File Ref: TsyB R 183/800-1-1/9/0 (C)

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (RUSSIAN FEDERATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 26 April 2016, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order and the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order (the Orders), at Annex A and Annex B respectively, should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 (the Ordinance). The Orders implement the comprehensive avoidance of double taxation agreements (CDTAs) which the Hong Kong Special Administrative Region (HKSAR) signed with Romania and the Russian Federation on 18 November 2015 and 18 January 2016 respectively.

A
B

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 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 payable on the income derived therefrom, the existence of CDTAs will enhance the certainty and stability in respect of the elimination of double taxation. Besides, the tax relief provided under CDTAs may exceed the level provided unilaterally by the tax jurisdictions concerned.

Benefits of CDTAs with Romania and Russia

4. In the absence of CDTAs with Romania and Russia, income earned by Romanian or Russian residents in Hong Kong is subject to both Hong Kong tax and Romanian or Russian tax (as the case may be). Moreover, profits of Hong Kong companies doing business through a permanent establishment in Romania or Russia may be taxed in both Hong Kong and Romania or Russia if the income is Hong Kong sourced.

5. Under the two CDTAs, tax paid in Hong Kong will be allowed as a deduction or credit against tax payable in Romania or Russia in respect of the income. Double taxation will also be avoided in that any Romanian tax or Russian tax paid by Hong Kong companies in such case will be allowed as a credit against the tax payable in Hong Kong in respect of the income, subject to the provisions of the tax laws of Hong Kong.

6. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Romanian or Russian entity, from employment exercised in Romania or Russia will be exempted from Romanian or Russian tax if his or her aggregate stay in Romania or Russia in any relevant 12-month period does not exceed 183 days. Moreover, profits from international shipping transport earned by Hong Kong residents and arising in Romania or Russia, which are currently subject to tax in these two places, will not be taxed in Romania and Russia under the respective CDTAs.

7. Tax relief in terms of withholding tax rates is set out below –

	Withholding tax rates – Proposed caps (current rates)		
	Interest(s)	Royalties	Dividends
CDTA with Romania	Zero or 3%[1] (16% now)	3% (16% now)	3% or 5%[2] (16% now)
CDTA with Russia	N.A.	3% (companies – 20%; individuals – 30%)	5% or 10%[3] (15% now)

Further, Hong Kong airlines operating flights to Russia will be taxed in Hong Kong only at Hong Kong's corporation tax rate of 16.5 per cent (which is lower than that of Russia).

8. Overall speaking, the two CDTAs have already set out the allocation of taxing rights between jurisdictions and the relief on tax rates on different types of income. It will help investors to better assess their potential tax liabilities from cross-border economic activities, foster closer economic and trade links, and provide added incentives for enterprises of Romania and Russia to do business or invest in Hong Kong, and vice versa.

Exchange of Information Article under the CDTAs with Romania and Russia

9. Hong Kong adopts the Organisation for Economic Co-operation and Development 2004 version of the Exchange of Information (EoI) Article in our CDTAs to facilitate exchange of tax information to meet the international standard. We introduced amendments to the Ordinance in 2013, which further enhanced the EoI arrangement under CDTAs in terms of tax types

[1] The zero rate would be applicable if Hong Kong levies no withholding tax on the interest. Otherwise, the rate will be capped at 3%.

[2] The cap of 3% would be applicable if the beneficial owner is a company which holds directly at least 15 per cent of the capital of the company paying the dividends. Otherwise, the rate will be capped at 5%.

[3] The cap of 5% would be applicable if the beneficial owner is a company which holds directly at least 15 per cent of the capital of the company paying the dividends. Otherwise, the rate will be capped at 10%.

and limitation on disclosure. In order to protect taxpayers' privacy and confidentiality of any information exchanged, Government has given undertaking to the Legislative Council (LegCo) that we will continue to adopt highly prudent safeguard measures in our CDTAs and that we will highlight deviations, if any, when submitting CDTAs to LegCo for negative vetting.

10. Both CDTAs contain an EoI Article. We have agreed with Romania and Russia respectively that all of the following necessary safeguards would be adopted –

(a) we will only exchange information upon receipt of requests and no information will be exchanged on an automatic or spontaneous basis;

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

(c) information received by our CDTA partners should be treated as confidential;

(d) information will only be disclosed to the tax authorities concerned and not for release to their oversight bodies unless there are legitimate reasons given by CDTA partners;

(e) information requested should not be disclosed to a third jurisdiction; and

(f) there is no obligation to supply information under certain circumstances, for example, where the information would disclose any trade, business, industrial, commercial or professional secret or trade process, or which would be covered by legal professional privilege, etc.

Regarding the scope of tax types for the purpose of EoI, we have adopted a positive listing approach. In the light of the views expressed by LegCo, we have set out the tax types, other than income taxes[4] or other taxes of a similar character, in the agreements. Such other tax types applicable to Romania include value-added tax and excise duties, whilst those applicable to Russia include value-added tax, tax on property of organisation and tax on property of individuals.

[4] Income taxes refer to those imposed on taxpayers (i.e. individuals or entities) that vary with the income or profits of the taxpayers, such as taxes on business profits, employment income, rental income, capital gains, interest, royalty, dividends and pensions.

Legal Basis

11. Under section 49(1A) of the Ordinance, if the Chief Executive in Council, by order, declares that arrangements have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. Under section 49(1B) of the Ordinance, arrangements made in an order under section 49(1A) of the Ordinance may only specify for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned. Following the signing of CDTAs with Romania and Russia, it is necessary for the Chief Executive in Council to declare by order that arrangements with Romania and Russia on double taxation relief have been made so as to bring the two CDTAs 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 CDTAs with Romania and Russia. There is no other option.

THE ORDERS

13. **Section 2** of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order declares that the arrangements specified in section 3 have been made and that it is expedient that those arrangements should have effect. **Section 3** states that the arrangements are those in Articles 1 to 28 of our CDTA with Romania. The text of the Articles is set out in the **Schedule** to the Order.

14. **Section 2** of the the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order declares that the arrangements specified in section 3 have been made and that it is expedient that those arrangements should have effect. **Section 3** states that the arrangements are those in Articles 1 to 29 of our CDTA with Russia as well as Paragraphs 1 to 3 of the Protocol to the CDTA. The text of the Articles and the Paragraphs is set out in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

15. The legislative timetable is as follows –

Publication in the Gazette	13 May 2016
Tabling at LegCo	18 May 2016
Commencement of the Orders	29 July 2016

IMPLICATIONS OF THE PROPOSAL

C

16. The proposal has financial, economic, civil service and family 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 gender implications. It also has no sustainability implications other than those set out in the economic implications paragraph shown in Annex C.

PUBLIC CONSULTATION

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

PUBLICITY

18. We issued a press release on the signing of the two CDTAs on 18 November 2015 and 18 January 2016 respectively. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

D
E & F

19. As at 30 April 2016, we have entered into CDTAs with 35 jurisdictions, including those concluded with Romania and Russia. A summary of the main provisions of each of the two CDTAs is at Annex D and Annex E respectively. A list of our CDTA partners is at Annex F.

ENQUIRY

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

Financial Services and the Treasury Bureau
11 May 2016

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ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) Order
Annex B	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order
Annex C	Financial, Economic, Civil Service and Family Implications of the Proposal
Annex D	Summary of the main provisions of the Romanian Agreement
Annex E	Summary of the main provisions of the Russian Agreement
Annex F	List of jurisdictions with which Hong Kong has entered into CDTAs

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Romania) 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 29 July 2016.

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 Government of Romania; 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 Articles 1 to 28 of the agreement titled "Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (which is translated into Chinese as "《中華人民共和國香港特別行政區與羅馬尼亞關於對收入稅項避免雙重課稅和防止逃稅的協定》" in this Order), done in duplicate at Bucharest on 18 November 2015 in the English language.

(2) The English text of the Articles referred to in subsection (1) is reproduced in the Schedule. A Chinese translation of the Articles is also set out in that Schedule.

Schedule

[s. 3]

Articles 1 to 28 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party and, in the case of Romania, also the administrative - territorial units, 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, as well as taxes on capital appreciation.

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

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

(i) profits tax;

(ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of Romania:

(i) the tax on income; and

(ii) the tax on profit.

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

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong

Kong Special Administrative Region tax" or "Romanian tax", as the context requires.

Article 3

General Definitions

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

(a) the term "Hong Kong Special Administrative Region" means any place where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(b) the term "Romania" means the state territory of Romania, including its territorial sea and air space above them, over which Romania exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which Romania exercises sovereign rights and jurisdiction, in accordance with its legislation and with the rules and principles of international law;

(c) the term "business" also includes the performance of professional services and of other activities of an independent character;

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

(e) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative;

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

(f) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or Romania, as the context requires;

(g) the term "enterprise" applies to the carrying on of any business;

(h) 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;

(i) 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;

(j) the term "national", in relation to Romania, means any individual possessing the Romanian citizenship in accordance with the laws of Romania and any legal person, body of persons and any other entity set up and deriving its status as such from the laws in force in Romania;

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

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

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

3. As regards the application of the 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 the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

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

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

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

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

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

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

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

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 Romania;

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Romania, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Romania, 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. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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

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

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

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

(d) the maintenance of a stock of goods or merchandise belonging to the enterprise, which is exhibited at a temporary trade fair or exhibition, and which is sold by the enterprise at the termination of such fair or exhibition;

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

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

(g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), 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 in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

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

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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, 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.

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

5. 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 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.

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:

(a) 3 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 15 per cent of the capital of the company paying the dividends;

(b) 5 per cent of the gross amount of the dividends in all other cases.

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

3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting Party shall be exempt from tax in that Party if they are derived and beneficially owned by:

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

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

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) a financial institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the Contracting Parties;

(b) in the case of Romania:

(i) Romania or an administrative - territorial unit thereof;

(ii) the National Bank of Romania;

(iii) the Export-Import Bank of Romania (EXIMBANK);

(iv) a financial institution wholly or mainly owned by Romania and mutually agreed upon by the competent authorities of the Contracting Parties.

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

5. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. 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 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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 3 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, if and as long as the Hong Kong Special Administrative Region, under its internal legislation, levies no withholding tax on interest, the percentage provided for in paragraph 2 shall be reduced to zero. The competent authority of the Hong Kong Special Administrative Region shall inform the competent authority of Romania of any changes made in

the internal legislation of the Hong Kong Special Administrative Region regarding the imposition of a withholding tax on interest.

4. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting Party shall be exempt from tax in that Party if it is derived and beneficially owned by:

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

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

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) a financial institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the Contracting Parties;

(b) in the case of Romania:

(i) Romania or an administrative - territorial unit thereof;

(ii) the National Bank of Romania;

(iii) the Export-Import Bank of Romania (EXIMBANK);

(iv) a financial institution wholly or mainly owned by Romania and mutually agreed upon by the competent authorities of the Contracting Parties.

5. 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.

6. The provisions of paragraphs 1, 2 and 3 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to

the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

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.

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 software, cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, any industrial, commercial or scientific equipment, or for

information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting Party in which the permanent establishment is situated.

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

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with

the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), 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 deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party.

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

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

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

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

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

   (c) the remuneration is not borne by a permanent establishment 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 15

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 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, 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 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from the activities referred to in paragraph 1 within the framework of cultural or sports exchanges agreed to by the Governments of the Contracting Parties and carried out other than for the purpose of profit shall be exempt from tax in the Contracting Party in which these activities are exercised.

Article 17

Pensions

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

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party and, in the case of Romania, also an administrative - territorial unit thereof, to an individual in respect of services rendered to that Party or unit 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 Party and the individual is a resident of that Party who:

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

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

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party and, in the case of Romania, also an administrative - territorial unit thereof.

Article 19

Students

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

Article 20

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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

Article 21

Elimination of Double Taxation

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

2. 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), Romanian tax paid under the laws of Romania 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 Romania, 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.

3. Where a resident of Romania derives income which, in accordance with the provisions of the Agreement, may be taxed in the Hong Kong Special Administrative Region, Romania shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region.

Article 22

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 Romania, are Romanian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Romania) 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 8 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 Contracting 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 this Article shall apply only to taxes which are covered by Article 2 of this Agreement.

Article 23

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 internal law 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 22, 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 Romania. 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 the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the internal law 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

Article 24

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 internal laws of the Contracting Parties concerning taxes covered by Article 2 of this Agreement, and, in the case of Romania, also the value-added tax and excise duties, 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 internal law 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. Information shall not be disclosed to any third jurisdiction for any purpose.

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.

Article 25

Fiscal Privileges

Nothing in this Agreement shall affect the fiscal privileges under the general rules of international law or under the provisions of special agreements.

Article 26

Anti-Abuse Measures

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

Article 27

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.

2. The Agreement shall enter into force on the date of the latter notification and shall have effect with respect to income derived on or after the first day of January in the calendar year next following the year in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force indefinitely, but either of the Contracting Parties may, on or before the thirtieth of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting Party a written notice of termination. The Agreement shall be terminated on the date of receipt of the written notice of termination. However, in such event, the Agreement shall continue to have effect to the income derived on or after the first day of January in the calendar year when the Agreement is terminated. The Agreement shall cease to have effect to the income derived on or after the first day of January in the calendar year next following the calendar year when the Agreement is terminated.

(Chinese Translation)

第一條

所涵蓋的人

本協定適用於屬締約一方的居民或同時屬締約雙方的居民的人。

第二條

所涵蓋的稅項

1. 本協定適用於代締約方課徵的收入稅項，而就羅馬尼亞而言，亦適用於代行政 — 領土單位課徵的收入稅項，不論該等稅項以何種方式徵收。

2. 對總收入或收入的組成部分課徵的所有稅項，包括對得自轉讓動產或不動產的收益課徵的稅項，以及對資本增值課徵的稅項，須視為收入稅項。

3. 本協定適用於以下現有稅項：

(a) 就香港特別行政區而言，

(i) 利得稅；

(ii) 薪俸稅；及

(iii) 物業稅；

不論是否按個人入息課稅徵收；

(b) 就羅馬尼亞而言，

(i) 所得稅項；及

(ii) 利潤稅項。

4. 本協定亦適用於在本協定的簽訂日期後，在現有稅項以外課徵或為取代現有稅項而課徵的任何與現有稅項相同或實質上類似的稅項，以及適用於締約方日後課徵而又屬本條第 1 款及第 2 款所指的任何其他稅項。締約雙方的主管當局須將其稅務法律的任何重大改變，通知對方的主管當局。

5. 現有稅項連同在本協定簽訂後課徵的稅項，以下稱為"香港特別行政區稅項"或"羅馬尼亞稅項"，按文意所需而定。

第三條

一般定義

1. 就本協定而言，除文意另有所指外：

(a) "香港特別行政區"一詞指中華人民共和國香港特別行政區的稅務法律所適用的任何地區；

(b) "羅馬尼亞"一詞指羅馬尼亞的國家領土，包括羅馬尼亞行使主權的領海，及該領土和領海的上空，以及羅馬尼亞按照其法例與國際法的規則及原則行使主權權利和管轄權的毗連區、大陸架及專屬經濟區；

(c) "業務"一詞亦包括進行專業服務及其他具獨立性質的活動；

(d) "公司"一詞指任何法團或就稅收而言視作法團的任何實體；

(e) "主管當局"一詞：

(i) 就香港特別行政區而言，指稅務局局長或其獲授權代表；

(ii) 就羅馬尼亞而言，指公共財政部部長或其獲授權代表；

(f) "締約方"及"另一締約方"兩詞指香港特別行政區或羅馬尼亞，按文意所需而定；

(g) "企業"一詞適用於任何業務的經營；

(h) "締約方的企業"及"另一締約方的企業"兩詞分別指締約方的居民所經營的企業及另一締約方的居民所經營的企業；

(i) "國際運輸"一詞指由締約方的企業營運的船舶或航空器進行的任何載運，但如該船舶或航空器只在另一締約方內的不同地點之間營運，則屬例外；

(j) "國民"一詞，就羅馬尼亞而言，指按照羅馬尼亞法律擁有羅馬尼亞公民身分的任何個人，以及藉羅馬尼亞現行的法律設立、並根據該法律取得法人、團體及其他實體地位的任何法人、團體及任何其他實體；

(k) "人"一詞包括個人、公司、信託、合夥及任何其他團體；

(l) "稅項"一詞指香港特別行政區稅項或羅馬尼亞稅項，按文意所需而定。

2. 在本協定中，"香港特別行政區稅項"及"羅馬尼亞稅項"兩詞不包括根據任何締約方的有關法律所課徵的任何罰款或利息。有關法律，是指關乎本協定(屬憑藉第二條而適用)的稅項的法律。

3. 在締約方於任何時候施行本協定時，凡有任何詞語在本協定中並無界定，則除文意另有所指外，該詞語須具有它當其時根據該方就本協定適用的稅項而施行的法律所具有的涵義，而在根據該方適用的稅務法律給予該詞語的涵義與根據該方的其他法律給予該詞語的涵義兩者中，以前者為準。

第四條

居民

1. 就本協定而言，"締約方的居民"一詞：

(a) 就香港特別行政區而言，指，

(i) 通常居住於香港特別行政區的任何個人；

(ii) 在某課稅年度內在香港特別行政區逗留超過 180 天或在連續兩個課稅年度(其中一個是有關的課稅年度)內在香港特別行政區逗留超過 300 天的任何個人；

(iii) 在香港特別行政區成立為法團的公司，或在香港特別行政區以外成立為法團而通常在香港特別行政區內受管理或控制的公司；

(iv) 根據香港特別行政區的法律組成的任何其他人，或在香港特別行政區以外組成而通常在香港特別行政區內受管理或控制的任何其他人；

(v) 香港特別行政區政府；

(b) 就羅馬尼亞而言，指根據羅馬尼亞的法律，因其居籍、居所、管理工作的地點、登記地點，或任何性質類似的其他準則而有在羅馬尼亞繳稅的法律責任的人，亦包括羅馬尼亞及其任何行政 — 領土單位。然而，該詞並不包括僅就源自羅馬尼亞的收入而有在羅馬尼亞繳稅的法律責任的任何人。

2. 如任何個人因第 1 款的規定而同時屬締約雙方的居民，則該人的身分須按照以下規定斷定：

(a) 如該人在其中一方有可供其使用的永久性住所，則該人須當作只是該方的居民；如該人在雙方均有可供其使用的永久性住所，則該人須當作只是與其個人及經濟關係較為密切的一方(重要利益中心)的居民；

(b) 如無法斷定該人在哪一方有重要利益中心，或該人在任何一方均沒有可供其使用的永久性住所，則該人須當作只是其慣常居所所在的一方的居民；

(c) 如該人在雙方均有或均沒有慣常居所，則該人須當作只是其擁有居留權(就香港特別行政區而言)的一方或屬國民(就羅馬尼亞而言)的一方的居民；

(d) 如該人既擁有香港特別行政區的居留權亦屬羅馬尼亞的國民，或該人既沒有香港特別行政區的居留權亦不屬羅馬尼亞的國民，則締約雙方的主管當局須共同協商解決該問題。

3. 如並非個人的人因第 1 款的規定而同時屬締約雙方的居民，則該人須當作只是其實際管理工作地點所處的一方的居民。

第五條

常設機構

1. 就本協定而言，"常設機構"一詞在企業透過某固定營業場所經營全部或部分業務的情況下，指該固定營業場所。

2. "常設機構"一詞尤其包括：

(a) 管理工作地點；

(b) 分支機構；

(c) 辦事處；

(d) 工廠；

(e) 作業場所；及

(f) 礦場、油井或氣井、石礦場或任何其他開採自然資源的場所。

3. 建築工地或建築或安裝工程須持續存在或進行十二個月以上，才可成為常設機構。

4. 儘管有本條上述的規定，"常設機構"一詞須當作不包括：

(a) 純粹為了貯存或陳列屬於有關企業的貨物或商品而使用設施；

(b) 純粹為了貯存或陳列而維持屬於有關企業的貨物或商品的存貨；

(c) 純粹為了由另一企業作加工而維持屬於有關企業的貨物或商品的存貨；

(d) 維持屬於有關企業的貨物或商品的存貨，而該貨物或商品於臨時貿易展覽會或展覽展出，且該企業在該貿易展覽會或展覽結束時，出售該貨物或商品；

(e) 純粹為了為有關企業採購貨物或商品或收集資訊而維持固定營業場所；

(f) 純粹為了為有關企業進行任何其他屬準備性質或輔助性質的活動而維持固定營業場所；

(g) 純粹為了(a)項至(f)項所述的活動的任何組合而維持固定營業場所，但該固定營業場所因該活動組合而產生的整體活動，須屬準備性質或輔助性質。

5. 儘管有第 1 款及第 2 款的規定，如某人(第 6 款適用的具獨立地位的代理人除外)在締約一方代表另一締約方的企業行事，並符合以下描述，則就該人為該企業所進行的任何活動而言，該企業須當作在首述的締約方設有常設機構：

(a) 該人在首述的締約方擁有並慣常在首述的締約方行使以該企業名義訂立合約的權限，但如該人的活動局限於第 4 款所述的活動(該等活動即使透過固定營業場所進行，也不會令該固定營業場所根據該款的規定成為常設機構)，則屬例外，或

(b) 該人並沒有上述權限，但慣常在首述一方維持貨物或商品的存貨，並經常代表該企業，利用該等存貨交付貨物或商品。

6. 凡某企業透過經紀、一般佣金代理人或任何其他具獨立地位的代理人在締約一方經營業務，則只要該等人士是在其業務的通常運作中行事的，該企業不得僅因它如此經營業務而被當作在該方設有常設機構。

7. 即使屬締約一方的居民的某公司，控制屬另一締約方的居民的其他公司或在該另一締約方(不論是透過常設機構或以其他方式)經營業務的其他公司，或受上述其他公司所控制，此項事實本身並不會令上述其中一間公司成為另一間公司的常設機構。

第六條

來自不動產的收入

1. 締約一方的居民自位於另一締約方的不動產取得的收入(包括自農業或林業取得的收入)，可在該另一方徵稅。

2. "不動產"一詞具有該詞根據有關財產所處的締約方的法律而具有的涵義。該詞在任何情況下須包括：附屬於不動產的財產、用於農業及林業的牲畜和設備、關於房地產的一般法律規定適用的權利、不動產的使用收益權，以及作為開採或有權開採礦藏、源頭及其他自然資源的代價而取得不固定或固定收入的權利。船舶及航空器不得視為不動產。

3. 第 1 款的規定適用於自直接使用、出租或以任何其他形式使用不動產而取得的收入。

4. 第 1 款及第 3 款的規定亦適用於來自企業的不動產的收入。

第七條

營業利潤

1. 締約一方的企業的利潤僅在該方徵稅，但如該企業透過位於另一締約方的常設機構在該另一方經營業務則除外。如該企業如前述般經營業務，其利潤可在該另一方徵稅，但以該等利潤中可歸因於該常設機構的部分為限。

2. 在符合第 3 款的規定下，如締約一方的企業透過位於另一締約方的常設機構，在該另一方經營業務，則須在每一締約方將該常設機構在有關情況下可預計獲得的利潤歸因於該機構，上述有關情況是指假設該常設機構是一間可區分且獨立的企業，在

相同或類似的條件下從事相同或類似的活動，並在完全獨立的情況下，與首述企業進行交易。

3. 在斷定某常設機構的利潤時，為該常設機構的目的而招致的開支(包括如此招致的行政和一般管理開支)須容許扣除，不論該等開支是在該常設機構所處的一方或其他地方招致的。

4. 如締約一方習慣上是按照將某企業的總利潤分攤予其不同部分的基準，而斷定須歸因於有關常設機構的利潤的，則第 2 款並不阻止該締約方按此習慣的分攤方法斷定該等應課稅的利潤；但採用的分攤方法，須令所得結果符合本條所載列的原則。

5. 不得僅因某常設機構為有關企業採購貨物或商品，而將利潤歸因於該常設機構。

6. 就上述各款而言，除非有良好而充分的理由需要改變方法，否則每年須採用相同的方法斷定須歸因於有關常設機構的利潤。

7. 如利潤包括在本協定其他各條另有規定的收入項目，該等條文的規定不受本條的規定影響。

第八條

航運和空運

1. 締約一方的企業自營運船舶或航空器從事國際運輸所得的利潤，僅在該方徵稅。

2. 第 1 款的規定亦適用於來自參與聯營、聯合業務或國際營運機構的利潤。

第九條

相聯企業

1. 凡

(a) 締約一方的企業直接或間接參與另一締約方的企業的管理、控制或資本，或

(b) 相同的人直接或間接參與締約一方的企業的和另一締約方的企業的管理、控制或資本，

而在上述任何一種情況下，該兩間企業之間在商業或財務關係上訂立或施加的條件，是有別於互相獨立的企業之間所訂立的條件的，則若非因該等條件便本應會產生而歸於其中一間企業、但因該等條件而未有產生而歸於該企業的利潤，可計算在該企業的利潤之內，並據此徵稅。

2. 凡締約一方將某些利潤計算在該方的某企業的利潤之內，並據此徵稅，而另一締約方的某企業已在該另一方就該等被計算在內的利潤課稅，如假設上述兩間企業之間訂立的條件正如互相獨立的企業之間所訂立的條件一樣，該等被計算在內的利潤是會產生而歸於首述一方的該企業的，則該另一方須適當地調整其對該等利潤徵收的稅額。在釐定上述調整時，須充分顧及本協定的其他規定，而締約雙方的主管當局在有必要的情況下須與對方磋商。

第十條

股息

1. 由屬締約一方的居民的公司支付予另一締約方的居民的股息，可在該另一方徵稅。

2. 然而，如支付上述股息的公司屬締約一方的居民，該等股息亦可在該締約方按照該方的法律徵稅，但如該等股息的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過：

(a) (如該實益擁有人是一間公司(合夥除外)，而且直接持有支付股息的公司的股本至少百分之十五)該等股息總額的百分之三；

(b) (在所有其他情況下)該等股息總額的百分之五。

如有關公司從利潤中支付股息，本款並不影響就該等利潤對該公司徵稅。

3. 儘管有第 2 款的規定，在締約一方產生的股息，如屬由下列機構取得和實益擁有，則須在該方獲豁免徵稅：

(a) 就香港特別行政區而言，

(i) 香港特別行政區政府；

(ii) 香港金融管理局；

(iii) 外匯基金；

(iv) 經締約雙方的主管當局共同議定的、由香港特別行政區政府全權擁有或主要由香港特別行政區政府擁有的金融機構；

(b) 就羅馬尼亞而言，

(i) 羅馬尼亞或其行政 — 領土單位；

(ii) 羅馬尼亞國家銀行；

(iii) 羅馬尼亞進出口銀行(EXIMBANK)；

(iv) 經締約雙方的主管當局共同議定的、由羅馬尼亞全權擁有或主要由羅馬尼亞擁有的金融機構。

4. "股息"一詞用於本條中時，指來自股份或其他分享利潤的權利(但並非債權)的收入；如作出分派的公司屬一方的居民，而按照該方的法律，來自其他法團權利的收入，須與來自股份的收入受到相同的稅務待遇，則"股息"亦包括該等來自其他法團權利的收入。

5. 凡就某股份支付的股息的實益擁有人是締約一方的居民，而支付該股息的公司則是另一締約方的居民，如該擁有人在該另一締約方內透過位於該另一方的常設機構經營業務，且持有該股份是與該常設機構有實際關連的，則第 1 款及第 2 款的規定並不適用。在此情況下，第七條的規定適用。

6. 如某公司是締約一方的居民，並自另一締約方取得利潤或收入，則該另一方不得對該公司就某股份支付的股息徵稅(但在有關股息是支付予該另一方的居民的範圍內，或在持有該股份是與位於該另一方的常設機構有實際關連的範圍內，則屬例外)，而即使支付的股息或未分派利潤的全部或部分，是在該另一方產生的利潤或收入，該另一方亦不得對該公司的未分派利潤徵收未分派利潤的稅項。

7. 如與產生或轉讓孳生股息的股份或其他權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等股份或權利而利用本條獲益，則本條的規定不適用。

第十一條

利息

1. 產生於締約一方而支付予另一締約方的居民的利息，可在該另一方徵稅。

2. 然而，在締約一方產生的上述利息，亦可在該締約方按照該方的法律徵稅，但如該等利息的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過該等利息總額的百分之三。

3. 儘管有第 2 款的規定，如香港特別行政區根據其內部法例，沒有徵收利息預扣稅，則在沒有如此徵收利息預扣稅的期間內，第 2 款規定的百分率須降至零。如香港特別行政區的內部法例在徵收利息預扣稅方面，出現任何改變，香港特別行政區的主管當局須將該項改變，通知羅馬尼亞的主管當局。

4. 儘管有第 2 款的規定，在締約一方產生的利息，如屬由下列機構取得和實益擁有，則須在該方獲豁免徵稅：

(a) 就香港特別行政區而言，

(i) 香港特別行政區政府；

(ii) 香港金融管理局；

(iii) 外匯基金；

(iv) 經締約雙方的主管當局共同議定的、由香港特別行政區政府全權擁有或主要由香港特別行政區政府擁有的金融機構；

(b) 就羅馬尼亞而言，

(i) 羅馬尼亞或其行政 — 領土單位；

(ii) 羅馬尼亞國家銀行；

(iii) 羅馬尼亞進出口銀行(EXIMBANK)；

(iv) 經締約雙方的主管當局共同議定的、由羅馬尼亞全權擁有或主要由羅馬尼亞擁有的金融機構。

5. "利息"一詞用於本條中時，指來自任何類別的債權的收入，不論該債權是否以按揭作抵押，亦不論該債權是否附有分享債務人的利潤的權利，並尤其指來自政府證券和來自債券或債權證的收入，包括該等證券、債券或債權證所附帶的溢價及獎賞。就本條而言，逾期付款的罰款不被視作利息。

6. 凡就某項債權支付的利息的實益擁有人是締約一方的居民，並在該利息產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，而該債權是與該常設機構有實際關連的，則第 1 款、第 2 款及第 3 款的規定並不適用。在此情況下，第七條的規定適用。

7. 凡就某項債務支付利息的人是締約一方的居民，則該等利息須當作是在該方產生。然而，如支付利息的人在締約一方設有常設機構(不論該人是否締約一方的居民)，而該債務是在與該常設機構有關連的情況下招致的，且該等利息是由該常設機構負擔的，則該等利息須當作是在該常設機構所在的締約一方產生。

8. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致就有關債權所支付的利息的款額，在顧及該債權

下，屬超出支付人與實益擁有人在沒有上述關係時會議定的款額，則本條的規定只適用於該議定的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

9. 如與產生或轉讓孳生利息的債權有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該債權而利用本條獲益，則本條的規定不適用。

第十二條

特許權使用費

1. 產生於締約一方而支付予另一締約方的居民的特許權使用費，可在該另一方徵稅。

2. 然而，在締約一方產生的上述特許權使用費，亦可在該締約方按照該方的法律徵稅；但如該等特許權使用費的實益擁有人是另一締約方的居民，則如此徵收的稅款不得超過該等特許權使用費總額的百分之三。

3. "特許權使用費"一詞用於本條中時，指作為使用或有權使用文學作品、藝術作品或科學作品(包括軟件、電影影片，及供電台或電視廣播使用的膠片或磁帶)的任何版權、任何專利、商標、設計或模型、圖則、秘密程式或程序的代價，或作為使用或有權使用任何工業、商業或科學設備的代價，或作為取得關於工業、商業或科學經驗的資料的代價，因而收取的各種付款。

4. 凡就某權利或財產支付的特許權使用費的實益擁有人是締約一方的居民，並在該等特許權使用費產生所在的另一締約方內，透過位於該另一方的常設機構經營業務，而該權利或財產是與該常設機構有實際關連的，則第 1 款及第 2 款的規定並不適用。在此情況下，第七條的規定適用。

5. 凡支付特許權使用費的人是締約一方的居民，則該等特許權使用費須當作是在該方產生。然而，如支付特許權使用費的人在締約一方設有常設機構(不論該人是否締約一方的居民)，而支付該等特許權使用費的法律責任，是在與該常設機構有關連的情況下招致的，且該等特許權使用費是由該常設機構負擔的，則該等特許權使用費須當作是在該常設機構所在的締約一方產生。

6. 凡因支付人與實益擁有人之間或他們兩人與某其他人之間的特殊關係，以致就有關使用、權利或資料所支付的特許權使用費的款額，在顧及該使用、權利或資料下，屬超出支付人與實益擁有人在沒有上述關係時會議定的款額，則本條的規定只適用於該議定的款額。在此情況下，多付的部分仍須在充分顧及本協定的其他規定下，按照每一締約方的法律徵稅。

7. 如與產生或轉讓孳生特許權使用費的權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等權利而利用本條獲益，則本條的規定並不適用。

第十三條

資本收益

1. 締約一方的居民自轉讓位於另一締約方並屬第六條所述的不動產所得的收益，可在該另一方徵稅。

2. 如某動產屬某常設機構的業務財產的一部分，而該常設機構是締約一方的企業在另一締約方設立的，則自轉讓該動產所得的

收益，包括自轉讓該常設機構(單獨或隨同整個企業)所得的收益，可在該另一方徵稅。

3. 締約一方的企業自轉讓被營運從事國際運輸的船舶或航空器所得的收益，或自轉讓關於上述船舶或航空器的營運的動產所得的收益，只可在該方徵稅。

4. 如締約一方的居民自轉讓股份而取得收益，而該等股份超過百分之五十的價值是直接或間接來自位於另一締約方的不動產的，則該收益可在該另一方徵稅。

5. 凡有關轉讓人是締約一方的居民，自轉讓第 1 款、第 2 款、第 3 款及第 4 款所述的財產以外的任何財產所得的收益，只可在該方徵稅。

第十四條

來自受僱工作的入息

1. 除第十五條、第十七條及第十八條另有規定外，締約一方的居民自受僱工作取得的薪金、工資及其他類似報酬，只可在該方徵稅，但如受僱工作是在另一締約方進行則除外。如受僱工作是在另一締約方進行，則自該受僱工作取得的報酬可在該另一方徵稅。

2. 儘管有第 1 款的規定，締約一方的居民自於另一締約方進行的受僱工作而取得的報酬如符合以下條件，則只可在首述一方徵稅：

(a) 收款人於在有關的課稅期內開始或結束的任何十二個月的期間中，在該另一方的逗留期間不超過(如多於一段期間則須累計)183 天；及

(b) 該報酬由一名並非該另一方的居民的僱主支付，或由他人代該僱主支付；及

(c) 該報酬並非由該僱主在該另一方所設的常設機構所負擔。

3. 儘管有本條上述規定，自於締約一方的企業所營運從事國際運輸的船舶或航空器上進行受僱工作而取得的報酬，只可在該方徵稅。

第十五條

董事酬金

締約一方的居民以其作為屬另一締約方的居民的公司的董事會的成員身分所取得的董事酬金及其他同類付款，可在該另一方徵稅。

第十六條

藝人及運動員

1. 儘管有第七條及第十四條的規定，締約一方的居民作為演藝人員(例如戲劇、電影、電台或電視藝人，或樂師)或作為運動員在另一締約方以上述身分進行其個人活動所取得的收入，可在該另一方徵稅。

2. 演藝人員或運動員以其演藝人員或運動員的身分在締約一方進行個人活動所取得的收入，如並非歸於該演藝人員或運動員本人，而是歸於另一人，則儘管有第七條及第十四條的規定，該收入可在該締約方徵稅。

3. 儘管有第 1 款及第 2 款的規定，如第 1 款提述的活動，屬在締約雙方政府同意的文化或體育交流的範疇內，並且是非牟利的，則自該活動取得的收入，須在該活動進行所在的締約方，獲豁免徵稅。

第十七條

退休金

在締約一方產生的、作為過往的受僱工作或自僱工作的代價而支付予另一締約方的居民的退休金及其他類似報酬，包括整筆付款，只可在首述一方徵稅。

第十八條

政府服務

1. (a) 締約一方(而就羅馬尼亞而言，亦指羅馬尼亞的行政 — 領土單位)就提供予該方或該單位的服務而向任何個人支付的薪金、工資及其他類似報酬(退休金除外)，只可在該方徵稅。

(b) 然而，如上述服務是在另一締約方提供，而上述個人屬該方的居民，並且：

(i) 就香港特別行政區而言，擁有香港特別行政區的居留權；以及就羅馬尼亞而言，屬羅馬尼亞的國民；或

(ii) 不是純粹為提供該等服務而成為該方的居民，

則該等薪金、工資及其他類似報酬只可在該方徵稅。

2. 第十四條、第十五條及第十六條的規定，適用於就在與締約一方所經營的業務有關連的情況下提供的服務而取得的薪金、工資及其他類似報酬，而就羅馬尼亞而言，上述業務亦指由羅馬尼亞的行政 — 領土單位經營的業務。

第十九條

學生

凡某學生或業務學徒是、或在緊接前往締約一方之前曾是另一締約方的居民，而該學生或業務學徒逗留在首述一方，純粹是為了接受教育或培訓，則該學生或業務學徒為了維持其生活、教育或培訓的目的而收取的款項，如是在該方以外的來源產生，則不得在該方徵稅。

第二十條

其他收入

1. 締約一方的居民的各項收入無論在何處產生，如在本協定以上各條未有規定，均只可在該方徵稅。

2. 凡就某權利或財產支付的收入(來自第六條第 2 款所界定的不動產的收入除外)的收款人是締約一方的居民，並在另一締約方內透過位於該另一方的常設機構經營業務，且該權利或財產是與該常設機構有實際關連的，則第 1 款的規定不適用於該收入。在此情況下，第七條的規定適用。

3. 如與產生或轉讓孳生收入的權利有關的任何人的主要目的或主要目的之一，是藉着產生或轉讓該等權利而利用本條獲益，則本條的規定並不適用。

第二十一條

消除雙重課稅

1. 現同意按照本條以下各款，避免雙重課稅。

2. 在不抵觸香港特別行政區的法律中關乎容許在香港特別行政區以外的司法管轄區繳付的稅項用作抵免香港特別行政區稅項的規定(該等規定不得影響本條的一般性原則)的情況下，如已根據羅馬尼亞的法律和按照本協定，就屬香港特別行政區居民的人自羅馬尼亞的來源取得的收入繳付羅馬尼亞稅項，則不論是直接繳付或以扣除的方式繳付，所繳付的羅馬尼亞稅項須容許用作抵免就該收入而須繳付的香港特別行政區稅項，但如此獲容許抵免的款額，不得超過按照香港特別行政區的稅務法律就該收入計算所得的香港特別行政區稅項的款額。

3. 凡某羅馬尼亞居民取得的收入按照本協定的規定是可在香港特別行政區徵稅的，羅馬尼亞須容許在就該居民的收入徵收的稅項中，扣除一筆相等於已在香港特別行政區繳付的入息稅的款額。然而，該項扣除不得超過在扣除前計算的入息稅中、可歸因於可在香港特別行政區徵稅的收入的部分。

第二十二條

無差別待遇

1. 任何人如擁有香港特別行政區的居留權或在該處成立為法團或以其他方式組成，或屬羅馬尼亞的國民，則該人在另一締約方不得受符合以下說明的任何課稅或與之有關連的任何規定所規限：該課稅或規定是有別於(如該另一方是香港特別行政區)擁有香港特別行政區的居留權或在該處成立為法團或以其他方式組成的人，或有別於(如該另一方是羅馬尼亞)羅馬尼亞的國民，在相同情況下(尤其是在居民身分方面)須受或可受的課稅及與之有關連的規定，或較之為嚴苛。儘管有第一條的規定，本規定亦適用於並非締約一方或雙方的居民的人。

2. 締約一方的企業設於另一締約方的常設機構在該另一方的課稅待遇，不得遜於進行相同活動的該另一方的企業的課稅待遇。凡締約一方以民事地位或家庭責任的理由，而為課稅的目的授予其本身的居民任何個人免稅額、稅務寬免及扣減，本規定不得解釋為該締約方也須將該免稅額、稅務寬免及扣減授予另一締約方的居民。

3. 除第九條第 1 款、第十一條第 8 款、或第十二條第 6 款的規定適用的情況外，締約一方的企業支付予另一締約方的居民的利息、特許權使用費及其他支出，為斷定該企業的須課稅利潤的目的，須按猶如該等款項是支付予首述一方的居民一樣的相同條件而可予扣除。

4. 如締約一方的企業的資本的全部或部分，是由另一締約方的一名或多於一名居民直接或間接擁有或控制，則該企業在首述締約方不得受符合以下說明的任何課稅或與之有關連的任何規定所規限：該課稅或規定是有別於首述一方的其他類似企業須受或可受的課稅及與之有關連的規定，或較之為嚴苛。

5. 本條的規定，只適用於本協定第二條所涵蓋的稅項。

第二十三條

相互協商程序

1. 如任何人認為任何締約方或締約雙方的行動導致或將導致對該人作出不符合本協定規定的課稅，則無論該等締約方的內部法律的補救辦法如何，該人如屬締約一方的居民，可將其個案呈交該締約方的主管當局；如其個案屬第二十二條第 1 款的情況，則可將其個案呈交有關締約方的主管當局。有關締約方就擁有香港特別行政區的居留權或在該處成立為法團或以其他方式組成的人而言，是指香港特別行政區；就羅馬尼亞的國民而言，則指羅馬尼亞。該個案須於就導致不符合本協定規定課稅的行動發出首次通知之時起計的三年內呈交。

2. 如有關主管當局覺得反對屬有理可據，而它不能獨力達致令人滿意的解決方案，它須致力與另一締約方的主管當局共同協商解決有關個案，以避免不符合本協定的課稅。任何達成的協議均須予以執行，不論締約雙方的內部法律所設的時限為何。

3. 締約雙方的主管當局須致力共同協商，解決就本協定的解釋或適用而產生的任何困難或疑問。締約雙方的主管當局亦可共同磋商，以消除在本協定沒有對之作出規定的雙重課稅。

4. 締約雙方的主管當局可為達成以上各款所述的協議而直接(包括透過由雙方的主管當局或其代表組成的聯合委員會)與對方聯絡。

第二十四條

資料交換

1. 締約雙方的主管當局須交換可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定第二條所涵蓋的稅項(而就羅馬尼亞而言，亦關乎增值稅及消費稅)的內部法律的資料，

但以根據該等法律作出的課稅不違反本協定為限。該項資料交換不受第一條所限制。

2. 締約一方根據第 1 款收到的任何資料須保密處理，其方式須與處理根據該方的內部法律而取得的資料相同，該資料只可向與第 1 款所述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局(包括法院及行政部門)披露。該等人員或當局只可為該等目的使用該資料。他們可在公開的法庭程序中或在司法裁定中披露該資料。不得為任何目的向任何第三司法管轄區披露資料。

3. 在任何情況下，第 1 款及第 2 款的規定均不得解釋為向締約一方施加採取以下行動的義務：

(a) 實施有異於該締約方或另一締約方的法律及行政慣例的行政措施；

(b) 提供根據該締約方或另一締約方的法律或正常行政運作不能獲取的資料；

(c) 提供會將任何貿易、業務、工業、商業或專業秘密或貿易程序披露的資料，或提供若遭披露即屬違反公共政策(*公共秩序*)的資料。

4. 如締約一方按照本條請求提供資料，則即使另一締約方未必為其本身的稅務目的而需要該等資料，該另一方仍須以其收集資料措施取得所請求的資料。前句所載的義務須受第 3 款的限制所規限，但在任何情況下，該等限制不得解釋為容許締約一方純粹因資料對其本土利益無關而拒絕提供該等資料。

5. 在任何情況下，第 3 款的規定不得解釋為容許締約一方純粹因資料是由銀行、其他金融機構、代名人或以代理人或受信人身

分行事的人所持有，或純粹因資料關乎某人的擁有權權益，而拒絕提供該等資料。

第二十五條

財政特權

本協定並不影響根據國際法的一般規則或特別協定規定享有的財政特權。

第二十六條

打擊濫用措施

本協定並不損害每一締約方施行其關於規避繳稅(不論其稱謂是否如此)的內部法律的權利。

第二十七條

生效

1. 締約雙方均須以書面通知另一締約方已完成其法律規定的使本協定生效的程序。

2. 本協定自較後一份通知的日期起生效，並就於本協定生效的公曆年的翌年1月1日或之後取得的收入，具有效力。

第二十八條

終止

本協定長期有效，但任何締約方均可在本協定生效日期起滿五年之後開始的任何公曆年的6月30日或之前，向另一締約方發出書面終止通知。本協定須在收到書面終止通知之日終止。然而，在該情況下，本協定仍就於本協定終止的公曆年的1月1日或之後取得的收入，具有效力。就本協定終止的公曆年的翌年1月1日或之後取得的收入而言，本協定不再具有效力。

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of Romania signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) on 18 November 2015.

2. This Order specifies the arrangements in Articles 1 to 28 of the Agreement (***arrangements***) 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 was signed in the English language. The Chinese text set out in the Schedule is a translation.

3. 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 the arrangements that requires disclosure of information concerning tax of Romania, have effect in relation to any tax of Romania that is the subject of that provision.

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) 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 29 July 2016.

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 Government of the Russian Federation; 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 Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income", done in duplicate at Hong Kong on 18 January 2016 in the Chinese, Russian and English languages; and

(b) Paragraphs 1 to 3 of the protocol to the agreement, done in duplicate at Hong Kong on 18 January 2016 in the Chinese, Russian 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 Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party 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.

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

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

      (i) profits tax;

      (ii) salaries tax;

      (iii) property tax;

      whether or not charged under personal assessment;

   (b) in the case of Russia,

      (i) the tax on profits of organizations;

      (ii) the tax on income of individuals.

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

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong

Kong Special Administrative Region tax" or "Russian tax", as the context requires.

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

(ii) the term "Russia" means the Russian Federation; when used in a geographical sense, means all the territory of the Russian Federation, including internal waters and territorial sea, in which the Russian laws relating to taxation apply, and also its exclusive economic zone and continental shelf, in which the Russian Federation has sovereign rights and jurisdiction in accordance with the UN Convention on the Law of the Sea (1982);

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

(c) the term "competent authority" means:

(i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative;

(ii) in the case of Russia, the Ministry of Finance of the Russian Federation or its authorized representative;

(d) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or the Russian Federation, 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 "fixed base" means a fixed place which a resident of a Contracting Party has in the other Contracting Party for the purpose of performing independent personal services;

(g) 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;

(h) the term "national" in relation to Russia means:

(i) any individual possessing the citizenship of Russia;

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

(i) the term "person" includes an individual, a company and any other body of persons, and in the case of the Hong Kong

Special Administrative Region also includes a trust and a partnership.

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

3. As regards the application of the 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 the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

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

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

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two

consecutive years of assessment one of which is the relevant year of assessment;

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

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

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

(c) in the case of either Contracting Party, the Government of that Party and any political subdivision or local authority thereof.

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 Russia);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Russia, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Russia, the competent authorities of the Contracting Parties shall settle the question by mutual agreement. If the competent authorities are unable to reach such agreement, such person shall not be entitled to any relief from tax provided by the 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 12 months;

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

than 183 days in any twelve-month period commencing or ending in the taxable period concerned.

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (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 in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

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

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

5. 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 by 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.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

(a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:

(i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;

(ii) income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships or aircraft in international traffic;

(b) interest on funds directly connected with the operation of ships or aircraft in international traffic;

(c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

Article 9

Associated Enterprises

1. Where:

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

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

Contracting Party and an enterprise of the other Contracting Party,

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

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

Article 10

Dividends

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

2. However, such dividends may also be taxed by 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:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 15 per cent of the capital of the company paying the dividends;

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends arising in a Contracting Party are exempt from tax in that Party, if they are paid:

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

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

(ii) to the Hong Kong Monetary Authority;

(iii) to the Exchange Fund;

(iv) to any entity wholly or mainly owned by the Government of the Hong Kong Special Administrative

Region and mutually agreed upon by the competent authorities of the two Contracting Parties;

(b) in the case of Russia:

(i) to the Government of Russia or a political subdivision or a local authority thereof;

(ii) to the Central Bank of Russia;

(iii) to any entity wholly or mainly owned by the Government of Russia and mutually agreed upon by the competent authorities of the two Contracting Parties.

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

5. 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.

6. 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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only by 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. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, 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 indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

5. 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, for whatever reasons, 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.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12

Royalties

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

2. However, such royalties may also be taxed by 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.

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.

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, for whatever reasons, 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 if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

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 by 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 a fixed base, may be taxed by 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 by 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 by that other Party. However, the provisions of this paragraph do not apply to gains derived from the alienation of shares:

   (a) quoted on such stock exchange as may be agreed between the 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 by the Contracting Party of which the alienator is a resident.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the alienation in respect of which the gain is realised, to take advantage of this Article by means of that alienation.

Article 14

Income from 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 by that Party unless 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 by the other Party but only so much of it as is attributable to that fixed base.

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

Income from Employment

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 by 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 by 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 by the first-mentioned Party if:

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

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

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

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

Article 17

Income of 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 by 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 by the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 18

Pensions

Pensions and other similar remuneration (including a lump sum payment) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment or self-employment and social security pensions shall be taxable only by the first-mentioned Party.

Article 19

Income from 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 the Government of that Party or subdivision or authority, shall be taxable only by that Party.

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

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

      (ii) did not become a resident of that 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

Payments to 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 by 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 by 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.

Article 22

Methods for Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be eliminated 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), Russian tax paid under the laws of Russia 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 Russia, 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 Russia, double taxation shall be eliminated as follows:

   Where a resident of Russia derives income from the Hong Kong Special Administrative Region, the amount of tax on that income paid in the Hong Kong Special Administrative Region in accordance with the provisions of this Agreement may be credited against the Russian tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Russian tax on

that income computed in accordance with the taxation laws and regulations of Russia.

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 Russia, are Russian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Russia) 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 5 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 the 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 internal 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 Russia). 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 the 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 the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the internal 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the internal laws of the Contracting Parties

concerning taxes covered by this Agreement and the Protocol, 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 internal 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.

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

Anti-Abuse Measures

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

Article 28

Entry into Force

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

2. The provisions of the Agreement shall thereupon have effect:

   (a) in the Hong Kong Special Administrative Region:

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

   (b) in Russia:

   in respect of Russian tax, for any taxable periods beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

3. Notwithstanding paragraph 9 of Article 12 of the Air Services Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Russian Federation signed in Hong Kong on the 22 January 1999, that Article shall cease to have effect in respect of any tax, from the date upon which this Agreement shall have effect in respect of that tax in accordance with the provisions of paragraph 2.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year. In such event, the 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 taxable periods beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in Russia:

in respect of Russian tax, for any taxable periods beginning on or after 1 January in the calendar year next following that in which the notice is given.

Part 2

Paragraphs 1 to 3 of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

1. With reference to the Agreement

It is understood that the term "political subdivisions" means, in the case of the Russian Federation, subjects (субъекты) of the Russian Federation, defined as such according to its Constitution.

2. With reference to Article 4 (Resident) and Article 25 (Exchange of Information)

It is understood that any document received under Article 25 of the Agreement or a certificate of residence issued by the competent authority of the Hong Kong Special Administrative Region or its authorized representative shall not require legalization or any apostille for the purposes of application in Russia, including their use in the courts and administrative bodies.

3. With reference to Article 25 (Exchange of Information)

It is understood that:

(a) in addition to the taxes covered by the Agreement, the provisions of this Article also apply to the following taxes that are administrated and enforced in Russia, for any taxable periods beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force:

(i) value added tax;

(ii) tax on property of organizations;

(iii) tax on property of individuals;

in case of termination under Article 29 of the Agreement, the provisions of this Article shall cease to apply to the above mentioned taxes for any taxable periods beginning on or after 1 January in the calendar year next following that in which the notice of termination is given;

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

(c) information exchanged shall not be disclosed to any third jurisdiction.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Russian Federation signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 18 January 2016.

2. This Order specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 3 of the Protocol (***arrangements***) 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, Russian and English languages.

3. 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 the arrangements that requires disclosure of information concerning tax of the Russian Federation, have effect in relation to any tax of the Russian Federation that is the subject of that provision.

Annex C

Financial, Economic, Civil Service and Family Implications of the Proposal

Financial Implications

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

Economic Implications

2. The CDTAs with Romania and Russia will facilitate business development between Hong Kong and Romania and between Hong Kong and Russia respectively, and contribute positively to the economic development of Hong Kong. They will enhance the economic interaction between Hong Kong and the two places concerned 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 EoI under CDTAs with Romania and Russia, which will be absorbed from within existing resources as far as possible. Where necessary, additional manpower resources should be justified and sought in accordance with the established mechanism.

Family Implications

4. Given that the tax burden of some individuals may be relieved under the two CDTAs, they may have positive implications to the financial abilities and functioning of some families.

Annex D

Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Romanian Agreement")

Summary of Main Provisions

The Romanian Agreement covers the following types of taxes:

(a)	in respect of Hong Kong –	(i) profits tax; (ii) salaries tax; and (iii) property tax.
(b)	in respect of Romania –	(i) the tax on income; (ii) the tax on profit; and (iii) for EoI purpose, it also covers value-added tax and excise duties.

2. The Romanian 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 Romanian Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Romanian Agreement that the following types of income shall only be taxed in the resident jurisdiction –

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

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

(c) income from non-government employment, including employment exercised in the source jurisdiction provided that the employee is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12-month period, etc.;

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

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

(f) other income not expressly dealt with in the Romanian Agreement.

4. Employment income paid by the government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions, including lump sum payments, 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 Romanian 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 Romanian 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 movable property forming part of the business property of such permanent establishment;

(c) passive income of dividends, interest and royalties received from residents of a source jurisdiction. The source jurisdiction's right to tax is subject to a specified limit in tax rates as follows –

(i) Dividends – zero per cent if derived and beneficially owned by the Government of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority, the Exchange Fund, Romania or an administrative – territorial unit thereof, the National Bank of Romania, the Export-Import Bank of Romania ("EXIMBANK"), or a financial institution wholly or mainly owned by the Government of Hong Kong Special Administrative Region or Romania as mutually agreed between both Contracting Parties; 3 per cent if the beneficial owner is a company which holds directly at least 15 per cent of the capital of the dividend paying company; and 5 per cent in all other cases;

(ii) Interest – zero per cent if derived and beneficially owned by the Government of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority, the Exchange Fund, Romania or an administrative – territorial unit thereof, the National Bank of Romania, EXIMBANK, or a financial institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region or Romania as mutually agreed between both Contracting Parties, or as long as Hong Kong levies no withholding tax on interest; and 3 per cent if Hong Kong levies withholding tax on interest; and

(iii) Royalties – 3 per cent;

(d) gains from alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the source jurisdiction;

(e) income from non-government employment exercised in the source jurisdiction, where the employee is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12-month period, etc.;

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

(g) income of entertainers and sportsmen who conduct their professional activities in the source jurisdiction.

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

Annex E

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Russian Agreement")

Summary of Main Provisions

The Russian Agreement covers the following types of taxes –

(a)	in respect of Hong Kong –	(i) profits tax; (ii) salaries tax; and (iii) property tax.
(b)	in respect of Russia –	(i) the tax on profits of organizations; (ii) the tax on income of individuals; and (iii) for EoI purpose, it also covers value added tax, tax on property of organisations, and tax on property of individuals.

2. The Russian 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 Russian Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Russian 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 the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft;

(c) interest income arising in the source jurisdiction;

(d) income from professional services, including services performed in the source jurisdiction when the services is not provided through a fixed base situated in the source jurisdiction;

(e) income from non-government employment, including employment exercised in the source jurisdiction provided that the employee is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12-month period, etc.;

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

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

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

4. Employment income paid by the government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions, including lump sum payments, 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 Russian 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 Russian 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) dividends received from residents of a source jurisdiction, with the source jurisdiction's right to tax is subject to the specified limit in tax rates as follows –

(i) zero per cent if paid to the Government of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority, the Exchange Fund, the Government of Russia or a political subdivision or a local authority thereof, the Central Bank of Russia, or entity wholly or mainly owned by the Government of the Hong Kong Special Administrative Region or the Government of Russia and mutually agreed upon by the competent authorities of the two Contracting Parties;

(ii) 5 per cent if the beneficial owner is a company which holds directly at least 15 per cent of the capital of the dividend paying company; and

(iii) 10 per cent in all other cases;

(d) royalties received from residents of a source jurisdiction, with the source jurisdiction's right to tax subject to a limit of 3 per cent on the gross amount of the royalties, if the beneficial owner of the royalties is a resident of the resident jurisdiction;

(e) gains from alienation of shares (except gains from quoted shares or gains arising from corporate reorganisation or merger) deriving more than 50 per cent 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;

(f) income from professional services performed in the source jurisdiction through a fixed base in the source jurisdiction, to the extent that such income is attributable to the fixed bases;

(g) remuneration from non-government employment exercised in the source jurisdiction, where the employee is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12-month period, etc.;

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

(i) income of entertainers and sportsmen who conduct their professional activities in the source jurisdiction.

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

Annex F

List of jurisdictions with which Hong Kong has entered into CDTAs

(as at 30.4.2016)

	Jurisdictions	Date of Signing (month and year)
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014*
31	South Africa	October 2014
32	United Arab Emirates	December 2014
33	Romania	November 2015*
34	Russia	January 2016*
35	Latvia	April 2016*

*Not yet entered into force