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**Ministry of Industry and Commerce**

**Law No. (31) of 2012 ratifying the Convention between the Government of the Kingdom of Bahrain and the Government of Australia Concerning the Exchange of Information relating to Tax Matters**

We, Hamad bin Isa Al Khalifa, King of the Kingdom of Bahrain.

Having reviewed the Constitution,

And the Convention Between the Government of the Kingdom of Bahrain and the Government of Australia Concerning the Exchange of Information relating to Tax Matters signed in Manama on 15 December 2011;

The Shura Council and the Council of Representatives have approved the following law, which we have ratified and enacted:

**Article One**

The Convention Between the Government of the Kingdom of Bahrain and the Government of Australia Concerning the Exchange of Information relating to Tax Matters signed in Manama on 15 December 2011, and attached to this Law, has been ratified.

**Article Two**

The Prime Minister and the ministers each within his jurisdiction shall implement this Law, and it shall come into force from the day following the date of its publication in the Official Gazette.

**King of Kingdom of Bahrain**

**Hamad bin Isa Al Khalifa**

Issued at Riffa Palace:

On: **11 Shaaban 1433 A.H.**

**Corresponding to:** 1 July 2012

Convention between the Government of the Kingdom of Bahrain and the Government of Australia Concerning the Exchange of Information relating to Tax Matters

The Government of the Kingdom of Bahrain and the Government of the Government of Australia, desiring to conclude a Convention concerning information on tax matters, have agreed as follows:

**Article (1)**

**Object and Scope of the Agreement**

The competent authorities of the Contracting States shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of those States concerning taxes covered by this Convention. Such information shall include information that is foreseeably relevant to the determination, assessment and Collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Convention and shall be treated as confidential in the manner provided in Article **(8)** of the same Convention. 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 effective exchange of information.

**Article (2)**

**Jurisdiction**

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

**Article (3)**

**Taxes Covered**

The existing taxes to which the Convention shall apply are:

**in Bahrain**: income tax payable under Legislative Decree No. (22) of 1979.

in Australia: taxes of every kind and description imposed under federal laws administered by the Commissioner of Taxation.

- This Convention shall also apply to any identical or any substantially similar taxes imposed after the date of signature of the Convention in addition to or in place of the existing taxes. the competent authorities of the Contracting Parties shall notify, each other of any substantial changes to the taxation and related information gathering measures covered by the Convention.

This Convention shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Contracting State.

**Article (4)**

**Definitions**

For the purposes of this Convention unless otherwise defined:

the term “applicant Party” means the Contracting Party requesting information.

the term "Bahrain" means the territory of the Kingdom of Bahrain as well as the maritime areas, seabed and subsoil over which Bahrain exercises, in accordance with international law, sovereign rights and jurisdiction;

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

the Territory of Norfolk Island.

the Territory of Christmas Island.

the Territory of Cocos (Keeling) Islands.

the Territory of Ashmore and Cartier Islands.

the Territory of Heard Island and McDonald Islands.

the Coral Sea Islands Territory.

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this sub-paragraph) 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 exclusive economic zone or the seabed and subsoil of the continental shelf.

the term "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;

the term "Company” means any body corporate or any entity that is treated as a body corporate for tax purposes or any other entity constituted or recognized under the laws of one or other of the Contracting States as a body corporate.

the term "competent authority" means in the case of Bahrain, the Minister of Finance or his authorised representative and, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner.

the term “Contracting Party" means Bahrain or Australia as the context requires.

the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party.

the term "information" means any fact, statement or record in any form whatever.

the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting State to obtain and provide the requested information.

the term "person" includes an individual, a company and any other body of persons.

the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company.

the term “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.

The term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties.

the term "requested Party" means the Contracting Party requested to provide information.

the term "tax” means any tax to which the Convention applies.

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

**Article (5)**

**Exchange of Information Upon Request**

The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article (1). Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

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, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested. Notwithstanding that the requested Party may not need such information for its own tax purposes.

If specifically requested by the competent authority of an applicant 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.

Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article (1) of the Convention, have the authority to obtain and provide upon request:

information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees and trustees.

information regarding the ownership of companies, partnerships, trusts, foundations, and other persons, including, within the constraints of Article (2), ownership information on all such persons in an ownership claim; in the case of trusts, information on testators, trustees and beneficiaries; and in the case of foundations, information on founders. members of the foundation council and beneficiaries. Further, this Convention does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to any difficulties.

The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

the identity of the person under examination or investigation.

a statement of the information sought including determination of its nature and the form in which the applicant Party wishes to receive the information from the requested Party.

the tax purpose for which the information is sought.

grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party.

to the extent known, the name and address of any person believed to be in possession of the requested information.

a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of' the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Convention.

a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to any difficulties.

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

Confirm receipt of a request in waiting to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within (60) days of the receipt of the request.

If the competent authority of the requested Party has been unable to obtain and provide the information within (90) days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

**Article (6)**

**Tax Examinations Abroad**

A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the time of a tax examination in the second-mentioned Party.

If the request referred to in Paragraph (2) is acceded to by the competent authority of the Contracting Party conducting the examination to carry out its examination, the competent authority of the other contracting party shall, as soon as possible, be notified the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

**Article (7)**

**Possibility of Declining a Request**

The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent and authority of the requested Party may decline to assist where the request is not made in conformity with this Convention.

The provisions of this Convention shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article (5). Paragraph (4) shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

The provisions of this Convention shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and his attorney, solicitor or other admitted legal representative where such communications are:

produced for the purposes of seeking or providing legal advice.

produced for the purposes of use in existing or contemplated legal proceedings.

The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy ( public order).

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

The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

**Article (8)**

**Confidentiality**

Any information received by a Contracting Party under this Convention shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by a Contracting Party. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

**Article (9)**

**Costs**

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties. Ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting State, 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 Applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**Article (10)**

**Implementation Legislation**

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

**Article (11)**

**No Prejudicial or Restrictive Measures**

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

A "prejudicial or restrictive measure based on harmful tax practices" is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that the other Contracting 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.

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.

A "prejudicial or restrictive measure" does not include generally applicable measures, applied by either Party, such as Controlled Foreign Company 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 (12)**

**Mutual Agreement Procedure**

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

In addition to the Conventions referred to in Paragraph (1) of this Article, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles (5 and 6).

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

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

**Article (13)**

**Entry into Force of the Convention**

The Contracting Parties shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and shall thereupon have effect:

for criminal tax matters on that date.

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.

The provisions of this Agreement shall apply in their terms to information pre-dating the coming into force of this Convention.

**Article (14)**

**Termination of this Convention**

This Convention shall continue in effect indefinitely, but either of the Contracting States may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting Party through the diplomatic channel written notice of termination.

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

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

In witness whereof the undersigned being duly authorised thereto by their respective Government have signed the Convention.

Done in duplicate at Manama on 15 December 2011, in the Arabic and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

**For**

**For**

**The Government of the Kingdom of Bahrain**

**The Government of Australia**