

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG) (AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) (AMENDMENT) ORDER 2011

INTRODUCTION

At the meeting of the Executive Council on 3 May 2011, the Council ADVISED and the Chief Executive ORDERED that the Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) (Amendment) Order 2011 (the Order), at Annex A, should be made under section 49 of the Inland Revenue Ordinance, Cap. 112 (the Ordinance). The Order implements the Protocol between the Hong Kong Special Administrative Region (HKSAR) and the Grand Duchy of Luxembourg (Luxembourg) for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 11 November 2010 (the Luxembourg Protocol).

JUSTIFICATIONS

Purpose of the Protocol

2. Luxembourg and the HKSAR signed an agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital (the Luxembourg Agreement) on 2 November 2007 (Annex B). The Luxembourg Agreement is given effect in Hong Kong by the Specification of Arrangements (Government of the Grand Duchy of Luxembourg)(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (Cap.112 sub. leg. BA)(principal order).

3. The Luxembourg Protocol, signed on 11 November 2010, upgrades the Exchange of Information (EoI) Article in the Luxembourg Agreement to the 2004 version of the Organisation for Economic Cooperation and Development (OECD). The Luxembourg Protocol should be read together with the Luxembourg Agreement and form an integral part of the Agreement.

4. The OECD 2004 version of the EoI Article requires the contracting parties, upon receiving a request for information, to exchange information even when there is no domestic tax interest involved. It is the international trend to adopt the OECD 2004 version of the EoI Article. Previously, our inability to adopt the 2004 EoI version has caused negative perception on the transparency of Hong Kong's tax regime. This negative perception would harm Hong Kong's reputation as an international financial centre, and could lead to sanctions imposed by other economies. With the commencement of the Inland Revenue (Amendment) Ordinance 2010 in March 2010 which enables Hong Kong to adopt the OECD 2004 version of the EoI Article in our Comprehensive Agreements for Avoidance of Double Taxation (CDTAs), we have started to sign new CDTAs incorporating this latest standard and sought to upgrade the EoI Article in our existing CDTAs.

EoI Article under the Luxembourg Protocol

5. During the scrutiny of the relevant legislative amendments mentioned in paragraph 4 above, the Government presented a sample EoI Article (Annex C) to the Bills Committee and undertook to highlight any deviation from the text in any CDTA that we have signed when we submit the CDTA for ratification.

6. The Luxembourg Protocol has adopted all the safeguards in the sample EoI Article, in particular -

- (a) the Article only obliges the Contracting Parties to exchange information upon receipt of specific request, i.e. there will be no automatic or spontaneous EoI;
- (b) the scope of information exchange is confined to taxes covered by the Luxembourg Agreement;
- (c) the information sought should be foreseeably relevant, i.e. there will be 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) information will only be disclosed to the tax authorities and not for release to their oversight body;

- (f) the information requested shall not be disclosed to a third jurisdiction; and
- (g) there is no obligation to supply information under certain circumstances as set out in the sample EoI Article.

Legal Basis

7. 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 Luxembourg Protocol, it is necessary for the Chief Executive in Council to declare by order that arrangements with Luxembourg set out in the Luxembourg Protocol have been made, so as to put the Luxembourg Protocol into effect.

OTHER OPTIONS

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

THE ORDER

9. The Order makes the following amendments to the principal order –
- (a) New sections 2(2), 3(2) and 3(3) are added for declaring that the arrangements in the Luxembourg Protocol have been made with the government of Luxembourg and that it is expedient that those arrangements shall have effect.
 - (b) A new Schedule 2 is added to set out the arrangements in the Luxembourg Protocol.
 - (c) Consequential amendments are also made to the principal order.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows –

Publication in the Gazette	13 May 2011
Tabling at Legislative Council	18 May 2011

IMPLICATIONS OF THE PROPOSAL

D

11. The proposal has civil service and economic implications as set out in Annex D. 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 financial, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. The business and professional sectors have all along supported our policy to align Hong Kong's EoI regime with the international standard on tax transparency.

PUBLICITY

13. Publicity was arranged for the signing of the Luxembourg Protocol on 11 November 2010. A spokesman will be available to answer media and public enquiries.

ENQUIRY

14. 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
11 May 2011

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance (Chapter 112)

SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG) (AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) (AMENDMENT) ORDER 2011

ANNEXES

Annex A	Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) (Amendment) Order 2011
Annex B	Specification of Arrangements (Government of the Grand Duchy of Luxembourg)(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order
Annex C	Sample Exchange of Information Article
Annex D	Economic and Civil Service Implications of the Proposal

Specification of Arrangements (Government of the Grand Duchy of Luxembourg)
(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal
Evasion) (Amendment) Order 2011

Section 1

*1

**Specification of Arrangements (Government of the
Grand Duchy of Luxembourg) (Avoidance of Double
Taxation on Income and Capital and Prevention of
Fiscal Evasion) (Amendment) Order 2011**

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

1. Commencement

This Order comes into operation on 7 July 2011.

**2. Specification of Arrangements (Government of the Grand
Duchy of Luxembourg) (Avoidance of Double Taxation on
Income and Capital and Prevention of Fiscal Evasion) Order
amended**

The Specification of Arrangements (Government of the Grand
Duchy of Luxembourg) (Avoidance of Double Taxation on Income
and Capital and Prevention of Fiscal Evasion) Order (Cap. 112 sub.
leg. BA) is amended as set out in sections 3 to 6.

3. Section 2 amended

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1)—

Repeal

“section 49”

Substitute

“section 49(1)”.

(3) Section 2(1)(a)—

Specification of Arrangements (Government of the Grand Duchy of Luxembourg)
(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal
Evasion) (Amendment) Order 2011

Section 4

2

Repeal

“section 3”

Substitute

“section 3(1)”.

(4) After section 2(1)—

Add

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

(a) that the arrangements specified in section 3(2) have
been made with the Government of the Grand
Duchy of Luxembourg 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 Grand Duchy of Luxembourg; and

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

4. Section 3 amended

(1) Section 3—

Renumber the section as section 3(1).

(2) Section 3(1)—

Repeal

“section 2(a)”

Substitute

“section 2(1)(a)”.

(3) Section 3(1)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

- (4) After section 3(1)—

Add

- “(2) The arrangements specified for the purposes of section 2(2)(a) are the arrangements in Articles 1 to 5 of the protocol to the Agreement between the Hong Kong Special Administrative Region of the People’s Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, done in duplicate at Hong Kong on 11 November 2010 in the English and French languages.
- (3) The English text of Articles 1 to 5 of the protocol referred to in subsection (2) is reproduced in Schedule 2; a Chinese translation of the Articles is also set out in that Schedule.”.

5. Schedule heading amended

The Schedule, heading—

Repeal

“SCHEDULE”

Substitute

“Schedule 1”.

6. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[s. 3]

**Articles 1 to 5 of the Protocol to the Agreement
between the Hong Kong Special Administrative
Region of the People’s Republic of China and the
Grand Duchy of Luxembourg for the Avoidance
of Double Taxation and the Prevention of Fiscal
Evasion with respect to Taxes on Income and on
Capital**

ARTICLE 1

Paragraph 5 of Article 5 (Permanent Establishment) of the Agreement shall be deleted and replaced by the following:

- “5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.”

ARTICLE 2

A paragraph 5 shall be added in Article 24 (Mutual Agreement Procedure) of the Agreement:

“5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

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

ARTICLE 3

Article 25 (Exchange of Information) of the Agreement shall be deleted and replaced by the following:

“Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 4

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 Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions 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 the Protocol enters into force;

- (b) in Luxembourg:

- (i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which the Protocol enters into force;
- (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

ARTICLE 5

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and

shall apply as long as the Agreement itself is applicable unless otherwise agreed by the Contracting Parties.”.

(Chinese Translation)

第一條

刪去本協定第五條(常設機構)第 5 款，代以：

- “5. 儘管有第 1 及 2 款的規定，如某人(第 6 款適用的具獨立地位的代理人除外)代表某企業行事，而該人在某締約方擁有以該企業名義簽訂合約的權限，並慣常在該締約方行使該權限，則該企業須當作就該人為該企業所進行的任何活動在該締約方設有常設機構；但如該人的活動局限於第 4 款所述的活動(該等活動即使透過固定營業場所進行也不會令該固定營業場所根據該款的規定成為常設機構)，則屬例外。”

第二條

於本協定第二十四條(雙方協商程序)加入第 5 款：

- “5. 凡，
- (a) 任何人根據第 1 款，以某締約方或締約雙方的行動已導致對該人作出不符合本協定規定的課稅為理由，將案件呈交某締約方的主管當局，而

- (b) 在案件呈交予另一締約方的主管當局的兩年之內，締約雙方的主管當局未能依據第 2 款達成協議解決該個案，

則如該人要求，因該個案而產生的任何尚未解決的爭議點須提交仲裁。但如已有任何締約方的法院或行政審裁處就該等尚未解決的爭議點作出裁定，該等爭議點不得提交仲裁。除非某名直接受該個案影響的人不接受實施有關仲裁裁定的共同協議，否則該裁定對締約雙方均具約束力，而儘管在締約雙方的當地法律中有任何時限，該裁定須予以實施。締約雙方的主管當局須藉共同協議，確定施行本款的方式。”

第三條

刪去本協定第二十五條(資料交換)，代以：

“第二十五條

資料交換

1. 凡資料屬可預見攸關實施本協定的規定或施行或強制執行締約雙方關乎本協定所涵蓋的稅項的當地法律(但以根據該等法律作出的課稅不違反本協定者為限)，締約雙方的主管當局須交換該等資料。該等資料交換不受第一條的規定所限制。
2. 某締約方根據第 1 款收到的任何資料，均須保密處理，其方式須等同於處理根據該方的當地法律而取得的資料，該資料

只可向以下人員或當局披露：與第 1 款所提述的稅項的評估或徵收、執行或檢控有關，或與關乎該等稅項的上訴的裁決有關的人員或當局(包括法院及行政機關)。該等人員或當局只可為該等目的使用該資料。他們可在公眾法庭的法律程序中或在司法裁定中披露該資料。不得為任何目的將資料向任何第三司法管轄區披露。

3. 在任何情況下，第 1 及 2 款的規定均不得解釋為向某締約方施加作出以下作為的責任：
 - (a) 實施有悖於該締約方或另一締約方的法律及行政慣例的行政措施；
 - (b) 提供根據該締約方或另一締約方的法律或在該締約方或另一締約方的正常行政運作過程中不能獲取的資料；
 - (c) 提供會披露任何貿易、業務、工業、商業或專業秘密或貿易程序的資料，或提供若遭披露即屬違反公共政策的資料。
4. 如某締約方按照本條請求提供資料，則另一締約方即使未必為其本身的稅務目的而需要該資料，仍須以其收集資料措施取得所請求的資料。前述句子所載的責任，受第 3 款的限制所規限，但在任何情況下，該等限制不得解釋為容許某締約方純粹因資料無關其本土利益而拒絕提供該資料。
5. 在任何情況下，第 3 款的規定均不得解釋為容許某締約方純粹因以下理由而拒絕提供該資料：該資料是由某銀行、其他

金融機構、代名人或以代理人或受信人身分行事的人所持有，或該資料關乎某人的擁有權權益。”

第四條

每一締約方均須以書面通知另一締約方已完成其法律規定的使本議定書生效的程序。本議定書自上述通知的較後一份的日期起生效，其條文：

- (a) 在香港特別行政區：

就香港特別行政區稅項而言，對在本議定書生效的公曆年的翌年 4 月 1 日或之後開始的任何課稅年度具有效力；

- (b) 在盧森堡大公國：

- (i) 就在來源預扣的稅項而言，對在本議定書生效的公曆年的翌年 1 月 1 日或之後取得的收入具有效力；

- (ii) 就其他收入稅項及資本稅項而言，對就於本議定書生效的公曆年的翌年 1 月 1 日或之後開始的任何課稅年度而須徵收的稅項具有效力。

第五條

本議定書構成本協定整體的一部分，除非締約雙方另有協議，否則本議定書在本協定有效期間有效，並在本協定適用期間適用。”。

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

Under the Specification of Arrangements (Government of the Grand Duchy of Luxembourg) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (Cap. 112 sub. leg. BA) (*principal order*), the arrangements in Articles 1 to 29 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (*Agreement*) dated 2 November 2007 are declared to be double taxation relief arrangements under section 49 of the Inland Revenue Ordinance (Cap. 112).

2. The Government of Hong Kong and the Government of the Grand Duchy of Luxembourg entered into a protocol (*Protocol*) to amend the Agreement on 11 November 2010. This Order amends the principal order by adding new provisions that declare the arrangements in Articles 1 to 5 of the Protocol to be additional double taxation relief arrangements.
3. The effects of the new provisions are—
 - (a) that the arrangements in Articles 1 to 5 of the Protocol 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 the Grand Duchy of Luxembourg, have effect in relation to any tax of the Grand Duchy of Luxembourg that is the subject of that provision.

Specification of Arrangements (Government of the Grand Duchy of Luxembourg)
(Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal
Evasion) (Amendment) Order 2011

Explanatory Note
Paragraph 4

15

4. The Order also makes consequential amendments to the principal order.

Chapter:	112BA	SPECIFICATION OF ARRANGEMENTS (GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG) (AVOIDANCE OF DOUBLE TAXATION ON INCOME AND CAPITAL AND PREVENTION OF FISCAL EVASION) ORDER	Gazette Number	Version Date
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		Empowering section	L.N. 18 of 2008	01/04/2008
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(Cap 112, section 49)

[1 April 2008]

(Originally L.N. 18 of 2008)

Section:	1	(Omitted as spent)	L.N. 18 of 2008	01/04/2008
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(Omitted as spent)

Section:	2	Declaration under section 49	L.N. 18 of 2008	01/04/2008
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For the purposes of section 49 of the Ordinance, it is declared—

- (a) that the arrangements specified in section 3 have been made with the Government of the Grand Duchy of Luxembourg 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 Grand Duchy of Luxembourg; and
- (b) that it is expedient that those arrangements should have effect.

Section:	3	Arrangements specified	L.N. 18 of 2008	01/04/2008
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The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 29 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital done in duplicate at Hong Kong on 2 November 2007 in the English and French languages, the English text of which Articles is reproduced in the Schedule.

Schedule:		SCHEDULE	L.N. 18 of 2008	01/04/2008
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[section 3]

ARTICLES 1 TO 29 OF THE AGREEMENT BETWEEN THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME AND ON CAPITAL

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 and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 the Agreement shall apply are:
 - (a) in the case of the Hong Kong Special Administrative Region:
 - (i) profits tax;
 - (ii) salaries tax; and
 - (iii) property tax, whether or not charged under personal assessment;
 - (b) in the case of the Grand Duchy of Luxembourg:
 - (i) the income tax on individuals (l' impot sur le revenu des personnes physiques);
 - (ii) the corporation tax (l' impot sur le revenu des collectivites);
 - (iii) the capital tax (l' impot sur la fortune); and
 - (iv) the communal trade tax (l' impot commercial communal).
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.
5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Luxembourg 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 "Luxembourg" means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;
 - (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 Luxembourg, the Minister of Finance or his authorised representative;
 - (e) the term “Contracting Party” or “Party” means the Hong Kong Special Administrative Region or Luxembourg 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 Luxembourg, means:
 - (i) any individual possessing the nationality of Luxembourg; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in Luxembourg;
 - (j) the term “person” includes an individual, a company, a partnership and any other body of persons, and, in the case of the Hong Kong Special Administrative Region, also includes a trust;
 - (k) the term “tax” means the Hong Kong Special Administrative Region tax or Luxembourg tax, as the context requires.
2. In this Agreement, the terms “Hong Kong Special Administrative Region tax” and “Luxembourg tax” do not include any penalty or interest imposed under the laws of either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.
 3. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
 - (a) in the case of the Hong Kong Special Administrative Region,

- (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
 - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
 - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
 - (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
- (b) in the case of Luxembourg, any person who, under the laws of Luxembourg, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Luxembourg in respect only of income from sources in Luxembourg or capital situated therein;
- (c) in the case of either Contracting Party, the Government of that 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 Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer ("centre of vital interests");
 - (b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
 - (c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Luxembourg);
 - (d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Luxembourg, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Luxembourg, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:

- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop; and
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term “permanent establishment” also encompasses:
- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
 - (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 180 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of 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 Party a stock of goods or merchandise from which he regularly fills orders on behalf of the enterprise.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
 7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the exploration or working may take place.
4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
5. The provisions of paragraphs 1 and 4 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the law of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment or other method; such an apportionment or other method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:
 - (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:
 - (i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;
 - (ii) income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships and aircraft in international traffic;
 - (b) interest on funds directly connected with the operation of ships or aircraft in international traffic;
 - (c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

Article 9

Associated Enterprises

1. Where:
 - (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a

Contracting Party and an enterprise of the other Contracting Party,

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

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

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed:
 - (a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR 1.2 million in the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.

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

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, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident, and in the case of Luxembourg the investor’ s share of the profit in a commercial, industrial, mining or craft undertaking, paid proportionally to the profits and by virtue of his capital outlay, as well as interest and payments on bonds, where, over and above the fixed rate of interest, a right of assignment is granted for supplementary interest varying according to the unretained earnings.
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, 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.
5. Where a company which is a resident of a Contracting Party derives profits or income from the other

Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in that other Party if such resident is the beneficial owner of the interest.
2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term "interest" shall not include income referred to in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, 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.
4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 3 per cent of the gross amount of the royalties.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for 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 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 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 reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.
3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. 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 Parties; or
 - (b) alienated or exchanged in the framework of a reorganisation of a company, a merger, a division or a similar operation; or
 - (c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the

employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
 - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

Article 15

Directors' Fees

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

Article 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

Pensions, Alimony and Maintenance Payment

1. Subject to the provisions of paragraph 2 of Article 18, 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 Party.
2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) paid under:
 - (a) a public scheme which is part of the social security system of a Contracting Party; or
 - (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party; or

(c) the social security legislation of a Contracting Party,

shall be taxable only in that Contracting Party.

3. Alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

Article 18

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 Party or authority shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:
 - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Luxembourg, is a national of Luxembourg; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
2. Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.
3. The provisions of Articles 14, 15, 16 and 17 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 or a local authority thereof.

Article 19

Students

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

Article 20

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 21

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.
2. Capital represented by 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 may be taxed in that other Party.
3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting Party, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Party.
4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that 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), Luxembourg tax paid under the laws of Luxembourg 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 Luxembourg, 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 the 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 provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:
 - (a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Luxembourg shall, subject to the provisions of sub-paragraphs (b) and (c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.
 - (b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 12 and 16 may be taxed in the Hong Kong Special Administrative Region, Luxembourg shall allow as a deduction from the income tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the Hong Kong Special Administrative Region.
 - (c) The provisions of sub-paragraph (a) shall not apply to income derived or capital owned by a resident of Luxembourg where the Hong Kong Special Administrative Region applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Articles 10 or 12 to such income.

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 Luxembourg, are nationals of Luxembourg, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Luxembourg) in the same circumstances, in particular with respect to residence, are or may be subjected.

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 Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Luxembourg) 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 Party than the taxation levied on enterprises of that other Party carrying on the same activities.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned 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 Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.
6. Nothing contained in this Article shall 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.

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

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

Article 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 the Agreement insofar as the taxation thereunder is not contrary to the 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 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 the 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 shall 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 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

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 27

Miscellaneous Rules

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. All communications between the competent authorities in relation to matters covered by the Agreement shall be in English or, if not in English, be accompanied by a translation into English (except for annexes provided by third parties).

Article 28

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of the Agreement shall thereupon have effect:
 - (a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April 2008;
 - (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January 2008;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January 2008.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

- (a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;
- (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following the year in which the notice is given;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

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 1¹.
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;

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 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.

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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.

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Civil Service and Economic Implications of the Proposal

Civil Service Implications

There will be additional work for the Inland Revenue Department (IRD) in handling requests for exchange of information from Luxembourg under the liberalized arrangement in the Luxembourg Protocol. IRD has obtained the approval of the Finance Committee of the Legislative Council to create a supernumerary directorate post for three years with effect from 1 April 2011 to support the implementation of CDTA-related initiatives.

Economic Implications

2. The implementation of the Luxembourg Protocol upgrades the EoI Article in the Luxembourg Agreement to the OECD 2004 version. This will help reinforce the reputation of Hong Kong as an international financial centre and will be conducive to the long-term economic development of Hong Kong.