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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 INDIA) ORDER

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME AND PREVENTION OF TAX EVASION AND AVOIDANCE) (REPUBLIC OF FINLAND) ORDER

INTRODUCTION

At the meeting of the Executive Council on 4 September 2018, the Council ADVISED and the Chief Executive ORDERED that the following two orders should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) ("IRO") –

(a) the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) Order ("the Indian Order") (at **Annex A**); and

A

(b) the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) Order ("the Finnish Order") (at **Annex B**).

B

The Indian Order and the Finnish Order implement the Comprehensive Avoidance of Double Taxation Agreements ("CDTAs") which Hong Kong signed with India and Finland on 19 March and 24 May 2018 respectively.

JUSTIFICATIONS

Benefits of CDTAs in General

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 as well as movements of capital, technology and human resources, and undermines 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 however occur where a foreign jurisdiction taxes its residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax paid on income derived therefrom, CDTAs will enhance the certainty in respect of the elimination of double taxation. Besides, the tax relief available under CDTAs may exceed the level provided unilaterally by the jurisdictions concerned.

Benefits of the CDTAs with India and Finland

4. The CDTAs with India and Finland set out the allocation of taxing rights between Hong Kong and the respective jurisdictions and the relief on tax rates on different types of income. They will help investors better assess their potential tax liabilities from cross-border economic activities, foster economic and trade links, and provide incentives for enterprises of India and Finland to conduct business or invest in Hong Kong, and vice versa.

5. In the absence of CDTAs with India and Finland, income earned by Indian or Finnish residents in Hong Kong is subject to tax in both Hong Kong and India/Finland (as the case may be; same for similar references in this memorandum). Moreover, profits of Hong Kong companies conducting business through a permanent establishment in India/Finland may be taxed in both Hong Kong and India/Finland if the income is Hong Kong-sourced.

6. Under the two CDTAs, tax paid in Hong Kong will be allowed as a deduction against tax payable in India/Finland in respect of the same income. Also, any Indian tax/Finnish tax paid by Hong Kong residents will be allowed as a credit against the tax payable in Hong Kong in respect of the same income, subject to the provisions of the tax laws of Hong Kong.

7. Income derived by a Hong Kong resident, which is not paid by (or on behalf of) and borne by an Indian/Finnish entity, from employment exercised in India/Finland will be exempt from Indian tax/Finnish tax if the

resident's aggregate stay in India/Finland in any relevant 12-month period does not exceed 183 days.

8. Profits from international shipping transport earned by enterprises of Hong Kong arising from India/Finland, which are currently subject to tax in these two places, will enjoy 50% reduction in tax in India and will not be taxed in Finland under the respective CDTAs. Hong Kong air carriers operating flights to India/Finland will only be taxed in Hong Kong at Hong Kong's corporation tax rate[1], which is lower than that of 40% and 20% in India and Finland respectively.

9. Caps on the withholding tax rates applicable to Hong Kong residents are summarised below –

	Caps on withholding tax rates set out in the CDTAs ***(current applicable tax rates in India/Finland without the CDTAs)***		
	Interest	**Royalties**	**Dividends**
CDTA with India	0%[2]/10% *(in general – 20%; foreign currency convertible bonds - 10%; and long-term loans/bonds - 5%)*	10% *(10% plus other charges)*	5%[3]
CDTA with Finland	Not applicable	3% *(companies – 20%; individuals – 30%)*	5%[4] or 10% *(companies – 20%; individuals – 30%)*

[1] Under the two-tiered profits tax rates regime, a corporation is subject to profits tax at 8.25% for the first $2 million of assessable profits. For assessable profits above $2 million, the applicable profits tax rate is 16.5%.

[2] The withholding tax will be exempt if the interest is derived and beneficially owned by the Hong Kong Special Administrative Region Government, the Hong Kong Monetary Authority, the Exchange Fund, or any other institution as agreed between Hong Kong and India. The withholding tax rate on interest in all other cases is 10% or the current applicable rate, whichever is lower.

[3] At present, a final dividend distribution tax is payable by the dividend-paying company in India at 15%, plus other charges, while no tax is imposed on the Hong Kong residents receiving the dividends. Under the CDTA with India, India's withholding tax rate for Hong Kong residents on dividends will be capped at 5% if the dividend recipients are liable to tax in India in future.

[4] The cap of 5% withholding tax rate would be applicable if the beneficial owner of the dividends is a company (other than a partnership) which controls directly at least 10% of the voting power in the dividend-paying company.

Exchange of Information Article under each of the CDTA with India and Finland

10. Hong Kong adopts the Organisation for Economic Co-operation and Development 2004 version of the Exchange of Information ("EoI") Article in the two CDTAs to facilitate exchange of tax information for meeting the international requirements. 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. The CDTA with India and Finland each contains an EoI Article. We have agreed with India and Finland respectively that the following safeguards would be adopted –

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

(b) information received by India and Finland 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, except for the case of the CDTA with India, where a specific provision is included at the request of the Indian side to provide that the Indian competent authority may disclose information to (i) the Indian Parliamentary Committees; (ii) Special Investigation Team constituted by the Indian Government; and (iii) any other oversight bodies mutually agreed upon in writing;

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

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

12. The scope of tax types for the purpose of EoI is confined to the taxes covered by the two CDTAs and their respective Protocol thereto.

Legal Basis

13. Under section 49(1A) of the IRO, if the Chief Executive in Council ("CE-in-C"), by order, declares that arrangements specified in the order 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 IRO, arrangements specified in an order under section 49(1A) of the IRO may be made for the purposes of affording relief from double taxation; exchanging information in relation to any tax imposed by the laws of Hong Kong or any territory concerned; and/or implementing an initiative of international tax co-operation. Following the signing of the CDTAs with India and Finland, it is necessary for the CE-in-C to declare by order that arrangements with India and Finland on double taxation relief have been made so as to bring the two CDTAs into effect.

OTHER OPTIONS

14. An order made by the CE-in-C under section 49(1A) of the IRO is the only way to give effect to the CDTAs with India and Finland. There is no other option.

THE INDIAN ORDER AND THE FINNISH ORDER

15. **Section 3** of the Indian Order declares that the arrangements in the CDTA with India and its Protocol have been made and that it is expedient that those arrangements should have effect. The text of the CDTA with India and its Protocol is set out in the **Schedule** to the Indian Order.

16. **Section 3** of the Finnish Order declares that the arrangements in the CDTA with Finland and its Protocol have been made and that it is expedient that those arrangements should have effect. The text of the CDTA with Finland and its Protocol is set out in the **Schedule** to the Finnish Order.

LEGISLATIVE TIMETABLE

17. The legislative timetable is as follows –

Publication in the Gazette	14 September 2018
Tabling at Legislative Council	10 October 2018
Commencement of the Orders	30 November 2018

IMPLICATIONS OF THE PROPOSAL

18. 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 IRO and its subsidiary legislation. It has no environmental, gender or productivity implications, and no sustainability implications other than those set out in the economic implications paragraph in **Annex C**. The financial, economic, civil service and family implications of the proposal are set out in **Annex C**.

C

PUBLIC CONSULTATION

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

PUBLICITY

20. We issued press releases on the signing of the CDTAs with India and Finland on 19 March and 24 May 2018 respectively. A spokesperson is available to handle enquiries.

BACKGROUND

21. As at 31 August 2018, we have entered into CDTAs with 40 jurisdictions, including the two concluded with India and Finland. A summary of the main provisions of the two CDTAs is at **Annex D** and **Annex E** respectively. A list of Hong Kong's CDTA partners is at **Annex F**. Hong Kong will continue to press ahead with its efforts to expand its CDTA network, in particular with the economies along the Belt and Road. Our goal is to bring the total number of CDTAs to 50 over the next few years.

D, E & F

ENQUIRIES

22. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810-2317.

Financial Services and the Treasury Bureau
12 September 2018

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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 India) Order
Annex B		Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance)(Republic of Finland) Order
Annex C	-	Financial, Economic, Civil Service and Family Implications of the Proposal
Annex D	-	Summary of the Main Provisions 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 India for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income
Annex E		Summary of the Main Provisions 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 Finland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance
Annex F	-	List of Jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of India) 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 30 November 2018.

2. Interpretation

In this Order—

Agreement (《協定》) means 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 India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done in duplicate at Hong Kong on 19 March 2018 in the Chinese, Hindi and English languages;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate at Hong Kong on 19 March 2018 in the Chinese, Hindi and English languages.

3. Declaration under section 49(1A)

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

(a) that the arrangements in the Agreement and the Protocol have been made with the Government of the Republic of India; and

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

(2) The text of the Agreement is reproduced in Part 1 of the Schedule.

(3) The text of the Protocol is reproduced in Part 2 of the Schedule.

Schedule

[s. 3]

Part 1

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 India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of India, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

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 and taxes on the total amounts of wages or salaries paid by enterprises.

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

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax;

      whether or not charged under personal assessment;

   (b) in the case of India, the income tax, including any surcharge thereon.

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 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 respective taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Indian tax", as the context requires. However, the term "Hong Kong Special Administrative Region tax" or "Indian tax" shall not include any penalty or interest or fine imposed under the laws of either Contracting Party relating to the taxes to which the Agreement applies.

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 "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the United Nations Convention on the Law of the Sea;

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

(c) the term "competent authority" means:

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

(ii) in the case of India: the Finance Minister, Government of India, or his authorized representative;

(d) the term "Contracting Party" or "the other Contracting Party" means the Hong Kong Special Administrative Region or India, as the context requires;

(e) the term "domestic law", in relation to the Hong Kong Special Administrative Region means the internal law of the Hong Kong Special Administrative Region;

(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 India means:

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

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

(i) the term "person" includes an individual, a company, a trust, a partnership and any other body of persons which is treated as a taxable unit under the taxation laws in force in the respective Contracting Parties;

(j) the term "tax" means Hong Kong Special Administrative Region tax or Indian tax, as the context requires;

(k) (i) the term "year of assessment", in the case of the Hong Kong Special Administrative Region, means the period of 12 months commencing on the first day of April in any year;

(ii) the term "fiscal year", in the case of India, means the financial year commencing on the first day of April in one calendar year and ending on the thirty-first day of March in the following calendar year.

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 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 India, any person who, under the laws of India, 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 India in respect only of income from sources in India;

(c) in the case of either Contracting Party, the Government of that Party, or any political subdivisions or local authorities 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 India);

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

competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement. In the absence of such agreement, he shall not be entitled to any relief or exemption from tax provided by the Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Parties.

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 determine by mutual agreement the Contracting Party of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Parties.

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 sales outlet;

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

(h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and

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

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

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

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

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

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned

Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:

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

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

(c) has no such authority, but habitually secures orders in the first-mentioned Contracting Party, wholly or almost wholly for the enterprise or its associated enterprise.

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

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

Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

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

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

3. Any property or right referred to in paragraph 2 shall be regarded as situated where the land, standing timber, mineral deposits, quarries, sources or natural resources, as the case may be, are situated or where the working may take place.

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

5. The provisions of paragraphs 1 and 4 shall also apply to the income from immovable property of an enterprise 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 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, in accordance with the provisions of the tax laws of that Party.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

Article 8

Shipping and Air Transport

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

2. Notwithstanding the provisions of paragraph 1, 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 imposed in that other Contracting Party 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.

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

   (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic, including income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships or aircraft in international traffic;

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

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

Article 9

Associated Enterprises

1. Where

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

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

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

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the

conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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 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. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

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 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 insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

6. The benefits of this Article shall not be available if the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividends are paid is to take advantage of this Article by means of that creation or assignment.

Article 11

Interest

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

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

   (a) the Government, a political subdivision or a local authority of the other Contracting Party; or

   (b) (i) in the case of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority and the Exchange Fund;

   (ii) in the case of India, the Reserve Bank of India and the Export-Import Bank of India; or

   (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting Parties.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income

from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 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.

8. The benefits of this Article shall not be available if the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid is to take advantage of this Article by means of that creation or assignment.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting Party in which they arise, and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 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 television or radio 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, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 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 fixed base, then such royalties shall be deemed to arise in the Contracting Party in which the permanent establishment or fixed base is situated.

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

7. The benefits of this Article shall not be available if the main purpose or one of the main purposes of any person concerned with

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

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 10 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 as consideration for managerial, technical or consultancy services, including through the provision of services of technical or other personnel, but does not include payments for independent personal services and for dependent personal services as mentioned in Articles 15 and 16 respectively of this Agreement.

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 right or property in respect of which the fees for technical services 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. 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 liability 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 Contracting Party in which the permanent establishment or fixed base is situated.

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

7. The benefits of this Article shall not be available if the main purpose or one of the main purposes of any person concerned with performance of services in respect of which the technical fees are paid is to take advantage of this Article by means of such performance of services.

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 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 the Contracting Party of which the alienator is a resident.

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 shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting Party may be taxed in that Party.

6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5, may be taxed in each Contracting Party in accordance with the provisions of its domestic law.

7. The benefits of this Article shall not be available if the main purpose or one of the main purposes of any person concerned with the alienation of property in respect of which the capital gains are derived is to take advantage of this Article by means of that alienation.

Article 15

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting Party from the performance of professional services or other independent activities of a similar 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 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 year of assessment (in the case of the Hong Kong Special Administrative Region) or fiscal year (in the case of India) 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, surgeons, 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 year of assessment (in the case of the Hong Kong Special Administrative Region) or fiscal year (in the case of India) 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 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 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.

3. The provisions of paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting Party by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting Parties or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting Party of which the entertainer or sportsperson is a resident.

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, regardless of whether such pension or remuneration is paid in consideration of past employment, shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme, which is 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 a local authority thereof to an individual in respect of services rendered to that Party or its political subdivision or local 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 India, is a national of India; or

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

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

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration and to pensions (including a lump sum payment) in respect of services rendered in connection

with a business carried on by the Government of a Contracting Party or a political subdivision or a local authority thereof.

Article 21

Students

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

Article 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 the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 23

Methods for Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. in the Hong Kong Special Administrative Region:

   Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Indian tax paid under the laws of India and in accordance with the 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 India, 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 India:

(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in the Hong Kong Special Administrative Region.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the Hong Kong Special Administrative Region.

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

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 India, are 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 India) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a Contracting Party from charging the profits of a permanent establishment which a company of the other Contracting Party has in the first mentioned Party at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting Party, nor as being in conflict with the provisions of paragraph 3 of Article 7.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 3 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.

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

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 domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 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 India). The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

notwithstanding any time limits in the domestic law of the Contracting Parties.

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

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

Article 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 domestic law of the Contracting Parties concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their political subdivisions or local authorities as 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 domestic law of that Party and shall be disclosed

only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting Party may be used for other purposes when such information may be used for such other purposes under the laws of both Parties and the competent authority of the supplying Party authorizes such use.

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 there is no tax interest in such information to that Party.

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. The provisions of this Agreement shall in no case prevent a Contracting Party from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.

2. A Contracting Party is not required to grant benefits under the Agreement if the main purpose or one of the main purposes of any persons concerned is for the non-taxation or reduced taxation

through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Agreement for the indirect benefit of residents of third jurisdictions).

3. Cases of legal entities not having bona fide business activities shall also be covered by the provisions of this Article.

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 entry into force of this Agreement.

2. The Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

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

(a) in the Hong Kong Special Administrative Region:

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

(b) in India:

in respect of income derived in any fiscal year beginning on or after the first day of April following the date on which the Agreement enters into force.

Article 30

Termination

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

(a) in the Hong Kong Special Administrative Region:

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

(b) in India:

in respect of income derived in any fiscal year on or after the first day of April following the date on which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Hong Kong this 19 day of March 2018, in the Chinese, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

[SIGNED]

Part 2

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 India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

At the time of signing 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 India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the "Agreement"), the two Governments have agreed upon the following provisions which shall form an integral part of the Agreement:

1. For the purposes of the Agreement, it is understood that in relation to the Hong Kong Special Administrative Region, the terms "ordinarily resides" and "normally managed or controlled" have the meaning they have under the law of the Hong Kong Special Administrative Region as amended from time to time without affecting the general principle thereof.

In addition to above, with reference to clause (i) of subparagraph (a) of paragraph 1 of Article 4 (Resident) of the Agreement, it is understood that an individual ordinarily resides in the Hong Kong Special Administrative Region if the individual has a substantial presence, permanent home or habitual abode in the Hong Kong Special Administrative Region, and he has personal and economic relations with the Hong Kong Special Administrative Region.

In addition to above, with reference to clauses (iii) and (iv) of subparagraph (a) of paragraph 1 of Article 4 (Resident) of the Agreement, it is understood that a company incorporated or any other person constituted outside the Hong Kong Special Administrative Region is normally managed or controlled in the Hong Kong Special Administrative Region if its executive officers and senior management employees make day-to-day key decisions in the Hong Kong Special Administrative Region for the strategic, financial and operational policies for the company or the person, and the staff of the company or the person conduct in the Hong Kong Special Administrative Region, the day-to-day activities necessary for making those decisions.

2. For the purposes of the Agreement, it is understood that in relation to the Hong Kong Special Administrative Region, the term "right of abode" has the meaning it has under the law of the Hong Kong Special Administrative Region as amended from time to time without affecting the general principle thereof.

3. With reference to paragraph 5 of Article 2 (Taxes Covered) of the Agreement, it is understood that the term "penalty or interest" includes, in the case of the Hong Kong Special Administrative Region, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith and

"additional tax" under Section 82A of the Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong).

4. With reference to clause (i) of subparagraph (a) of paragraph 1 of Article 3 (General Definitions) of the Agreement, it is understood that the term "any place where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply" refers to the land and sea comprised within the boundary of the Hong Kong Special Administrative Region of the People's Republic of China, together with the Shenzhen Bay Port Hong Kong Port Area.

5. With reference to Article 26 (Exchange of Information) of the Agreement, it is understood that:

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

(b) the competent authority of India may disclose information to:

(i) Parliamentary Committees;

(ii) Special Investigation Team (SIT) constituted by Government; and

(iii) any other oversight bodies mutually agreed upon in writing.

(c) the requested Contracting Party shall disclose any information that precedes the date on which the Agreement has effect for the taxes covered by the Agreement, insofar the information is foreseeably relevant for a fiscal year or taxable event following that date.

(d) in addition to the taxes covered by the Agreement, the provisions of this Article also apply to the following taxes that are administrated and enforced in India:

(i) the wealth tax;

(ii) the excise and customs duties;

(iii) the goods and services tax (GST); and

(iv) the sales and value added taxes.

6. It is understood that the Contracting Parties may review the provisions of the Agreement at the request of either Contracting Party.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Hong Kong this 19 day of March 2018, in the Chinese, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of India 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 19 March 2018.

2. This Order specifies the arrangements in the Agreement and 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 the Protocol were signed in the Chinese, Hindi and English languages which are equally authentic, and the English text prevails if there is a divergence of interpretation.

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 India, have effect in relation to any tax of India that is the subject of that provision.

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Finland) 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 30 November 2018.

2. Interpretation

In this Order—

Agreement (《協定》) means 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 Finland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, done in duplicate at Hong Kong on 24 May 2018 in the English language;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate at Hong Kong on 24 May 2018 in the English language.

3. Declaration under section 49(1A)

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

(a) that the arrangements in the Agreement and the Protocol have been made with the Government of the Republic of Finland; and

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

(2) The English text of the Agreement is reproduced in the English text of Part 1 of the Schedule. A Chinese translation of the Agreement is set out in the Chinese text of that Part.

(3) The English text of the Protocol is reproduced in the English text of Part 2 of the Schedule. A Chinese translation of the Protocol is set out in the Chinese text of that Part.

Schedule

[s. 3]

Part 1

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 Finland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

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:

   (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 Finland:

      (i) the state income taxes (valtion tuloverot; de statliga inkomstskatterna);

(ii) the corporate income tax (yhteisöjen tulovero; inkomstskatten för samfund);

(iii) the communal tax (kunnallisvero; kommunalskatten);

(iv) the church tax (kirkollisvero; kyrkoskatten);

(v) the tax withheld at source from interest (korkotulon lähdevero; källskatten på ränteinkomst); and

(vi) the tax withheld at source from non-residents' income (rajoitetusti verovelvollisen lähdevero; källskatten för begränsat skattskyldig).

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 which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Finnish 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 "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

(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 Finland, the Ministry of Finance, its authorised representative or the authority which, by the

Ministry of Finance, is designated as competent authority;

(e) the terms "a Contracting Party" and "the other Contracting Party" mean the Hong Kong Special Administrative Region or the Republic of Finland, 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 Finland, means:

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

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

(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 Finnish tax, as the context requires.

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

3. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

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

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

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

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

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

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

(b) in the case of Finland, any person who, under the laws of Finland, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation (registration) or any other criterion of a similar nature, and also includes that State and any statutory body or local authority thereof. This term, however, does not include any person who is liable to tax in Finland in respect only of income from sources in Finland.

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 Finland);

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Finland, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Finland, 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 determine by mutual agreement the Contracting Party of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such an agreement, such

person shall not be entitled to claim any benefits under the Agreement, except that such person may claim the benefits of Articles 22 and 23, and the competent authorities may determine by mutual agreement the mode of application of the rest of the Agreement to that person.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop; and

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

3. The term "permanent establishment" also encompasses:

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

   (b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 270 days within any twelve-month period.

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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, 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, 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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to

enjoyment may be taxed in the Contracting Party in which the immovable property is situated.

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

Article 7

Business Profits

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

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

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

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

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

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

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

Article 8

Shipping and Air Transport

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

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

Article 9

Associated Enterprises

1. Where

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

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

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

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the

conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits, where that other Party considers the 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 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls directly at least 10 per cent of the voting power in the company paying the dividends;

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

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

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

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

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

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in that other Party if such resident is the beneficial owner of the interest.

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

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

Article 12

Royalties

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

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

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 information concerning industrial, commercial or scientific experience.

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

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

with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

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

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares (other than shares traded on a recognized stock exchange) or other corporate rights in a company of whose assets (the value thereof) more than 50 per cent, directly or indirectly, consists of 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 the preceding paragraphs 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, 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 within 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 may be taxed in that Party.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors 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 Article 18, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 18:

(a) pensions and other benefits, whether periodic or lump-sum payments:

(i) awarded under the social security legislation of a Contracting Party; or

(ii) made under a pension or retirement scheme which is a scheme in which individuals may participate to secure

retirement benefits and which is recognized for tax purposes in a Contracting Party; or

(b) any annuity arising in a Contracting Party,

may be taxed in that Party.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18

Government Service

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

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

2. (a) Pensions and other similar remuneration (including a lump sum payment) paid by, or out of funds created by or to which contributions are made by, a Contracting Party or a statutory body or a local authority thereof or the Government of a Contracting Party to an individual in respect of services rendered to that Party or body or authority or Government shall be taxable only in that Party.

(b) However, such pensions and other similar remuneration (including a lump sum payment) shall be taxable only in the other Contracting Party if the individual is a resident of that Party and:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein; and

(ii) in the case of Finland, is a national thereof.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions (including lump sum payments), and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a statutory body or a local authority thereof or the Government of a Contracting Party.

Article 19

Students

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

Article 20

Other Income

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

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

3. 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 the Agreement and arising in the other Contracting Party may also be taxed in that other Party.

Article 21

Entitlement to Benefits

Notwithstanding the other provisions of this Agreement, a benefit under this 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 this Agreement.

Article 22

Methods for Elimination of Double Taxation

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

2. Subject to the provisions of Finnish law regarding the elimination of international double taxation (which shall not affect the general principle hereof), double taxation shall be eliminated in Finland as follows:

   (a) Where a resident of Finland derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Finland shall, subject to the provisions of sub-paragraph (b), allow as a deduction from the Finnish tax of that person, an amount equal to the Hong Kong Special Administrative Region tax paid under the Hong Kong Special Administrative Region law and in accordance with the Agreement, as computed by reference to the same income by reference to which the Finnish tax is computed.

   (b) Dividends paid by a company being a resident of the Hong Kong Special Administrative Region to a company which is a resident of Finland and which controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

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

Article 23

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Finland, are 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 Finland) 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 Finland) 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 4 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

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 24

Mutual Agreement Procedure

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

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 concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their 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. Notwithstanding the foregoing, information received by a Contracting Party may be used for other purposes when such information may be used for such other purposes under laws of both Parties and the competent authority of the supplying Party authorises such use.

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 there is no tax interest in such information to that Party.

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

Article 26

Members of Government Missions

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

Article 27

Miscellaneous Rules

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its internal laws and measures concerning the prevention of

tax avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to the Agreement.

Article 28

Entry into Force

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

2. The Agreement shall enter into force on the thirtieth day after the receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

   (a) in the Hong Kong Special Administrative Region:

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

   (b) in Finland:

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

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

3. The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Finland for the Avoidance of Double Taxation with respect to Taxes on Income from Aircraft Operation signed in Hong Kong on 19 November 2007 (hereinafter referred to as "the 2007 Agreement") shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2. The 2007 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provision of this paragraph.

Article 29

Termination

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

(a) in the Hong Kong Special Administrative Region:

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

(b) in Finland:

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

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

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Hong Kong this 24 day of May 2018, in the English language.

[SIGNED]

Part 2

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 Finland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

At the time of signing 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 Finland for the elimination of double taxation with respect to taxes on income and the prevention of tax

evasion and avoidance (the "Agreement"), the two Governments have agreed upon the following provisions which shall form an integral part of the Agreement:

1. *With reference to Articles 4 (Resident) and 18 (Government Service)*

It is understood that the term "statutory body" means any legal entity of a public character created by a Contracting Party or the Government of a Contracting Party in which no person other than a Contracting Party or the Government of a Contracting Party itself or a local authority thereof has an interest.

2. *With reference to Article 13 (Capital Gains)*

It is understood that the term "recognised stock exchange" means:

(a) the Stock Exchange of Hong Kong Limited and any Hong Kong Special Administrative Region stock exchange recognised under the law of the Hong Kong Special Administrative Region;

(b) the Helsinki Stock Exchange;

(c) any other stock exchange agreed upon by the competent authorities.

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

It is understood that:

(a) the provisions of this Article also apply to the following taxes that are administrated and enforced in Finland:

(i) taxes on net wealth; and

(ii) taxes in other categories, except customs duties, namely:

-- estate, inheritance or gift taxes;

-- taxes on immovable or movable property;

-- consumption taxes; and

-- taxes on goods and services.

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

(c) in the case of the Hong Kong Special Administrative Region, the judicial decisions in which information may be disclosed include the decisions of the Board of Review.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Hong Kong this 24 day of May 2018, in the English language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Finland signed an agreement for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (***Agreement***) together with a protocol to the Agreement (***Protocol***) on 24 May 2018.

2. This Order specifies the arrangements in the Agreement and 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 the Protocol were signed in the English language. Chinese translations of the Agreement and the Protocol are 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 Finland, have effect in relation to any tax of Finland that is the subject of that provision.

Annex C

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

Financial Implications

The Government would have to forgo an insignificant sum of revenue which is currently being collected in respect of profits of Indian and Finnish resident companies not attributable to a permanent establishment in Hong Kong, as well as shipping and air services profits of Indian and Finnish operators.

Economic Implications

2. The two CDTAs will facilitate business activities between Hong Kong and India/Finland, and contribute positively to the economic development of Hong Kong. They will enhance the economic interaction between Hong Kong and the two places by providing enhanced certainty 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 exchange of information from India and Finland under the CDTAs, which will be absorbed by the existing resources as far as possible. Where necessary, additional manpower resources would be sought in accordance with the established resources allocation mechanism.

Family Implications

4. Given that the tax burden of some individuals may be relieved under the two CDTAs, the proposal may have positive implications for the financial situation of those families.

Annex D

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 India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("Indian Agreement")

Summary of Main Provisions

The Indian 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 India – the income tax, including any surcharge thereon. For EoI purpose, it also covers the wealth tax; the excise and customs duties; the goods and services tax and the sales and value added taxes.

2. The Indian 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 Indian Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Indian 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 of an enterprise from operation of ships and aircraft in international traffic, except those derived in the source jurisdiction from the operation of ships; and gains derived by an enterprise from the alienation of ships or aircraft operated in

international traffic or movable property pertaining to the operation of such ships or 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, or where 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) income of entertainers and sportspersons who conduct their professional activities if the activities are substantially supported by public funds; and

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

4. Employment income and pension paid by the government of a Contracting Party is, in general, taxable only in that Party (source jurisdiction). Pensions from non-government employment, including a lump sum payment, 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 Indian 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 Indian Agreement that the following types of income may be taxed in both jurisdictions –

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

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

(c) profits of an enterprise 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 the specified limit in tax rates as follows:

- for dividends, 5% of the gross amount of the dividends, if the beneficial owner of the dividends is a resident of the resident jurisdiction;

- for interest, 0% if the beneficial owner is the Government, a political subdivision or a local authority of either Hong Kong or India, the Hong Kong Monetary Authority, the Exchange Fund, the Reserve Bank of India, the Export-Import Bank of India, or any other institution as may be agreed upon from time to time between the competent authorities of Hong Kong and India; and 10% in all other cases;

- for royalties, 10% on the gross amount of the royalties, if the beneficial owner of the royalties is a resident of the resident jurisdiction;

(e) fees for technical services arising from the source jurisdiction, the source jurisdiction's right to tax is limited to 10%;

(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 base

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 entertainers and sportspersons who conduct their professional activities in the source jurisdiction, provided that the activities are not substantially supported by public funds; and

(k) gain from the alienation of shares and capital gains not expressly dealt with in the Indian Agreement.

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 India will provide double taxation relief for its residents by the credit method.

Annex E

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

Summary of Main Provisions

The Finnish 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 Finland –	(i) the state income taxes; (ii) the corporate income tax; (iii) the communal tax; (iv) the church tax; (v) the tax withheld at source from interest; (vi) the tax withheld at source from non-residents' income; and (vii) for EoI purpose, it also covers taxes on net wealth and taxes in other categories, except customs duties, namely: estate, inheritance or gift taxes, taxes on immovable or movable property, consumption taxes and taxes on goods and services.

2. The Finnish 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 Finnish Agreement (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the

Finnish 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 of an enterprise from operation of ships and aircraft in international traffic and gains derived by an enterprise from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft;

(c) interest arising in the source jurisdiction;

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

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

4. 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 Finnish 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 Finnish Agreement that the following types of income may be taxed in both jurisdictions –

(a) income generated from immovable property, income from the

direct use, letting or use in any other form of right to the enjoyment of immovable property and gains from the alienation of such property situated in the source jurisdiction;

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

(c) dividends received from residents of a source jurisdiction, with the source jurisdiction's right to tax subject to the specified limit in tax rates as follows:

- 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls directly at least 10% of the voting power in the dividend-paying company; and

- 10% of the gross amount of the dividends 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% of the gross amount of the royalties, if the beneficial owner of the royalties is a resident of the resident jurisdiction;

(e) gains from the alienation of shares (other than shares traded on a recognized stock exchange) or other corporate rights in a company of whose assets (the values thereof) more than 50%, directly or indirectly, consists of 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) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;

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

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

(j) Pensions from non-government employment.

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 Finland will provide double taxation relief for its residents by the credit method.

Annex F

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements
(as at 31 August 2018)

	Jurisdictions	Month 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
38	Saudi Arabia	August 2017
39	India[#]	March 2018
40	Finland[#]	May 2018

[#] The CDTAs with India and Finland have not yet entered into force pending completion of the ratification procedures.