

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE FAROES FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

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

- desiring to conclude an Agreement concerning information on tax matters,
- considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of the Faroes,

have agreed as follows:

Article 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the internal laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its jurisdiction.

Article 3

Taxes Covered

1. The taxes to which this Agreement applies are:
 - (a) in the case of the Hong Kong Special Administrative Region,

(i) profits tax;

(ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of the Faroes,

(i) taxes on income and profits;

(ii) taxes levied under the Hydrocarbon Tax Act;

(iii) taxes levied under the Tonnage Tax Act;

(iv) royalty taxes;

(v) taxes on capital gains;

(vi) taxes on net wealth; and

(vii) 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. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - (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 “the Faroes” means the landmass of the Faroes and their territorial waters and any area outside the territorial waters where the Faroes according to Faroese legislation and in accordance with international law, may exercise rights with respect to the seabed and subsoil and their natural resources;
 - (b) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be

readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

- (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 Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the Faroes, the Minister of Finance or his authorised representative or the authority which is designated as a competent authority for the purpose of this Agreement;
- (e) the term “Contracting Party” means the Hong Kong Special Administrative Region or the Faroes as the context requires;
- (f) the term “information” means any fact, statement or record in any form whatever;
- (g) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- (h) the term “person” includes an individual, a company and any other body of persons;

- (i) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (j) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (k) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (l) the term “requested Party” means the Contracting Party requested to provide information;
- (m) the term “applicant Party” means the Contracting Party requesting information;
- (n) the term “tax” means any tax to which the Agreement applies.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, 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 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its internal laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1, have the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons,

including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The requested Party shall disclose any information that precedes the date on which this Agreement has effect for the taxes covered by the Agreement, insofar the information is foreseeably relevant for a taxable period or taxable event following that date.
6. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) the tax period for which information is requested;
 - (c) the tax purpose for which the information is sought and the tax type(s) concerned;
 - (d) a statement of the information sought, including its nature, its relevance to the purpose of the request, and the form in

which the applicant Party wishes to receive the information from the requested Party;

- (e) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (g) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (h) a statement that the applicant Party has pursued all means available within its own jurisdiction to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and

- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
 - (b) produced for the purposes of use in existing or contemplated legal proceedings.
- 4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).
- 5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
- 6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a person who has the right of abode or is incorporated or otherwise constituted in the requested Party (where the requested Party is the Hong Kong Special Administrative Region) or a national of the requested Party (where the requested Party is the Faroes) as compared with a person who has the right of abode or is incorporated or otherwise constituted in the applicant Party (where the applicant Party is the Hong Kong Special Administrative Region) or a national of the applicant Party (where the applicant Party is the Faroes) in the same circumstances.

Article 7

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential in the same manner as information obtained under the internal laws of that Party and may be disclosed only

to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 8

Costs

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the applicant Party. Extraordinary costs include, but are not limited to, the following:
 - (a) reasonable fees charged by third parties for carrying out research;
 - (b) reasonable costs of engaging experts, interpreters, or translators;
 - (c) reasonable costs of conveying documents to the applicant Party;

- (d) reasonable litigation costs of the requested Party in relation to a specific request for information; and
 - (e) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US500 to determine whether the applicant Party will continue to pursue the request and bear the cost.

Article 9

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 10

Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 11

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Article 5.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 12

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. This Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of this Agreement shall thereupon have effect, with respect to all matters covered in Article 1, for taxable periods beginning on or after the date on which the Agreement enters into force, or, where there is no taxable period, for all charges to tax arising on or after the date on which the Agreement enters into force.

Article 13

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the

Agreement by giving written notice of termination to the other Contracting Party. In such case, the Agreement shall cease to have effect on the first day of the month following the end of the period of six months after the date of receipt of notice of termination by the other Contracting Party.

2. In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under the Agreement.

In witness whereof the undersigned being duly authorised thereto have signed the Agreement.

DONE at Paris, this 22nd day of August 2014, in duplicate in the English language.

For the Government of
the Hong Kong Special
Administrative Region of
the People's Republic of China

For the Government of
the Faroes