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Report of the Subcommittee on Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order

Purpose

This paper reports on the deliberations of the Subcommittee on Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order ("the Subcommittee").

Background

2. It has been the Government's policy priority to conclude comprehensive agreements for avoidance of double taxation ("CDTAs") with Hong Kong's trading and investment partners which serve as a business facilitation initiative to minimize the incidence of double taxation¹. All CDTAs signed between partners embody a mechanism for exchange of tax information ("EoI") which is necessary to allow the sharing of information between CDTA partners for their own tax purposes.

3. According to the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") of the Organization for Economic Cooperation and Development ("OECD"), a jurisdiction should make available both CDTA and tax information exchange agreement ("TIEA") as instruments for EoI with other jurisdictions. TIEA is a form of agreement for EoI which carries no double taxation relief. During an earlier review of Hong Kong's compliance with the international EoI standard, the Global Forum recommended that Hong Kong should put in place a legal framework for entering into TIEAs with other jurisdictions, otherwise Hong Kong would run the risk of being labelled as an uncooperative tax jurisdiction. On 10 July 2013, the Legislative Council ("the Council") enacted the Inland Revenue

¹ Double taxation is generally defined as the imposition of comparable taxes in two or more places on the same taxpayers in respect of the same subject matter for identical periods.

(Amendment) (No. 2) Ordinance 2013 which enables Hong Kong to enter into standalone TIEAs with other jurisdictions.

The Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order

4. The Government signed the Agreement between the Hong Kong Special Administrative Region and the United States of America for the Exchange of Information relating to Taxes ("US Agreement") on 25 March 2014, which is the first TIEA concluded by Hong Kong with other jurisdictions. The Inland Revenue (Exchange of Information relating to Taxes) (United States of America) Order (L.N. 54 of 2014) ("the Order") is made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO") to give effect to the US Agreement². The Order was published in the Gazette on 25 April 2014 and tabled at the Council meeting of 30 April 2014 for negative vetting. The Order will come into operation on 20 June 2014.

The Subcommittee

5. At the House Committee meeting held on 2 May 2014, members agreed to form a subcommittee to study the Order. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Hon James TO Kun-sun, the Subcommittee has held three meetings with the Administration to examine the Order.

6. To allow more time for the Subcommittee to study the Order, the Subcommittee Chairman has given notice to move a motion at the Council meeting of 21 May 2014 to extend the scrutiny period of the Order to 18 June 2014. However, the motion was not dealt with at the Council meeting of 21 May or 28 May 2014 due to continued consideration of the Appropriation Bill 2014, and the deadline for amending the Order expired on 28 May 2014.

Deliberations of the Subcommittee

The policy on CDTAs and TIEAs

7. The Subcommittee notes that it has been the Administration's policy priority to expand Hong Kong's network of CDTAs given their benefits in facilitating the flow of trade, investment and talent between Hong Kong and other jurisdictions. Subcommittee members have enquired about the reasons for Hong Kong to sign a TIEA instead of a CDTA with US. Moreover, in view of the territorial source principle of taxation adopted in Hong Kong,

² The terms of the US Agreement, in gist, are reproduced in the Order.

Subcommittee members are concerned that there would be limited financial benefits for Hong Kong arising from any crackdown on tax evasion cases by way of EoI.

8. The Administration has stressed that it remains the Government's policy priority to expand Hong Kong's network of CDTAs. However, according to the prevailing international standard, a jurisdiction should make available both CDTA and TIEA as instruments for EoI with other jurisdictions. In this connection, the Inland Revenue (Amendment) (No. 2) Ordinance 2013 has provided for a legal framework for Hong Kong to enter into TIEAs with other jurisdictions where necessary. Moreover, it is also the prevailing international standard that preference for a CDTA over a TIEA cannot be a reason for refusing to enter into an EoI agreement with relevant partners. Hence, while the Administration has repeatedly persuaded those jurisdictions which approached Hong Kong for TIEA negotiations to pursue CDTAs instead, there is no alternative but to commence TIEA negotiations with them if they express no interest in the Administration's counter-proposal. The US is a case in point. The Administration has added that individual tax jurisdictions will have their own considerations in considering whether to enter into a CDTA with other jurisdictions, such as concern about potential loss in tax revenue, alternative means other than CDTA to address issues of double taxation.

9. The Administration has advised that it is also negotiating TIEAs with a number of other jurisdictions, such as Denmark, Norway and Sweden. Notwithstanding the above, Hong Kong would, as a business facilitation initiative, continue its efforts to expand the network of CDTAs with its trading and investment partners. Even though the Administration may conclude TIEAs with certain jurisdictions, it does not rule out the possibility of pursuing CDTAs with individual jurisdictions later if they are interested.

Interface of the US Agreement with US Foreign Account Tax Compliance Act

10. The Subcommittee has enquired about the relationship between the US Agreement and US Foreign Account Tax Compliance Act ("FATCA"), as well as the arrangement for Hong Kong to use the Agreement as the EoI mechanism to complement the implementation of FATCA.

11. The Administration has explained that entering into a TIEA with US serves the primary purpose of fulfilling Hong Kong's international obligation in enhancing tax transparency. In addition, as FATCA³ is an anti-tax evasion regime enacted by US to detect US taxpayers who use accounts with non-US financial institutions ("FIs") (i.e. foreign financial institutions ("FFIs") in FATCA parlance) to conceal income and assets from the US Internal Revenue Service ("IRS"), the US Agreement is relevant to the overall compliance with FATCA by FFIs in Hong Kong. Essentially, FATCA requires FFIs, including

³ FATCA was passed by the US Congress in 2010 and will take effect from 1 July 2014.

those in Hong Kong, to report financial account information of US taxpayers to the US IRS. Failing to comply with the reporting requirements under FATCA by FFIs will result in the US Government imposing a 30% withholding tax on certain gross payments made from US to the non-compliant FFIs.

12. The Subcommittee notes that US has developed two Model intergovernmental agreements ("IGAs") to simplify the FATCA requirements and overcome impediments in relation to implementation. Model 1 IGA requires FFIs to report account information of US taxpayers to their own government, which will commit to exchanging such information at a government level with US IRS on an automatic basis. The Administration has advised that Hong Kong has not pursued Model 1 IGA as the laws do not permit exchange of tax information with other jurisdictions on an automatic basis. Model 2 IGA, which Hong Kong is pursuing, requires FFIs to report the relevant account information of US taxpayers to the US IRS directly, supplemented by group requests made by the US IRS on a need basis, for exchange of information on relevant US taxpayers at a government level (i.e. EoI on a per request rather than an automatic basis). Hence, the exchange of information at a government level has to be underpinned by an EoI agreement, be it CDTA or TIEA. As US has not pursued a CDTA with Hong Kong, and to facilitate the conclusion of the IGA with US before the implementation of FATCA in July 2014, it is essential for Hong Kong to have in place a TIEA with US in a timely manner.

Scope of TIEA

13. The Subcommittee is concerned about the wide scope of the US Agreement as it would allow the Inland Revenue Department ("IRD") to provide the US tax authority with tax information pertaining to non-FIs in Hong Kong whereas FATCA involves reporting by FFIs only. The Subcommittee members have requested the Administration to consider restricting the US Agreement to exchange of information covering FIs only with a view to protecting the interests of non-FIs. By doing so, the Administration would have more bargaining power in negotiating a CDTA with US in future.

14. The Administration has explained that there is limited room for individual jurisdictions to make adjustments to the scope of a TIEA since there is a model agreement developed by OECD. The EoI mechanism provided for under the OECD's model TIEA includes all information relating to taxes covered, which may or may not be held by FIs. The Administration has pointed out that any major deviations from the model agreement, e.g. limiting the scope of information to be exchanged to information held by FIs only, will run the risk of the TIEA not being internationally regarded as a compliant EoI agreement. This will reflect badly on the image of Hong Kong as a cooperative jurisdiction. Practically speaking, it is also highly unlikely that TIEA partners (including US) will agree to adopt a formulation distinct from the OECD's model agreement. The Subcommittee notes that according to the Administration's research, the

33 TIEAs signed by US with other jurisdictions generally follow the international standard, i.e. allowing for exchange of information from various sources.

15. The Subcommittee reiterates the concern about adverse effects of the US Agreement on non-FIs and has urged the Administration to conduct further negotiation with US to pursue exemption for exchange of information held by non-FIs in Hong Kong under specified conditions. The Subcommittee further stresses the need for the Administration to protect the interests of non-FIs, for instance, to put in place measures to prevent disclosure of commercial information exchanged under the US Agreement to other enforcement authorities in US.

16. The Administration has advised that Hong Kong has signed a total of 29 CDTAs, all of which provide for an EoI mechanism which does not restrict the scope of information to be exchanged to financial information held by FIs. The EoI mechanism under CDTAs has been running smoothly and IRD has not encountered any concrete cases of data holders being aggrieved by the provision of the requested information.

17. As regards concern about protection for confidentiality of information exchanged, the Administration has advised that as stipulated in Article 7 of the US Agreement, any information received by a Contracting Party shall be treated confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the agreement; and such persons or authorities shall use such information only for such purposes. There is no provision in the US Agreement allowing for use of information exchanged for non-tax purposes. Accordingly, no commercial information exchanged can be disclosed or referred to other enforcement authorities not performing the above-mentioned purposes.

18. Hon James TO has reiterated his grave concern about numerous EoI requests to be lodged by US under the US Agreement after implementation of FATCA. He considers that this will not only create great compliance burden on Hong Kong people and companies in providing information to IRD but also have serious resources implication on IRD. As such, he indicates that he will move a motion⁴ to repeal the Order so that the Administration would negotiate with US again to secure better terms for Hong Kong.

19. The Administration has stressed that during the TIEA negotiations with US, it has made best endeavours to secure terms which are most favourable to Hong Kong's interest, including exclusion of the article on tax examinations

⁴ Hon James TO gave notice on 21 May 2014 to move the motion at the Council meeting of 28 May 2014 but the Council was unable to deal with the motion due to continued consideration of the Appropriation Bill 2014.

abroad, adoption of a positive listing approach in relation to tax types covered and time limitation on disclosure of information. In the unfortunate event that the Order is repealed by the Council, it will inevitably call into question whether Hong Kong remains committed to supporting international move to enhance tax transparency. Also, without the Order, Hong Kong could not proceed to conclude the IGA with US which would render FFIs in Hong Kong having to deal with more onerous compliance burden under FATCA. The Administration has stressed that in practical terms, even if the Order is repealed, there is no prospect of US agreeing to adopt a formulation distinct from the OECD's model agreement.

Comparison of the provisions in the US Agreement with the OECD model TIEA

20. The Subcommittee notes that while the provisions of the US Agreement are largely based on the 2002 version of the OECD's model TIEA, there are certain modifications to address either US' comments or Hong Kong's needs, which are permissible under the commentary of the OECD model. At the request of the Subcommittee, the Administration has provided a comparison of the US Agreement with the OECD model TIEA and explained the major differences in **Appendix II**. The Subcommittee notes that the OECD's model TIEA contains 16 articles whereas the US Agreement has 11 articles. The US Agreement has not adopted model articles in relation to tax examinations abroad, implementation legislation, language, other international agreements/arrangements, and depositary's functions. Both sides have agreed to the exclusion of these articles either for the sake of simplicity or on grounds that the relevant articles are not required in the bilateral context or they do not align with the policy of either party.

21. As for the Subcommittee's enquiry about the party to be responsible for the costs in relation to handling EoI requests under the US Agreement, the Administration has pointed out that Article 8 of the Agreement provides that the requested party shall bear the ordinary costs incurred in providing assistance for the purpose of responding to an EoI request, and the applicant party shall bear the associated extraordinary costs, if any. Examples of the extraordinary costs are fees charged by third parties for carrying out research, costs of engaging experts, interpreters or translators, litigation costs in relation to the EoI requests and costs of obtaining depositions and testimony. The Administration assures the Subcommittee that IRD will consider any special requests from US carefully, which may involve carrying out of research or engagement of experts.

Operation of the EoI mechanism under the US Agreement

22. Subcommittee members have expressed grave concern that after the implementation of FATCA, the US tax authority may adopt vigorous measures to combat tax evasion by US persons and entities, thus the US competent authority may lodge a large number of EoI requests to IRD. The Subcommittee has stressed the importance for IRD to examine EoI requests

from the US competent authority in a prudent manner and on the basis of evidence rather than claims to ensure that every request meets the conditions laid down in the US Agreement and there is no fishing expedition, i.e. speculative requests that have no apparent nexus to a tax inquiry or investigation.

23. The Administration has stressed that it is the international standard drawn up by OECD that EoI requests have to be foreseeably relevant to the administration and enforcement of the laws of the applicant party concerning taxes covered by the CDTAs or TIEAs. The requested party is not obligated to provide information in response to requests which are "fishing expeditions".

24. Regarding the EoI mechanism under TIEAs, the Administration has advised that the actual operation will essentially be the same as that under CDTAs. IRD has all along adopted a highly stringent approach in handling EoI requests made pursuant to CDTAs to ensure that the overriding prerequisite of meeting the standard of "foreseeable relevance" is satisfied before any information is to be exchanged. The same stringent approach will be adopted in handling EoI requests pursuant to TIEAs. IRD will first examine whether the standard of "foreseeable relevance" is met, having regard to the conditions laid down in the relevant TIEA and the checklist of particulars that the applicant party has to provide in lodging its EoI request, as stipulated under the Inland Revenue (Disclosure of Information) Rules (Cap. 112BI). The Administration assures the Subcommittee that IRD will not simply rely on claims made by the applicant party but will also examine carefully the supporting evidence and facts of proof provided by the applicant party in order to decide whether the information sought is foreseeably relevant to the determination of the tax liability of the person under examination by the applicant party. If the evidence provided is not sufficiently clear and specific to show that the information requested is foreseeably relevant to the enforcement of the applicant party's tax laws, IRD will not entertain the EoI request. Neither will IRD accede to frivolous EoI requests made by the applicant party. The Subcommittee notes that for the period between 2009 and April 2014, IRD did not provide information in relation to 17 EoI requests under CDTAs as the applicant parties have failed to demonstrate the "foreseeable relevance" of the information requested.

25. In the case of the US Agreement, the Administration has pointed out that Article 5(5) sets out the requirements on the particulars that the applicant party shall provide to the requested party to demonstrate the "foreseeable relevance" of the requested information to the administration or enforcement of the applicant party's tax laws. The requirements are intended to ensure that EoI requests lodged are clear, specific and consistent with the OECD standard. Before acceding to EoI requests lodged by US, IRD will make a fair and cautious assessment of the validity of each request, with reference to the evidence and facts of proof provided by US to ascertain the foreseeable

relevance of the information requested or whether the information is in possession or control of a person within the jurisdiction of Hong Kong.

26. Given that IRD may invoke power to compel parties to provide the requested information when gathering information for an EoI request, the Subcommittee is keen to ensure that sufficient protection is accorded to information holders in defending their rights in providing information to IRD.

27. The Administration has explained that for a valid EoI request, IRD will collect the requested information by issuing formal notices to relevant persons under IRO. IRD will notify in writing the subject person of the EoI request of the nature of the information requested by the US tax authority and of his right to request within 14 days after the date of notification a copy of the information that IRD is prepared to disclose to US. Within 21 days after IRD provides a copy of the information to be disclosed, the relevant person can ask IRD to amend any part of the information on the grounds that the information is factually incorrect or does not relate to him. The Commissioner of Inland Revenue ("CIR") may make full amendment, partial amendment or no amendment. If the person remains not satisfied, he can within 14 days after CIR's notice of decision further ask the Financial Secretary to direct CIR to make the amendments requested. Upon completion of the above procedures, IRD will then issue a final reply to US on the EoI request. The Administration has supplemented that there are so far no cases where the subject persons of EoI requests have objected to IRD's disclosure of relevant information to the applicant parties or have requested IRD to amend the information to be disclosed. Nor are there any cases where the subject persons of EoI requests have challenged IRD's decisions on information disclosure by applying for judicial review or taking other legal proceedings.

The HK-US IGA for FATCA

28. Given that FATCA is a piece of US legislation with far reaching implications on FIs worldwide, the Subcommittee has examined its requirements on FFIs in Hong Kong and the benefits for Hong Kong to adopt Model 2 IGA to complement FATCA.

29. As far as FATCA is concerned, according to the Administration, Hong Kong and US have engaged in discussions and reached agreement in substance on a Model 2 IGA in May 2014. To reduce their FATCA compliance burden pursuant to the IGA, FFIs in Hong Kong will need to register and conclude separate individual agreements (known as "FFI agreements") with the US IRS⁵. Under these FFI agreements, FFIs in Hong Kong will use established due diligence ("DD") procedures to identify account holders who are US taxpayers, and seek consent of these US account holders for reporting their account

⁵ FFIs include custodial institutions, depository institutions, investment entities or specified insurance companies.

information to the US IRS annually. The HK-US IGA will reduce reporting burden and facilitate compliance of FATCA by FFIs in Hong Kong in a number of ways. The major ones are as follows⁶ -

- (a) FFIs in Hong Kong complying with the respective FFI agreements will not be subject to the 30% withholding tax in respect of relevant US-sourced payments;
- (b) the US IRS will waive the requirements under the relevant US Internal Revenue Code for FFIs in Hong Kong to withhold tax on payments to recalcitrant accounts (i.e. accounts of which the holders do not consent to FATCA reporting and disclosure to the US IRS) or close those recalcitrant accounts;
- (c) for group institutions with worldwide operations, their Hong Kong operations will continue to be treated as FATCA-compliant, despite any non-compliance of a related entity operated in a jurisdiction that prevents its compliance with FATCA;
- (d) FFIs in Hong Kong may rely on a set of streamlined DD procedures set out in the IGA to screen and identify US indicia in order to locate US accounts and clients for reporting purposes. This will minimize inconvenience for other account holders who are not the targets of FATCA. As long as FFIs in Hong Kong follow the streamlined DD requirements set out in the IGA and their own FFI agreements with US, they will be treated as complying with the requirements of FATCA and will not be subject to withholding. FFIs in Hong Kong may leverage the current customer DD requirements under relevant anti-money laundering legislation, and build in additional appropriate and reasonable procedures if necessary, to ascertain the identity of clients including those who are US taxpayers; and
- (e) a wide range of entities, financial institutions and products (including, among others, the Government and all statutory bodies, mandatory provident fund schemes, other retirement products that fall within the specified criteria, institutions with a predominantly local clientele, credit unions, certain regulated collective investment schemes, investment advisers and investment managers, and certain employee incentive share schemes) shall be exempt in view of the low risks of themselves being used by US taxpayers for tax evasion.

30. The Subcommittee considers it important for the Administration to apprise FFIs in Hong Kong of their requirements under FATCA, and step up

⁶ A gist of the exemption or simplified reporting and DD requirements for FFIs in the HK-US IGA is given in Annex B to LC Paper No. CB(1)1463/13-14(02).

publicity in this respect so that the local financial services industry would be better prepared for FATCA.

31. The Administration has advised that the Government had engaged the financial services industry intensively in the HK-US IGA discussion with the US authorities. Over the past 12 months, financial regulators were in communication with licensed FIs in their respective sectors to remind them to assess their relevant FATCA compliance implications. In particular, FIs are reminded to have the procedures and systems in place to protect clients' monies, investments, or other interests in financial instruments from withholding by third parties, avoid aiding clients to engage in tax evasion locally or overseas, and promote the orderliness of market operation. The formal signing of the HK-US IGA will take place later in 2014. The Administration will make an announcement then and publish the text of the IGA. The Subcommittee further notes that the conclusion of international agreements by the Government of the HKSAR does not require the prior approval of the Council.

Referral to the Panel on Financial Affairs

32. To facilitate the Council's monitoring of the implementation of the US Agreement, at the request of the Subcommittee, the Administration has agreed to provide annual reports to the Panel on Financial Affairs ("FA Panel") on the Agreement, including information on the number of EoI requests made or received, approved, declined by IRD under the Agreement, and assessment on the impact of the Agreement (such as resources implication) in the light of operational experience. The Subcommittee also considers that FA Panel should closely monitor the development of issues related to FATCA.

Consultation with the House Committee

33. The House Committee, at its meeting on 16 May 2014, noted the verbal report on the deliberations of the Subcommittee. The written report was issued to members of the House Committee on 11 June 2014.

**Subcommittee on Inland Revenue (Exchange of Information
relating to Taxes) (United States of America) Order**

Membership list

Chairman

Hon James TO Kun-sun

Members

Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Starry LEE Wai-king, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, JP (since
13 May 2014)
Hon CHUNG Kwok-pan

(Total : 7 members)

Clerk

Ms Connie SZETO

Legal Adviser

Miss Evelyn LEE

Comparison between the Hong Kong/United States tax information exchange agreement ("HK/US TIEA") and the Organization for Economic Cooperation and Development ("OECD") Model TIEA

Articles	OECD Model TIEA	HK/US TIEA
1. Object and Scope of the Agreement	This article defines the scope of the Agreement, which is the provision of assistance through exchange of information ("EoI") that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, and foreseeably relevant to the determination, assessment and collection of such taxes, recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be treated as confidential in the manner provided in Article 8.	In general, the HK/US TIEA covers the same object and scope as the OECD model. It is also more or less the same as TIEAs recently signed by the US with other jurisdictions (such as Cayman Islands).
2. Jurisdiction	This Article addresses the jurisdictional scope of the Agreement. A requested party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons within its territorial jurisdiction.	The HK/US TIEA adopts the OECD model with further elaboration to explain that information to be exchanged is not limited to that relating to the affairs of residents of one or both of the Contracting Parties. This is in line with the EoI article in comprehensive agreement for avoidance of double taxation.
3. Taxes Covered	This Article intends to identify taxes with respect to which the Contracting Parties agree to exchange information in accordance with the provisions of the Agreement. Its scope is not restricted and a positive listing is not required.	To honour our earlier commitment to Legislative Council, the Government has adopted a positive listing approach in setting out the taxes covered by the HK/US TIEA. The tax types covered in the case of the US include – (i) federal taxes on income; (ii) federal taxes related to employment and self-employment; (iii) federal estate and gift taxes; and (iv) federal excise taxes.

Articles	OECD Model TIEA	HK/US TIEA
4. Definitions	This Article contains the definitions of terms for purposes of the Agreement.	The HK/US TIEA contains all the definitions in the model, except the ones on "criminal laws" and "criminal tax matters", because no differential treatment between criminal matters and other matters is required.
5. Exchange of Information Upon Request	This Article provides the general rule that the Competent Authority of the requested party must provide information upon request for the purposes referred to in Article 1, clarifies that a Contracting Party will have to take action to obtain the information requested, and lists out the information the applicant party must provide to the requested party in order to demonstrate the foreseeable relevance of the information requested.	The HK/US TIEA adopts the OECD model. The Government has added two more items to the list of information that the applicant party should provide to demonstrate the foreseeable relevance of the information requested in view of our Inland Revenue (Disclosure of Information) Rules, i.e. Article 5(c) on period of time with respect to which the information is requested, and Article 5(e) on grounds for believing that the information requested is foreseeably relevant to tax administration or enforcement of the applicant party.
6. Tax Examinations Abroad	This Article provides the arrangement for tax examinations abroad.	No such Article in the HK/US TIEA, because HK's policy does not allow for tax examinations abroad.
7. Possibility of Declining a Request	This Article identifies the situations in which a requested party is not required to supply information in response to a request.	This becomes Article 6 in the HK/US TIEA. The HK/US TIEA covers all the paragraphs in the OECD model, except paragraph 6 ¹ . The US has explained that they do not include such paragraph in their TIEAs, since the tax imposed by the US on branch profits or on the premium income of non-resident insurers may be

¹ Article 7(6) of the OECD Model TIEA states that "the requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances"

Articles	OECD Model TIEA	HK/US TIEA
		regarded as discriminatory in the US. The US needs to exclude this paragraph to avoid disputes in this regard. Considering that this paragraph is rarely applied and its deletion will have minimal impact on Hong Kong, the Government finds the current version acceptable.
8. Confidentiality	This Article intends to ensure that adequate protection is afforded to information received from another Contracting Party. Safeguards include: information received shall be treated as confidential, disclosure is only allowed 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 the Agreement, information shall be used for tax purposes only, and no disclosure to third jurisdiction is allowed.	This becomes Article 7 in the HK/US TIEA. The HK/US TIEA in general adopts the OECD model. Upon the US' request, disclosure to oversight bodies as positively listed out in the Protocol is allowed.
9. Costs	This Article provides that incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.	This becomes Article 8 in the HK/US TIEA. Given that it is the Government's policy intention to charge the applicant party for extraordinary costs incurred while the requested party will bear the ordinary costs, the Government has crafted the Article accordingly to reflect such intention.
10. Implementation Legislation	This Article provides that the Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.	No such Article in the HK/US TIEA for simplicity sake.

Articles	OECD Model TIEA	HK/US TIEA
11. Language	This Article provides the Competent Authorities of the Contracting Parties with the flexibility to agree on the language that will be used in making and responding to requests. This Article may not be required in a bilateral version.	No such Article in the HK/US TIEA for simplicity sake.
12. Other International Agreements or Arrangements	This Article intends to ensure that the applicant party is able to use the international instrument it deems most appropriate for obtaining necessary information. This Article may not be required in a bilateral version.	No such Article in the HK/US TIEA, because this article is not required in the bilateral context.
13. Mutual Agreement Procedure	This Article provides that Competent Authorities shall endeavor to resolve disputes by mutual agreement where difficulties or doubts arise regarding the implementation or interpretation of the Agreement.	This becomes Article 9 in the HK/US TIEA. The HK/US TIEA in general adopts the OECD model.
14. Depositary's Functions	This Article would be unnecessary in a bilateral version.	No such Article in the HK/US TIEA, because this is not required in the bilateral context.
15. Entry into Force	This Article provides that the Agreement is subject to ratification, acceptance or approval by the Contracting Parties in accordance with their respective laws. Date of entry into force with respect to exchange of information for criminal tax matters is earlier than that for all other matters.	This becomes Article 10 in the HK/US TIEA. Since the US does not need to undergo any ratification or approval procedures for bringing the Agreement into force, the HK/US TIEA only mentions that the Agreement shall enter into force on the date of HK's notification to the US. Also, there is no mention of criminal tax matters as HK does not have differential treatment between criminal tax matters and other matters with respect to time limit on disclosure.

Articles	OECD Model TIEA	HK/US TIEA
16. Termination	This Article provides that termination becomes effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination.	This becomes Article 11 in the HK/US TIEA. The Government adopts "the date of notice of termination" instead of "date of receipt of notice of termination" upon the US' suggestion, as the time difference should be negligible.

(Source: Annex C to LC Paper No. CB(1)1463/13-14(02))