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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF THAILAND)(AVOIDANCE OF DOUBLE TAXATION ON INCOME AND PREVENTION OF FISCAL EVASION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 18 October 2005, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Kingdom of Thailand)(Avoidance of Double Taxation on Income and Prevention of Fiscal Evasion) Order (the Order), at Annex A, should be made under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance). The Order implements the Agreement with the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Agreement) on 7 September 2005.

A

JUSTIFICATIONS

2. The Agreement is the second comprehensive agreement for avoidance of double taxation (CDTA) concluded by Hong Kong with another jurisdiction and the

first with a partner in the Asia Pacific region. A summary of the main provisions of the Agreement is at Annex B. The Agreement seeks to eliminate double taxation instances encountered by Hong Kong and Thai investors and employees in connection with cross border economic activities.

B

3. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. It is generally recognised in the international community 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.

Benefits of CDTAs

4. Hong Kong adopts the territorial concept of taxation, whereby only income sourced in Hong Kong is subject to tax whereas income derived from sources outside Hong Kong by a local resident is in most cases not taxed in Hong Kong. In addition, Hong Kong does not levy withholding taxes on most types of passive income such as dividends and interest. Under such circumstances, double taxation may not occur.

5. Double taxation may occur where a foreign jurisdiction taxes its own residents on income derived from Hong Kong. However, many jurisdictions provide their own residents with unilateral tax relief for Hong Kong tax paid on income derived herefrom, thus avoiding or reducing double taxation of foreign residents in most cases.

6. Notwithstanding the above, there are still many advantages for Hong Kong to conclude CDTAs with our trading and investment partners.

7. Compared with tax relief granted unilaterally by certain jurisdictions with respect to double taxation suffered by their residents, the existence of a CDTA which sets out in agreement terms the allocation of taxing rights between two places as well as the ways in which double taxation is to be eliminated will provide enhanced certainty and stability to investors. In addition, relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

Benefits of the Agreement

8. The Agreement will bring some tax savings to the Hong Kong residents. For instance, under the Agreement, Thailand cannot levy tax on the profits

remitted by a branch in Thailand to a Hong Kong head office. Such remittance is currently subject to a withholding tax in Thailand at 10% in the absence of a CDTA. In the case of income from operation of aircraft or ships in international traffic earned by a Hong Kong resident that arises in Thailand, in the absence of a CDTA, the income is subject to income tax in Thailand. Under the Agreement, for aircraft operations, such income will be exempted from Thai income tax whereas for shipping operations, tax will be reduced by 50%.

9. Besides, in the absence of a CDTA, royalties received by a Hong Kong resident from Thailand not attributable to a permanent establishment in Thailand are subject to a Thai withholding tax, which is currently at 15% on the gross amount of royalties. Under the Agreement, the Thai withholding tax will be reduced to 5% if paid for the use of, or the right to use, any copyright of literary, artistic or scientific work (films taxable under this head); and 10% if paid for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process. In the case of interest received by a Hong Kong resident from Thailand which is not attributable to a permanent establishment in Thailand, in the absence of a CDTA, the interest is subject to a withholding tax which is currently at 15% of the gross amount of interest (an individual may elect to pay tax at the progressive rates). Under the Agreement, the Thai withholding tax will be reduced to 10% if interest is received by financial institution or insurance company or if interest is paid with respect to indebtedness arising from a sale on credit of equipment, merchandise or services.

10. Overall, the Agreement will help investors better assess their potential tax liabilities from economic activities, foster closer economic and trade links between the two places, and provide added incentives for Thai enterprises to do business/invest in Hong Kong, and vice versa.

11. In addition to the actual tax savings for taxpayers of Thailand and Hong Kong, the Agreement will achieve the following-

(a) provide a further level of certainty and stability to potential investors, as the allocation of taxing rights between Hong Kong and Thailand as well as the relief regarding and limits on tax rates on the different types of income are set out clearly in the bilateral agreement, which will have binding effect once the ratification procedures have been completed, so that subsequent unilateral tax policy changes would not override the terms of the Agreement; and

(b) the formal relationship and dialogue established with the Thai tax authorities as provided under the Agreement can be used to resolve difficulties which might arise in connection with cross-border taxation.

12. Hong Kong is keen to establish a network of double taxation avoidance agreements with its major trading and investment partners. Such a network will put us on a par with other places in the region that already have one, thereby further enhancing our competitiveness in attracting investment.

Legal Basis

13. Under section 49 of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the signature of the Agreement with the Kingdom of Thailand, it is necessary to declare by order that arrangements with the Kingdom of Thailand on double taxation relief have been made, so as to put the arrangements into effect. We therefore propose to make the Order for the Agreement.

OTHER OPTIONS

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

THE ORDER

15. **Section 1** of the Order declares that arrangements referred to in section 2 for double taxation relief in relation to income tax and any tax of a similar character have been made with the Government of the Kingdom of Thailand and should take effect. **Section 2** states that the arrangements are those in Articles 1 to 28 of the Agreement between Hong Kong and Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as well as paragraphs 1 to 3 of the Protocol to that Agreement, the text of both of which is specified in the Schedule to the Order. The **Schedule** to the Order sets out the details of the arrangements.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be -

Publication in the Gazette	28 October 2005
Tabling in the Legislative Council	2 November 2005

IMPLICATIONS OF THE PROPOSAL

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

C

PUBLIC CONSULTATION

18. The Government first announced its policy to conclude CDTAs with our key trading and investment partners in the 1998-99 Budget. This was welcomed by the business sector. When consulted on the Exchange of Information Article in 2002 and 2005, the International Business Committee generally indicated support for the Government's efforts to negotiate and conclude CDTAs with other countries. Some members of the Committee expressed the view that the lack of CDTAs could be an obstacle to foreign investment coming into Hong Kong.

PUBLICITY

19. We will issue a press release on 28 October 2005. A spokesman will be available to answer media and public enquiries.

BACKGROUND

Hong Kong's Plan to Conclude a Network of Comprehensive Agreements on Avoidance of Double Taxation

20. The Government announced Hong Kong's intention to discuss CDTAs with our major trading partners in the 1998-99 Budget. Since then, we have approached some thirty major trading partners for the negotiation of a CDTA.

21. Response from countries belonging to the Organisation for Economic Co-operation and Development (OECD) was generally not enthusiastic. Most of them do not consider it a priority to have a CDTA with Hong Kong because of our low tax rates, territorial-based tax regime, as well as the existence of unilateral relief which make double taxation instances much less of a problem in terms of promoting international trade and investments. We managed to start CDTA discussions with one of the OECD Members, Denmark, in March 2001. The two sides were able to reach consensus on most major issues, except for exchange of information. Generally speaking, the Exchange of Information (EoI) Article in a CDTA provides for the exchange of information between the contracting parties for the purpose of implementing the CDTA and of the domestic tax laws of the contracting parties. Hong Kong had adopted a fairly restrictive EoI Article, while Denmark had insisted on adopting an Article similar to the 1995 version of the model convention developed by the OECD.

22. As it became clear after those discussions that Hong Kong's willingness to liberalise the EoI Article would be the key to success in CDTA negotiations with OECD countries, we therefore consulted the International Business Committee. The Committee's majority view was that, if it was necessary to secure CDTAs, they would be willing to accept an EoI Article similar to the one in the 1995 version of the OECD Model Convention.

23. Thereafter, we resumed negotiations with Denmark and conducted negotiations with five other OECD member countries, namely Belgium, France, the United Kingdom, Italy and the Netherlands. We also conducted negotiations with Thailand and Vietnam.

24. We initialled an agreement with Belgium immediately after our first round of negotiations in late August 2003 and signed the agreement on 10 December 2003. One of the key factors contributing to the exceptional achievement of concluding the agreement in a single round is Belgium's acceptance of an EoI article similar to the OECD 1995 version rather than the then more liberalised 2000 version which they originally requested. The agreement entered into force on 7 October 2004.

25. However, similar success could not be achieved in our subsequent negotiations with the other OECD countries, which have all moved to a further liberalised EoI article, the OECD 2004 version. The 2004 OECD model of EoI

provisions widely adopted by its members makes it very clear that an absence of a domestic tax interest cannot be relied upon as grounds for failure to obtain information for exchange purposes. We could not adopt this version without amending the Inland Revenue Ordinance to remove the domestic tax interest requirement as a condition for invoking the information seeking power of IRD. We understand from our negotiation partners that these provisions would be adopted by OECD member countries as standard provisions in their future negotiations of CDTAs.

26. We held negotiations with Thailand in March and October 2004 and successfully concluded a CDTA with them. The agreement was initialled on 14 October 2004 and signed on 7 September 2005. The successful conclusion was mainly due to the Thais being prepared to accept an EoI Article modelled on the 1995 OECD version, rather than the more liberalised 2000 or 2004 versions.

27. We have also conducted the first round of negotiations with Vietnam in January 2005. Being a developing country in the region, Vietnam does not go for a liberalised EoI article and has proposed a version which is even more restrictive than the 1995 OECD version. We have reached agreement with Vietnam on the EoI article but there are still a number of other issues that have to be solved.

28. We have also commenced negotiation with the Macao SAR on a CDTA and have held discussions from 5 to 7 September with the Mainland authorities on the expansion of the existing limited double taxation avoidance arrangement concluded in 1998 to a CDTA.

29. Our inability to comply with the fast-changing international standards of information exchange is certainly a stumbling block in our negotiation of CDTAs with OECD countries. If we are to develop a CDTA network with OECD countries, we will have to further liberalise the EoI provisions in our DTA model. We believe that there is a high probability that the later Hong Kong enters into the international treaty network, the wider the scope of the EoI provisions will be in the OECD model. After consulting the International Business Committee in March 2005, we have proceeded to consult the business sector as to whether we should further liberalise the EoI provisions to adopt the 2004 OECD model if our partners insist.

30. In the meantime, we will continue to take forward discussions with OECD countries as far as possible. We will also start CDTA discussions with our other

Asian neighbours.

Limited Double Taxation Arrangements/Agreements

31. In circumstances where CDTA discussions cannot be proceeded with immediately, we seek to conclude limited double taxation avoidance arrangements for revenues arising from the operation of ships/aircraft in international traffic with our shipping/aviation partners. We have now concluded twenty three double taxation avoidance arrangements on airline income, six agreements on shipping income and two agreements on airline and shipping income. A list of the limited double taxation arrangements/agreements already concluded is at Annex D.

D

ENQUIRY

32. In case of enquiries about this Brief, please contact Miss Erica NG, Principal Assistant Secretary for Financial Services and the Treasury (Treasury)(Revenue), at 2810 2370.

Financial Services and the Treasury Bureau
28 October 2005

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF THAILAND)(AVOIDANCE OF DOUBLE TAXATION ON INCOME AND PREVENTION OF FISCAL EVASION) ORDER

ANNEXES

Annex A	Specification of Arrangements (Government of The Kingdom of Thailand)(Avoidance of Double Taxation on Income and Prevention of Fiscal Evasion) Order
Annex B	HK/Thailand DTA: Summary of Main Provisions
Annex C	Financial, Economic and Civil Service Implications of the Proposal
Annex D	Agreements/Arrangements on Avoidance of Double Taxation for Hong Kong

Annex A

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF THAILAND)(AVOIDANCE OF DOUBLE TAXATION ON INCOME AND PREVENTION OF FISCAL EVASION) ORDER

CONTENTS

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE KINGDOM OF THAILAND)(AVOIDANCE OF DOUBLE TAXATION ON INCOME AND PREVENTION OF FISCAL EVASION) ORDER

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

1. Declaration under section 49

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

(*a*) that the arrangements specified in section 2 have been made with the Government of the Kingdom of Thailand with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the Kingdom; and

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

2. Arrangements specified

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

(*a*) Articles 1 to 28 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 Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income done in duplicate at Bangkok on 7 September 2005 in the English language, the text of which Articles is reproduced in Part 1 of the Schedule; and

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

SCHEDULE [s. 2]

PART 1

ARTICLES 1 TO 28 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 KINGDOM OF THAILAND 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 local authorities, irrespective of the manner in which they are levied.

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

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

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

– profits tax,

– salaries tax, and

– property tax;

(b) in the case of Thailand,

– income tax, and

– petroleum income tax.

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

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

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 the Hong Kong Special Administrative Region of the People's Republic of China; used in a geographical sense, it means the land and sea comprised within the boundary of the Hong Kong Special

Administrative Region, including Hong Kong Island, Kowloon, the New Territories and the waters of Hong Kong;

(b) the term "Thailand" means the territory of the Kingdom of Thailand, including its internal waters, its territorial seas, and any maritime areas over which the Kingdom of Thailand has sovereign rights or jurisdiction under international law;

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

(d) the term "competent authority" means :

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

(ii) in the case of Thailand, the Minister of Finance or his authorised representative;

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

(f) 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;

(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 “person” includes an individual, a company, a trust, a partnership, any other body of persons as well as any entity treated as a taxable unit under the taxation laws in force in either Contracting Party;

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

(j) the term “national” means, in the case of Thailand,

(i) any individual possessing Thai nationality;

(ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in Thailand.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting 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 Thailand, any person who, under the laws of Thailand, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Thailand in respect only of income from sources in Thailand;

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

(b) if the Contracting 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 Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then the competent

authorities of the Contracting Parties shall determine that the person is a resident of a Contracting Party for the purposes of this Agreement by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially :

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop;

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

   (g) a warehouse, in relation to a person providing storage facilities for others.

3. The term “permanent establishment” also encompasses:

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

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

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in sub-paragraphs (a) to (e) of this paragraph, 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 a 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;

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

   (c) has no such authority, but habitually secures orders in the first-mentioned Contracting Party wholly or almost wholly for the enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

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

made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Contracting 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 Contracting Party.

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

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

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

Article 7

BUSINESS PROFITS

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

7. 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.

8. 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. Income or profits derived by an enterprise of a Contracting Party from the operation of aircraft in international traffic shall be taxable only in that Contracting Party.

2. Income or profits of an enterprise of a Contracting Party derived in the other Contracting Party from the operation of ships in international traffic may be taxed in the other Contracting Party but the tax so charged shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs 1 and 2 shall also apply to income or 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 income or 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 income or profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Contracting Party — and taxes accordingly — profits on which an enterprise of the other Contracting Party has been charged to tax in that

other Contracting Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 Contracting 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 Contracting Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

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

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

5. Where a company which is a resident of a Contracting Party derives income or profits from the other Contracting Party, that other Contracting 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 Contracting 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 Contracting 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 income or profits arising in such other Contracting Party.

Article 11

INTEREST

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

2. However, such interest may also be taxed in the Contracting Party in which it arises, and according to the laws of that Contracting Party, but if the

beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest if the interest is beneficially owned by any financial institution or insurance company;

(b) 10 per cent of the gross amount of the interest if the interest is beneficially owned by a resident of the other Contracting Party and is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of that other Contracting Party of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length; and

(c) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Contracting Party, if it is 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 a financial institution appointed 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 Thailand,

(i) to the Government of the Kingdom of Thailand;

(ii) to any local authority;

(iii) to the Bank of Thailand;

(iv) to the Export-Import Bank of Thailand;

(v) to a financial institution appointed by the Government of the Kingdom of Thailand and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income treated as income from money lent by the taxation laws of the Contracting Party in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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 Contracting 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.

6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Contracting 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 Contracting Party in which the permanent establishment or fixed base is situated.

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

Article 12

ROYALTIES

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

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

(a) 5 per cent of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work;

(b) 10 per cent of the gross amount of the royalties if they are made as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process; and

(c) 15 per cent of the gross amount of the royalties in all other cases.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being 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 Contracting 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 Contracting 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 Contracting Party in which the permanent establishment or fixed base is situated.

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

Article 13

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 Contracting 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 in that other Contracting 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 Contracting Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Contracting 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

INDEPENDENT PERSONAL SERVICES

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

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

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

from his activities performed in that other Contracting Party may be taxed in that other Contracting Party.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Contracting 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 Contracting 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 Contracting Party if :

   (a) the recipient is present in the other Contracting 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 Contracting Party, and

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

Article 16

DIRECTORS' FEES

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

Article 17

ARTISTES AND SPORTSPERSONS

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 sportsperson, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Contracting Party.

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

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to remuneration derived from activities performed in a Contracting Party by an entertainer or a sportsperson and paid by the other Contracting Party if

the visit to that Contracting Party is substantially supported by public funds of the other Contracting Party including its local authority or statutory body. In such a case the remuneration shall be taxable only in the Contracting Party of which the entertainer or sportsperson is a resident.

Article 18

PENSIONS

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

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

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

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

   shall be taxable only in that Contracting Party.

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party or a local authority thereof to an individual in respect of services rendered to

that Contracting Party or authority shall be taxable only in that Contracting Party.

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

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

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

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

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

Article 20

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 Contracting 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 Contracting Party, provided that such payments arise from sources outside that Contracting Party.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting 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 Contracting Party independent personal services from a fixed base situated therein, and a right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

Article 22

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. 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), Thai tax paid under the laws of Thailand 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 Thailand, 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. Subject to the laws of Thailand regarding the allowance as a credit against Thai tax of tax paid in any country other than Thailand, Hong Kong Special Administrative Region tax paid in respect of income derived from Hong Kong Special Administrative Region shall be allowed as a credit against Thai tax paid in respect of that income. The amount of credit shall not, however, exceed that portion of Thai tax which is appropriate to that income.

3. For the purpose of allowance as a credit in a Contracting Party the tax paid in the other Contracting Party shall be deemed to include the tax which is otherwise payable in that other Contracting Party but has been reduced or waived in accordance with special incentive laws designed to promote economic development in that other Contracting Party. The provisions of this paragraph shall only apply for a period of 7 years from the day on which this Agreement comes into effect according to paragraph 2 of Article 27. The periods may be extended by mutual agreement between the competent authorities.

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 Thailand, are nationals of Thailand 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 Contracting Party (where that other Contracting Party is the Hong Kong Special Administrative Region) or nationals of that other Contracting Party (where that other Contracting Party is Thailand) in the same circumstances, in particular with respect to residence, are or may be subjected.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting 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 Contracting Party are or may be subjected.

5. The provisions of this Article 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.

6. The provisions of this Article shall only apply to the taxes which are the subject of this Agreement.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those Contracting 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 Thailand). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provision of this Agreement.

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

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

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of giving effect to the provisions of this Agreement.

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the

taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review. Information may not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting Party originally furnishing the information.

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

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

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

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

Article 26

MISCELLANEOUS PROVISIONS

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

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

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 entering into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of this Agreement shall have effect :

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

   (b) in Thailand,

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

      (ii) in respect of other taxes on income, on such taxes chargeable for any tax year or accounting period, beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

Article 28

TERMINATION

This Agreement shall remain in force indefinitely, but either of the Contracting Parties may give the other Contracting Party written notice of termination on or

before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force.

In such event this Agreement shall cease to have effect :

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

(b) in Thailand,

(i) in respect of taxes withheld at source, on amounts of income paid on or after 1 January in the calendar year next following that in which the notice is given; and

(ii) in respect of other taxes on income, on such taxes chargeable for any tax year or accounting period 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 KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1. The Agreement applies to the existing taxes set out in sub-paragraph (a) of paragraph 3 of Article 2, whether or not charged under personal assessment.

2. In the Agreement, the terms “Hong Kong Special Administrative Region tax” and “Thai tax” do not include any penalty or interest imposed under the laws of either Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2. In the case of the Hong Kong Special Administrative Region, “penalty or interest” includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and “additional tax” assessed for infringement of or failure to comply with its tax laws.

3. For the purposes of Article 8, income and 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 and aircraft in international traffic;

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

(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.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand 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 7 September 2005. This Order specifies the arrangements in Articles 1 to 28 of the Agreement and Paragraphs 1 to 3 of the Protocol as double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) notwithstanding anything in any enactment.

Annex B

HK/Thailand DTA:
Summary of Main Provisions

The CDTA with Thailand covers the following types of taxes: (i) profits tax, (ii) salaries tax, and (iii) property tax in respect of Hong Kong; and in respect of Thailand (i) income tax, and (ii) petroleum income tax.

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

Exclusive taxing right

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

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

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

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

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

(e) income from employment exercised aboard a ship or aircraft operated in international traffic;

(f) gains from alienation of shares, unless the company the shares of which are being disposed of deriving more than 50 per cent of its asset value from immovable property situated in the source jurisdiction;

(g) income of artistes and sportsperson, unless they conduct their activities in the source jurisdiction and their visit to the source jurisdiction is not substantially supported by public funds of the resident jurisdiction;

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

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

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

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

Shared taxing rights

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

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

the alienation of the business property of such permanent establishment;

(b) income derived in the source jurisdiction from operation of ships in international traffic;

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

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

(e) 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).

(f) income of artistes and sportsperson who conduct their activities in the source jurisdiction and their visit to the source jurisdiction is not substantially supported by public funds of the resident jurisdiction;

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

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

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

6. Both HK and Thailand give double taxation relief to a taxpayer through the credit method, i.e. if income taxable in the source jurisdiction is subject to tax in the resident jurisdiction, the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income.

Annex C

Financial, Economic and Civil Service Implications of the Proposal

Financial Implications

The Government would have to forgo some revenue which is currently being collected in respect of profits of Thai resident companies not attributable to a permanent establishment in Hong Kong, shipping and air services profits of Thai operators. Thai tax in respect of royalty income of local businessmen, if chargeable to tax in Hong Kong, will have to be allowed as a credit against the Hong Kong tax payable. However, the overall financial implications would be insignificant.

Economic Implications

The Agreement will facilitate business development between Hong Kong and Thailand and contribute positively to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Thailand.

Civil Service Implications

There will be additional work for the Inland Revenue Department (IRD) in handling requests for exchange of information from Thailand under the Agreement. This will be absorbed by redeployment within IRD.

Annex D

Agreements/Arrangements on Avoidance of Double Taxation for Hong Kong

Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital

1. The Kingdom of Belgium

Limited Arrangement for Avoidance of Double Taxation

1. The Mainland of China

Arrangement for Avoidance of Double Taxation on Airline Income

1. Bangladesh
2. Canada
3. Croatia
4. Denmark
5. Estonia
6. Finland
7. Germany
8. Iceland
9. Israel
10. Jordan
11. Kenya
12. Kuwait
13. The Macao SAR
14. The Mainland of China
15. Mauritius
16. The Netherlands
17. New Zealand
18. Norway
19. The Republic of Korea
20. Russia
21. Sweden
22. Switzerland
23. The United Kingdom

Agreement for Avoidance of Double Taxation on Shipping Income

1. Denmark
2. Germany
3. The Netherlands
4. Norway
5. The United Kingdom
6. The United States of America

Agreement for Avoidance of Double Taxation on Airline and Shipping Income

1. Singapore
2. Sri Lanka