

Statutory Document No. 2015/0409



*Income Tax Act 1970*

## TAXES (SPAIN) ORDER 2015

*Approved by Tynwald:* 19 January 2016  
*Coming into Operation:* 22 January 2016

The Council of Ministers makes the following Order under sections 104B and 104C of the Income Tax Act 1970.

### 1 Title

This Order is the Taxes (Spain) Order 2015.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on 22 January 2016<sup>1</sup>.

### 3 Interpretation

In this Order “**applicable arrangement**” means the arrangement for the exchange of information on tax matters contained in an agreement between the Isle of Man and the Kingdom of Spain signed in London on 3 December 2015 and set out in the Schedule.

### 4 Information exchange arrangement

It is declared that –

- (a) the applicable arrangement has been made with the Kingdom of Spain with a view to the exchange of information foreseeably relevant for carrying out laws (whether in the Island or Spain) concerning any taxes to which the applicable arrangement relates; and
- (b) the arrangement should have effect as part of the law of the Island.

<sup>1</sup>Tynwald approval is required by section 104B(6) of the Income Tax Act 1970.

MADE 9<sup>th</sup> December 2015

W. Alow.  
Chief Secretary



*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order is made under sections 104B and 104C of the Income Tax Act 1970. It implements an arrangement negotiated between the Isle of Man and the Kingdom of Spain for the exchange of information on tax matters.

**AGREEMENT ON**  
**EXCHANGE OF INFORMATION ON TAX MATTERS**  
**BETWEEN**  
**THE ISLE OF MAN**  
**AND**  
**THE KINGDOM OF SPAIN**

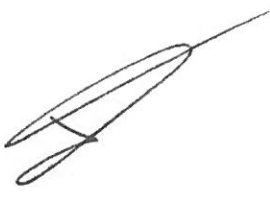

**WHEREAS** it is acknowledged that the Isle of Man has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Kingdom of Spain;

The Isle of Man and the Kingdom of Spain desiring to facilitate the exchange of information with respect to taxes, have agreed as follows:

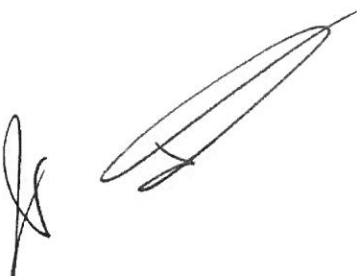

**ARTICLE 1**  
**OBJECT AND SCOPE OF THIS AGREEMENT**

The competent authorities of the Parties shall provide assistance through co-operation in notifying persons of Administrative Decisions of the Parties and through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. 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 Agreement and shall be treated as confidential in the manner provided in Article 8. 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**

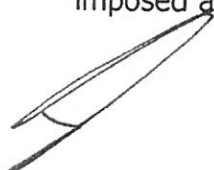
A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its jurisdiction.

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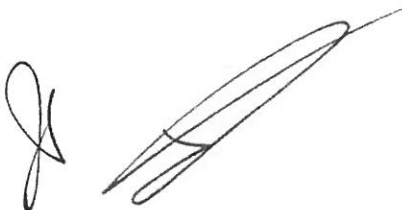
### **ARTICLE 3**

### **TAXES COVERED**

1. The taxes which are the subject of this Agreement are:
  - (a) in the Isle of Man:
    - (i) taxes on income or profit; and
    - (ii) the value added tax;
  - (b) in Spain:
    - (i) the income tax on individuals (Impuesto sobre la Renta de las Personas Físicas);
    - (ii) the corporation tax (Impuesto sobre Sociedades);
    - (iii) the income tax on non-residents (Impuesto sobre la Renta de No Residentes);
    - (iv) the capital tax (Impuesto sobre el Patrimonio);
    - (v) the inheritance and gift tax (Impuesto sobre Sucesiones y Donaciones);
    - (vi) the transfer tax (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados);
    - (vii) the value added tax (Impuesto sobre el Valor Añadido);
    - (viii) the excise tax (Impuestos Especiales); and
    - (ix) the local taxes on income and on capital (impuestos locales sobre la renta y el patrimonio).
  
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of,



the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

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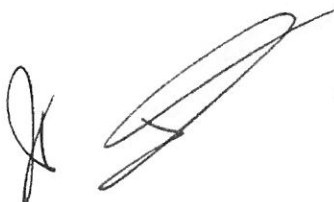
## **ARTICLE 4**

### **DEFINITIONS**

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
  - (b) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the airspace, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
  - (c) 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 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) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;



- (e) the term "competent authority" means, in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate and, in the case of Spain, the Minister of Finance and Public Administrations or his authorised representative;
- (f) 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;
- (g) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (h) the term "information" means any fact, statement or record in any form whatever;
- (i) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (j) the term "notification" means the delivery of documents to persons within the jurisdiction of either of the Parties in accordance with the rules and procedures of the Party which makes such delivery;
- (k) the term "Party" means the Isle of Man or the Kingdom of Spain as the context requires;
- (l) the term "person" includes an individual, a company and any other body of persons;
- (m) 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;



- (n) 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;
- (o) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (p) the term "Requested Party" means the Party requested to provide information and/or to assist with notification;
- (q) the term "Requesting Party" means the Party requesting information and/or assistance for notification; and
- (r) the term "tax" means any tax to which this Agreement applies.

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, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

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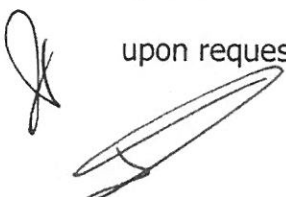
**ARTICLE 5**  
**EXCHANGE OF INFORMATION UPON REQUEST**

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the 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 such conduct occurred in the jurisdiction of the Requested Party.

2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary 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 its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

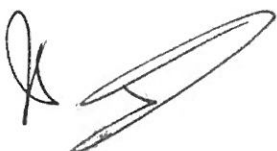
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- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b)
  - (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations, "Anstalten" and other persons, and within the constraints of Article 2 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. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

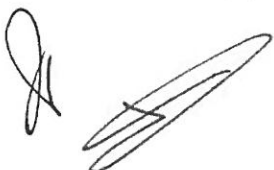
- (a) the identity of the person under examination or investigation;



- (b) a statement of the information sought including its nature and the form in which the Requesting Party wishes to receive the information from the Requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the territory of the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices 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;
- (g) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as soon as reasonably possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the

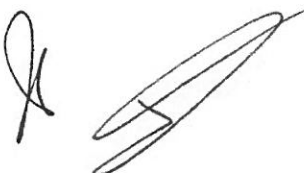


Requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and

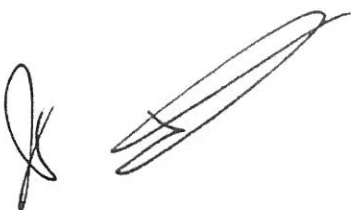
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting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

In the event that the Requested Party has not provided the information within six months of the receipt of the request, it shall inform the Requesting Party of the progress made in obtaining the requested information and provide the Requesting Party with its estimate of the time that will be needed to comply with the request. If the Requested Party is unable to comply with the request it will inform the Requesting Party, and provide an explanation for its inability. The Requesting Party shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Parties shall, through the Mutual Agreement Procedure as provided for in Article 13 or otherwise, discuss the possible ways of achieving the purpose of the request and determine the best way to achieve that objective.

The time restrictions mentioned in this Article shall have no effect on the validity and legality of information exchanged under this Agreement.

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8. The competent authorities of the Parties may by mutual agreement settle the mode in which requests for information shall be submitted to the Requested Party.

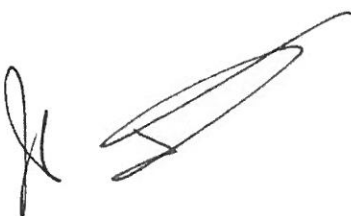
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**ARTICLE 6**  
**TAX EXAMINATIONS ABROAD**

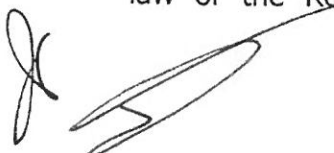
1. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the Requested Party.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party about 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 Requested 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.

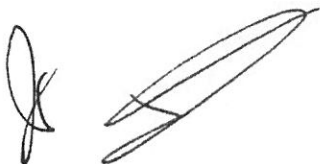
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**ARTICLE 7**  
**POSSIBILITY OF DECLINING A REQUEST**

1. The Requested Party shall not be required to obtain or provide information that the Requesting 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 authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.
  
2. The provisions of this Agreement shall not impose on a Party the obligation to provide information subject to legal privilege or 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.
  
3. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
  
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
  
5. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party, or any requirement connected therewith, which



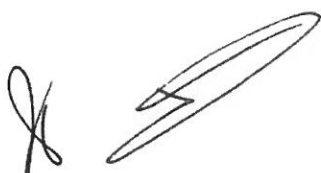
discriminates against a national of the Requested Party as compared with a national of the Requesting Party in the same circumstances.

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## **ARTICLE 8**

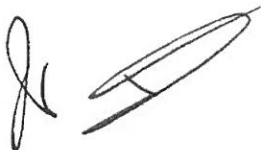
### **CONFIDENTIALITY**

1. Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by this Agreement. Such persons or authorities may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, the information received by a Party may be used for other taxes or for other purposes when such information may be used for such other taxes or other purposes under the laws of the Requesting Party and the competent authority of the Requested Party authorises such use.
  
2. The information provided to the Requesting Party under this Agreement may not be disclosed to any other jurisdiction.

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**ARTICLE 9**  
**REQUEST FOR NOTIFICATIONS**

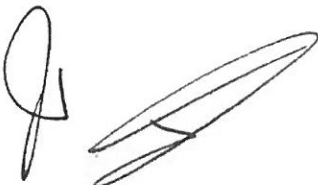
1. The competent authority of the Requested Party, at the request of the competent authority of the Requesting Party, and in accordance with the rules which govern the notification of similar instruments in the Requested Party, shall notify persons within the jurisdiction of the Requested Party (the "addressee") of decisions and any other instrument which emanate from the administrative authorities of the Requesting Party and concern the application of taxes covered by this Agreement.
  
2. The competent authority of the Requesting Party shall inform the competent authority of the Requested Party of the name, address and any other relevant information of the addressee when making a request for notification.
  
3. The competent authority of the Requested Party shall confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within 30 days of receipt of the request.
  
4. The competent authority of the Requested Party shall inform the competent authority of the Requesting Party as soon as reasonably possible, and in any case within 60 days of the receipt of the request, of:
  - (a) the date of transmission of the decision or instrument to the addressee;



- (b) the action that has been taken to reach the addressee and an explanation of the reasons for the inability, if it has been impossible to reach the addressee.

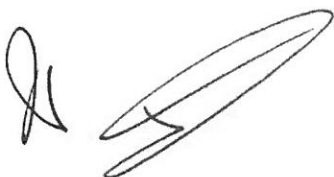
The Requesting Party shall subsequently decide whether or not to rescind its request. If it decides not to rescind its request the Parties shall, through the Mutual Agreement Procedure as provided for in Article 13 or otherwise, discuss the possible ways of achieving the purpose of the request and determine the best way to achieve that objective.

- 5. It shall be deemed that the notification has been impossible if the competent authority of the Requesting Party receives no communication from the competent authority of the Requested Party within 60 days of the receipt of the request.
- 6. The time restrictions mentioned in this Article shall have no effect on the validity and legality of notification made under this Agreement.
- 7. This Article does not preclude the application of the domestic rules for notification of the Requesting Party, both procedures being equally valid.

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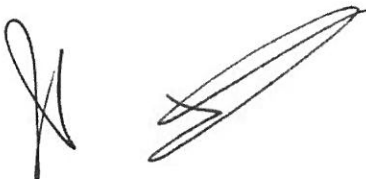
**ARTICLE 10**  
**COSTS**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party. At the request of either Party the competent authorities shall consult each other when necessary with regard to this Article. 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 extraordinary.

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**ARTICLE 11**  
**IMPLEMENTATION LEGISLATION**

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

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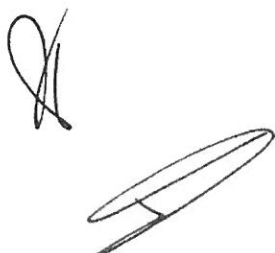
**ARTICLE 12**  
**LANGUAGE**

Requests for assistance and answers thereto shall be drawn up in English, or in Spanish and English.

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**ARTICLE 13**  
**MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
  
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6, 9 and 10.
  
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
  
4. The Parties may also agree on other forms of dispute resolution.

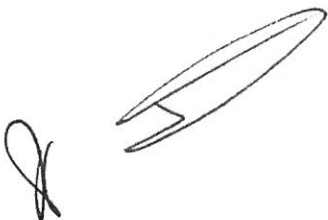
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**ARTICLE 14**  
**ENTRY INTO FORCE**

1. The Government of the Isle of Man and the Government of the Kingdom of Spain shall notify each other through appropriate channels that the internal procedures required by each Party for the entry into force of this Agreement have been complied with.
  
2. The Agreement shall enter into force after a period of three months following the date of receipt of the later of the notifications referred to in paragraph 1.
  
3. Upon entry into force, the provisions of this Agreement 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 the date of signature of this Agreement or, where there is no taxable period, all charges to tax arising on or after the date of signature.
  
4. The Isle of Man shall cease to be considered one of the territories referred to in paragraph 1 of the First Additional Provision of the Spanish Law to Avoid Tax Evasion (Disposición Adicional primera de la Ley 36/2006 de Medidas para la Prevención del Fraude Fiscal) of 29 November 2006 on the date on which this Agreement shall have effect.

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5. The information exchanged under this Agreement is considered to be "effective exchange of information" in accordance with the internal legislation of the Parties.



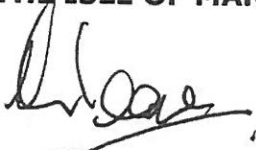
**ARTICLE 15**  
**TERMINATION**

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through the appropriate channels, by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiration of a period of two years from the date of its entry into force.
  
2. In such event, the Agreement shall cease to have effect the first day of January in the calendar year next following that in which the notice is given.
  
3. Notwithstanding any termination of this Agreement the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

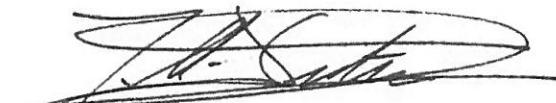
DONE in duplicate at London, this 3rd day of December, 2015, in two originals in the Spanish and English languages, both texts being equally authentic.

**FOR  
THE ISLE OF MAN:**



William Edward Teare  
Minister of the Treasury

**FOR  
THE KINGDOM OF SPAIN:**



José Manuel Gutiérrez Delgado  
Counsellor (Finance)  
Embassy of Spain in London