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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) (REPUBLIC OF LATVIA) ORDER

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

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

INTRODUCTION

At the meeting of the Executive Council on 27 June 2017, the Council ADVISED and the Chief Executive ORDERED that the following
A, B & C three orders (the Orders) at Annex A, Annex B and Annex C respectively should be made under section 49(1A) of the Inland Revenue Ordinance, Cap. 112 (the Ordinance) –

(a) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Latvia) Order;
(b) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Belarus) Order; and
(c) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Islamic Republic of Pakistan) Order.

The Orders implement the comprehensive avoidance of double taxation agreements (CDTAs) which the Hong Kong Special Administrative Region (HKSAR) signed with Latvia, Belarus and Pakistan on 13 April 2016, 16 January 2017 and 17 February 2017 respectively.

JUSTIFICATIONS

Benefits of Comprehensive Agreements for Avoidance of Double Taxation

2. Double taxation refers to the imposition of comparable taxes by more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services, movements of capital, technology and human resources, and poses an obstacle to the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into CDTAs with our trading and investment partners so as to minimise double taxation.

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

Benefits of CDTAs with Latvia, Belarus and Pakistan

4. In the absence of CDTAs with Latvia, Belarus and Pakistan, income earned by Latvian, Belarusian or Pakistani residents in Hong Kong is subject to tax by both Hong Kong and Latvia/Belarus/Pakistan (as the case may be). Moreover, profits of Hong Kong companies doing business through a permanent establishment in Latvia, Belarus or Pakistan may be taxed in both Hong Kong and Latvia/Belarus/Pakistan (as the case may be) if the income is Hong Kong sourced.

5. Under the three CDTAs, tax paid in Hong Kong will be allowed as a deduction against tax payable in Latvia, Belarus or Pakistan in respect of the income. Also, any Latvian tax, Belarusian tax or Pakistani tax paid by Hong Kong companies will be allowed as a credit against the tax payable in Hong Kong in respect of the income, subject to the provisions of the tax laws of Hong Kong.

6. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by a Latvian, Belarusian or Pakistani entity, from employment exercised in Latvia, Belarus or Pakistan will be exempted from Latvian, Belarusian or Pakistani tax if the resident's aggregate stay in these places in any relevant 12-month period does not exceed 183 days. Moreover, profits from international shipping transport earned by Hong Kong residents arising in Latvia, Belarus or Pakistan, which are currently subject to tax in these three places, will not be taxed in Latvia or Belarus and will enjoy 50% reduction in tax in Pakistan under the respective CDTAs.

7. Withholding tax rates applicable to Hong Kong residents are summarised below –

	Proposed caps on withholding tax rates – (compared with the current applicable tax rates in Latvia/Belarus/Pakistan)		
	Interest(s)	**Royalties**	**Dividends**
CDTA with Latvia	Zero or 10%[1] (individuals – 10%; corporate/individual residents in a blacklisted country[2] – 15%/23%)	Zero or 3%[3] (individuals – 5%; corporate/individual residents in a blacklisted country – 15%/23%; copyrights – 23%)	Zero or 10%[4] (individuals – 10%; corporate/individual residents in a blacklisted country – 15%/23%); resident in a blacklisted country for interim dividends – 30%)
CDTA with Belarus	5% (companies – 10%; individuals – 13%)	3% or 5%[5] (companies – 15%; individuals – 13%)	5% (companies – 12%; individuals – 13%)
CDTA with Pakistan	10% (various rates up to 17.5%)	10% (15%)	10% (various rates up to 25%)

[1] The zero rate would be applicable if the beneficial owner is a company. Otherwise, the rate will be capped at 10%.

[2] A blacklisted country refers to a country listed in the Republic of Latvia's Regulations of the Cabinet of Ministers No. 276 of 26 June 2001 "Terms on low-tax and tax-free countries or territories". Hong Kong is currently on Latvia's list. A country or territory listed therein ceases to be regarded as a low-tax or tax-free country or territory after the entry into force of its tax treaty or tax information exchange agreement with Latvia.

[3] The zero rate would be applicable if the beneficial owner is a company and the royalties are paid for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience. Otherwise, the rate will be capped at 3%.

[4] The zero rate would be applicable if the beneficial owner is a company. Otherwise, the rate will be capped at 10%.

[5] The cap of 3% would be applicable if the royalties are for the use, or the right to use, aircraft. Otherwise, the rate will be capped at 5%.

8. Furthermore, Hong Kong air carriers operating flights to Latvia or Belarus or Pakistan will be taxed in Hong Kong only at Hong Kong's corporation tax rate of 16.5% (which is lower than that of Belarus or Pakistan).

9. Overall speaking, the three CDTAs set out the allocation of taxing rights between Hong Kong and the respective jurisdiction and the relief on tax rates on different types of income. It will help investors better assess their potential tax liabilities from cross-border economic activities, foster economic and trade links, and provide added incentives for enterprises of Latvia, Belarus and Pakistan to conduct business or invest in Hong Kong, and vice versa.

Exchange of Information Article under the CDTAs with Latvia, Belarus and Pakistan

10. Hong Kong adopts the Organisation for Economic Co-operation and Development 2004 version of the Exchange of Information (EoI) Article in our CDTAs to facilitate exchange of tax information for meeting the international standard. In order to protect taxpayers' privacy and confidentiality of any information exchanged, the Government will continue to adopt highly prudent safeguard measures in our CDTAs.

11. Each of the three CDTAs contains an EoI Article. We have agreed with Latvia, Belarus and Pakistan that the following necessary safeguards would be adopted –

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

(b) information received by Latvia, Belarus and Pakistan should be treated as confidential;

(c) information will only be disclosed to the tax authorities concerned and will not be released to their oversight bodies unless there are legitimate reasons;

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

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

12. Regarding the scope of tax types for the purpose of EoI, the tax types, other than income taxes[6] or other taxes of a similar character, are set out in the agreements. Such other tax types applicable to Latvia include the value added tax and the immovable property tax; those applicable to Belarus include value added tax and excises that are administered and enforced in Belarus; and those applicable to Pakistan include the sales tax under the Sales Tax Act 1990, the federal excise duty under the Federal Excise Duty Act 2005, the customs duty under the Customs Act 1969 and the capital value tax.

Legal Basis

13. Under section 49(1A) of the Ordinance, if the Chief Executive in Council, by order, declares that arrangements have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. Under section 49(1B) of the Ordinance, arrangements made in an order under section 49(1A) of the Ordinance may be specified for the purposes of affording relief from double taxation and/or exchanging information in relation to any tax imposed by the laws of Hong Kong or the territory concerned only. Following the signing of CDTAs with Latvia, Belarus and Pakistan, it is necessary for the Chief Executive in Council to declare by order that arrangements with Latvia, Belarus and Pakistan on double taxation relief have been made so as to bring the three CDTAs into effect.

OTHER OPTIONS

14. An Order made by the Chief Executive in Council under section 49(1A) of the Ordinance is the only way to give effect to CDTAs with Latvia, Belarus and Pakistan. There is no other option.

THE ORDERS

15. **Section 2** of the Latvian Order declares that the arrangements specified in section 3(1) have been made and that it is expedient that those arrangements should have effect. **Section 3(1)** states that the arrangements are those in Articles 1 to 28 of our CDTA with Latvia as well as Paragraphs 1 to 4 of the Protocol to the CDTA. The text of the Articles and the Paragraphs are set out in the **Schedule** to the Latvian Order.

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

16. **Section 2** of the Belarusian Order declares that the arrangements specified in section 3(1) have been made and that it is expedient that those arrangements should have effect. **Section 3(1)** states that the arrangements are those in Articles 1 to 30 of our CDTA with Belarus. The text of the Articles is set out in the **Schedule** to the Belarusian Order.

17. **Section 2** of the Pakistani Order declares that the arrangements specified in section 3(1) have been made and that it is expedient that those arrangements should have effect. **Section 3(1)** states that the arrangements are those in Articles 1 to 30 of our CDTA with Pakistan as well as Paragraphs 1 to 3 of the Protocol to the CDTA. The text of the Articles and the Paragraphs are set out in the English text of the **Schedule** to the Pakistani Order. A Chinese translation of those Articles and Paragraphs is set out in the Chinese text of the Schedule.

LEGISLATIVE TIMETABLE

18. The legislative timetable is as follows –

Publication in the Gazette	30 June 2017
Tabling at LegCo	5 July 2017
Commencement of the Orders	24 November 2017

IMPLICATIONS OF THE PROPOSAL

19. The proposal has financial, economic, civil service and family 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 productivity, environmental or gender implications. It also has no sustainability implications other than those set out in the economic implications paragraph in Annex D.

D

PUBLIC CONSULTATION

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

PUBLICITY

21. We issued a press release on the signing of the three CDTAs on 13 April 2016, 16 January 2017 and 17 February 2017 respectively. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

22. As at 31 May 2017, we have entered into CDTAs with 37 jurisdictions, including the three concluded with Latvia, Belarus and Pakistan. A summary of the main provisions of each of the three CDTAs is at Annex E, Annex F and Annex G respectively. A list of Hong Kong's CDTA partners is at Annex H.

E
F & G
H

ENQUIRY

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

Financial Services and the Treasury Bureau
28 June 2017

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ANNEXES

Annex A	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Latvia) Order
Annex B	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Belarus) Order
Annex C	Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Islamic Republic of Pakistan) Order
Annex D	Financial, Economic, Civil Service and Family Implications of the Proposal

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Latvia) 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 24 November 2017.

2. Declaration under section 49(1A)

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

(a) that the arrangements specified in section 3(1) have been made with the Government of the Republic of Latvia; and

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

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in—

(a) Articles 1 to 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 the Republic of Latvia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income", done in duplicate at Riga on 13 April 2016 in the Chinese, Latvian and English languages; and

(b) Paragraphs 1 to 4 of the protocol to the agreement, done in duplicate at Riga on 13 April 2016 in the Chinese, Latvian and English languages.

(2) The text of the Articles referred to in subsection (1)(a) is reproduced in Part 1 of the Schedule.

(3) The text of the Paragraphs referred to in subsection (1)(b) is reproduced in Part 2 of the Schedule.

Schedule

[s. 3]

Part 1

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

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or of its local authorities, irrespective of the manner in which they are levied.

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

3. The existing taxes to which the 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 Latvia,

(i) the enterprise income tax (uzņēmumu ienākuma nodoklis); and

(ii) the personal income tax (iedzīvotāju ienākuma nodoklis).

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 this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Latvian tax", as the context requires.

Article 3

General Definitions

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

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

(ii) the term "Latvia" means the Republic of Latvia and, when used in the geographical sense, means the territory of the Republic of Latvia and any other area adjacent to the territorial waters of the Republic of Latvia within which under the laws of Latvia and in accordance with international law, the rights of Latvia may be exercised with respect to the sea bed and its sub-soil and their natural resources;

(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 Latvia, the Ministry of Finance or its authorised representative;

(e) the term "Contracting Party" or "Party" means the Hong Kong Special Administrative Region or Latvia, 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 Latvia means:

(i) any individual possessing the nationality of Latvia; and

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

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

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

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

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

(c) in the case of either Contracting Party, the Party, the Government of that Party and any local authority thereof;

(d) in the case of either Contracting Party, a pension fund or scheme that is established and regulated according to the statutory provisions of a Contracting Party and the income of which is generally exempt from tax in that Contracting Party.

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 Latvia);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Latvia, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Latvia, 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, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement and determine the mode of application of the Agreement to such person. In the absence of such agreement, for the purposes of the Agreement, the person shall not be entitled to claim any benefits provided by the Agreement.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

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

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting Party directly or through employees or other personnel engaged by the enterprise for such purpose, but only where such activities continue (for the same or a connected project) in the other Contracting Party for a period or periods exceeding in the aggregate six months within any twelve month period.

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

(a) the use of facilities solely for the purpose of storage, 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 sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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, any option or similar right to acquire immovable property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment

adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

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

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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

(a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, 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 investments that are made in a Contracting Party as integral part of carrying on the business of operation of ships or aircraft in international traffic, which shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest;

(c) profits from the use, maintenance or lease of containers (including trailers and related equipment for the transport of containers) by the enterprise for the transport of goods or merchandise when such activities are 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);

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

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

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

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

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

(ii) to the Hong Kong Monetary Authority;

(iii) to the Exchange Fund;

(iv) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of Latvia:

(i) to the Government of Latvia or its local authority;

(ii) to the Bank of Latvia;

(iii) to a statutory body or any institution wholly or mainly owned by the Government of Latvia or its local authority, and in either case as may be agreed from time to time between the competent authorities of the Contracting Parties;

(c) in the case of either Contracting Party, to a pension fund or scheme as referred to in paragraph 1 of Article 4.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting

Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 11

Interest

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

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

(a) 0 per cent of the gross amount of the interest, if the interest is paid by a company that is a resident of a Contracting Party to a company (other than a partnership) that is a resident of the

other Contracting Party and is the beneficial owner of the interest;

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

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that 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 the Exchange Fund;

(iv) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of Latvia:

(i) to the Government of Latvia or its local authority;

(ii) to the Bank of Latvia;

(iii) to a statutory body or any institution wholly or mainly owned by the Government of Latvia or its local

authority, and in either case as may be agreed from time to time between the competent authorities of the Contracting Parties;

(c) in the case of either Contracting Party, to a pension fund or scheme as referred to in paragraph 1 of Article 4.

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. The term "interest" shall not include any income which is treated as a dividend under the provisions of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein 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 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 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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

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

(a) 0 per cent of the gross amount of the royalties for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience if the royalties are paid by a company that is a resident of a Contracting Party to a company (other than a partnership) that is a resident of the other Contracting Party and is the beneficial owner of the royalties;

(b) 3 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, 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, having regard to the use, right or information for which they are paid, exceeds the amount which

would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

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 operating ships or aircraft in international traffic 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 or of a comparable interest of any kind deriving more than 50 per cent of their value directly or indirectly from

immovable property situated in the other Contracting Party may be taxed in that other Party. 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.

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

Article 14

Income from Employment

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

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

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

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

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

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

Article 15

Directors' Fees

Directors' fees and other similar remuneration derived by a resident of a Contracting Party in his capacity as a member of the board of directors or any other similar organ 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

1. Subject to the provisions of paragraph 2 of this Article and 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 including self-employment shall be taxable only in that Party.

2. Subject to the provisions of paragraph 2 of Article 18, 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

(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 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by 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 Latvia, is a national thereof; or

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

2. (a) Any pension (including a lump sum payment) and other similar remuneration paid by, or paid out of funds created or contributed by 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, 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) and other similar remuneration shall be taxable only in that other Contracting 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 a Contracting Party or a local authority thereof.

Article 19

Students

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

Article 20

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

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

Article 21

Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

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

2. In the case of Latvia, double taxation shall be eliminated as follows:

Where a resident of Latvia derives income which, in accordance with this Agreement, may be taxed in the Hong Kong Special Administrative Region, unless a more favourable treatment is provided in its internal law, Latvia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid thereon in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the income tax in Latvia, as computed before the deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region.

Article 22

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Latvia, are Latvian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Latvia) 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 Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Latvia) 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. 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 reduction 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, 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.

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. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the internal laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Latvia). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

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

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

Article 24

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the internal laws of the Contracting Parties concerning taxes covered by the 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 internal laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such

persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

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

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

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

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

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

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

Article 25

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 26

Miscellaneous Provisions

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

2. For the purposes of this Article, "laws and measures concerning tax avoidance" includes laws and measures for preventing, discouraging, avoiding or counteracting the effect of any transaction, arrangement or practice which has the purpose or effect of conferring a tax benefit on any person.

Article 27

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the 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 case of the Hong Kong Special Administrative Region:

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

(b) in the case of Latvia:

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

(ii) in respect of other taxes on income, for taxes chargeable for any fiscal year beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect:

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

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which the notice has been given;

(b) in the case of Latvia:

(i) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year next following that in which the notice has been given;

(ii) in respect of other taxes on income, for taxes chargeable for any fiscal year beginning on or after the first day of January in the calendar year next following that in which the notice has been given.

Part 2

Paragraphs 1 to 4 of the Protocol to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Latvia for the Avoidance of Double Taxation and the

Prevention of Fiscal Evasion with respect to Taxes on Income

1. With reference to Article 5:

It is understood that an enterprise of a Contracting Party shall be deemed to have a permanent establishment in the other Contracting Party in respect of offshore activities in connection with the exploration or extraction from the sea bed and sub-soil of natural resources situated in the other Contracting Party if it carries on such activities in the other Contracting Party, but only where such activities are carried on for a period or periods exceeding in the aggregate 30 days in any twelve month period.

2. With reference to Article 6:

It is understood that all income and gains from the alienation of immovable property referred to in Article 6 and situated in a Contracting Party may be taxed in that Party.

3. With reference to Article 17:

It is understood that a pension or retirement scheme is recognised for tax purposes if it is established and regulated in a Contracting Party and contributions to the scheme qualify for tax relief.

4. With reference to Article 24:

(a) It is understood that the provisions in this Article also apply to the following taxes that are administrated and enforced in Latvia:

(i) the value added tax (pievienotās vērtības nodoklis); and

(ii) the immovable property tax (nekustamā īpašuma nodoklis).

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

Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Latvia 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 13 April 2016.

2. This Order specifies the arrangements in Articles 1 to 28 of the Agreement and Paragraphs 1 to 4 of the Protocol (***arrangements***) as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in the Chinese, Latvian and English languages.

3. The effects of the declaration are—

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

(b) that the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of Latvia, have effect in relation to any tax of Latvia that is the subject of that provision.

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Belarus) 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 24 November 2017.

2. Declaration under section 49(1A)

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

(a) that the arrangements specified in section 3(1) have been made with the Government of the Republic of Belarus; and

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

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in Articles 1 to 30 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Belarus 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 16 January 2017 in the Chinese, Russian and English languages.

(2) The text of the Articles referred to in subsection (1) is reproduced in the Schedule.

Schedule

[s. 3]

Articles 1 to 30 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Belarus 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.

3. The existing taxes to which the 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;

(hereinafter referred to as "Hong Kong Special Administrative Region tax");

(b) in the case of Belarus,

(i) the tax on income;

(ii) the tax on profits;

(iii) the income tax on individuals; and

(iv) the tax on immovable property;

(hereinafter referred to as "Belarusian tax").

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. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

General Definitions

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

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

(ii) the term "Belarus" means the Republic of Belarus and, when used in a geographical sense, means the territory over which the Republic of Belarus exercises under the laws of Belarus and in accordance with international law, sovereign rights and jurisdiction;

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

(c) the term "capital" in the case of Belarus means property;

(d) the term "company" means:

(i) in the case of the Hong Kong Special Administrative Region, any body corporate or any entity that is treated as a body corporate for tax purposes;

(ii) in the case of Belarus, any legal person or any entity which is treated as a separate entity for tax purposes;

(e) the term "competent authority" means:

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

(ii) in the case of Belarus, the Ministry of Taxes and Duties of the Republic of Belarus or its authorized representative;

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

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

(h) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party,

except when the ship or aircraft is operated solely between places in the other Contracting Party;

(j) the term "national", in relation to Belarus, means:

(i) any individual possessing the citizenship of Belarus; and

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

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

(l) the term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

2. 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 Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 4

Resident

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

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

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

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

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

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

(b) in the case of Belarus, any person who, under the laws of Belarus, is liable to tax therein by reason of that person's domicile, residence, place of registration, 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 Belarus in respect only of income from sources in Belarus;

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

2. Where by reason of the provisions of paragraph 1 of this Article, 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 Belarus);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Belarus, or if he does not have the right of abode in the Hong Kong Special

Administrative Region nor is he a national of Belarus, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, 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. The facts to be taken into account in determining the "place of effective management" include the place from which an enterprise is effectively managed and controlled, as well as the place where decision-making at the highest level on the important policies essential for the management of the enterprise takes place. If its place of effective management cannot be determined, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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

(a) the use of facilities solely for the purpose of storage, 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 sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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, a 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 or forestry) situated in the other Contracting Party may be taxed in that other Contracting Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. Ships and aircraft shall not be regarded as immovable property. Income derived from immovable property which is taxable in accordance with this Article shall in any case include income derived from the direct use, letting, or use in any other form of property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

3. The provisions of paragraph 1 of this Article 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 of this Article 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 of this Article, 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 of this Article 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 of this Article, 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 Contracting Party.

2. The provisions of paragraph 1 of this Article 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 if that other Contracting Party considers such adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall, if necessary, consult each other.

Article 10

Dividends

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

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Contracting Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

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

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authority of the Hong Kong Special Administrative Region and the Government of Belarus or authorities authorized by the Government of Belarus;

(b) in the case of Belarus:

(i) the Government of Belarus;

(ii) the National Bank of Belarus;

(iii) the Development Bank of Belarus;

(iv) any institution wholly or mainly owned by the Government of Belarus as may be agreed from time to time between the competent authority of the Hong Kong Special Administrative Region and the Government of Belarus or authorities authorized by the Government of Belarus.

4. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other 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.

5. The provisions of paragraphs 1 and 2 of this Article 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 of this Agreement shall apply.

6. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other 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.

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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting Party is exempt from tax in that Contracting Party if the beneficial owner of the interest in the other Contracting Party is:

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

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

(ii) the Hong Kong Monetary Authority;

(iii) the Exchange Fund;

(iv) any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authority of the Hong Kong Special Administrative Region and the Government of Belarus or authorities authorized by the Government of Belarus;

(b) in the case of Belarus:

(i) the Government of Belarus;

(ii) the National Bank of Belarus;

(iii) the Development Bank of Belarus;

(iv) any institution wholly or mainly owned by the Government of Belarus as may be agreed from time to time between the competent authority of the Hong Kong Special Administrative Region and the Government of Belarus or authorities authorized by the Government of Belarus.

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 and 2 of this Article 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 of this Agreement 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 the person 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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

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

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

(a) 3 per cent of the gross amount of the royalties for the use of, or the right to use aircraft; and

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any computer software, 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. The term "commercial equipment" includes transport vehicles.

4. The provisions of paragraphs 1 and 2 of this Article 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 of this Agreement 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 the person is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting Party in which the permanent establishment is situated.

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

Article 13

Gains from the Alienation of Property

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 of this Agreement 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, 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 in a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Contracting Party. However, this paragraph does not apply to gains derived from the alienation of shares quoted on the Stock Exchange of Hong Kong Limited, JSC Belarusian Currency and Stock Exchange or any other stock exchanges as may be agreed between the competent authorities of the Contracting Parties.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4 of this Article, 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 of this Agreement, 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 of this Article, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Contracting Party if:

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

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

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

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

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in that person's 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 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Article 14 of this Agreement, income derived by a resident of a Contracting Party as an

entertainer, such as a theatre, motion picture, circus, radio or television artiste, or a musician, or as a sportsperson, from such personal activities of that person 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 acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 14 of the Agreement, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

Article 17

Pensions

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

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration paid by a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Contracting Party or its local authority 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 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 Belarus, is a national thereof; or

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

2. The provisions of Articles 14, 15 and 16 of this Agreement shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a local authority thereof.

Article 19

Students

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

2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 of the Agreement, 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 of the Agreement shall apply.

Article 21

Capital

1. Capital represented by immovable property referred to in Article 6 of this Agreement, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Contracting 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 Contracting Party.

3. Capital represented by ships and aircraft operated by an enterprise of a Contracting Party in international traffic and by movable

property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting Party.

4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Contracting Party.

Article 22

Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

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

2. In the case of Belarus, double taxation shall be eliminated as follows:

Where a resident of Belarus derives income (profit) or owns property which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Belarus shall allow:

(i) as a deduction from the tax on the income (profit) of that resident, an amount equal to the income (profit) tax paid in the Hong Kong Special Administrative Region;

(ii) as a deduction from the tax on the immovable property of that resident, an amount equal to the tax on immovable property paid in the Hong Kong Special Administrative Region.

Such deduction in either case shall not, however, exceed that part of the income (profit) tax or tax on immovable property, as computed before the deduction is given, which is attributable, as the case may be, to the income (profit) or immovable property which may be taxed in the Hong Kong Special Administrative Region.

Where in accordance with any provision of the Agreement, income (profit) derived or property owned by a resident of Belarus is exempt from tax in Belarus, Belarus may nevertheless, in calculating the amount of tax on the remaining income (profit) or property of such resident, take into account the exempted income (profit) or property.

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 Belarus, are Belarusian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other 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 Belarus) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 of this Agreement, also apply to persons who are not residents of one or both of the Contracting Parties.

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

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

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Contracting Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting Party are or may be subjected.

5. The provisions of this Article shall apply only to taxes which are covered by Article 2 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 that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the internal laws of those Contracting Parties, present the case to the competent authority of either Contracting Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

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

notwithstanding any time limits in the internal laws of the Contracting Parties.

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

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

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the internal laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. Such exchange of information also covers the value added tax and excises that are administrated and enforced in Belarus. The exchange of information is not restricted by Article 1 of this Agreement.

2. Any information received under paragraph 1 of this Article by a Contracting Party shall be treated as secret in the same manner as information obtained under the internal 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 of this Article. 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 of this Article 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 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 of this Article 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 of this Article be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

Members of Government Missions

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

Article 27

Anti-abuse Rules

1. Notwithstanding any provisions of this Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

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

Article 28

Amendments

Any amendments to this Agreement agreed by the Contracting Parties in writing shall be in the form of Protocols, which shall constitute an integral part of this Agreement. Such amendments shall enter into force subject to the provisions of Article 29 of this Agreement.

Article 29

Entry into Force

1. The Contracting Parties shall notify each other in writing, that the procedures required by its law for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the date of receipt of the last notification.

2. This Agreement shall have effect:

(a) in the Hong Kong Special Administrative Region:

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

(b) in Belarus:

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

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

Article 30

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving 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 on which this Agreement enters 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 taxable periods beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in Belarus:

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

(ii) in respect of other taxes, to taxes chargeable for any tax period beginning on or after 1 January of the calendar year next following the year in which the notice is given.

Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Belarus signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (***Agreement***) on 16 January 2017.

2. This Order specifies the arrangements in Articles 1 to 30 of the Agreement (***arrangements***) as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), and declares that it is expedient that those arrangements should have effect. The Agreement was signed in the Chinese, Russian and English languages.

3. The effects of the declaration are—

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

(b) that the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of Belarus, have effect in relation to any tax of Belarus that is the subject of that provision.

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Islamic Republic of Pakistan) 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 24 November 2017.

2. Declaration under section 49(1A)

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

(a) that the arrangements specified in section 3(1) have been made with the Government of the Islamic Republic of Pakistan; and

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

3. Arrangements specified

(1) The arrangements specified for the purposes of section 2(a) are the arrangements in—

(a) Articles 1 to 30 of the agreement titled "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (which is translated into Chinese as "《中華人民共和國香港特別行政區政府與巴基斯坦伊斯蘭共和國政府關於對收入稅項避免雙重課稅和防止逃稅的協定》" in this Order), done in duplicate at Hong Kong on 17 February 2017 in the English language; and

(b) Paragraphs 1 to 3 of the protocol to the agreement, done in duplicate at Hong Kong on 17 February 2017 in the English language.

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

(3) The English text of the Paragraphs referred to in subsection (1)(b) is reproduced in the English text of Part 2 of the Schedule. A Chinese translation of the Paragraphs is set out in the Chinese text of that Part.

Schedule

[s. 3]

Part 1

Articles 1 to 30 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

CHAPTER I
SCOPE OF THE AGREEMENT

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 the 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 Pakistan,

      (i) the income tax; and

      (ii) the super tax.

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 in relation to taxes covered by the Agreement.

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 "Pakistan tax", as the context requires.

CHAPTER II
DEFINITIONS

Article 3

General Definitions

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

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

(b) the term "Pakistan" when used in a geographical sense means the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction

with respect to the natural resources of the seabed and subsoil and superjacent waters;

(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 authorized representative;

(ii) in the case of Pakistan, the Federal Board of Revenue or its authorized representative;

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

(f) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting Party except when the ship or aircraft is operated solely between places in the other Contracting Party;

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

(i) any individual possessing the nationality of Pakistan; and

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

(i) the term "person" includes an individual, a company and any other body of persons and in the case of the Hong Kong Special Administrative Region also includes a trust and a partnership.

2. The terms "Hong Kong Special Administrative Region tax" and "Pakistan tax" do not include any penalty, interest or default surcharge (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax") 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 Pakistan, any person who, under the laws of Pakistan, 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 Pakistan in respect only of income from sources in Pakistan; and

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

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

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

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

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Pakistan, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Pakistan, 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;

(f) a warehouse;

(g) 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 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. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if it operates substantial equipment in that Party for a period exceeding twelve months.

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 5 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.

7. An enterprise of a Contracting Party shall not be deemed to have a permanent establishment in the other Contracting Party merely

because it carries on business in that other Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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.

CHAPTER III
TAXATION OF INCOME

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

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

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

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

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that 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:

(a) that permanent establishment;

(b) sales in that other Party of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in that other Party of the same or similar kind as those effected through that permanent establishment,

provided that (b) or (c) shall not apply where an enterprise is able to demonstrate that the sales or business activities were carried out for reasons other than obtaining benefits under this Agreement.

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. (a) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the

head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far 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 the 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. However, profits of an enterprise of a Contracting Party derived in the other Contracting Party from the operation of ships in international traffic may also be taxed in the other Contracting Party but the tax so charged shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

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

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

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

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

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other 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 wilful 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 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 10 per cent of the gross amount of dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a

permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, 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 in so far as such dividends are paid to a resident of that other Party or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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

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

(i) the Hong Kong Monetary Authority;

(ii) the Exchange Fund;

(b) in the case of Pakistan, the State Bank of Pakistan;

(c) the Government of either Contracting Party or any political subdivision or local authority thereof;

(d) any entity wholly or mainly owned by the Government of either Contracting Party or any political subdivision or local authority thereof and mutually agreed upon by the competent authorities of the two Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. 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, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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 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 10 per cent of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not,

has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or a fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

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

Article 13

Fees for Technical Services

1. Fees for technical services 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 fees for technical services 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 fees for technical services is a resident of the other Contracting Party, the tax so charged shall not exceed 12.5 per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" 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 of 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 fees for technical services, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the fees for technical services are effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services paid 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 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 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 Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, 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.

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

Independent Personal Services

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

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

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

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

Article 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19 and 20, 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 or a fixed base which the employer has in the other Party.

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

Article 17

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 18

Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7, 15 and 16, 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 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, 15 and 16, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

Article 19

Pensions

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration, including a lump sum payment, paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party.

2. However, such pensions and other similar remuneration may also be taxed in the other Contracting Party if the payment is made by a resident of that other Party or a permanent establishment situated therein.

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

   (a) a public scheme that belongs to or is managed by the Government of a Contracting Party or a political subdivision or local authority thereof;

   (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 20

Government Service

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

(ii) did not become a resident of that 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 or a political subdivision or local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that 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 16, 17, 18 and 19 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 political subdivision or local authority thereof.

Article 21

Students

1. A student or business apprentice who is or was a resident of a Contracting Party immediately before visiting the other Contracting Party and is temporarily present in that other Party solely for the purpose of his education or apprenticeship and receives payments for the purpose of his maintenance, education or apprenticeship shall not be taxed in that other Party in respect of:

(a) remittances from abroad arising from sources outside that other Party; and

(b) remuneration for personal services rendered in that other Party with a view to supplementing his resources,

unless such remittances or remuneration exceed the basic allowance or exemption limit as applicable under the internal tax laws of that other Party.

2. An individual who is or was a resident of a Contracting Party immediately before visiting the other Contracting Party and is temporarily present in that other Party solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable

organization or under a technical assistance program entered into by the Government of a Contracting Party shall, from the date of his first arrival in that other Party in connection with that visit, not be taxed in that other Party in respect of:-

(a) the amount of such grant, allowance or award;

(b) remittances from abroad arising from sources outside that other Party; and

(c) remuneration for personal services rendered in that other Party with a view to supplementing his resources,

unless such amount, remittances or remuneration exceed the basic allowance or exemption limit as applicable under the internal tax laws of that other Party.

Article 22

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, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the

income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

CHAPTER IV
METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

Methods for Elimination of Double Taxation

1. In the case of the Hong Kong Special Administrative Region double taxation shall be avoided as follows:

Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Pakistan tax paid under the laws of Pakistan 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 Pakistan, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the

credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. In the case of Pakistan double taxation shall be avoided as follows:

(a) Where a resident of Pakistan derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region whether directly or by deduction, Pakistan shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Hong Kong Special Administrative Region, but such amount of the tax to be deducted shall not exceed the lesser of the tax which would have been charged on the same income in Pakistan under the rates applicable therein.

(b) Where a resident of Pakistan derives income which, in accordance with the provisions of this Agreement, shall be taxable only in the Hong Kong Special Administrative Region, Pakistan may include this income in the tax base but only for purposes of determining the rate of tax on such other income as is taxable in Pakistan.

CHAPTER V
SPECIAL PROVISIONS

Article 24

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 Pakistan, are Pakistani nationals, shall not be subjected in the other Contracting Party to any taxation or any requirements 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 Pakistan) 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 Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Pakistan) 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. 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, fees for technical services 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.

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. The provisions of this Article shall apply to the taxes referred to in Article 2 of this Agreement.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the internal law of those Parties, present his case to the competent authority of the

Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 24, 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 Pakistan). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the internal 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. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions,

methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

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 the 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 and agrees in writing to be bound by the arbitration decision. 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. The arbitration decision in a particular case shall be binding on both Contracting Parties with respect to that case, and shall be implemented notwithstanding any time limits in the internal laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

Article 26

Exchange of Information

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

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the internal laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. 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 27

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 28

Miscellaneous Rules

1. Notwithstanding the other provisions of this Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

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

CHAPTER VI
FINAL PROVISIONS

Article 29

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 case of the Hong Kong Special Administrative Region,

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

(b) in the case of Pakistan,

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of July next following the date upon which the Agreement enters into force.

Article 30

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through appropriate government channels, by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year starting five years after the year in which the Agreement entered into force. In such event, the Agreement shall cease to have effect:

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

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April in the calendar year next following that in which the written notice of termination is given;

(b) in the case of Pakistan,

in respect of taxes withheld at source, for amounts paid or credited, and for other taxes, in respect of taxable years beginning, on or after the first day of July next following the date on which written notice of termination is given.

Part 2

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

1. It is understood that provisions of the Agreement which have been formulated on the basis of the corresponding provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries ("UN Model Tax Convention") or the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development ("OECD Model Tax Convention") shall generally be considered to have the same meaning as expressed in the

Commentaries on the articles of the UN Model Tax Convention or the OECD Model Tax Convention. The understanding in the preceding sentence shall not apply with respect to the following:

(a) any reservations or observations to the UN Model Tax Convention or the OECD Model Tax Convention, or Commentaries on the articles thereof, by either Contracting Party;

(b) any contrary interpretation as provided for in this Protocol;

(c) any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The Commentaries on the articles of the UN Model Tax Convention and the OECD Model Tax Convention, as may be revised from time to time, constitute a means of interpretation in the sense of the Vienna Convention on the Law of Treaties 1969.

2. With reference to Article 7 (Business Profits)

It is understood that in paragraph 3, the term "banking enterprise", in the case of the Hong Kong Special Administrative Region, means a financial institution as defined in its tax laws.

3. With reference to Article 26 (Exchange of Information)

It is understood that the provisions in this Article also apply to the following taxes that are administrated and enforced in Pakistan:

(a) the sales tax under the Sales Tax Act 1990;

(b) the federal excise duty under the Federal Excise Duty Act 2005;

(c) the customs duty under the Customs Act 1969; and

(d) the capital value tax.

Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Islamic Republic of Pakistan 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 17 February 2017.

2. This Order specifies the arrangements in Articles 1 to 30 of the Agreement and Paragraphs 1 to 3 of the Protocol (***arrangements***) as double taxation relief arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), and declares that it is expedient that those arrangements should have effect. The Agreement and Protocol were signed in the English language. A Chinese translation of those Articles and Paragraphs is set out in the Chinese text of the Schedule to this Order.

3. The effects of the declaration are—

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

(b) that the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of Pakistan, have effect in relation to any tax of Pakistan that is the subject of that provision.

Annex D

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

Financial Implications

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

Economic Implications

2. The CDTAs with Latvia, Belarus and Pakistan will facilitate business development between Hong Kong and the three jurisdictions, and contribute positively to the economic development of Hong Kong. They will enhance the economic interaction between Hong Kong and the three places concerned by providing enhanced certainty and stability to the tax liabilities of businessmen and investors.

Civil Service Implications

3. There will be additional work for the Inland Revenue Department in handling requests for EoI from Latvia, Belarus and Pakistan under the three CDTAs, which will be absorbed from within existing resources as far as possible. Where necessary, additional manpower resources would be sought with justifications in accordance with the established resources allocation mechanism.

Family Implications

4. Given that the tax burden of some individuals may be relieved under the three CDTAs, there may be positive implications on the financial situation of the affected individuals' families.

Annex E

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

Summary of Main Provisions

The Latvian Agreement covers the following types of taxes –

(a) in respect of Hong Kong –
- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax.

(b) in respect of Latvia –
- (i) the enterprise income tax;
- (ii) the personal income tax; and
- (iii) for EoI purpose, it also covers the value added tax and the immovable property tax.

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

Exclusive Taxing Rights

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

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

(b) profits from operation of aircraft or ships in international traffic and gains from alienation of ships or aircraft operated

in international traffic;

(c) dividend and interest income, arising from the source jurisdiction, that is beneficially owned by the Government or the central bank of the resident jurisdiction or any institution wholly or mainly owned by that Government subject to agreement between both Contracting Parties;

(d) dividend and interest income, arising from the source jurisdiction, that is beneficially owned by a pension fund or scheme that is established and regulated according to the statutory provisions of the resident jurisdiction and the income of which is generally exempt from tax in that resident jurisdiction;

(e) other capital gains not expressly dealt with in the Latvian Agreement;

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

(g) other income not expressly dealt with in the Latvian Agreement except where the article for business profits might apply to the income.

4. Employment income paid by the Government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions including Government pensions and annuities are generally taxable only in the source jurisdiction.

Shared Taxing Rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Latvian 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 Latvian Agreement that the following types of income may be taxed in both jurisdictions –

(a) income generated from and gains from the alienation of immovable 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) other than those mentioned in paragraphs 3(c) and 3(d) above, passive income of dividends, interest and royalties received from residents of source jurisdiction. The source jurisdiction's right to tax is subject to a specified limit in tax rates –

- for dividends, 0% if the beneficial owner is a company (other than a partnership) and 10% in all other cases;

- for interest, 0% if the beneficial owner is a company (other than a partnership) and 10% in all other cases; and

- for royalties, 0% if the beneficial owner is a company (other than a partnership) and the royalties are paid for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience and 3% in all other cases;

(d) gains from alienation of shares, other than quoted shares or shares alienated or exchanged in the framework of a reorganisation of a company, a merger, a division or a similar operation, of a company deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction;

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

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

(g) 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 Latvia will provide double taxation relief for its residents by the credit method.

Annex F

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

Summary of Main Provisions

The Belarusian Agreement covers the following types of taxes –

(a) in respect of Hong Kong –
- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax.

(b) in respect of Belarus –
- (i) the tax on income;
- (ii) the tax on profits;
- (iii) the income tax on individuals;
- (iv) the tax on immovable property; and
- (v) for EoI purpose, it also covers the value added tax and excises that are administered and enforced in Belarus.

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

Exclusive Taxing Rights

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

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

carried on);

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

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

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

(e) gains from the alienation of any property not expressly dealt with in the Belarusian Agreement; and all other elements of capital; and

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

4. Employment income paid by the Government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions, including lump sum payments, are taxable only in the source jurisdiction.

Shared Taxing Rights

5. Where both tax jurisdictions are given the right to tax the same item of income, the resident jurisdiction is required under the Belarusian 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 Belarusian 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 dividends and interest received from residents of a source jurisdiction, with the source jurisdiction's right to tax is subject to the specified limit in tax rates as follows –

- 0% if the beneficial owner is the Government of the Hong Kong Special Administrative Region (HKSAR Government), the Hong Kong Monetary Authority, the Exchange Fund, the Government of Belarus, the National Bank of Belarus, the Development Bank of Belarus or institution wholly or mainly owned by the HKSAR Government or the Government of Belarus as agreed between the competent authority of HKSAR and the Government of Belarus; and

- 5% in all other cases;

(d) royalties received from residents of a source jurisdiction, with the source jurisdiction's right to tax subject to a limit of 3% on the gross amount of the royalties (for the use of or the right to use aircraft) or 5% on the gross amount of the royalties (in all other cases), if the beneficial owner of the royalties is a resident of the resident jurisdiction;

(e) gains from alienation of shares (except gains from quoted shares) deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction;

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

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

(h) income of entertainers and sportspersons who conduct their professional activities in the source jurisdiction; and

(i) capital represented by immovable property situated in the source jurisdiction or capital represented by movable property forming part of the business property of a permanent establishment 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 Belarus will provide double taxation relief for its residents by the credit method.

Annex G

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

Summary of Main Provisions

The Pakistani Agreement covers the following types of taxes –

(a) in respect of Hong Kong –
- (i) profits tax;
- (ii) salaries tax; and
- (iii) property tax.

(b) in respect of Pakistan –
- (i) the income tax;
- (ii) the super tax; and
- (iii) for EoI purpose, it also covers the sales tax under the Sales Tax Act 1990, the federal excise duty under the Federal Excise Duty Act 2005, the customs duty under the Customs Act 1969 and the capital value tax.

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

Exclusive Taxing Rights

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

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

carried on);

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

(c) income from professional services, including services performed in the source jurisdiction provided that the services are not performed through a fixed base in the source jurisdiction and the person is present in the source jurisdiction for aggregate periods not exceeding 183 days in any relevant 12-month period;

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

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

(f) pensions from non-government employment, except those paid by residents of the source jurisdiction or a permanent establishment situated therein and those paid under pension or retirement schemes which are public schemes belonging to or managed by the Government of the source jurisdiction or which are recognized for tax purposes in the source jurisdiction;

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

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

4. Pensions from non-government employment paid under pension or retirement schemes which are public schemes belonging to or managed by the Government of the source jurisdiction or which are recognized for tax purposes in the source jurisdiction are taxable only in the source

jurisdiction. 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 Pakistani 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 Pakistani 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) profits derived in the source jurisdiction from operation of ships in international traffic, but the tax charged in the source jurisdiction is reduced by 50%;

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

- for dividends, 10%;

- for interest, 0% if the beneficial owner is the Hong Kong Monetary Authority, the Exchange Fund, the State Bank of Pakistan, the Government of either the Hong Kong Special Administrative Region (HKSAR) or Pakistan or any political subdivision or local authority thereof, or any entity wholly or mainly owned by the Government of the HKSAR or Pakistan or any political

subdivision or local authority thereof and mutually agreed upon by the competent authorities of the HKSAR and Pakistan; and 10% in all other cases;

- for royalties, 10%;

(e) fees for technical services arising from the source jurisdiction whose right to tax is limited to 12.5%;

(f) gains from the alienation of shares of a company deriving more than 50% of its asset value directly or indirectly from immovable property situated in the source jurisdiction;

(g) income from professional services performed in the source jurisdiction where the services are provided through a fixed based in the source jurisdiction or where the person is present in the source jurisdiction for aggregate periods exceeding 183 days in any relevant 12-month period, and gains from the alienation of movable property pertaining to the fixed base for performing such services;

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

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

(j) income of artistes and sportspersons who conduct their professional activities in the source jurisdiction;

(k) pensions from non-government employment which are paid by residents of the source jurisdiction or a permanent establishment situated therein; and

(l) other income (excluding capital gains) not expressly dealt with in the Pakistani Agreement if it is derived from 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 Pakistan will provide double taxation relief for its residents by the credit method.

Annex H

List of jurisdictions with which Hong Kong has entered into CDTAs

(as at 31 May 2017)

	Jurisdictions	Date of Signing
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014
31	South Africa	October 2014
32	United Arab Emirates	December 2014
33	Romania	November 2015
34	Russia	January 2016
35	Latvia	April 2016*
36	Belarus	January 2017*
37	Pakistan	February 2017*

*Not yet entered into force