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LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

INTRODUCTION

At the meeting of the Executive Council on 22 June 2010, 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) (Brunei Darussalam) Order ("the Order"), at A **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 ("the Ordinance"). The Order implements the Agreement between the Hong Kong Special Administrative Region ("HKSAR") and Brunei Darussalam ("Brunei") for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 20 March 2010 ("the Brunei Agreement").

JUSTIFICATIONS

Benefits of Comprehensive Agreements for Avoidance of Double Taxation

2. Double taxation refers to the imposition of comparable taxes in more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation

hinders the exchange of goods and services, movements of capital, technology and human resources, and poses an obstacle to the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into Comprehensive Agreements for Avoidance of Double Taxation ("CDTAs") with our trading and investment partners so as to minimise double taxation.

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

Benefits of the Brunei Agreement

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

5. In the absence of the Brunei Agreement, Hong Kong residents receiving interests from Brunei are subject to a withholding tax, which is currently at 15%. Under the Brunei Agreement, this will be reduced to 10%. If the recipient is a bank or financial institution, the withholding tax rate will be further reduced to 5%. The withholding tax rate will be further reduced to nil if the recipient is the HKSAR Government, the Hong Kong Monetary Authority or other recognised institutions as mutually agreed. Brunei has also agreed to lower the withholding tax on royalties received by Hong Kong residents from Brunei from the current rate of 10% to 5%.

6. Under the Brunei Agreement, Hong Kong airlines operating flights to Brunei will be taxed at Hong Kong's corporation tax rate (which is lower than that of Brunei). Profits from international shipping transport earned by Hong Kong residents that arise in Brunei, which are currently subject to tax there, will enjoy tax exemption under the Brunei Agreement.

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

Exchange of Information Article under the Brunei Agreement

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

B

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

(a) the Article only obliges the Contracting Parties to exchange information on request, i.e. no automatic or spontaneous exchange of information;

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

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

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

(e) disclosure of information is confined to the tax authorities but not their oversight body;

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

(g) there is no obligation to supply information under certain circumstances as set out in the sample EoI Article.

Legal Basis

10. Under section 49(1A) of the Ordinance, the Chief Executive in Council may, by order, declare that arrangements have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory. Following the signing of the Brunei Agreement, it is necessary for the Chief Executive in Council to declare by order that arrangements with Brunei on double taxation relief have been made, so as to put the Brunei Agreement into effect.

OTHER OPTIONS

11. 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 Brunei Agreement. There is no other option.

THE ORDER

12. **Section 2** of the Order declares that the arrangements specified in section 3 for double taxation relief in relation to income tax and any tax of a similar character imposed by the laws of Brunei have been made and that those arrangements should take effect. **Section 3** states that the

arrangements are those in Articles 1 to 28 of the Brunei Agreement as well as Paragraphs 1 to 2 (including the chapeau immediately before the paragraphs) of the Protocol to the Brunei Agreement, the text of which Articles and Paragraphs are specified in the **Schedule** to the Order.

LEGISLATIVE TIMETABLE

13. The legislative timetable will be -

Publication in the Gazette	2 July 2010
Tabling at Legislative Council	7 July 2010
Commencement of the Order	18 November 2010

IMPLICATIONS OF THE PROPOSAL

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

C

PUBLIC CONSULTATION

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

PUBLICITY

16. Publicity was arranged for the signing of the Brunei Agreement on 20 March 2010. A spokesman will be available to answer media and public enquiries.

BACKGROUND

17. The Brunei Agreement is the sixth CDTA concluded by Hong Kong with another jurisdiction. A summary of the main provisions of the Agreement is at **Annex D**.

D

18. We entered into a CDTA with Belgium in December 2003, with Thailand in September 2005, with the Mainland of China in August 2006, with Luxembourg in November 2007, with Vietnam in December 2008 and with Brunei, the Netherlands and Indonesia in March 2010.

ENQUIRY

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

Financial Services and the Treasury Bureau
30 June 2010

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

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

ANNEXES

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

INLAND REVENUE (DOUBLE TAXATION RELIEF AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME) (BRUNEI DARUSSALAM) 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 18 November 2010.

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 have been made with the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam 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 Brunei Darussalam; and

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

3. Arrangements specified

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

(*a*) Articles 1 to 28 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 His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" and "《中華人民共和國

香港特別行政區政府與文萊達魯薩蘭國政府就收入稅項避免雙重課稅和防止逃稅協定》" in the Chinese translation, done in duplicate at Bandar Seri Begawan on 20 March 2010 in the English language, the text of which Articles is reproduced in Part 1 of the Schedule; and

(*b*) Paragraphs 1 and 2 (including the chapeau immediately before these Paragraphs) of the Protocol to that Agreement, the text of which Paragraphs and chapeau is reproduced in Part 2 of the Schedule.

SCHEDULE [s. 3]

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 HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax;

      whether or not charged under personal assessment;

   (b) in the case of Brunei Darussalam,

      (i) income tax imposed under Income Tax Act (Cap.35); and

      (ii) petroleum profits tax imposed under Income Tax (Petroleum) Act (Cap.119).

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

Parties shall notify each other of any significant changes that have been made in their taxation laws within a reasonable period of time.

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" or "Brunei Darussalam 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 territory where the tax laws of the Hong Kong Special Administrative Region apply;

(ii) the term "Brunei Darussalam" means the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, as an area over which it exercises sovereign rights and jurisdiction in accordance with international law;

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

(c) the term "company" means any body corporate or any entity that 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;

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

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

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

(g) 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;

(h) 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;

(i) the term "national", in relation to Brunei Darussalam, means:

(i) any individual possessing the status of a national under the applicable laws in Brunei Darussalam; and

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

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

(k) the term "tax" means the Hong Kong Special Administrative Region tax or Brunei Darussalam tax, as the context requires.

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

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law 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;

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

(b) in the case of Brunei Darussalam,

any person who, under the laws of Brunei Darussalam, is domiciled, resident or has its place of control and management in Brunei Darussalam, and shall include the Government of Brunei Darussalam, any local authority, statutory body or government agency.

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 of which he is a national (in the case of Brunei Darussalam);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Brunei Darussalam, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Brunei Darussalam, 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 Contracting 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 store, warehouse or premises used as a sales outlet unless the activities fall within paragraphs 4(a) or (b);

(e) a factory;

(f) a workshop;

(g) a farm or plantation;

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

(i) a drilling rig or working ship used for the exploration of natural resources.

3. The term “permanent establishment” also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 183 days;

(b) the furnishing of services, including consultancy services, by an enterprise directly or 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 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 activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting 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 Contracting 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 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.

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, forestry or fishery) 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 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, 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 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.

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

3. The provisions of paragraph 2 shall not apply where judicial, administrative or legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party shall be taxable only in that

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

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

3. The provisions of paragraph 1 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.

4. Where a company which is a resident of a Contracting Party derives profits or income 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 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 profits or income arising in such other Contracting Party.

5. 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 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 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) five (5) per cent of the gross amount of the interest if it is received by any bank or financial institution; or

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

   The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, 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 any institution set up by the Government of the Hong Kong Special Administrative Region, whether or not exempt from tax, under statutory law such as corporation, fund, authority, foundation, agency or other similar entity;

(iv) to such institution as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of Brunei Darussalam,

(i) to the Government of Brunei Darussalam;

(ii) to the Brunei Currency and Monetary Board;

(iii) to the Brunei Investment Agency;

(iv) to the Employees Trust Fund Board;

(v) to any institution set up by the Government of Brunei Darussalam, whether or not exempt from tax, under statutory law such as corporation, fund, authority, foundation, agency or other similar entity;

(vi) to such institution as may be agreed from time to time between the competent authorities of the Contracting Parties.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being 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.

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 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.

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 exceeds, for whatever reason, 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.

8. 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 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 five (5) per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission such as the internet), any patent, trade mark, 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, 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 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 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 exceeds, for whatever reason, 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 shares or rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13

Technical Fees

1. Technical fees arising in a Contracting Party which are derived by a resident of the other Contracting Party may be taxed in that other Contracting Party.

2. However, such technical fees 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 technical fees is a resident of the other Contracting Party, the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the technical fees arise through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Technical fees 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 technical fees, whether he is a resident of that Contracting Party or not, has in that Contracting Party a permanent establishment in connection with which the liability to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees 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 technical fees paid exceeds, for whatever reason, 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 technical fees are paid to take advantage of this Article by means of that creation or assignment.

Article 14

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, including such gains

from the alienation of such a permanent establishment (alone or with the whole enterprise), 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, boats engaged in inland waterways transport 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 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 Contracting Party. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) quoted on such stock exchange as may be agreed between the Contracting Parties; or

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

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

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

Article 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 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 year 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 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, or aboard a boat engaged in inland waterways transport 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 7 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 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

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

Article 18

Pensions

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

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

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

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

shall be taxable only in that Contracting Party.

Article 19

Government Service

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other 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 Brunei Darussalam, is a national thereof; or

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

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

(b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

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

Article 20

Students

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned 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, 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.

Article 22

Methods for Elimination of Double Taxation

1. Double taxation shall be avoided as follows:

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

subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Brunei Darussalam tax paid under the laws of Brunei Darussalam 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 Brunei Darussalam, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

(b) in the case of Brunei Darussalam,

subject to the provisions of the laws of Brunei Darussalam regarding allowances as a credit against Brunei Darussalam tax of tax paid in a territory outside Brunei Darussalam (which shall not affect the general principle of this Article), Hong Kong Special Administrative Region tax paid under the laws of the Hong Kong Special Administrative Region and in accordance with this Agreement, whether directly or by deduction, on profits or income

from sources within the Hong Kong Special Administrative Region shall be allowed as a credit against any Brunei Darussalam tax computed by reference to the same profits or income on which the Hong Kong Special Administrative Region tax is computed.

2. 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 which has been reduced or exempted in accordance with special incentive laws designed to promote economic development in that other Contracting Party.

3. The provision of paragraph 2 shall cease to have effect after ten (10) years from the year of assessment beginning on 1 January of the calendar year immediately following that in which this Agreement enters into force. The competent authorities of the Contracting Parties may consult each other to determine whether this period shall be extended.

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 Brunei Darussalam, are nationals of Brunei Darussalam, 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 Brunei Darussalam) 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. Stateless persons who are residents of a Contracting Party shall not be subjected in either 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 in the Contracting Party (where the Contracting Party is the Hong Kong Special Administrative Region) or nationals of the Contracting Party (where the Contracting Party is Brunei Darussalam) in the same circumstances, in particular with respect to residence, are or may be subjected.

3. 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. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13, apply, interest, royalties, technical fees 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.

5. 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.

6. In this Article the term "taxation" pertains to 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 law 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 Brunei Darussalam). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting

of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

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

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that 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 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.

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 Contracting 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

Entry into Force

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

2. The provisions of this Agreement shall thereupon 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 immediately following that in which this Agreement enters into force;

(b) in Brunei Darussalam,

in respect of Brunei Darussalam tax, for any year of assessment beginning on or after 1 January in the calendar year immediately following that in which this Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years after the date on which this Agreement entered 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 immediately following that in which the notice is given;

(b) in Brunei Darussalam,

in respect of Brunei Darussalam tax, for any year of assessment beginning on or after 1 January in the calendar year immediately following that in which the notice is given.

PART 2

PARAGRAPHS 1 AND 2 (INCLUDING THE CHAPEAU IMMEDIATELY BEFORE THESE PARAGRAPHS) 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 HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

With reference to Article 25 of the Agreement:

1. The Article only obliges the Contracting Parties to exchange information on request.

2. Ad paragraph 5

   (a) It is understood that the provisions of that paragraph shall not be construed as preventing a Contracting Party from declining to supply the information which is owned by any institution referred to in paragraph 3 of Article 11 of the Agreement by reason of public policy.

   (b) A Contracting Party may decline to supply information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic law of that Contracting Party.

Clerk to the Executive Council

COUNCIL CHAMBER

2010

Explanatory Note

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam 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 20 March 2010. This Order specifies the arrangements in Articles 1 to 28 of the Agreement and Paragraphs 1 and 2 (including the chapeau immediately before these Paragraphs) of the Protocol as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) and declares that it is expedient that those arrangements should have effect.

2. The effects of the declaration are –

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

(*b*) that the arrangements, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of Brunei Darussalam, have effect in

relation to any tax of Brunei Darussalam that is the subject of that provision.

Annex B

Extracts of Hong Kong's Sample CDTA Text

ARTICLE 25

EXCHANGE OF INFORMATION

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

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

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

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

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

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

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

* * * *

PROTOCOL

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

1-9. …..

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

* * * *

Annex C

Financial, Economic and Civil Service Implications of the Proposal

Financial Implications

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

Economic Implications

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

Civil Service Implications

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

Annex D

Comprehensive Double Taxation Agreement ("CDTA")
Between Hong Kong and Brunei Darussalam

Summary of Main Provisions

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

(a) in respect of Hong Kong	-	(i) salaries tax; (ii) profits tax; and (iii) property tax;
(b) in respect of Brunei	-	(i) income tax; and (ii) petroleum profits tax.

2. The Brunei 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 right

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Brunei Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Brunei 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 or aircraft in international traffic and gains from alienation of ships or aircraft operated

in international traffic;

(c) dividend income arising in the source jurisdiction;

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

(e) income of entertainers and sportspersons who conduct their professional activities in the source jurisdictions under a plan of cultural exchange between the Governments of both jurisdictions;

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

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

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

4. Non-government pensions made under a public scheme which is part of the social security system of the source jurisdiction or under a retirement scheme which is recognized for tax purpose in the source jurisdiction 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 Brunei

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 Brunei Agreement that the following types of income may be taxed in both jurisdictions:

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

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

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

- for interest,
  0% if paid to the Government of either jurisdictions, central banks, and other institutions agreed by both sides;

  5% in case of bank or financial institution;

  10% in all other cases;

- for royalties, 5%;

(d) income of technical fees arisen from the source jurisdiction, the source jurisdiction's right to tax is limited to 15%;

(e) gains from alienation of immovable property or shares of a company deriving more than 50 per cent of their value directly or indirectly from immovable property;

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

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

(h) income of entertainers and sportspersons 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 Brunei will provide double taxation relief for its residents by the credit method.