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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME)(SOCIALIST REPUBLIC OF VIETNAM) ORDER

INTRODUCTION

At the meeting of the Executive Council on 21 April 2009, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Socialist Republic of Vietnam) Order ("the Order"), at ***Annex A***, should be made under section 49 of the Inland Revenue Ordinance, Cap. 112 ("the Ordinance"). The Order implements the Agreement between the Hong Kong Special Administrative Region (HKSAR) with the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 16 December 2008.

A

JUSTIFICATIONS

Benefits of Comprehensive Agreements for Avoidance of Double Taxation

2. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services, movements of capital, technology and human resources, and poses an obstacle to the

development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") with our trading and investment partners so as to minimise double taxation.

3. Hong Kong adopts the territorial concept of taxation whereby only income sourced from Hong Kong is subject to tax. A local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation. Double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Despite that many jurisdictions do provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived therefrom, the existence of a CDTA will provide enhanced certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

Benefits of the CDTA between Hong Kong and Vietnam

4. In the absence of the CDTA, income earned by Vietnamese residents in Hong Kong is subject to both Hong Kong and Vietnam income taxes. Profits of Vietnamese companies doing business through a permanent establishment, such as a branch, in Hong Kong are fully taxed in both places. Under the CDTA, double taxation is avoided in that any Hong Kong tax paid by Vietnamese residents or companies shall be allowed as a credit against any tax payable in respect of the same incomes in Vietnam.

5 The CDTA with Vietnam will also bring some tax savings to Hong Kong residents. For instance, Hong Kong residents receiving royalties from Vietnam are now subject to a standard withholding tax of 10% in Vietnam. Under the CDTA, the royalties withholding tax will be capped at 7% where payments are made for the use of any patent, design or model, plan, secret formula or process. As for interest, the withholding tax will be reduced from the current rate of 10% to nil if the recipient is the HKSAR Government, the Hong Kong Monetary Authority or other recognised institutions as mutually agreed.

6. Profits from international shipping transport earned by Hong

Kong residents that arise in Vietnam, which are currently subject to tax there, will enjoy tax exemption under the agreement. Hong Kong airlines operating flights to Vietnam will be taxed at the corporation tax rate of 16.5% in Hong Kong as against the corporate tax rate of 25% in Vietnam, which they are subject to currently.

7. Overall speaking, the CDTA between Hong Kong and Vietnam sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of income. It will help investors of the two economies better assess their potential tax liabilities from cross-border economic activities, foster closer economic and trade links between the two places, and provide added incentives for Vietnamese enterprises to do business with or invest in Hong Kong, and vice versa.

Legal Basis

8. Under section 49 of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the signing of the CDTA with Vietnam, it is necessary for the Chief Executive in Council to declare by order that arrangements with Vietnam on double taxation relief have been made, so as to put the CDTA into effect.

OTHER OPTIONS

9. An Order made by the Chief Executive in Council under section 49 of the Ordinance is the only way to give effect to the CDTA with Vietnam. There is no other option.

THE ORDER

10. **Section 2** of the Order declares that arrangements specified in

section 3 for double taxation relief in relation to income tax and any tax of a similar character imposed by the laws of the Socialist Republic of Vietnam should take effect. **Section 3** states that the arrangements are those in Articles 1 to 29 of the CDTA with Vietnam as well as Paragraphs 1 to 3 of the Protocol to the CDTA, the text of which Articles and Paragraphs are specified in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be -

Publication in the Gazette	30 April 2009
Tabling at Legislative Council	6 May 2009
Commencement date of the Order	25 June 2009

IMPLICATIONS OF THE PROPOSAL

12. The proposal has financial, economic and civil service implications as set out in ***Annex B***. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Ordinance and its subsidiary legislation. It has no productivity, environmental or sustainability implications.

B

PUBLIC CONSULTATION

13. The business and professional sectors have all along supported our policy to conclude more CDTAs with our key trading and investment partners.

PUBLICITY

14. Publicity was arranged for the signing of the CDTA with Vietnam on 16 December 2008. A spokesman will be available to answer media and public enquiries.

BACKGROUND

15. The CDTA with Vietnam is the fifth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the Agreement is at ***Annex C***.

C

16. We entered into a CDTA with Belgium in December 2003, with Thailand in September 2005, with the Mainland of China in August 2006, and with Luxembourg in November 2007.

ENQUIRIES

17. In case of enquiries about this Brief, please contact Mr Kenneth Cheng, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
29 April 2009

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME)(SOCIALIST REPUBLIC OF VIETNAM) ORDER

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with Respect to Taxes on Income) (Socialist Republic of Vietnam) Order
Annex B	Financial, Economic and Civil Service Implications of the Proposal
Annex C	Comprehensive Double Taxation Agreement (CDTA) Between Hong Kong and Vietnam

Annex A

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME)(SOCIALIST REPUBLIC OF VIETNAM) ORDER

(Made by the Chief Executive in Council under section 49 of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 25 June 2009.

2. Declaration under section 49

For the purposes of section 49 of the Ordinance, it is declared –

(*a*) that the arrangements specified in section 3 have been made with the Government of the Socialist Republic of Vietnam with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Republic; and

(*b*) that it is expedient that those arrangements should have effect.

3. Arrangements specified

The arrangements specified for the purposes of section 2(*a*) are the arrangements in –

(*a*) Articles 1 to 29 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done in duplicate at Hanoi on 16 December 2008 in the English

and Vietnamese languages, the English text of which Articles is reproduced in Part 1 of the Schedule; and

(*b*) Paragraphs 1 to 3 of the Protocol to that Agreement, the English text of which Paragraphs is reproduced in Part 2 of the Schedule.

SCHEDULE [s. 3]

PART 1

ARTICLES 1 TO 29 OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are:

(a) in the case of the Hong Kong Special Administrative Region:
(i) profits tax;
(ii) salaries tax; and
(iii) property tax,
whether or not charged under personal assessment;

(b) in the case of the Socialist Republic of Vietnam:
(i) business income tax; and
(ii) personal income tax.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" and "Vietnamese tax" respectively.

Article 3

General Definitions

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

(a) (i) the term "Hong Kong Special Administrative Region" means the Hong Kong Special Administrative Region of the People's Republic of China;

(ii) the term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means its land territory, islands, internal waters, territorial sea and airspace above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which the Socialist Republic of Vietnam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law;

(b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(c) the term “competent authority” means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;

(ii) in the case of Vietnam, the Minister of Finance or his authorized representative;

(d) the term “Contracting Party” means the Hong Kong Special Administrative Region or Vietnam, as the context requires;

(e) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean, respectively, an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

(g) the term “national”, in relation to Vietnam, means:

(i) any individual possessing the nationality of Vietnam; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in Vietnam;

(h) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons;

(i) the term “tax” means the Hong Kong Special Administrative Region tax or Vietnamese tax, as the context requires.

2. In this Agreement, the terms “Hong Kong Special Administrative Region tax” and “Vietnamese tax” do not include any penalty or interest imposed under the laws in force in either Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

   (a) in the case of the Hong Kong Special Administrative Region,

      (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

      (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

      (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

      (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

   (b) in the case of Vietnam, any person who, under the laws of Vietnam, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of registration, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Vietnam in respect only of income from sources in Vietnam.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer ("centre of vital interests");

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Vietnam);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Vietnam, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Vietnam, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then the competent authorities of the Contracting Parties shall determine that the person is a resident of a Contracting Party for the purposes of this Agreement by mutual agreement.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) a warehouse, in relation to a person supplying storage facilities for others; and

(h) an installation structure, or equipment used for the exploration of natural resources.

3. The term “permanent establishment” also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 180 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has, and habitually exercises, in the first-mentioned Contracting Party an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term “immovable property” shall have the meaning which it has under the laws of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to:

   (a) that permanent establishment;

   (b) sales in that other Party of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

   (c) other business activities carried on in that other Party of the same or similar kind as those effected through that permanent establishment;

   provided that (b) or (c) shall not apply where an enterprise is able to demonstrate that the sales or business activities were carried out for reasons other than obtaining treaty benefits.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. If the information available to the taxation authority of a Contracting Party is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that Contracting Party relating to the determination of the tax liability of a person provided that that law shall be applied in accordance with the principles of this Article, so far as the information

available to the taxation authority permits.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where

   (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or

   (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting Party derives profits or

income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article,

   (a) interest arising in the Hong Kong Special Administrative Region shall be exempt from Hong Kong Special Administrative Region tax if the interest is paid to:

      (i) the Government of Vietnam;

      (ii) the State Bank of Vietnam;

      (iii) the Bank for Foreign Trade of Vietnam;

      (iv) other financial institution the capital of which is wholly owned by the Government of Vietnam;

      (v) a financial establishment appointed by the Government of Vietnam and mutually agreed upon by the competent authorities of the two Contracting Parties;

   (b) interest arising in Vietnam shall be exempt from Vietnamese tax if the interest is paid to:

(i) the Government of the Hong Kong Special Administrative Region;

(ii) the Hong Kong Monetary Authority;

(iii) a financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being the Government of a Contracting Party or a resident of that Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting Party when the payer is the Government of that Party or a resident of that Party. Where, however, the person paying the interest, whether he is the Government of a Contracting Party or a resident of that Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party,

due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed:

   (a) 7 per cent of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process;

   (b) 10 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes or discs used for radio or television broadcasting, any patent, trade mark, design or model, computer software program, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being the Government of a Contracting Party or a resident of that Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is the Government of that Party or a resident of that Party. Where, however, the person paying the royalties, whether he is the Government of a Contracting Party or a resident of that Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Gains from the Alienation of Property

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of or comparable participation in a company, the assets of which consist, directly or indirectly, mainly of immovable property situated in the other Contracting Party may be taxed in that other Party.

5. Gains derived from the alienation of shares, other than the shares referred to in paragraph 4, of not less than 15 per cent of the entire shareholding of a company which is a resident of a Contracting Party may be taxed in that Contracting Party.

6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting Party in respect of professional services or other activities of an independent character shall be taxable only in that Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:

   (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or

   (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Party may be taxed in that other Party.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

   (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and

   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 17

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsmen who are residents of a Contracting Party from activities in the other Contracting Party under a plan of cultural exchange between the Governments of both Contracting Parties shall be exempt from tax in that other Contracting Party.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Contracting Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments (including a lump sum payment) made under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party; or

   (b) an arrangement in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

   shall be taxable only in that Contracting Party.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other Party and the individual is a resident of that Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Vietnam, is a national thereof; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (including a lump sum payment) paid by, or out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, such pension (including a lump sum payment) shall be taxable only in the other Contracting Party if the individual is a resident of that other Party and, in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Vietnam, is a national thereof, and the pension (including a lump sum payment) is paid in respect of services referred to in sub-paragraph (b) of paragraph 1 of this Article.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions (including a lump sum payment), in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

Article 20

Students

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

2. Notwithstanding the provisions of Article 15, remuneration for services rendered by a student mentioned in the preceding paragraph in a Contracting Party shall not be taxed in that Party, provided that such services are in connection with his studies.

Article 21

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting Party not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 22

Methods for Elimination of Double Taxation

1. (a) In the case of the Hong Kong Special Administrative Region, subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Vietnamese tax paid under the laws of Vietnam and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Vietnam, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

(b) For the purpose of paragraph 1 (a) of this Article, the income tax paid in Vietnam shall be deemed to include any amount of tax which would have been payable as Vietnamese tax for any year but for an exemption from or a reduction of tax granted for that year or any part thereof as a result of the application of the provisions of Vietnamese law designed to extend time limited tax incentives to promote foreign investment for development purpose. The provision of this sub-paragraph shall only apply for a period of 10 years from the day on which this Agreement comes into effect according to paragraph 2 of Article 28.

2. (a) In the case of Vietnam, where a resident of Vietnam derives income, profits or gains which under the laws of the Hong Kong Special Administrative Region and in accordance with this Agreement may be taxed in the Hong Kong Special Administrative Region, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the tax on income, profits or gains, as computed before the deduction is given, which is attributable to the income, profits or gains which may be taxed in the Hong Kong Special Administrative Region.

(b) Where, in accordance with any provision of this Agreement, income derived by a resident of Vietnam is exempt from tax in Vietnam, Vietnam may nevertheless, in calculating the amount of tax on the remaining income take into account the exempted income.

3. Where a company which is a resident of a Contracting Party pays dividends to a company which is a resident of the other Contracting Party and the latter company, directly or indirectly, controls not less than 10 per cent of the shares of the company which pays the dividends, the credit that the company which is a resident of that other Party is entitled to shall include the tax paid by the company which pays the dividends in respect of the profits from which such dividends are derived (but not exceeding the appropriate portion of profits incidental to the derivation of such dividends).

Article 23

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Vietnam, are Vietnam nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Vietnam) in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities.

3. Except where the provisions of paragraph l of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

5. Nothing contained in this Article shall be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

6. Notwithstanding the provisions of this Article, for so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subjected, the imposition of such taxation shall not be regarded as breaching the terms of paragraphs 2 and 4 of this Article.

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Vietnam). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to this Agreement, as well as to prevent fiscal evasion in relation to such taxes. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 shall use the information only for such purposes. They may disclose the information in public court proceedings, or in judicial decisions, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting Party the obligation:

   (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 26

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 27

Miscellaneous Rules

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

Article 28

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its laws for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which this Agreement enters into force;

(b) in Vietnam:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after 1 January in the calendar year next following that in which this Agreement enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination on or before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force.

In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amount paid or credited on or after 1 January following the calendar year in which the notice of termination is given, and in any subsequent calendar years; and

(ii) in respect of other taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in any subsequent calendar years.

PART 2

PARAGRAPHS 1 TO 3 OF THE PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1. For the purposes of Article 3 paragraph 2 and in the case of the Hong Kong Special Administrative Region, the term "penalty or interest" includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and additional tax assessed for infringement of or failure to comply with its tax laws.

2. For the purposes of Article 7 paragraph 3, the term "banking enterprise" means, in the case of the Hong Kong Special Administrative Region, a financial institution as defined under the Inland Revenue Ordinance, Chapter 112 of the Laws of Hong Kong.

3. For the purposes of Article 13 paragraph 4, the term "assets" shall be read as the value of the assets, and the term "mainly" shall be read as "not less than 50 per cent".

Clerk to the Executive Council

COUNCIL CHAMBER

2009

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Socialist Republic of Vietnam signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income ("Agreement") together with a protocol to the Agreement ("Protocol") on 16 December 2008. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 3 of the Protocol as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.

Annex B

Financial, Economic and Civil Service Implications of the Proposal

Financial Implications

The Government would have to forgo some revenue which is currently being collected in respect of profits of Vietnamese resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Vietnamese operators. However, the overall financial implications would be insignificant.

Economic Implications

2. The Agreement will facilitate business development between Hong Kong and Vietnam and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Vietnam by providing enhanced certainty and stability to the tax liabilities of investors.

Civil Service Implications

3. There will be additional work for the Inland Revenue Department (IRD) in handling requests for exchange of information from Vietnam under the Agreement. The additional workload will be absorbed by redeployment of staff within IRD.

Annex C

Comprehensive Double Taxation Agreement (CDTA)
Between Hong Kong and Vietnam

Summary of Main Provisions

The CDTA with Vietnam (the "Agreement") covers the following types of taxes:

(a) in respect of Hong Kong – (i) profits tax;
(ii) salaries tax; and
(iii) property tax;
whether or not charged under personal assessment;

(b) in respect of Vietnam – (i) business income tax; and
(ii) personal income tax.

2. The Agreement deals with the taxing of income of residents of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

Exclusive taxing right

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Agreement that the following types of income shall only be taxed in the resident jurisdiction -

(a) profits of an enterprise, unless the enterprise carries on business

in the source jurisdiction through a permanent establishment therein (i.e. a fixed place of business through which the business of an enterprise is wholly or partly carried on);

(b) profits from operation of ships and aircraft in international traffic and gains from alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft;

(c) income derived by an individual from exercising independent professional services, unless he has a fixed base regularly available to him in the source jurisdiction for the purpose of performing his activities or his stay in the source jurisdiction amounts to or exceeds in the aggregate 183 days in any twelve-month period;

(d) income from employment, unless the employment is exercised in the source jurisdiction;

(e) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;

(f) non-government pensions, unless the pensions are made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction or under the social security legislation of the source jurisdiction;

(g) capital gains not expressly dealt with in the Agreement; and

(h) other income not expressly dealt with in the Agreement except where the income (excluding capital gains) is derived from the source jurisdiction.

4. Non-government pensions made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction or under the social security legislation of the source jurisdiction are taxable only in the source jurisdiction. Besides, employment income and pensions paid by the government of a Contracting Party are, in general, taxable only in that Party (source jurisdiction).

Shared taxing rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Agreement to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax and the resident jurisdiction is left with a secondary right). It is provided in the Agreement that the following types of income may be taxed in both jurisdictions -

(a) Profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment, to the extent that such profits are attributable to the permanent establishment, and gains from the alienation of the business property of such permanent establishment;

(b) income generated from immovable property and gains from the alienation of such property situated in the source jurisdiction;

(c) gains from alienation of shares of a company deriving more than 50 per cent of its asset value from immovable property situated in the source jurisdiction;

(d) passive income of dividends, interest and royalties received from residents of a source jurisdiction (the source jurisdiction's right to tax is subject to a specified limit in tax rates: for dividend, 10%; for interest, 0% if the recipient is the

Government or recognized financial institutions and 10% in all other cases; for royalties, 7% for the use of patent, design or secret formula, etc and 10% in all other cases);

(e) income of artistes and sportsmen who conduct their professional activities in the source jurisdiction and their visit to the source jurisdiction is not under a plan of cultural exchange between the Governments of both source and resident jurisdictions;

(f) remuneration from non-government employment exercised in the source jurisdiction;

(g) directors' fees from a company resident in the source jurisdiction; and

(h) other income (excluding capital gains) not expressly dealt with in the agreement if it is derived from the source jurisdiction.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempted from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Both Hong Kong and Vietnam will provide double taxation relief for their residents by the credit method.