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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME) (SWITZERLAND) ORDER

INTRODUCTION

At the meeting of the Executive Council on 17 April 2012, the Council ADVISED and the Acting Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief with respect to Taxes on Income) (Switzerland) Order (the Order), at Annex A, should be made under section
A 49(1A) of the Inland Revenue Ordinance, Cap. 112 (the Ordinance). The Order implements the Agreement between the Hong Kong Special Administrative Region (HKSAR) and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income signed on 4 October 2011 (the Swiss Agreement).

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. Although 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 Swiss Agreement

4. In the absence of the Swiss Agreement, profits of Hong Kong companies doing business through a permanent establishment, such as a sales outlet, in Switzerland may be taxed in both places if the income is Hong Kong sourced. Under the Swiss Agreement, double taxation is avoided in that any Swiss tax paid by the companies shall be allowed as a credit against the tax payable in Hong Kong.

5. Under the Swiss Agreement, the income received by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Swiss entity, from employment exercised in Switzerland will be exempted from Swiss income tax if his or her aggregate stay in Switzerland in any relevant 12-month period does not exceed 183 days.

6. In the absence of a CDTA, Hong Kong residents receiving dividends from Switzerland not attributable to a permanent establishment there are subject to Swiss withholding tax currently at 35%. Under the Swiss Agreement, such withholding tax will be capped at 10%. Also, the withholding tax on dividends will be exempted if the beneficial owner of the dividends is a company holding directly at least 10% of the capital of the company paying the dividends, a pension fund or scheme or the Hong Kong Monetary Authority. The Swiss withholding tax on interest, currently at 35%, will be exempted for Hong Kong residents.

7. Upon its entry into force, the Swiss Agreement will supersede the existing provisions in the air services agreement with Switzerland on limited double taxation avoidance for airline income and provide the same level of benefits as those provisions, i.e. Hong Kong airlines operating flights to Switzerland will be taxed in Hong Kong at Hong Kong's corporation tax rate

(which is in general lower than that of Switzerland). Profits from international shipping transport earned by Hong Kong residents that arise in Switzerland, which are currently subject to tax there, will enjoy tax exemption in Switzerland under the Swiss Agreement.

8. Overall speaking, the Swiss Agreement 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 to 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 enterprises of Switzerland to do business with or invest in Hong Kong, and vice versa.

Exchange of Information Article under the Swiss Agreement

9. The Inland Revenue (Amendment) Ordinance 2010 which enables Hong Kong to adopt the Organisation for Economic Co-operation and Development (OECD) 2004 version of the Exchange of Information (EoI) Article in our CDTAs came into operation in March 2010. During the scrutiny of the relevant bill, the Government presented a sample EoI Article (Annex B) to the Bills Committee and undertook to highlight any deviation from the text in any CDTA that we have signed when we submit the CDTA for vetting.

B

10. The Swiss Agreement, which contains an EoI Article (the Article) based on the OECD 2004 version, has adopted all the safeguards in the sample EoI Article, in particular -

(a) the Article does not require the Contracting Parties to exchange information on an automatic or spontaneous basis;

(b) the scope of information exchange is confined to taxes covered by the Swiss Agreement;

(c) the information sought should be foreseeably relevant, i.e. there will be no fishing expedition;

(d) confidentiality requirements and restrictions on the usage of the information exchanged are as set out in the sample EoI Article;

(e) information will only be disclosed to the tax authorities and not for release to their oversight body;

(f) the information requested shall not be disclosed to a third jurisdiction; and

(g) there is no obligation to supply information under certain

circumstances as set out in the sample EoI Article.

Legal Basis

11. Under section 49(1A) 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 Swiss Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with Switzerland on double taxation relief have been made so as to put the Swiss Agreement into effect.

OTHER OPTIONS

12. An Order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to the Swiss Agreement. There is no other option.

THE ORDER

13. **Section 2** of the Order declares that the 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 Switzerland have been made and that those arrangements should take effect. **Section 3** states that the arrangements are those in Articles 1 to 29 of the Swiss Agreement as well as Paragraphs 1 to 8 of the Protocol to the Swiss Agreement, the text of which Articles and Paragraphs is set out in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows –

Publication in the Gazette	18 May 2012
Tabling at Legislative Council	23 May 2012
Commencement of the Order	13 July 2012

IMPLICATIONS OF THE PROPOSAL

15. The proposal has financial, economic and civil service implications as set out in Annex C. 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

C

sustainability implications.

PUBLIC CONSULTATION

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

PUBLICITY

17. Publicity was arranged for the signing of the original Swiss Agreement on 6 December 2010 (please refer to paragraph 18 below). A spokesman will be available to answer media and public enquiries.

BACKGROUND

18. The Swiss Agreement is the eighteenth CDTA concluded by Hong Kong with another jurisdiction. A CDTA between Hong Kong and Switzerland was originally signed on 6 December 2010 (the original Swiss Agreement). Before the then order was made by the Chief Executive in Council, the Swiss side informed us that a provision in the Protocol to the original CDTA relating to EoI was considered too stringent by the Peer Review Group of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes[1]. The Swiss side therefore requested and we agreed to abrogate the original Swiss Agreement and enter into the current Swiss Agreement with the relevant EoI provision suitably amended to comply with the standard of the Peer Review Group. A summary of the main provisions of the Agreement is at Annex D.

D

19. We entered into a CDTA with Belgium in December 2003, with Thailand in September 2005, with the Mainland of China in August 2006, with Luxembourg in November 2007, with Vietnam in December 2008, with Brunei, the Netherlands and Indonesia in March 2010, with Hungary, Kuwait and Austria in May 2010, with the United Kingdom and Ireland in June 2010, with Liechtenstein in August 2010, with France in October 2010, with Japan in November 2010, with New Zealand in December 2010, with Switzerland on the original CDTA in December 2010 and on the new CDTA in October 2011, with Portugal in March 2011, with Spain in April 2011, with the Czech Republic in June 2011, with Malta in November 2011, with Jersey in February 2012 and with Malaysia in April 2012.

[1] The said Global Forum has launched a two-phase peer review exercise to evaluate member jurisdictions' compliance with the international EoI standard. The Peer Review Group is responsible for considering the peer review findings before endorsement by the Global Forum.

ENQUIRY

20. In case of enquiries about this Brief, please contact Ms Shirley Kwan, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2370.

Financial Services and the Treasury Bureau
16 May 2012

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME) (SWITZERLAND) ORDER

ANNEXES

Annex A	Inland Revenue (Double Taxation Relief with respect to Taxes on Income) (Switzerland) Order
Annex B	Sample Exchange of Information Article
Annex C	Financial, Economic and Civil Service Implications of the Proposal
Annex D	Summary of the main provisions of the Comprehensive Double Taxation Agreement between Hong Kong and Switzerland

Inland Revenue (Double Taxation Relief with respect to Taxes on Income) (Switzerland) Order

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 13 July 2012.

2. Declaration under section 49(1A)

For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements specified in section 3(1) have been made with the Swiss Federal Council 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 Switzerland; and

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

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in—

(a) Articles 1 to 29 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income", done in duplicate at Hong Kong on 4 October 2011 in the Chinese, German and English languages; and

(b) Paragraphs 1 to 8 of the protocol to the agreement, done in duplicate at Hong Kong on 4 October 2011 in the Chinese, German and English languages.

(2) The English text of the Articles referred to in subsection (1)(a) is reproduced in Part 1 of the Schedule.

(3) The English text of the Paragraphs referred to in subsection (1)(b) 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 Swiss Federal Council for the Avoidance of Double Taxation 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 or of its political subdivisions or local authorities, 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 in particular:

   (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 Switzerland, the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).

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 taxes on income referred to in the preceding paragraphs of this Article are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Swiss tax", as the context requires.

6. The Agreement shall not apply to taxes withheld at the source on prizes in a lottery.

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 any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(ii) the term "Switzerland" means the Swiss Confederation;

(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 authorised representative;

(ii) in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;

(d) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or Switzerland, 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 Switzerland, means:

(i) any individual possessing the nationality or citizenship of Switzerland; and

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

(h) the term "person" includes an individual, a company and any other body of persons;

(i) the term "tax" means Hong Kong Special Administrative Region tax or Swiss tax, as the context requires.

2. 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 law 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 and 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 and controlled in the Hong Kong Special Administrative Region;

(b) in the case of Switzerland, any person who, under the laws of Switzerland, is liable to tax therein by reason of his domicile, residence, 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 Switzerland in respect only of income from sources in Switzerland;

(c) in the case of either Contracting Party, the Government and the political subdivisions or local authorities of that Party.

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 Switzerland);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Switzerland, or if he neither has the right of abode in the Hong Kong Special Administrative Region nor is a national of Switzerland, 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 it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

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; and

   (f) a mine, an oil or gas well, a quarry or any other place of extraction 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 270 days;

   (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, in connection with a site, a project or supervisory activities referred to in subparagraph (a), if those services continue within a Contracting Party in

connection with such site, project or activities for a period or periods aggregating more than 270 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, display or delivery 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, display or delivery;

   (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 advertising, for the supply of information, for scientific research or similar activities which have a preparatory or auxiliary character for the enterprise;

   (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is 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 on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for 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.

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.

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 law 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 work, mineral deposits, quarries, sources and other natural resources; ships 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 that permanent establishment.

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.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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.

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, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method as may be customary; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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, if it agrees that the adjustment made by the first-mentioned Party is justified both in principle and as regards the amount, 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 the competent authorities of the Contracting Parties shall if necessary consult each other.

3. A Contracting Party shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after six years from the end of the year in which the profits which would have accrued to an enterprise of that Party. This paragraph shall not apply in the case of fraud or wilful default.

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.

3. Notwithstanding the provisions of paragraph 2, the Contracting Party of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

   (a) a company (other than a partnership) which is resident of the other Contracting Party and which holds directly at least 10 per cent of the capital of the company paying the dividends; or

   (b) a pension fund or pension scheme; or

   (c) in the case of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority; and in the case of Switzerland, the Swiss National Bank.

4. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of the limitations mentioned in paragraphs 2 and 3. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' 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.

6. 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.

7. 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.

8. The provisions of this Article shall not apply in respect of any dividends paid in the course of a transaction or series of transactions which is structured in such a way that a resident of a Contracting Party entitled to the benefits of this Agreement receives an item of income arising in the other Contracting Party but the resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting Party and who, if it received that item of income directly from the other Contracting Party, would not be entitled under an agreement for the avoidance of double taxation between the Party in which that other person is resident and the Contracting Party in which the income arises, or otherwise, to

benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting Party and the main purpose of such structuring is obtaining benefits under this Agreement.

Article 11

Interest

1. Interest arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.

2. 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.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting 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 such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. 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 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.

5. The provisions of this Article shall not apply in respect of any interest paid in the course of a transaction or series of transactions which is structured in such a way that a resident of a Contracting Party entitled to the benefits of this Agreement receives an item of income arising in the other Contracting Party but the resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting Party and who, if it received that item of income directly from the other Contracting Party, would not be entitled under an agreement for the avoidance of double taxation between the Party in which that other person is resident and the Contracting Party in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting Party and the main purpose of such structuring is obtaining benefits under 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 3 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

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 used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, 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 a resident of a Contracting 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 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. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting 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 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.

7. The provisions of this Article shall not apply in respect of any royalties paid in the course of a transaction or series of transactions which is structured in such a way that a resident of a Contracting Party entitled to the benefits of this Agreement receives an item of income arising in the other Contracting Party but the resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting Party and who, if it received that item of income directly from the other Contracting Party, would not be entitled under an agreement for the avoidance of double taxation between the Party in which that other person is resident and the Contracting Party in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting Party and the main purpose of such structuring is obtaining benefits under this Agreement.

Article 13

Capital Gains

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 a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party provided that the resident owns, directly or indirectly, at least 5 per cent of the issued shares of the company. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) quoted on a stock exchange established in and recognised by a Contracting Party or on any other stock exchange as may be agreed between the competent authorities of the Contracting Parties; or

   (b) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or

   (c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, 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 unless:

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

   (b) his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned of that other Party. 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 and 19, 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 the fiscal year concerned of that other Party, 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 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. This paragraph shall not apply if it is established that neither the entertainer or the sportsman himself, nor persons related to him, participate directly in the profits of such person.

3. Paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting Party by entertainers or sportsmen if such income is derived directly or indirectly, wholly or mainly from public funds of the other Contracting Party, a political subdivision or a local authority thereof.

Article 18

Pensions

Pensions and other similar remuneration in consideration of past employment or self-employment, arising in a Contracting Party and paid to a resident of the other Contracting Party, shall be taxable only in the first-mentioned Party.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration paid by the Government of a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

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

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

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

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party or a political subdivision or a local authority thereof.

Article 20

Students

Payments which a student 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 receives for the purpose of his maintenance or education shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

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. The provisions of this Article shall not apply in respect of any items of income referred to in paragraph 1 paid in the course of a transaction or series of transactions which is structured in such a way that a resident of a Contracting Party entitled to the benefits of

this Agreement receives an item of income arising in the other Contracting Party but the resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting Party and who, if it received that item of income directly from the other Contracting Party, would not be entitled under an agreement for the avoidance of double taxation between the Party in which that other person is resident and the Contracting Party in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting Party and the main purpose of such structuring is obtaining benefits under this Agreement.

Article 22

Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be avoided as follows:

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), Swiss tax paid under the laws of Switzerland 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 Switzerland, 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.

2. In the case of Switzerland, double taxation shall be avoided as follows:

(a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Switzerland shall, subject to the provisions of subparagraph (b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in the Hong Kong Special Administrative Region is demonstrated.

(b) Where a resident of Switzerland derives dividends or royalties which, in accordance with the provisions of Articles 10 and 12 respectively may be taxed in the Hong Kong Special Administrative Region, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

(i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in the Hong Kong Special Administrative Region in accordance with the provisions of Articles 10 and 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the Hong Kong Special Administrative Region; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in the Hong Kong Special Administrative Region from the gross amount of the dividends or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of the Hong Kong Special Administrative Region shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

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 Switzerland, are nationals thereof, 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 Switzerland) in the same circumstances, in particular with respect to residence, are or may be

subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

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. This provision shall not 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 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. The provisions of paragraphs 1 to 4 of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

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 Switzerland). 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.

5. Where,

(a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision that decision shall be binding on both Contracting Parties and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 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 referred to in paragraph 1. 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.

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

(a) to carry out administrative measures at variance with the laws and 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 (*ordre public*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In the case of Switzerland, in order to obtain such information, its tax authority shall, if necessary to comply with its obligations under this paragraph, have the power to ensure the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

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

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 Contracting Party shall notify the other in writing of the completion of the procedures required by its law 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 the first day of April of the calendar year next following that in which this Agreement enters into force;

   (b) in Switzerland:

   (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following that in which this Agreement enters into force;

   (ii) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

3. Notwithstanding the provisions of subparagraphs (a) and (b) of paragraph 2, Article 8 and paragraph 3 of Article 13 shall have effect in both Contracting Parties from the date on 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 written notice of termination to the other Contracting Party at least six months before the end of any calendar year. 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 the first day of April of the calendar year next following that in which the notice is given;

(b) in Switzerland:

(i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following that in which the notice is given;

(ii) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the notice is given.

Part 2

Paragraphs 1 to 8 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 Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income

1. ad Article 2

In respect of paragraph 5 of Article 2, it is understood that the terms "Hong Kong Special Administrative Region tax" and "Swiss tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under Section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party.

2. ad Articles 3 and 4

In respect of subparagraph (h) of paragraph 1 of Article 3 and paragraph 1 of Article 4, it is understood that the terms "person" and "resident of a Contracting Party" do not include a trust, or an individual or a company acting in the capacity of a trustee.

3. ad Article 4

In respect of paragraph 1 of Article 4, it is understood that the term "resident of a Contracting Party", in the case of Switzerland, includes:

(a) a recognised pension fund or pension scheme established in Switzerland; and

(b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, artistic, sportive or educational purposes (or for more than one of those purposes) and that is a resident of Switzerland according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic laws of Switzerland.

Regarding subparagraph (a), it is understood that any pension fund or pension scheme recognised and controlled according to statutory provisions of Switzerland, which is generally exempt from income taxation in Switzerland and which is operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of such arrangements shall be regarded as a recognised pension fund or pension scheme of Switzerland.

4. ad Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting Party sells goods or merchandise or carries on business in the other Party through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but

shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Party where the permanent establishment is situated.

The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Party of which the enterprise is a resident.

5. ad Articles 7 and 12

It is understood that payments received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment constitute business profits covered by Article 7.

6. ad Article 10

Regarding subparagraph (b) of paragraph 3 of Article 10, it is understood that the term "pension fund or pension scheme" includes the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of the Agreement:

(a) in the Hong Kong Special Administrative Region, any scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in the Hong Kong Special Administrative Region;

(b) in Switzerland, any plans and schemes covered by

(i) the Federal Act on old age and survivors' insurance of 20 December 1946;

(ii) the Federal Act on disabled persons' insurance of 19 June 1959;

(iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;

(iv) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer professional pension plans; and

(v) the forms of individual recognised pension schemes comparable with the professional pension plans, in accordance with article 82 of the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982.

It is further understood that the term "pension fund or pension scheme" includes investment funds or trusts where all of the interest of the funds or trusts are held by pension funds or pension schemes.

7. ad Article 18

It is understood that the term "pensions" as used in Article 18 does not only cover periodic payments, but also includes lump sum payments.

8. ad Article 25

(a) The Hong Kong Special Administrative Region confirms that, in accordance with its current domestic laws and subject to the same, the tax authorities of the Hong Kong Special Administrative Region have the power to enforce the

disclosure of information covered by paragraph 5 of Article 25.

(b) It is understood that an exchange of information will only be requested once the requesting Contracting Party has exhausted all regular sources of information available under the internal taxation procedure.

(c) It is understood that the tax authorities of the requesting Party shall provide, in particular, the following information to the tax authorities of the requested Party when making a request for information under Article 25:

(i) the identity of the person under examination or investigation;

(ii) the period of time for which the information is requested;

(iii) 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;

(iv) the tax purpose for which the information is sought;

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

(d) It is understood that while the provisions of subparagraph (c) are intended to ensure that fishing expeditions do not occur, they are to be construed in a manner which does not frustrate the effective exchange of information.

(e) It is further understood that Article 25 shall not commit the Contracting Party to exchange information on an automatic or a spontaneous basis.

(f) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting Party remain applicable before the information is transmitted to the requesting Contracting Party. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

(g) In the case of the Hong Kong Special Administrative Region, the persons or authorities to whom the information may be disclosed under paragraph 2 of Article 25 include the Board of Review.

(h) It is also understood that information requested shall not be disclosed to a third jurisdiction.

(i) It is understood that a Contracting Party may only request information relating to taxable periods for which the provisions of the Agreement have effect for that Party.

Clerk to the Executive Council

COUNCIL CHAMBER

2012

Explanatory Note

The Hong Kong Special Administrative Region Government and the Swiss Federal Council signed an agreement for the avoidance of double taxation with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 4 October 2011. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 8 of the Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in the Chinese, German and English languages.

2. The effects of the declaration are—

(a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and

(b) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of Switzerland, have effect in relation to any tax of Switzerland that is the subject of that provision.

Annex B

Extracts of Hong Kong's Sample CDTA Text

ARTICLE 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their political subdivisions or local or territorial authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1[1].

2. Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1. 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.

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

   (a) to carry out administrative measures at variance with the laws and 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;

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[1] Article 1: "PERSONS COVERED: This Agreement shall apply to persons who are residents of one or both of the Contracting Parties."

(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 (ordre public).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contacting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

* * * *

PROTOCOL

At the time of signing of the Agreement between the Government of Country A and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion, the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1-9. …..

10. It is understood that Article 25 does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties. In respect of the same Article, it is also understood that information requested shall not be disclosed to a third jurisdiction. In the case of the Hong Kong Special Administrative Region, the judicial decisions in which information may be disclosed include the decisions of the Board of Review.

* * * *

Annex C

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 Swiss resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping profits of Swiss operators. However, the overall financial implications would be insignificant.

Economic Implications

2. The Swiss Agreement will facilitate business development between Hong Kong and Switzerland and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Switzerland 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 in handling requests for exchange of information from Switzerland under the Swiss Agreement. Additional manpower resources would be sought in accordance with the established resource allocation mechanism.

Annex D

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

Summary of Main Provisions

1. The CDTA with Switzerland (the "Swiss Agreement") covers the following types of taxes:

(a) in respect of Hong Kong – (i) salaries tax;
(ii) profits tax; and
(iii) property tax;

(b) in respect of Switzerland – the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).

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

Exclusive taxing rights

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Swiss Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Swiss 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;

(c) interest income;

(d) capital gains not expressly dealt with in the Swiss Agreement;

(e) income from services of an independent character, including services performed in the source jurisdiction provided that the services are not provided through a fixed base situated therein and the person is present in the source jurisdiction for periods not exceeding in the aggregate 183 days in the fiscal year concerned;

(f) income from non-government employment, including employment exercised in the source jurisdiction provided that the employee is present in the source jurisdiction for periods not exceeding in aggregate 183 days in the fiscal year concerned, etc.;

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

(h) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction and such income is derived directly or indirectly, wholly or mainly from public funds of the resident jurisdiction; and

(i) other income not expressly dealt with in the Swiss Agreement.

4. Employment income paid by the government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions are taxable only in the 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 Swiss 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 Swiss Agreement that the following types of income may be taxed in both jurisdictions:

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

(b) 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;

(c) passive income of dividends 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 dividends, 0% if the beneficial owner is a company which holds directly at least 10 percent of the capital of the paying company, or a pension fund or scheme, or the Hong Kong Monetary Authority or the Swiss National Bank and 10% in all other cases;

- for royalties, 3%;

(d) gains from alienation of shares of a company (except quoted shares or arising from corporate re-organization or merger) deriving more than 50% of its asset value directly or indirectly from immovable property (other than premises in which the company carries on business) situated in the source jurisdiction and the seller owns at least 5 percent of

the issued shares of that company;

(e) income from non-government employment exercised in the source jurisdiction, where the employee is present in the source jurisdiction for periods exceeding in the aggregate 183 days in the fiscal year concerned, etc.;

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

(g) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction (other than such income mentioned in paragraph 3(h)).

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. Hong Kong provides double taxation relief for its residents by the credit method whereas Switzerland provides double taxation relief for its residents by both the exemption method and the credit method.