h) providing any other assistance not inconsistent with the laws of the Requested Party.

3. Except as otherwise provided in this Treaty, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting Party would constitute an offense under the laws of the Requested Party.

4. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

**Article 2**

**Central Authorities**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For Bermuda, the Central Authority shall be the Attorney General or a person designated by the Attorney General.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

**Article 3**

**Limitations on Assistance**

1. The Central Authority of the Requested Party may deny assistance if:
  - (a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests or would be contrary to important public policy;
  - (b) the request relates to an offender who, if proceeded against in the Requested Party for the offense for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
  - (c) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
  - (d) the request relates to a political offense; or
  - (e) the request does not conform to the requirements of the Treaty.
2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested Party denies assistance pursuant to this Article, it shall inform the Central Authority of the Requesting Party of the reasons for the denial.

#### **Article 4**

##### **Form and Contents of Requests**

1. A request for assistance shall be in writing.
2. The request shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
  - (b) a description of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter;
  - (c) information, where available, on the identity, date of birth, and location of the person or persons under investigation or prosecution;
  - (d) a statement of the facts relied upon in support of the request;
  - (e) a description of the evidence, information, or other assistance sought;
  - (f) a statement of the purpose for which the evidence, information, or other assistance is sought;
  - (g) an affirmation that the statute of limitations with respect to the criminal offense has not expired; and
  - (h) an affirmation that none of the persons being investigated has previously been tried, convicted, or acquitted for the same conduct that is under investigation or, if any such person has previously been tried, convicted, or acquitted for the same conduct that is under investigation, a detailed explanation of why the Requesting Party believes another trial of that person would be proper under its laws.

3. To the extent necessary and possible, a request shall also include:
  - (a) information on the identity, date of birth, and location of any person from whom evidence is sought;
  - (b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
  - (c) information on the identity and suspected location of a person or item to be located;
  - (d) a precise description of the place or person to be searched and of the item to be seized;
  - (e) a description of the manner in which any testimony or statement is to be taken and recorded;  
  
a description of the testimony or statement sought, which may include a list of questions to be asked of a person;
  - (g) a description of any particular procedure to be followed in executing the request;
  - (h) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled; and
  - (i) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.

#### **Article 5**

##### **Execution of Requests**

1. As empowered by this Treaty or by national law, the Requested Party shall take whatever steps it deems necessary to give effect to requests received from the Requesting Party. The courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested Party.

3. Requests shall be executed in accordance with the laws of the Requested Party except to the extent that this Treaty provides otherwise. The method of execution specified in the request shall be followed to the extent that it is not incompatible with the laws and practices of the Requested Party. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for criminal investigations or proceedings in the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that Party, or would prejudice the safety of any person in the territory of the Requested Party, it may postpone execution, or make execution subject to conditions determined to be necessary after consultation with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested Party shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting Party. If the Requested Party believes that the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested Party shall respond to reasonable requests by the Central Authority of the Requesting Party concerning progress toward execution of the request.

7. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

8. The Central Authority of the Requesting Party shall inform the Central Authority of the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

9. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of a request. If execution of the request is denied, delayed, or postponed, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial, delay, or postponement.

**Article 6**

**Costs**

1. The Requested Party shall pay all costs relating to the execution of a request, including the costs of representation, except for the following, which shall be paid by the Requesting Party:

- (a) the fees of experts;
- (b) the costs of translation, interpretation, and transcription;
- (c) the allowances and expenses related to travel of persons pursuant to Articles 10 and 11; and
- (d) other costs incurred by the Requested Party as a direct result of executing a request to the extent agreed upon by the Central Authorities in accordance with paragraph 2 or paragraph 3 of this Article.

2. If it becomes apparent that the Requested Party will incur expenses of an extraordinary nature in the execution of a request, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

3. If the Requested Party incurs expenses of an extraordinary nature in the execution of a request that were:

- (a) unexpected; and
- (b) incurred through no fault of the Requested Party,

the Central Authorities shall consult to determine whether the Requesting Party shall pay some or all of these expenses.

**Article 7**

**Limitations on Use**

1. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purposes other than for the proceedings stated in the request, without the prior consent of the Central Authority of the Requested Party.



2. The Central Authority of the Requested Party may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions that it may specify. If the Requesting Party accepts the information or evidence subject to such conditions, the Requesting Party shall use its best efforts to comply with them.

3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that there is an obligation to do so under the Constitution of the Requesting Party in a criminal prosecution. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.

4. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative hearing related to the request, may thereafter be used for any purpose.

#### **Article 8**

##### **Testimony or Evidence in the Requested Party**

1. A person in the Requested Party from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents and records, in accordance with the requirements of the law of the Requested Party.

2. Upon request, the Central Authority of the Requested Party shall furnish to the Requesting Party, in advance, information regarding the date and place of the taking of testimony or evidence pursuant to this Article.

3. The Requested Party shall permit the presence of persons specified in the request during the execution of the request, and shall allow persons specified in the request to ask questions of the person whose testimony or evidence is being taken, through a legal representative qualified to appear before the courts of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party with respect to testimony or evidence that is not subject to a claim of immunity, incapacity, or privilege under the laws of the Requested Party, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Evidence produced in the Requested Party pursuant to this Article or evidence that is the subject of testimony taken under this Article may be authenticated

by an attestation including, with respect to business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party.

#### **Article 9**

##### **Official Records**

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of an executive, legislative, or judicial authority in the Requested Party.

2. The Requested Party may provide copies of any records, including documents or information in any form, that are in the possession of an executive, legislative, or judicial authority in that Party, but that are not publicly available, to the same extent and under the same conditions as such copies would be available to the Requested Party's own law enforcement or judicial authorities. The Requested Party may in its discretion deny, entirely or in part, a request for records that are not publicly available.

3. Records produced pursuant to this Article shall, upon request, be authenticated by an official responsible for maintaining them through the use of Form C appended to this Treaty. No further authentication shall be necessary. The absence or nonexistence of such records shall, upon request, be certified by an official responsible for maintaining similar records through the use of Form D appended to this Treaty. Records authenticated by Form C, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting Party as proof of the truth of the matters stated therein.

#### **Article 10**

##### **Appearance Outside the Requested Party**

1. The Requesting Party may request the appearance outside the Requested Party of a person located in the Requested Party for purposes of assistance under this Treaty. The Requested Party shall invite the person to appear and the Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the person's response.

2. The Requesting Party shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting

Party advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting Party.

3. The Central Authority of the Requesting Party may, in its discretion, determine that a person appearing in the Requesting Party pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions that preceded the person's departure from the Requested Party.

4. The safe conduct provided for by this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the Requesting Party, voluntarily returns.

#### **Article 11**

##### **Transfer of Persons in Custody**

1. A person in the custody of the Requested Party whose presence outside the Requested Party is sought for purposes of providing assistance under this Treaty shall be transferred from the Requested Party for that purpose if the person consents and if the Central Authorities of the Requesting and the Requested Parties agree.

2. A person in the custody of the Requesting Party whose presence in the Requested Party is sought for purposes of assistance under this Treaty may be transferred from the Requesting Party to the Requested Party if the person consents and if the Central Authorities of both Parties agree.

3. For purposes of this Article:

- (a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending Party;
- (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving Party shall not require the sending Party to initiate extradition or any other proceedings for the return of the person transferred;

- (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party; and
- (e) where the receiving Party is a third State, the Requesting Party shall make all arrangements necessary to meet the requirements of this paragraph.

4. Safe conduct shall be provided in accordance with Article 10, paragraphs 3 and 4, except that the person shall be kept in custody for the offense for which the person is incarcerated in the sending Party.

#### **Article 12**

##### **Transit of Persons in Custody**

1. The Requested Party may authorize the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party in an investigation, prosecution, or proceeding.
2. The Requested Party shall have the authority and the obligation to keep the person in custody during transit.

#### **Article 13**

##### **Location or Identification of Persons or Items**

The Requested Party shall use its best efforts to ascertain the location or identity in the Requested Party of persons or items specified in a request.

#### **Article 14**

##### **Service of Documents**

1. The Requested Party shall use its best efforts to effect service of any document relating to any request for assistance made by the Requesting Party under the provisions of this Treaty.
2. Service of any subpoena or other process by virtue of paragraph 1 of this Article requesting appearance or production of documents in the territory of the

Requesting Party shall not impose any obligation under the law of the Requested Party to comply with it.

3. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service to the Requesting Party in the manner specified in the request.

#### **Article 15**

##### **Search and Seizure**

1. The Requested Party shall execute a request for the search, seizure, and transfer of any item to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances;

3. Upon request, every official who has had custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of custody, and any changes in condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting Party.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

#### **Article 16**

##### **Return of Items**

The Central Authority of the Requesting Party shall arrange for the return of any item, including documents and records furnished in execution of a request under this Treaty, as soon as practicable unless the Central Authority of the Requested Party waives the return.

**Article 17**

**Assistance in Forfeiture Proceedings**

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses that are located in the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with their national laws and shall, through their Central Authority, report to the other Party on the action taken.

2. Each Party shall assist the other to the extent permitted by its laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

**Article 18**

**Treaty as First Resort**

Neither Party shall enforce any compulsory measure requiring an action to be performed by any person located in the territory of the other Party with respect to a matter for which assistance could be granted under this Treaty unless the Party proposing such enforcement has first attempted in good faith to obtain the desired assistance pursuant to the Treaty.

**Article 19**

**Compatibility with Other Agreements**

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. Either Party may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

**Article 20**

**Consultation**

The Central Authorities shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

**Article 21**

**Definitions**

For the purposes of this Treaty:

1. "Proceedings related to criminal matters" means any measure or step taken in connection with the investigation or prosecution of criminal offenses for which the maximum penalty under the laws of the Requesting Party is deprivation of liberty for at least one year, including immobilization, seizure, and forfeiture of proceeds and instrumentalities of crime, and the imposition of fines related to a criminal prosecution.

2. The Central Authorities, at their discretion, may agree in writing to treat as "proceedings related to criminal matters" any investigation by an administrative agency or hearing before an administrative tribunal or court that may result in the imposition of civil or administrative sanctions.

3. The Parties shall treat as "proceedings related to criminal matters" all civil or administrative proceedings, ancillary to a pending criminal investigation or prosecution, and taken by either Party or its agencies connected with:

- (a) the use by any person willfully or dishonestly of any means, directly or indirectly, in connection with the offer, purchase, or sale of any security:
  - (i) to employ any device, scheme, or artifice to defraud;
  - (ii) dishonestly to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or
  - (iii) dishonestly to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person; or

- (b) the offer, purchase, or sale of securities by any person while in possession of material non-public information, directly or indirectly relating to the securities offered, purchased, or sold, in breach of a legally binding duty of trust or confidence.

**Article 22**

**Entry into Force and Termination**

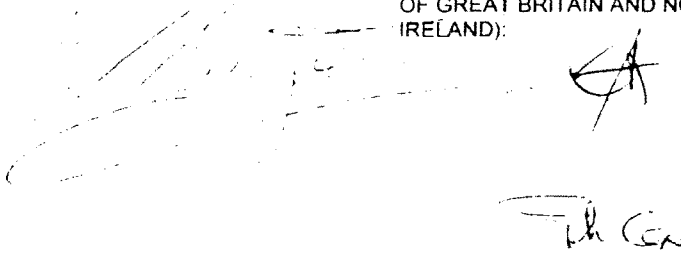
1. This Treaty shall enter into force on the date of the latter written notification by the Parties that they have completed their internal legal requirements for the entry into force of this Treaty.
2. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.
3. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

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

DONE at Hamilton, in duplicate, this 12<sup>th</sup> day of January 2009, in the English language

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF BERMUDA (HAVING BEEN AUTHORIZED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND):





Form A

**CERTIFICATION OF BUSINESS RECORDS**

         *[name]* attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with          *[name of business from which documents are sought]* in the position of          *[business position or title]* and by reason of my position am authorized and qualified to make this attestation. Each of the records attached hereto is a record in the custody of the above-named business that:

- (A) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- (B) was kept in the course of a regularly conducted business activity;
- (C) was made or kept by the business as a regular practice; and
- (D) if not an original record, is a duplicate of the original.

         *[date of execution]*

         *[place of execution]*

         *[signature]*







Form E

CERTIFICATION WITH RESPECT TO SEIZED ITEMS

\_\_\_\_\_, *name*, attest on penalty of criminal punishment for false statement or attestation that:

1. My position with the Government of \_\_\_\_\_ *(country)* is \_\_\_\_\_ *(official title)*
2. I received custody of the items listed below from \_\_\_\_\_ *(name of person)* on \_\_\_\_\_ *(date)* at \_\_\_\_\_ *(place)* • and \_\_\_\_\_
3. I relinquished custody of the items listed below to \_\_\_\_\_ *(name of person)* on \_\_\_\_\_ *(date)* at \_\_\_\_\_ *(place)* in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

\_\_\_\_\_ *(date of execution)*

\_\_\_\_\_ *(place of execution)*

\_\_\_\_\_ *(signature)*

Official Seal

